

Tuscany Legacy Leasing LLC v LuxUrban RE Holdings LLC

2025 NY Slip Op 33214(U)

August 19, 2025

Supreme Court, New York County

Docket Number: Index No. 651525/2025

Judge: Leslie A. Stroth

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. LESLIE A. STROTH PART 12M

Justice

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TUSCANY LEGACY LEASING LLC,

Plaintiff,

- v -

LUXURBAN RE HOLDINGS LLC F/K/A CORPHOUSING
GROUP INC., LUXURBAN HOTELS INC., BRIAN
FERDINAND, MICHAEL JAMES, BRANDON ELSTER,
JIMMIE CHATMON, SHANOOP KOTHARI, ROBERT
ARIGO

Defendant.

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INDEX NO. 651525/2025

MOTION DATE N/A, N/A

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 25, 36, 37, 39, 41, 42, 43, 47, 49, 50, 51

were read on this motion to/for PENDENTE LITE.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 27, 28, 29, 30, 31, 33, 34, 35, 40, 44, 45, 46, 48, 52, 53, 54

were read on this motion to/for POSSESSION.

FACTUAL BACKGROUND

Plaintiff commenced this action against defendants LuxUrban RE Holdings LLC (“Tenant”), LuxUrban Hotels Inc. (“Lux”), and various guarantors, asserting breaches of lease agreements and subsequent settlement agreements regarding the operation of the Tuscany Hotel, located at 120 East 39th Street, New York, New York (the “Premises”).

Plaintiff alleges that Tenant entered into possession in September 2022 under a written lease, later amended and replaced through settlement agreements in March, April, and July 2024. Each agreement imposed payment obligations for rent, use and occupancy, and union dues. Plaintiff further alleges that Defendants repeatedly defaulted on these obligations, including by

failing to honor required lump-sum payments by issuing checks that were returned for insufficient funds, and by misrepresenting the initiation of wire or ACH transfers.

Plaintiff contends that despite notices of default, including a May 31, 2024 notice demanding turnover of operations by June 17, 2024, Defendants continued in possession without consent and without curing their defaults. As of October 30, 2024, Plaintiff alleges that arrears exceeded \$1.7 million, with further arrears and unpaid union obligations later increasing the total claimed to \$4,364,487.10.

Plaintiff seeks pendente lite use and occupancy payments of \$346,800 per month, an order of possession, and prejudgment relief pursuant to CPLR 5229 restraining Defendants from transferring revenues or assets.

Defendants oppose, arguing that Plaintiff's relief is improper, that it effectively seeks final judgment at the preliminary stage, and that amounts alleged are overstated or misrepresented. They also contend that they have made substantial payments during the relevant period and that Plaintiff has already recovered millions under settlement terms and withdrawals from Defendant accounts.

LEGAL STANDARD

CPLR 5229 provides, "In any court, before a judgment is entered, upon motion of the party in whose favor a verdict or decision has been rendered, the trial judge may order examination of the adverse party and order him restrained with the same effect as if a restraining notice had been served upon him after judgment." (*Gallegos v Elite Model Mgt. Corp.*, 1 Misc 3d 200, 203 [Sup Ct 2003]). Relief pursuant to CPLR 5229 is a preventative measure designed to frustrate the adverse party from disposing of assets before such disposition takes place. (*Id.* at 207). Courts may order an adverse party restrained until judgment is entered where there is a

danger that he will dispose of his assets. (*see Kaminsky v. Kahn*, 46 Misc.2d 131–132, 258 N.Y.S.2d 1000, 1001 (Sup.Ct.N.Y.Co.1965); CPLR 5229 Legislative Studies and Reports (McKinney 1978). In a promissory note case, relief under CPLR 5229 has been granted upon a finding of liability. (*see Ibanez v. Pfeiffer*, 76 Misc.2d 363, 350 N.Y.S.2d 964, 966 (Civ.Ct.Queens Co.1973).

A commercial landlord is entitled to pendente lite use and occupancy payments from a tenant that remains in possession during litigation, irrespective of disputes over the ultimate obligation. (*see Gap, Inc. v 170 Broadway Retail Owner, LLC*, 191 AD3d 549 [1st Dept 2021]). The First Department has held granting landlords pendente lite payments is appropriate as “it would have been manifestly unfair for defendant to remain in possession of the subject premises without paying.” (*10E53 Owner LLC v Bruderman Asset Mgt.*, 202 AD3d 609, 609 [1st Dept 2022]).

