

Arnold v 4-6 Bleecker St. LLC

2025 NY Slip Op 32808(U)

July 29, 2025

Supreme Court, New York County

Docket Number: Index No. 158541/2013

Judge: Margaret A. Chan

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MARGARET A. CHAN PART 49M

Justice

-----X

PETER ARNOLD, ELI LAZARUS, SEAN ROCHA,
MICHAEL SCHILLER,

Plaintiff,

- v -

4-6 BLEECKER STREET LLC, 316 BOWERY REALTY
CORP., WALSAM 316 LLC, WALSAM 316 BOWERY
LLC, WALSAM BLEECKER LLC, LAWBER BOWERY
LLC, 316 BOWERY NEXT GENERATION LLC

Defendant.

-----X

INDEX NO. 158541/2013
MOTION DATE 12/17/2024,
01/12/2025
MOTION SEQ. NO. 026 027

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 026) 862, 863, 864, 865, 866, 867, 870, 871, 872, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 903, 904, 905, 906, 907, 908, 909, 910, 911

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

The following e-filed documents, listed by NYSCEF document number (Motion 027) 873, 874, 875, 876, 877, 880, 881, 899, 900, 901, 902, 912, 913, 914, 915, 916, 917, 918, 919, 920

were read on this motion to/for POST JUDGMENT OTHER.

In this long drawn-out rent-overcharge case that plaintiffs commenced in September 2013 and prevailed on the overcharge issue in October 2015, they were ultimately awarded a money judgment on March 12, 2024. Plaintiffs move by Order to Show Cause pursuant to CPLR 5225 for an order directing defendant 4-6 Bleecker Street LLC (4-6 Bleecker or defendant) to turn over funds in full satisfaction of the judgment in the amount of \$226,743.66 under MS 026 by Peter Arnold and Michael Schiller and in the amount of \$333,456.84 under MS 027 by Eli Lazarus and Sean Rocha. 4-6 Bleecker cross moves for a protective order pursuant to CPLR 5240, which plaintiffs oppose.

The facts of this case have been repeated in the prior Orders on the multitude of motions and appeals; they will not be repeated here. Suffice to say that after plaintiffs prevailed in their overcharge claim on October 14, 2015¹ (NYSCEF 168 - Order and Judgment of Hon. Joan A. Madden (ret.) [Oct 2015 Order]), the matter

¹ At the time of the 2015 order, three plaintiff were current tenants and one plaintiff was a former tenant (see NYSCEF # 168- October 14, 2015 order [Hon. Joan A. Madden] at 1 ["In this landlord-tenant action, three current tenants and one former tenant claim that their respective apartments were improperly and fraudulently removed from Rent Stabilization."])).

was sent to a Special Referee to conduct a hearing on the charges due to plaintiffs, including attorneys' fees (see NYSCEF # 520 - Order dated August 19, 2019, at 6-7 [reference to a referee]). The Special Referee's report was confirmed by order of this court dated October 2, 2023 (NYSCEF # 853 - Order). The Referee awarded \$226,743.66 in attorneys' fees to plaintiffs Arnold and Schiller and \$333,456.84 in attorneys' fees to plaintiffs Rocha and Lazarus as reflect in the order confirming the Referee's report (*id.* at 3; *see also* NYSCEF # 884 - 4-6 Bleecker's mol at 7).

In the interim, the parties entered into settled orders settling the damages owed to each of the four plaintiffs. The parties executed a Settlement Agreement and Release on January 8, 2020, with all the above-captioned defendants (collectively, Walsam) except for 4-6 Bleecker (NYSCEF # 885). 4-6 Bleecker² was not part of this Settlement Agreement because it was not involved in the overcharge (NYSCEF # 884 - 4-6 Bleecker's mol at 7). On March 6, 2020, 4-6 Bleecker provided plaintiffs Arnold, Schiller, and Rocha rent stabilized leases with a monthly set by plaintiffs' expert; plaintiff Lazarus had moved out at the start of this case (*id.*).

