

Claudisal Rest. Corp. v 202-206 Thompson St. LLC

2025 NY Slip Op 32776(U)

July 15, 2025

Supreme Court, New York County

Docket Number: Index No. 156741/2025

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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INDEX NO. 156741/2025

CLAUDISAL RESTAURANT CORP.,
Plaintiff,

MOTION DATE N/A

MOTION SEQ. NO. 001

- v -

202-206 THOMPSON ST. LLC, SHELLVILLE REALTY CO.
LLC

DECISION + ORDER ON
MOTION

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20

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

APPEARANCES:

Benowich Law LLP, White Plains, NY (Leonard A. Benowich, Esq., of counsel), for plaintiff.

Jason J. Rebhun, Esq., New York, NY (Jason J. Rebhun, Esq., of counsel), for defendants.

EMILY MORALES-MINERVA, J.S.C.

In this action for a permanent injunction and declaratory relief, as well as for compensatory damages for breach of the lease, plaintiff CLAUDISAL RESTAURANT CORP. (commercial tenant) moves, by order to show cause (motion sequence number 001), for a Yellowstone injunction, enjoining and restraining defendants 202-206 THOMPSON ST. LLC and SHELLVILLE REALTY CO. LLC (owner-landlord) from terminating, cancelling, or holding commercial tenant in default of the commercial lease between the parties

pending final determination of the cause of action. The court (Ta-Tanisha James, J.S.C.) signed the order to show cause, granted commercial tenant a Temporary Restraining Order, enjoining defendant from terminating the lease, and designated the motion returnable in Part 42M, 111 Centre Street, New York, New York, on June 16th, 2025, at 12:00 P.M. (see New York State Court Electronic Filing System [NYSCEF] Doc. No. 11, Order to Show Cause, with interim relief requested, dated May 30, 2025). Owner-landlord submitted opposition to the injunction (see NYSCEF Doc. No. 15, Opposition to Order to Show Cause).

On the return date, commercial tenant and owner-landlord appeared, by counsel, requesting an adjournment on consent, to July 14th, 2025, at 11:00 A.M. (see NYSCEF Doc. No. 14, Order on Motion Sequence No. 001, dated June 17, 2025). The Court granted the request.

On July 14th, 2025, at the call of the calendar, commercial tenant and owner-landlord appeared, again, by counsel. Following oral arguments, on record, the court marked the motion submitted for determination.

Now, for the reasons set forth below, the Court denies commercial tenant's request for a Yellowstone injunction and vacates the temporary injunction.

ANALYSIS

In First Natl. Stores v Yellowstone Shopping Ctr., 21 NY2d 630 [1968], the Court of Appeals held that -- where a commercial tenant fails to obtain a temporary restraining order prior to the expiration of the cure period in its lease -- the courts are powerless to extend the cure period and revive the lease. From this hard lesson, came a tenant practice "of obtaining a stay of the cure period before it expired to preserve the lease until the merits of the dispute could be resolved in court" (Graubard Mollen Horowitz Pomeranz & Shapiro v 600 Third Ave. Assocs., 93 NY2d 508, 514 [1999] [Wesley, J.]; see also 159 MP Corp v Redbridge Bedford, LLC, 33 NY3d 353, 366 [2019] [citation and quotations omitted] [providing, among other things, that, "[i]n the wake of" First Natl. Stores, supra, "tenants challenging notices of default in declaratory judgment actions 'developed the practice of obtaining a stay of the cure period' . . .]).

Inspired by First Natl. Stores v Yellowstone Shopping Ctr. (21 NY2d 630), this type of injunction came to be known as the Yellowstone injunction (see id.). The Court of Appeals has "described the Yellowstone injunction as a 'creative remedy' crafted by lower courts . . ." (159 MP Corp, supra, 33 NY3d at 366). The general purpose of this injunction is as follows:

"[To maintain] the status quo so that the commercial tenant . . . may protect its investment in the leasehold by obtaining a stay tolling the cure period [] before it expired to preserve the lease until the merits of the dispute could be resolved in court"

(Graubard, supra, 93 NY2d at 514).

"The Yellowstone injunction is an important adjunct to . . . [a] declaratory judgment action, in which a tenant threatened with eviction based on debatable claims of breach may obtain a judicial resolution of the debate before deciding whether to cure, to remain with no need to cure, or to accept eviction" (159 MP Corp, supra, 33 NY3d at 382 [Rowan, Ch. J., dissenting]).

A party seeking a Yellowstone must establish:

"(1) it holds a commercial lease; (2) it received from the landlord either a notice of default, a notice to cure, or a threat of termination of the lease; (3) it requested injunctive relief prior to the termination of the lease; and (4) it is prepared and maintains the ability to cure the alleged default by any means short of vacating the premises'"

(Wharton-Bickley v 388 Broadway, 237 AD3d 72, 78 [1st Dept 2025] [emphasis added], quoting Graubard, supra, 93 NY2d at 514 and Elite Wine & Spirit LLC v Michaelangelo Preserv. LLC, 213 AD3d 143, 148 [1st Dept 2023]).

Here, commercial tenant established the first element, which is undisputed. Plaintiff CLAUDISAL RESTAURANT CORP. is the commercial tenant of the restaurant premises of defendants

202-206 THOMPSON ST. LLC and SHELLVILLE REALTY CO. LLC's property known as 206 Thompson Street New York, New York. However, commercial tenant has not satisfied the second element for the issuance of a Yellowstone injunction: a showing that "it received from the landlord either a notice of default, a notice to cure, or a threat of termination of the lease" (Wharton-Bickley, supra, 237 AD3d at 78 [quotations and citations omitted]).

