

**Lex Hemp & Exotic Corp. v Darnet Realty Assoc.,
LLC**

2025 NY Slip Op 33165(U)

August 22, 2025

Supreme Court, New York County

Docket Number: Index No. 150289/2024

Judge: Ashlee Crawford

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ASHLEE CRAWFORD PART 38
Justice
INDEX NO. 150289/2024
MOTION DATE 02/20/2025
MOTION SEQ. NO. 003
LEX HEMP AND EXOTIC CORP. Plaintiff,
- v -
DARNET REALTY ASSOCIATES, LLC, Defendant.
DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102 were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER

ASHLEE CRAWFORD, J.:

Defendant-tenant Darnet Realty Associates, LLC moves pursuant to CPLR § 2221 for leave to renew and reargue the Court’s February 29, 2024 order (Nock, J.), which granted the order to show cause by plaintiff-subtenant Lex Hemp and Exotic Corp. for a Yellowstone injunction.1 The commercial storefront is located at 666 Lexington Avenue, New York, New York (also known as 136 East 56th Street, New York, New York).

Notice to Cure and Motion for Yellowstone Injunction (Seq. 001)

Darnet served a 30-day notice to cure, dated December 7, 2023, on Lex Hemp (NYSCEF Doc. 49 [“Notice to Cure”]). Therein, Darnet alleges, inter alia, that Lex Hemp is in breach of Articles R1, the “use clause” of the parties’ sublease, and R21, R30, R56 of the sublease, by unlawfully advertising for sale cannabis products, and selling such products out of the premises

1 It is undisputed that that part of defendant’s motion seeking to consolidate this action with the now-disposed action 136 East 56th Owner’s Corp. v Darnet Realty Associates, LLC, et al. (Index No. 161750/2023) is moot.

on April 3, 2023, May 2, 2023, and July 18, 2023, but does not address the non-payment of rent (id.). The notice to cure provides that if Tenant fails to cure the above stated defaults on or before June 16, 2023 . . . the Landlord will terminate the Tenancy (id.).²

According to Darnet, plaintiff has not paid rent or additional rent since the inception of the Lease, other than one month of rent, which was pre-paid at the Lease signing (NYSCEF Doc 44 ¶ 31).

The February 29, 2024 Order

In the subject order, the Court referred to a “near-mirror-image” prior action (*136 East 56th Owner’s Corp. v Darnet Realty Associates, LLC and Lex Hemp & Exotic Corp.* [Index No. 161750/2023][“Prior Action”]) brought by the non-party owner of the building against Darnet, as tenant, and Lex Hemp, as subtenant, involving “the very same issues”; that is, the “alleged unlicensed sale by Lex Hemp of cannabinoids and various Building Code violations caused by Lex Hemp” (NYSCEF Doc. 67 [2/29/24 Order at 1-2]).

Concerning the alleged code violations as a premise for the notice to cure in this action, the Court in the February 29th order noted that in the Prior Action, Darnet, not Lex Hemp, was charged with resolving them. The Court further stated that “[i]nsofar as Darnet complains of rent arrearages owed by Lex Hemp (*see*, NYSCEF Doc. No. 44 ¶ 31), that was the subject of a summary holdover proceeding which was dismissed on account of improper notice (*see*, NYSCEF Doc. No. 5)” (2/29/24 Order at 3).

Strikingly, the Court did not address Lex Hemp’s alleged sale of cannabis products, which is the primary basis for the Notice to Cure. Rather, the Court made reference to “the present chaotic state of procedural affairs” between this action and the now-disposed Prior

² Darnet subsequently issued additional notices to cure, which stated that the deadline to terminate the lease is July 6, 2023 (NYSCEF Doc. No. 52) and January 15, 2024 (NYSCEF Doc. No. 59), respectively.

Action, and left the *Yellowstone* injunction in place “pending further proceedings and further order of the court” (2/29/24 Order at 3).

