

Desi Flavors Deli Inc. v Cheltoncort Owners Corp.

2025 NY Slip Op 34209(U)

November 3, 2025

Supreme Court, New York County

Docket Number: Index No. 163472/2025

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

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DESI FLAVORS DELI INC, D/B/A DESI FLAVORS DELI,
DEEPAK SETIA,

Petitioner,

INDEX NO. 163472/2025

MOTION DATE 10/10/2025

MOTION SEQ. NO. 001

- v -

CHELTONCORT OWNERS CORP., THE BOARD OF
DIRECTORS AT CHELTONCORT OWNERS CORP,
JOHN/JANE DOE #1, JOHN/JANE DOE #2, JOHN/JANE
DOE #3, JOHN/JANE DOE #4

**DECISION + ORDER ON
MOTION**

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 6, 8, 9, 10, 11
were read on this motion to/for STAY.

Upon the foregoing documents, the order to show cause is denied.

Background

Petitioner Deepak Setia (“Individual Petitioner”) owns and operates a restaurant,
Petitioner Desi Flavors Deli Inc. (“Corporate Petitioner”, collectively with the Individual
Petitioner the “Petitioners”) at the premises located at 170-178 Ninth Avenue. This location is
owned by Respondent Cheltoncort Owners Corp. The location was leased by the overtenant,
non-party Chelsea Leasehold Owners Corp. (“Chelsea”) who had subleased various portions of
this building to the Corporate Petitioner and other businesses. When Chelsea defaulted on the
lease, the Respondents began to accept rent directly from the Corporate Petitioner and the other
subtenant businesses, and they reached out to the various subtenants regarding a direct lease.

During the direct lease discussions, Petitioners allege that Respondents were requiring
conditions from them and not from other subtenants. These conditions related to odor-proofing

of the premises due to the spices used in their cooking, as well as an initial payment of \$100,000 and a promise to limit operations to four days a week. Petitioners have filed a discrimination complaint with the New York City Commission on Human Rights, alleging that these conditions are discriminatory. When the parties failed to enter into a direct lease, Respondents pursued eviction proceedings in Housing Court. The Civil Court has issued a finding that the Corporate Petitioner has no possessory right to the premises and Respondents have obtained a judgment of possession and warrant of eviction against the Corporate Petitioner.

Petitioners filed the present petition on October 10, 2025, seeking to stay all eviction proceedings and warrant enforcement pending the determination of the NYCCHR complaint, and enjoining Respondents from taking any steps to evict Petitioners during the pendency of said complaint. They also seek an order compelling Respondents to provide Petitioners with proposed lease terms that Petitioner does not find to be discriminatory. Petitioners also brought the present order to show cause on the same day, seeking a preliminary injunction restraining Respondents from taking any steps to evict Petitioners.

Standard of Review

The granting of a preliminary injunction lies in the court's discretion, and it is "an extraordinary provisional remedy which will only issue where the proponent demonstrates (1) a likelihood of success on the merits; (2) irreparable injury absent a preliminary injunction, and (3) a balance of equities tipping in its favor." *Harris v. Patients Med., P.C.*, 169 A.D.3d 433, 434 [1st Dept. 2019].

Discussion

Respondents oppose the order to show cause on several grounds. Ultimately, Petitioners' request for a preliminary injunction fails for several reasons. First, an Article 78 proceeding is

not the appropriate method of challenging determinations made in Civil Court or Housing Court. *See* CPLR § 7801 (proceedings under this article are unavailable to challenge determinations made in a civil action). Secondly, to the extent that Petitioner seeks to stay eviction proceedings on the grounds that Respondents' proposed lease terms were discriminatory, they have failed to establish a likelihood of success on the merits. They cite to no case law, nor is the Court aware of such, that would allow a court to compel a landlord to issue a commercial lease to a party with which it has no contractual privity. The fact that the Civil Court has already determined that the Corporate Petitioner has no possessory right in the premises further weighs against a showing of likelihood of success on the merits.

To be clear, the Court is not weighing in on whether the proposed lease terms were or were not discriminatory, or whether Petitioners are likely to succeed on their NYCCHR claim, or the extent of any damages Petitioners may or may not have for the eviction proceeding. But, regardless of how it is phrased in their papers, Petitioners are undeniably seeking to enforce a possessory right to the premises in question that they have not established exists or even would exist should the discriminatory claim succeed. Without some form of possessory interest in the premises at issue and a showing of irreparable harm, the Court does not have a basis to halt the eviction order. Petitioners have not cited to any binding case that would hold otherwise. And finally, in the order to show cause Petitioners indisputably seek the same relief sought in the petition. The First Department has held that the "authority to grant stays in an article 78 proceeding under CPLR 7805 is limited to instances where such relief is 'ancillary' to the ultimate relief sought." *36th and Second Tenants Ass'n v. New York State Div. of Hous. & Cmty. Renewal*, 243 A.D.2d 321, 321 [1st Dept. 1997]. Accordingly, it is hereby

ADJUDGED that the order to show cause is denied.

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11/3/2025
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: