

45 Nostrand LLC v Strongin

2025 NY Slip Op 33516(U)

September 18, 2025

Supreme Court, New York County

Docket Number: Index No. 650447/2022

Judge: Lyle E. Frank

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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. LYLE E. FRANK **PART** **11M**

Justice

-----X

45 NOSTRAND LLC

Plaintiff,

- v -

WENDY STRONGIN,

Defendant.

-----X

INDEX NO. 650447/2022

MOTION DATE 08/12/2025

MOTION SEQ. NO. 009

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 009) 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312 were read on this motion to/for STAY.

This action arises out of allegations of a breach of a real estate sales contract. Plaintiff was awarded summary judgment on its cause of action for specific performance, requiring the sale of the real property in question to proceed. Defendant now seeks an order, pursuant to CPLR §5519(a)(6), for an undertaking pending defendant’s appeal of this Court’s decision and order dated June 3, 2025. Plaintiff opposes the instant application. For the reasons set forth below and based on the conditions set forth herein, the application is granted.

Defendant seeks to post an undertaking in the amount of \$10,000 comprised of \$5,000 for the reasonable value of use and occupancy for the property from August 2, 2025, through April, 2026 and \$5,000 to prevent defendant from committing any waste against the property.

Defendant seeks to offset the cost to maintain the property along with an order requiring defendant to continue to pay the property taxes, maintain insurance on the property, and to not otherwise commit waste against the property. In support of its calculation, defendant relies on its expert affirmation that includes an analysis of comparable properties in the area, and its affirmation regarding the cost of maintaining the subject property.

Plaintiff contends that defendant's application is untimely and notwithstanding the untimeliness, the undertaking amount suggested is insufficient. Plaintiff contends that pursuant to CPLR § 5519, defendant is required to post an undertaking in the amount of the replacement value of the real property along with use and occupancy. In support of its position that the amount of the total undertaking should be \$7,504,000, plaintiff relies on an expert affirmation purporting to show appropriate comparable properties to demonstrate a lost rental value of \$60,000 per month during the summer, and \$10,000 per month during the extended season. Plaintiff assumes a one-year delay for the appeal, thus totaling use and occupancy in the amount of \$270,000. Plaintiff contends that defendant's current insurance policy insures the property for only \$3,866,000, thus requiring an additional \$7,234,000 to equal the contended \$11.37 million replacement value. Further, plaintiff seeks to have defendant prevented from wasting an asset of a permit to construct a dock on the premises, set to expire in September 2026.

CPLR §5519(a)(6) states, in pertinent part:

Stay without court order. Service upon the adverse party of a notice of appeal or an affidavit of intention to move for permission to appeal stays all proceedings to enforce the judgment or order appealed from pending the appeal or determination on the motion for permission to appeal where: 6. the appellant or moving party is in possession or control of real property which the judgment or order directs be conveyed or delivered, and an undertaking in a sum fixed by the court of original instance is given that the appellant or moving party will not commit or suffer to be committed any waste and that if the judgment or order appealed from, or any part of it, is affirmed, or the appeal is dismissed, the appellant or moving party shall pay the value of the use and occupancy of such property, or the part of it as to which the judgment or order is affirmed, from the taking of the appeal until the delivery of possession of the property.

As a preliminary matter, the Court finds that defendant's application is timely in the interest of justice. To hold otherwise would effectively deny defendant of its right to appeal. It

is clear that the parties stipulated to the extension of time by which defendant was to make the instant motion, and there is no prejudice to plaintiff. Further, defendant's statements to the Court that its appeal will be perfected by November 10, 2025, establishes its good faith and intention not to prejudice plaintiff or delay the matter.

After oral argument and a thorough review of the documents submitted in support and in opposition of the instant application, the Court finds the defendant is required to post an undertaking in the amount of \$100,000.00. While the Court agrees with plaintiff that the subject property is valuable and unique, the Court finds that the current insurance policy to rebuild the property is sufficient, as the total property value includes the entire lot not just the structures built on the lot. The Court declines to find that the purported comparable property offered by plaintiff's expert, a home built in 2008, is comparable to a property that undisputedly has not been renovated in decades. Further, the Court agrees with defendant that requiring defendant to maintain the property, inclusive of property taxes, insurance and general upkeep of the property while simultaneously being required to pay use and occupancy of the property would result in a windfall to plaintiff, not contemplated by the statute.

In its discretion the Court finds that an undertaking of \$100,000.00 will serve as a sufficient use and occupancy of the premises given the uncertainty of the timeline of the completion of the appeal. The Court finds that defendant's maintenance of the current insurance policy and continued upkeep of the premises including payment of property taxes and maintenance of the permit, along with the undertaking is sufficient and equitable under the circumstances. Accordingly, it is hereby

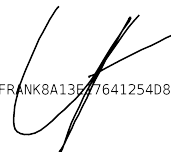
ORDERED that enforcement of this Court's order dated June 3, 2025, is stayed pending resolution of the appeal in this action, upon the following conditions:

Defendant is to perfect its appeal by no later than November 10, 2025;

Defendant ensures the permit to construct a dock on the subject property remains active throughout the pendency of the litigation or takes all steps necessary in an attempt to keep such permit active;

Defendant maintains the insurance on the property and continue to pay the property taxes; and it is further

Defendant post an undertaking in the amount of \$100,000.00 pending the resolution of the appeal not more than 30 days following the date of this Order, in an escrow account to be determined by the parties.


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LYLE E. FRANK, J.S.C.

9/18/2025
DATE

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