Motion to Renew and Reargue (Seq. 003)

Darnet timely moved to renew and reargue the Court’s order granting a *Yellowstone* injunction. In support of renewal, plaintiff argues that Lex Hemp is still engaged in illegal activity at the premises by selling cannabis products without a license and in violation of the lease. Darnet submits the affidavit of Jason Cohen, a retired New York Police Department detective now working as a private detective, stating that on March 21, 2024, Cohen purchased cannabis products at, and observed patrons smoking marijuana in, the premises (NYSCEF Docs. 81 [Dann Affirm.] at ¶¶ 33-36, 82 [Cohen Aff.] at ¶¶ 1-6, 85 [Ex. C to Cohen Aff., 3/4/24 Case Synopsis]). Cohen further states that on February 28, 2024, an investigator working with him purchased cannabis products at the premises (Cohen Aff. at ¶ 7; 3/4/24 Case Synopsis). Darnet argues that the foregoing is newly-discovered evidence warranting renewal of the *Yellowstone* application.

In support of reargument, Darnet contends that the Court overlooked that Lex Hemp engaged in illegal activity at the premises on April 4, 2023, May 2, 2023, and July 18, 2023, as alleged in the Notice to Cure. Darnet emphasizes that the Notice to Cure annexes photographs of a sign outside the premises advertising cannabis products for sale, as well as photographs of cannabis products purchased from the premises. Darnet notes that Lex Hemp is not licensed to sell cannabis products by the New York State Office of Cannabis Management, and is precluded under the parties’ lease from selling such products without a license (Dann Affirm. at ¶¶ 40-43; NYSCEF Doc. 29 [Lease] ¶ 2). Darnet maintains that Lex Hemp has not met its burden of

demonstrating a desire to cure, and that in order to cure, Lex Hemp simply must cease selling cannabis products at the premises (Dann Affirm. at ¶¶ 44-46).

Additionally, Darnet argues that the Court overlooked the provision in the lease requiring Lex Hemp to pay all rent and additional rent arrears as a condition to commencing an action seeking to toll any default notice (Dann Affirm. at ¶¶ 47-50; Lease at ¶ R23).³ Darnet submits its rent ledger for Lex Hemp showing total arrears of \$171,907.35 as of March 2024 (NYSCEF Doc. 86 [Ex. D to Dann Affirm., Ledger]). During oral argument, counsel for Darnet informed the Court that Lex Hemp currently owes \$324,000 (2/20/25 Tr at 6:21-7:10). Darnet requests that the Court condition any stay or injunction on Lex Hemp's payment of all outstanding rent and additional rent (Dann Affirm. at ¶ 48).

In opposition, Lex Hemp submits an affirmation from its officer, Sakr Alghzali, stating in relevant part that "regarding the alleged arrears, Plaintiff agrees to pay, together with Defendant and/or owner's repair of the Premises, and stopping to interfere with Plaintiff's business" (NYSCEF Doc. 88 at ¶ 17). Lex Hemp argues that renewal and reargument must be denied,

³ As to actions by tenants to toll any notice of default, the Lease provides as follows:

"In the event Tenant commences any action which tolls or seeks to toll any notice of default sent pursuant to this lease, or which prevents or seeks to prevent Landlord from exercising any remedy set forth in this lease or permitted by law, Tenant shall pay (without prejudice) to Landlord all arrears in rent and additional rent, and all rent and additional rent due hereunder as same accrues, as a condition to obtaining such relief and/or of maintaining such an action. In the event of any dispute over how much money is due to Landlord pursuant to any provision of this lease, Tenant shall have to first pay (and continue to pay without prejudice) all such disputed sums billed by Landlord as a condition to maintaining any action challenging such calculation. Landlord shall promptly refund any overpayments by Tenant. Landlord's acceptance of all such payments shall be deemed to be on account, under protest and without prejudice, and Tenant's tender of such payments shall be without prejudice to Tenant's rights and remedies" (Lease at ¶ R23).

because it is premised on new facts not available at the time of the original motion. Moreover, it contends that the next step after the Court grants a *Yellowstone* injunction is a trial on the merits, and Lex Hemp is not obligated to cure any alleged defaults until there is a final determination on the merits. Despite Alghzali's assertion that he would pay the alleged arrears, Lex Hemp's counsel argues that "the payment of rent is not part of this action" (NYSCEF Doc. 90 [Altman Affirm.] at ¶¶ 16-31). Lex Hemp also asserts that Darnet waived its claims that Lex Hemp breached the lease, because Darnet had actual knowledge of what Lex Hemp was selling at the premises, and did not object (Altman Affirm. at ¶¶ 32-34).

In support of the underlying motion, Sahr Alghzali, an officer of plaintiff, affirmed that plaintiff does not sell illegal contraband at the premises (NYSCEF Doc. No. 13 [Alghzali Affidavit] ¶ 24). However, Alghzali then stated "[t]hat, should the Court determine that the [p]laintiff has breached the Lease, the [p]laintiff will diligently work to obtain a license, if required, and/or will cease to sell marijuana products" (*id.* ¶ 25).

Discussion

A motion for leave to reargue pursuant to CPLR § 2221(d) "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion."

A motion for leave to renew shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination; and shall contain reasonable justification for the failure to present such facts on the prior motion (CPLR § 2221[e]; Alekna v 207-217 West 110 Portfolio Owner LLC, 212 AD3d 480 [1st Dept 2023]; Oparaji v Malcolm Construction LLC, 77 Misc3d 141[A], *1 [App Term, 1st Dept, 2023]).

“The party requesting a *Yellowstone* injunction must demonstrate that: (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” (Graubard Mollen Horowitz Pomeranz & Shapiro v 600 Third Ave. Associates, 93 NY2d 508, 514 [1999][citation and internal quotation marks omitted]). To obtain *Yellowstone* relief, a tenant need not show a likelihood of success on the merits, it can simply deny the alleged breach of its lease (Artcorp Inc. v Citirich Realty Corp., 124 AD3d 545, 546 [1st Dept 2015]). Conditions placed upon the grant of a *Yellowstone* Injunction do not alter the rights and obligations of the parties, including the obligation to pay rent (Graubard, 83 NY2d at 515).

The March 1, 2024 Order overlooked a matter of fact and law, by neglecting to consider the standard for a *Yellowstone* injunction and making no findings as to whether plaintiff was prepared to cure the alleged default. As plaintiff’s counsel himself notes, “[c]onspicuously missing from this decision is any language that talks about payment of rent or additional rent” (2/20/2025 Tr at 19:17-19). Therefore, defendant’s motion for leave to reargue is granted.

However, upon reargument, the Court adheres to the prior order granting Lex Hemp’s order to show cause for a *Yellowstone* injunction. Lex Hemp has met its burden, including by demonstrating an ability to cure. Addressing Darnet’s request to condition any grant of *Yellowstone* relief on Lex Hemp’s compliance with section R23 of the Lease, which requires the payment of rental arrears, such request is proper (see Graubard, 83 NY2d at 515). Lex Hemp’s argument that this action for a *Yellowstone* injunction is not an action to toll a notice of default, as contemplated in section R23 of the Lease, is without merit (Lease at ¶ R23; see generally

Wharton-Bickley v 388 Broadway Owners LLC, 237 AD3d 72 [1st Dept 2025]). Therefore, Lex Hemp shall comply with the condition in the Lease to pay arrears and continue to pay rent and additional rent as such rent becomes due.

That part of Darnet’s motion seeking leave to renew is denied, as it presents new facts that developed after the February 29, 2024 order was issued (Mehler v Jones, 181 AD3d 535 [1st Dept 2020]).

Accordingly, it is

ORDERED that defendant’s motion for leave to reargue and renew (seq. 003) is GRANTED IN PART such that reargument is granted, and upon reargument, the Court adheres to its prior order granting plaintiff’s order to show cause for a Yellowstone injunction, except that the order is AMENDED to add the directive that, within 30 days of entry of this order, plaintiff shall pay all rental arrears in accordance with section R23 of the Lease, and plaintiff shall pay all rent and additional rent under the Lease as it becomes due; and it is further

ORDERED that that part of defendant’s motion seeking leave to renew is DENIED; and it is further

ORDERED that all parties shall appear for a preliminary conference on October 16, 2025, at 10:00 AM.

This constitutes the decision and order of the Court.

8/22/2025

DATE



ASHLEE CRAWFORD, 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