Finally, a landlord is entitled to a judgment of possession where a tenant fails to comply with court-ordered use and occupancy or other obligations under a lease or settlement agreement. Courts may grant a money judgments, possession or both, where a tenant continues to occupy premises in violation of court orders and without payment (*Marbru Assoc. v White*, 206 AD3d 562 [1st Dept 2022]). Courts may condition possession on payment of use and occupancy. (*Park Terrace Gardens, Inc. v Penkovsky*, 100 AD3d 577 [1st Dept 2012]).

DISCUSSION

Pendente Lite Use and Occupancy

Plaintiff alleges that Defendants have remained in possession of the Premises without complying with their financial obligations. The July 2024 Settlement Agreement expressly required Defendants to pay ongoing monthly use and occupancy equal to the rent reserved under

the terminated lease, approximately \$346,800 per month for 2025. Defendants have not submitted evidence demonstrating compliance with this obligation.

Under *Gap, Inc. and 10E53 Owner LLC*, this Court retains discretion to direct pendente lite use and occupancy payments. Equity dictates that a tenant not be permitted to occupy valuable commercial property without paying for its use. Accordingly, all unpaid use and occupancy due through the date of entry of this order, shall be paid, without exception within 90 days of the date of this order with notice of entry. Additionally, Defendants are directed to remit \$346,800 per month, pendente lite, beginning with the payment due August 1, 2025 (unless already paid), and on the first day of each month thereafter until further order of the Court.

CPLR 5229 Relief

Plaintiff also seeks prejudgment restraints under CPLR 5229. However, the statute requires that a “verdict or decision” already have been rendered in the movant’s favor before such relief may be imposed. At this juncture, liability has not yet been adjudicated. While Plaintiff points to the executed confessions of judgment as evidence of inevitable liability, those documents do not constitute a judicial “decision” or “verdict” within the meaning of CPLR 5229. Moreover, although there are allegations of Defendants’ financial distress and prior defaults, those circumstances alone do not authorize the extraordinary relief of pre-judgment restraint. The Court therefore declines to invoke CPLR 5229 at this stage. Plaintiff’s application for such relief is denied.

Possession of the Premises

The record demonstrates that Defendants remain in possession of the Premises without having made the pendente lite use and occupancy payments required under both the agreements and this Court’s interim orders. A landlord is entitled to a judgment of possession where a tenant

continues to occupy in violation of court orders and without payment (*see Marbru Assoc*, 206 AD3d 562).

Courts may also condition possession on the tenant's failure to make court-ordered use and occupancy payments (*Park Terrace Gardens, Inc. v Penkovsky*, 100 AD3d 577 [1st Dept 2012]). This ensures tenants are not prematurely dispossessed if they come into compliance while preserving the landlord's rights should nonpayment persist.

Accordingly, the Court grants Plaintiff's motion for a judgment of possession, conditioned on Defendants' continued nonpayment. If Defendants fail to timely remit the required pendente lite use and occupancy payments, Plaintiff is entitled to immediate possession, and the Sheriff of the City of New York is directed to remove Defendants from the Premises and place Plaintiff in possession.

Accordingly; it is hereby


ORDERED that Plaintiff's Motion Sequences 001 and 002 are granted to the extent that Defendants shall pay to Plaintiff all unpaid use and occupancy due through the date of this order with notice of entry, without exception, within thirty (30) days of the date of entry of this order; and it is further

ORDERED that Defendants are directed to remit to Plaintiff the sum of \$346,800.00 per month, pendente lite, beginning with the payment due August 1, 2025 (unless already paid), and continuing on the first day of each month thereafter until further order of the Court; and it is further

ORDERED that Plaintiff's application for relief pursuant to CPLR 5229 is denied; and it is further

ORDERED that Plaintiff's motion for judgment of possession is granted conditioned on Defendants' continued nonpayment. If Defendants fail to remit the required pendente lite use and occupancy payments as directed herein, Plaintiff shall be entitled to immediate possession of the Premises known as the Tuscany Hotel, located at 120 East 39th Street, New York, New York, and the Sheriff of the City of New York is directed to eject and remove Defendants and place Plaintiff in possession, with authority to dispose of any personal property remaining on the Premises without liability; and it is further

ORDERED that the Clerk shall enter judgment accordingly.

<u>8/19/2025</u> DATE			 HON. LESLIE A. STROTH J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> REFERENCE
		<input type="checkbox"/> DENIED	
			<input type="checkbox"/> SUBMIT ORDER
			<input type="checkbox"/> FIDUCIARY APPOINTMENT