Subsequently, 4-6 Bleecker was awarded indemnification from Walsam by the First Department on January 20, 2022 (*id.*).

On July 15, 2024, Walsam filed for bankruptcy protection (*id.*). The Bankruptcy Court approved the sale of the subject premise, 4-6 Bleecker Street, New York, NY (the building) on December 17, 2024, and also ensured that 4-6 Bleecker retains its rights as to rents from its residential tenants through the closing of the contract of sale (*id.* at 10 quoting from NYSCEF # 887 - Bankruptcy Court's Order Approving Sale of Property at 8). On that same day, plaintiffs filed an OSC for a turnover (*id.* at 8). The building was sold at an auction for \$2,325,000; 4-6 Bleecker received 80% of that amount (NYSCEF # 863, pltf's atty aff ¶'s 8, 10; NYSCEF # 866 - 4-6 Bleecker's Chapter 11 Statement - ¶ 2(A)). On December 20, 2024, the Bankruptcy Court ordered \$484,684.76 from the sale proceeds be held in escrow "in the IOLA account of Debtors' counsel" pending "a determination of the state court, and which may include, but is not limited to, a reduction in the amount owed or to be held in escro ." (*id.*; NYSCEF # 888 - Order of the Bankruptcy Court, SDNY [Hon. Michael E. Wiles] dated December 20, 2024).

By MS 026 and MS 027, plaintiffs urge this court to direct 4-6 Bleecker to turnover the judgment amount plus interest and enforce the judgment under CPLR 5225. 4-6 Bleecker, on the other hand, would have this court exercise its equitable powers under CPLR 5240 and deem the judgment satisfied given that plaintiffs had not paid rent during this litigation period and cross moves for a protective order (4-6 Bleecker's mol at 8-10).

² 4-6 Bleecker was and is the landlord of the subject residential building pursuant to the Master lease.

Plaintiffs, in opposing 4-6 Bleecker's cross motion, aver that no rent was owed and there had been no claims for rent during this litigation until this motion (see NYSCEF # 894 - Schiller aff - ¶ 4). Plaintiffs add that 4-6 Bleecker's claim for alleged unpaid rent and its calculated amounts are fabricated, barred by the six-year statute of limitations, and countered with the many of the issues, including those involving habitability, that were before the Housing Court in 2021 (*id.* ¶¶ 7-13). Plaintiffs claim that 4-6 Bleecker's cross motion alleging a claim for unpaid rent, for the first time since the commencement of this litigation, is but another delay tactic. Plaintiffs also argue that 4-6 Bleecker is not entitled to any equitable remedy because of laches.

Plaintiffs note that 4-6 Bleecker's claim that plaintiffs acted inequitably by not paying rent is disingenuous; plaintiff Lazarus does not owe any "back rent" during this litigation as he had moved out around the time this case commenced (see NYSCEF # 902 - pl'tfs Rocha and Lazarus' mol in opp at 8). Plaintiffs argue that 4-6 Bleecker's "unadjudicated claims for back rent" are barred by laches because "[4-6 Bleecker] has engaged in a "lengthy neglect" and "omission" to assert its purported right for back rent." (*id.* at 9).

On January 29, 2025, 4-6 Bleecker filed a petition pursuant to CPLR 5239 to determine how much, if any, amount of the judgment may be offset by the unpaid rent (see Index No. 650321/2025 NYSCEF # 1 - Petition). 4-6 Bleecker's case under Index No. 650321/2025 was subsequently reassigned to this court on June 13, 2025 (4-6 Bleecker's mol at 11; NYSCEF #'s 70-72).

DISCUSSION

Under CPLR 5225(a), a judgment creditor may move to have its judgment satisfied "where it is shown that the judgment debtor is in the possession or custody of money or other personal property in which he has an interest." (*AC Penguin Prestige Corp. v Two Thousand Fifteen Artisanal LLC*, 233 AD3d 576, 576 [1st Dept 2024]). There is no dispute that plaintiffs' respective motions are proper in that they have a judgment and 4-6 Bleecker Street has realized the proceeds from the sale of its property in an auction sale held by the bankruptcy court.

Under CPLR 5240, a court may issue an order "*denying, limiting, conditioning, regulating, extending, or modifying the use of any enforcement procedure*" (*JP Morgan Chase Bank, NA v Motorola, Inc.*, 47 AD3d 293, 307 [1st Dept 2007] [emphasis in original]). CPLR 5240 "grants the courts broad discretionary power to control and regulate the enforcement of a money judgment under article 52 to prevent 'unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts'" (*id.* quoting *Guardian Loan Co. v Early*, 47 NY2d 515, 519-520 [1979]).

The parties competing motion and cross motion raise concerns that run through the history of this litigation – that is, this litigation was rife with delays from multiple and repetitive arguments, motions, appeals (*see e.g.* NYSCEF # 287 - Order dated May 31, 2017 at 7 [Hon. Joan A. Madden] [“defendants . . . simply rehash their prior argument . . .” ; NYSCEF # 572 – Order of this court dated Sept. 10, 2019 quoting *Arnold v 4-6 Bleecker Street LLC*, 165 AD3d 493, 494 [1st Dept 2018] [barring the Walsam defendants from “relitigating the plaintiffs’ showing of entitlement to rent overcharges and treble damages.”]) and, of course, needless contentious and circuitous discovery issues between the Walsam defendants and 4-6 Bleecker.

Also of note is the fact that 4-6 Bleecker, as the landlord under a net lease, collected the rent from tenants in the residential part of the building. In the course of this 12-year litigation, this the first time that this landlord has sought or even mentioned unpaid rents to this court. Further, even as Justice Madden had stated in her 2013 order, three of the plaintiffs were current tenants and one was a former tenant (Lazarus) when this case was commenced, but defendant is still pursuing rent for the period when Lazarus was no longer a tenant. 4-6 Bleecker is aware of this fact as indicated in its brief. Despite this knowledge, 4-6 Bleecker’s attempt to now claw back alleged owed rents from a non-tenant and for alleged outstanding rent from plaintiffs who were tenants during this litigation, appears to be yet another delay tactic in a case that is rife with them. As such, to prevent “unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to [plaintiffs] or the courts” (*JP Morgan Chase Bank*, 47 AD3d at 307), 4-6 Bleecker’s cross motion for a protective order is denied. 4-6 Bleecker’s recourse is to pursue its case for the outstanding rent in its newly filed case. However, this litigation that started in 2013, that did not have any claims for rent by 4-6 Bleecker, must end.

CONCLUSION

Based on the foregoing, it is

ORDERED that plaintiffs’ respective motions pursuant to CPLR 5252(a) directing defendant 4-6 Bleecker Street, LLC to turn over the funds held in escrow pursuant to the Order of the Bankruptcy Court dated December 20, 2024 (NYSCEF # 888) to satisfy the Judgment dated March 12, 2024 (NYSCEF # 861), in favor of plaintiffs Peter Arnold and Michael Schiller in the amount of \$226,743.66 (MS 026), and plaintiffs Eli Lazarus and Sean Rocha’s (MS 027) in the amount of \$333,456.84, are granted; and it is further

ORDERED that defendant 4-6 Bleecker Street, LLC’s cross motion for a protective order pursuant to CPLR 5240 is denied; and it is further

ORDERED that defendant 4-6 Bleecker Street LLC shall turn over the funds (\$484,684.76) held in escrow to satisfy the Judgment dated March 12, 2024 that is in favor of plaintiffs Peter Arnold and Michael Schiller, and plaintiffs Eli Lazarus and Sean Rocha (NYSCEF # 861); and it is further

ORDERED that counsels for plaintiffs shall serve and file a copy of this Decision and Order, with notice of entry, upon the Clerk of the Court and defendants within 20 days of this order.

This constitutes the Decision and Order of the court.

07/29/2025
DATE


MARGARET A. CHAN, 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