

Hotel 237, LLC v New York City Dept. of Fin.
2025 NY Slip Op 31961(U)
May 21, 2025
Supreme Court, New York County
Docket Number: Index No. 156368/2025
Judge: Emily Morales-Minerva
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. EMILY MORALES-MINERVA PART 42M

Justice

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HOTEL 237, LLC

Plaintiff,

- v -

THE NEW YORK CITY DEPARTMENT OF FINANCE,

Defendant.

-----X

INDEX NO. 156368/2025

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19

were read on this motion to/for INJUNCTION/RESTRAINING ORDER

APPEARANCES:

Rosenberg & Estis, New York, NY (Amanda Lauren Katz, Esq., of counsel) for plaintiff.

New York City Law Department, New York, NY (Stephanie Marie Fitos, Esq., of counsel) for defendant.

EMILY MORALES-MINERVA, J.S.C.:

In the instant action, plaintiff HOTEL 237, LLC moves, by order to show cause (mot. seq. no. 001), for an order granting it a mandatory and preliminary injunction staying the tax lien sale scheduled for May 20, 2025, for the property located at 239 West 107th Street New York, New York, Block 01879, Lot 0013 (property). Pending the hearing and determination of the order to show cause, plaintiff requests that a temporary restraining order (TRO) be issued to stay and enjoin defendant, THE NEW YORK

CITY DEPARTMENT OF FINANCE, from holding a tax lien sale or auction with respect to the property (interim relief).

On May 19, 2025, the Court granted the interim relief requested by plaintiff, issued a TRO to temporarily stay the tax lien sale, and scheduled a hearing for May 21, 2025, at 11:30 A.M. on the interim relief sought (see New York State Court Electronic Filing System [NYSCEF] Doc. No. 10, Order to Show Cause).

On May 21, 2025, at 11:30 AM, all parties appeared, and defendant opposed the plaintiff's request for interim relief. Now, for the reasons below, the Court declines to extend the TRO, and vacates the TRO issued on May 19, 2025.

"To be entitled to a preliminary injunction, the moving party must demonstrate (1) a likelihood of success on the merits, (2) irreparable injury if provisional relief is not granted and (3) that the equities are in his favor" (Kazantzis v Cascade Funding RM1 Acquisitions Grantor Tr., 217 AD3d 410, 411 [1st Dept 2023] [citation and quotations omitted]; see also CPLR § 6301; Nobu Next Door, LLC v. Fine Arts Hous., Inc., 4 NY3d 839, 840 [2005] [stating a "party seeking a preliminary injunction must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of an injunction and a balance of equities in its favor"]).

"A temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had" (CPLR § 6301 [emphasis added]; see Wilder v Fresenius Med. Care Holdings, Inc., 175 AD3d 406 [1st Dept 2019]).

Here, plaintiff fails to establish, among other things, a likelihood of success on the merits of its argument that the tax lien shall not be sold because plaintiff did not provide proper notice of the sale. Black letter law provides as follows:

"A tax lien shall not be sold unless the commissioner of finance, or his or her designee, notifies [a] the owner of record at the address of record and [b] any other person who has registered pursuant to section 11-309¹ of this chapter, or who has provided notice to the commissioner of finance pursuant to section 11-416² or 11-

¹ NYC Administrative Code § 11-309 (a) provides: "The owner of any lot, piece or parcel of land in the city of New York or any person interested in such lot, piece or parcel, may file with the department of finance, a statement containing a brief description of such land, together with the section, block and lot number thereof, or such other identifying information as at the time is established by the department of finance, and a statement of the applicant's interest therein, together with a written request that such lot, piece or parcel of land be registered in the name of the applicant. In such statement the applicant shall designate a post office address to which notifications addressed to such applicant shall be sent. A brief description of such lot, piece or parcel of land corresponding to the description thereof in the statement so filed, together with the name of the applicant and [their] post office address and the date of such application, shall thereupon be registered in the department of finance."

² NYC Administrative Code § 11-416 governs owner's registration cards, and the mailing of tax bills and notices to registered owners or the owner's designees, and provides "[t]he failure to receive such notice or process as herein provided shall not affect the validity of any action or proceeding brought pursuant to this chapter."

417³ of this title, by first class mail, of the intention to sell the tax lien"

(NYC Administrative Code § 11-320 [b] [1]). Here, it is undisputed that plaintiff is neither the owner of the subject premises nor registered to receive such notice, pursuant to sections 11-309, 11-416 or 11-417 of the governing Administrative Code.

Further, to the extent that plaintiff contends that defendant failed to provide notice to the owner of the subject premises or to others entitled to notice, plaintiff provides no authority upon which it has standing to argue on behalf of such entities. Finally, defendant provided proof of proper service on owner.

Plaintiff also fails to establish risk of "immediate and irreparable injury, loss, or damages" (see generally Kazantzis, supra, 217 AD3d at 411). Plaintiff alleges it has a leasehold of the subject premises, which it may lose due to the tax lien sale. However, whether plaintiff has a leasehold or is a

³ NYC Administrative Code § 11-417 (a) provides: "The commissioner of finance shall, in addition to the file maintained by [them] pursuant to section 11-416 of this chapter, maintain a file of in rem cards submitted by any person having an interest in real property who is not entitled to have tax bills mailed to him or her by the commissioner of finance, including mortgagees, lienors, encumbrancers and owners who have filed owner's registration cards designating someone else to receive bills and notices . . . (b) The commissioner of finance shall mail a notice of foreclosure, and any other process required by this chapter to each person who has filed an in rem card whenever the parcels to which such cards refer are included in a list of delinquent taxes filed pursuant to this chapter. However, failure to receive such notice or process shall not affect the validity of any proceeding brought pursuant to this chapter."

holdover commercial tenant of the subject premises is an issue of fact pending before another court.⁴

Further, even if a leasehold is determined to exist, which is not the case here, a sale of the tax lien has no forthright consequence on plaintiff (see generally Administrative Code § 11-335 [governing the commencement of proceedings to foreclose on tax liens, following default on the lien, if any]). Finally, plaintiff has not established that monetary damages would be inadequate compensation for purposes of demonstrating irreparable injury for any loss (see generally Liang v Yi Jing Tan, 155 AD3d 1020, 1022 [2nd Dept 2017]).

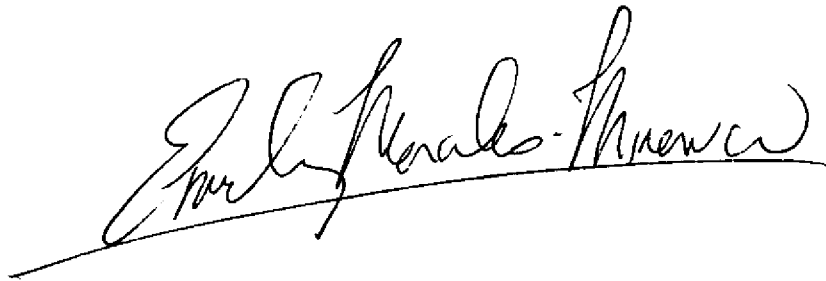
Accordingly, it is hereby

ORDERED that the temporary restraining order in this action, dated May 19, 2025, is vacated; it is further

ORDERED that the Order to Show Cause is marked for submission as of today, May 27, 2025; and it is further

ORDERED that the Clerk of Court shall mark the file accordingly.

date: 5/21/2025



⁴The issue of whether plaintiff possesses a valid leasehold is the subject of litigation currently pending before the Honorable Debra James in G.M. Canmar Residence Corp. v Hotel 237, LLC, Index No. 151321/2024 (Sup Ct, NY Cnty), and will not be addressed herein.

5/21/2025

DATE

EM-M
EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE