At an IAS Term Commercial Part 12 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 5th day of December 2025.

P R E S E N T:
Honorable Reginald A. Boddie
Justice, Supreme Court

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RED ROCK OUTDOOR ADVERTISING, INC.,

Plaintiff,

-against-

NO SLEEP TILL, LLC,
918 ATLANTIC PROPERTY OWNER LLC,

Defendants.

Index No. 538668/2025

Cal. No. 23, 31 MS 1-3

Decision and Order

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The following e-filed papers read herein:	NYSCEF Doc Nos.
MS 1	1-32; 35-36; 65; 67-69
MS 2	55-58; 66; 70
MS 3	38-51; 59-64; 72-75

After oral argument and upon the foregoing papers, plaintiff's order to show cause seeking various injunctive relief against defendants (MS 1) and the order to show cause by defendant, No Sleep Till LLC ("No Sleep"), seeking vacatur of the temporary restraining order ("TRO") dated November 3, 2025, and denial of plaintiff's motion (MS 3) are decided as follows:

According to plaintiff, it holds a highly valuable long-term commercial lease ("Sign Lease") for advertising signs on the commercial property located at 918 Atlantic Avenue in Brooklyn, New York ("Premises"). Such lease was entered into on or around December 5, 2015

by (1) plaintiff; (2) Five Star Associates, LLC ("Five Star"), who owned the Premises at the time; and (3) Atlantic Car Wash, Inc. ("Atlantic Car Wash"), the sole tenant under a lease with Five Star ("Car Wash Lease"). Under the Sign Lease, plaintiff's lease term is ten years with a right/option for an additional ten-year term. However, because the Car Wash Lease was due to expire on February 15, 2031, plaintiff represents that the parties agreed that plaintiff's option term under the Sign Lease could not extend beyond such date. As such, the change to the option term was made by hand.

On August 30, 2017, plaintiff claims it completed construction of its signs for the Premises and began operating them with advertising displays. Plaintiff alleges that it invested over $200,000 in establishing the signs. Additionally, that it has been paying rent to its lessor, Atlantic Car Wash, since the commencement date of the Sign Lease.

On February 26, 2019, defendant No Sleep purchased Atlantic Car Wash's business and took possession of the Premises. Plaintiff asserts that No Sleep has been accepting its rent payments without any complaint about the signs until shortly after September 8, 2025, when plaintiff exercised its option to extend the lease term to February 15, 2031. Plaintiff further asserts that it learned, in early September 2025, that a permit application had been filed with the Department of Buildings in July 2025 for a "Full Demolition" of the Premises. The application was filed on behalf of defendant, 918 Atlantic Property Owner LLC ("918 Atlantic"), who purchased the property from Five Star on May 22, 2025. Plaintiff also asserts that Atlantic Car Wash agreed to a buyout offer from 918 Atlantic for the Car Wash Lease, agreeing to exit the Premises by November 30, 2025, without ever notifying plaintiff of the buyout agreement as required under section 11 of the Sign Lease.

According to plaintiff, on September 22, 2025, it received a Notice of Default from Lessor's counsel, dated September 16, 2025, stating that plaintiff was in default under section 3 of the Sign Lease because: (1) the signs' constructed dimensions of 26'h X 24'w did not comply with the section, specifying the 26' height as the issue; and (2) plaintiff failed to obtain Lessor's approval for the change in dimensions from 14'h x 48'w to 26'h x 24'w. Lessor demanded that the sign/billboard be removed.

Plaintiff responded to the Notice of Default through its counsel stating that (1) the text of section 3 and 5 of the Sign Lease permits plaintiff to modify the size of the sign without approval; (2) in any event, approval was given by Lessor's assignor (Atlantic Car Wash) in 2017; (3) the purported defaults are not material; (4) Lessor's demand for sign removal ignores plaintiff's right to cure under section 12 by reconfiguring the signs; and (5) Lessor failed to provide 30 days to cure any alleged defaults as required under section 12 of the Sign Lease. It is plaintiff's position that the September 16, 2025 Notice of Default is a pretext to prevent Lessee from getting the additional term it is entitled to, ending on February 14, 2031.

By Notice of Termination dated October 17, 2025, Lessor terminated the Sign Lease "effective October 17, 2025" and demanded plaintiff's vacatur of the Premises. On October 31, 2025, plaintiff filed this action, along with its application for an injunction against defendants enjoining them from taking any action pursuant to the Notice of Termination including demolition of the Premises. On November 3, 2025, a TRO was issued staying the cure period and enjoining defendants from taking any action with respect to terminating the Sign Lease or demolishing the Premises, among other things.

On November 17, 2025, No Sleep filed its motion seeking vacatur of the TRO and denial of plaintiff's application. No Sleep argues that plaintiff is not entitled to *Yellowstone* relief because

its application was made after expiration of the cure period and termination of the lease. In addition, No Sleep contends plaintiff does not possess a tenancy but, rather, a license to use Lessor's roof for the placement of a billboard. No Sleep argues that the Sign Lease does not grant plaintiff exclusive use and possession of the rooftop, which is a hallmark of a tenancy, since plaintiff does not have the right to exclude anyone from the roof. No Sleep further contends that the Sign Lease contemplates that No Sleep could entirely or partially obstruct the billboard, by placing equipment on the roof, and also use the roof as it pleases to perform maintenance work, install equipment, replace the roof, etc. Based on the foregoing, No Sleep argues that the court deny plaintiff's injunctive application and vacate the TRO.

Defendant 918 Atlantic joins in No Sleep's motion. In addition, 918 Atlantic submits that the TRO against it should be vacated for the additional reason that plaintiff failed to comply with the service requirements reflected in the order to show cause. Specifically, that the order to show cause directs personal service upon 918 Atlantic on or before November 12, 2025. However, 918 Atlantic's counsel contends that it only received a UPS package on November 12, 2025 containing the papers and was not personally served.

Under motion sequence two, which is returnable on December 18, 2025, plaintiff seeks an order approving the irregularity of the service effectuated pursuant to CPLR 2001 or, in the alternative, granting plaintiff an extension of time to serve defendant under CPLR 2004. Plaintiff represents that it personally served 918 Atlantic with the relevant papers on November 18, 2025. Plaintiff also explains why it was unable to timely comply with the relevant order to show cause service requirements including, among other issues, its counsel being out of the country the night that its order to show case was first presented. In addition, plaintiff argues that 918 Atlantic is not prejudiced by the mistake since counsel for 918 Atlantic was provided with the supporting papers

for the order to show cause by email on October 31, 2023, 918 Atlantic filed opposition to the motion on November 3rd, and UPS delivered the papers to 918 Atlantic on November 12, 2025. Defendant 918 Atlantic having submitted opposition to motion sequence two, the court advances said motion to today to be determined along with motion sequences one and three.

Discussion

Regarding the preliminary matter of whether plaintiff possesses a leasehold interest in the Premises or merely a license, it is well established that "[t]he central distinguishing characteristic of a lease is the surrender of absolute possession and control of property to another party for an agreed-upon rental" (*Matter of Nextel of N.Y., Inc. v. Time Mgmt. Corp.*, 297 AD2d 282, 282 [2d Dept 2002] [citations omitted]). "Whether a given agreement is a lease or a license depends upon the parties' intentions" (*Mirasola v Advanced Capital Group, Inc.*, 73 AD3d 875, 876 [2d Dept 2010] [citations omitted]).

Here, plaintiff established that the Sign Lease is a valid lease agreement and not a license. A review of the Sign Lease reveals numerous provisions consistent with those commonly found in commercial leases including a fixed term that is not revocable at will, monthly rent, and insurance and indemnity requirements. Moreover, section 1 of the Sign Lease provides that Lessor grants to "Lessee the ***exclusive right*** [to] the Property for advertising signs… (emphasis added)." Thus, No Sleep's contention that plaintiff possesses merely a license is without merit.

Turning to whether plaintiff is entitled to *Yellowstone* relief, it is well established that "[a] *Yellowstone* injunction maintains the status quo so that a commercial tenant, when confronted by a threat of termination of its lease, may protect its investment in the leasehold by obtaining a stay tolling the cure period so that upon an adverse determination on the merits the tenant may cure the default and avoid a forfeiture" (*255 Butler Assoc., LLC v 255 Butler, LLC*, 208 AD3d 829, 830-

831 [2d Dept 2022] [citations omitted]). "To obtain a *Yellowstone* injunction, the tenant 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 both the termination of the lease and the expiration of the cure period set forth in the lease and the landlord's notice to cure, and (4) it is prepared and maintains the ability to cure the alleged default by any means short of vacating the premises" (*Long Is. Airline, LLC v Town of E. Hampton*, 220 AD3d 664, 665 [2d Dept 2023] [citations omitted]).

Here, in support of their argument for vacatur of plaintiff's injunctive relief, defendants raise the issue of the timeliness of plaintiff's application. At oral argument, plaintiff conceded that the Notice of Default was served on September 19, 2025. Given the undisputed 30-day cure period under the Sign Lease, plaintiff should have moved for relief by Monday, October 20, 2025. However, plaintiff did not move until October 31st, which was past the cure period.

Nevertheless, because the court finds that the subject Notice of Default is defective insofar as it deprives plaintiff of an opportunity to cure, the subject Notice of Default is void. Specifically, the Notice of Default mandates the signs' removal, which is equivalent to requiring plaintiff to vacate the Premises. Plaintiff having otherwise met the prongs for *Yellowstone* relief, plaintiff's motion for same is granted to the extent below. Accordingly, No Sleep's motion seeking vacatur of the injunction is denied.

Following the grant of a *Yellowstone* injunction, a court must set an undertaking at an amount rationally related to the quantum of damages which the landlord would sustain in the event that the tenant is later determined not to have been entitled to the injunction (see CPLR 6212[b]). Here, neither side briefed the issue. Thus, the court sets the undertaking to $25,000, without prejudice to the parties to seek renewal of this issue.

Finally, regarding motion sequence two which the court has advanced to today, plaintiff's motion is granted to the extent that plaintiff's time to serve the relevant order to show cause and supporting papers upon 918 Atlantic is extended, *nunc pro tunc*, to November 19, 2025, pursuant to CPLR 2004 (*see Matter of State of New York v Robert C.*, 113 AD3d 937, 939 [3d Dept 2014]). Thus, personal service of the subject papers upon counsel for 918 Atlantic on November 18, 2025 is deemed timely.

Conclusion

In conclusion, it is hereby

ORDERED that plaintiff's motion (MS 1) is granted to the extent that defendants are enjoined from terminating the Sign Lease pursuant to the subject Notice of Default; it is further

ORDERED that plaintiff post an undertaking in the amount of $25,000 within two weeks of the date of entry of this decision; it is further

ORDERED that No Sleep's motion (MS 3) is denied; and it is further

ORDERED that plaintiff's motion seeking an extension of time (MS 2) is granted as set forth herein.

Any relief not explicitly granted herein is denied.

ENTER:

Honorable Reginald A. Boddie
Justice, Supreme Court

HON. REGINALD A. BODDIE
J.S.C.