On May 06, 2025, owner-landlord served commercial tenant with a "Fifteen Days' Demand of the Rent", which provides:

"You are required to pay the above outlined due amount [\$67,484.21] on or before May 30, 2025, that being more than fifteen (15) days from the date of the service of this notice, or surrender up the possession of said premises to the Landlord [202-206 THOMPSON ST. LLC and SHELLVILLE REALTY CO. LLC], otherwise Landlord shall commence summary proceedings under the statute to recover the possession of the rented property"

(emphasis added) (NYSCEF Doc. No. 006, Rent Demand, dated May 06, 2025). This rent demand is not a notice of default or a notice to cure upon a threat of eminent termination of the lease. It is the statutory prerequisite to a summary nonpayment proceeding (see RPAPL 711[2]).¹

¹ RPAPL 711 provides, as relevant here, "A special proceeding may be maintained under this article upon the following grounds: (2) The tenant has defaulted in the payment of rent, pursuant to the agreement under which the premises are held, and a written demand of the rent has been made with at least fourteen days' notice requiring, in the alternative, the payment of the

There is no need to freeze the time from the date of May 30, 2025, because nothing happens on that date that the court cannot address. In other words, lifting the temporary Yellowstone injunction here does not terminate the lease forthwith leaving the court unable to revive it. No risk exists that -- unless the status quo between the parties is preserved from May 30, 2025, until conclusion of a yet to be filed summary judgment proceeding -- plaintiff will irreparably lose its leasehold.

Owner-landlord confirmed, on record, that it is not seeking to terminate commercial tenant's lease and intended only to reserve its right to bring a nonpayment proceeding in its "Fifteen Days' Demand of the Rent" (NYSCEF Doc. No. 006, Rent Demand, dated May 06, 2025).²

Under these circumstances, a Yellowstone injunction does not lie (see Purdue Pharma, LP v Ardsley Partners, LP, 5 AD3d 654, 655 [2d Dept 2004] [finding that a Yellowstone injunction was appropriate where the landlord served a notice to cure which threatened termination of the lease", not a "a mere notice of

rent, or the possession of the premises, has been served upon the tenant as prescribed in section seven hundred thirty-five of this article."

² "It is elementary that a nonpayment proceeding must be predicated on a default in rent owed 'pursuant to the agreement under which the premises are held' and cannot be based on an expired lease" (615 Nostrand Ave. Corp. v Roach, 15 Misc 3d 1, 4 [App Term 2006], citing RPAPL 711 [2]; see Matter of Jaroslow v Lehigh Val. R.R. Co., 23 NY2d 991, 993 [1969]; United Sec. Corp. v Suchman, 307 NY 48 [1954]; and Licht v Moses, 11 Misc 3d 76, 813 NYS2d 849 [App Term, 2d & 11th Jud Dists 2006]).

nonpayment"), citing M.B.S Love Unlimited, Inc. v Jaclyn Realty Assocs., 215 AD2d 537, 538 [2d Dept 1995] [holding that Yellowstone injunction was unnecessary, as landlord neither served a notice of default or a notice to cure the default within a specified period of time]; and Top-All Varieties v Raj Dev. Co., 151 AD2d 470, 471 [2d Dept 1989] [holding that rent demand served by landlord was not a notice of default or notice to cure, and that injunctive relief was not required in those circumstances]).

The cases commercial tenant relies upon for a contrary result are unavailing. In Lexington Ave. & 42nd St. Corp. v 380 Lexchamp Operating Inc., the First Department held that a Yellowstone injunction was warranted where landlord served a notice upon tenant which specifically cited an article of the lease that provided that tenant's leasehold would terminate in thirty-days if the default was not cured (205 AD2d 421, 422 [1st Dept 1994]). In DHB Indus., Inc. v West-Post Mgmt. Co., the court granted a Yellowstone injunction to tenant because landlord served tenant with a notice of default "indicating that the lease would be terminated if [tenant] did not cure the default on or before September 30, 2025" (9 Misc3d 1130[A] [Sup Ct Nassau Cnty 2005]). In both cases, landlord served a notice that contained termination language. In the instant mater, the

rent demand contains no such language (see NYSCEF Doc. No. 006, Rent Demand, dated May 06, 2025).

Lastly, "Civil Court is the strongly preferred forum for resolving . . . landlord-tenant disputes" (Brecker v 295 Cent. Park West, Inc., 71 AD3d 564, 565 [1st Dept 2010]; see 44-46 West 65th Apt. Corp. v Stvan, 3 AD3d 440, 441 [noting the "strong preference for resolving landlord-tenant disputes in Civil Court due to its unique ability to resolve such issues"])). Therefore, the Court dismisses the counterclaims in this action, as landlord-owner's intention, as stated on the record, is to begin a commercial summary nonpayment proceeding in Civil Court; it asserted its claims here only because commercial tenant brought the parties before the Supreme Court for a Yellowstone injunction.

Accordingly, it is hereby

ORDERED that plaintiff's motion, by Order to Show Cause (motion sequence no. 001), seeking a Yellowstone injunction, is denied; it is further

ORDERED that the Temporary Restraining Order issued by this court, dated May 30, 2025, is vacated forthwith in its entirety and; it is further

ORDERED that plaintiff's complaint is dismissed; it is further

ORDERED that that defendant's crossclaims are also dismissed; and it is further

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

7/15/2025
DATE

CHECK ONE: CASE DISPOSED GRANTED DENIED NON-FINAL DISPOSITION OTHER

APPLICATION: SETTLE ORDER SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE

Emily Morales-Minerva
EMILY MORALES-MINERVA, J.S.C.