

Cheops Hous. Dev. Fund Corp. v Rey

2026 NY Slip Op 31970(U)

April 9, 2026

Supreme Court, New York County

Docket Number: Index No. 154274/2024

Judge: Gerald Lebovits

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. GERALD LEBOVITS PART 07

Justice

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INDEX NO. 154274/2024

THE CHEOPS HOUSING DEVELOPMENT FUND CORPORATION A/K/A CHEOPS HOUSING DEVELOPMENT FUND CORPORATION A/K/A CHEOPS HDFC,

MOTION SEQ. NO. 003

Plaintiff,

DECISION + ORDER ON MOTION

- v -

NINA REY, CARSON REY, JOHN DOE, and JANE DOE,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48

were read on this motion for SUMMARY JUDGMENT.

Romer Debbas LLP, New York, NY (Steven Kirkpatrick of counsel), for plaintiff. Roger M. Newyear, Esq., Bronx, NY, for defendants.

Gerald Lebovits, J.:

This is a residential-landlord-tenant action, brought by plaintiff-landlord, the Cheops Housing Development Fund Corporation (Cheops) against defendant-tenant Nina Rey; tenant's daughter (and sometime occupant of the premises at issue), Carson Rey; and John Doe and Jane Doe (the current occupant or occupants of the premises). Plaintiff is seeking a declaratory judgment that tenant's tenancy (and any right by her or derived from her to occupy the premises) expired on April 30, 2024, following a decision by landlord to decline to renew the lease, and an accompanying writ of ejectment. Plaintiff is also seeking injunctive relief requiring defendants to permit plaintiff to access the premises; a judgment for unpaid rent or use and occupancy (U&O), which began accruing on May 1, 2024; and attorney fees incurred in this action.

On motion sequence 002, plaintiff moved for summary judgment on its complaint and for an order directing the payment of U&O pendente lite. (See NYSCEF No. 23 [notice of motion].) In determining the motion, this court agreed that plaintiff had shown that the lease expired on April 30, 2024, and that plaintiff was entitled to pendente lite U&O. (See NYSCEF No. 35 at Tr. 18-25 [transcript of oral decision delivered on the record].) But because this court understood plaintiff to be seeking summary judgment only on its U&O claim, in particular (see id. at 18, 25-26), the court's order was limited to directing defendants to pay U&O prospectively, beginning with the month in which the order was issued (May 2025). (See id. at 26; NYSCEF No. 31 [order memorializing oral decision].)

Plaintiff now seeks (i) summary judgment on the balance of its claims in the action; and (ii) an order again directing payment of U&O, on the ground that defendants paid U&O for May 2025, but have made no payments since. (*See* NYSCEF No. 38 at 1-3 [notice of motion].) Plaintiff also seeks, in the alternative, renewal of its prior summary-judgment motion and the grant of the relief sought on that motion. (*See id.* at 3-4.)

Plaintiff's motion is granted.

DISCUSSION

I. Whether Plaintiff's Motion is Procedurally Barred

Defendants' principal argument on this motion is that plaintiff's motion is barred by claim and issue preclusion, because this court's ruling on motion sequence 002 assertedly already determined the claims on which plaintiff now seeks summary judgment. (*See* NYSCEF No. 44 at 2-5.) This argument is unpersuasive.

Claim preclusion does not apply. This court's prior order was interlocutory, rather than final—it resolved only plaintiff's request for an order directing payment of U&O *pendente lite*, without determining the rest of plaintiff's claims in the action. Issue preclusion does not apply, because this court did not reject those claims in its order on motion sequence 002. Instead, this court (perhaps incorrectly) understood plaintiff's summary-judgment motion to be seeking only limited relief (the *pendente lite* U&O order) and granted that relief. The court's order was not intended to resolve the remaining claims in the action or to preclude plaintiff from seeking summary judgment in its favor on those claims. And this court's order granting *prospective, interim* U&O did not finally resolve plaintiff's claim seeking all U&O accrued since the (asserted) expiration of tenant's lease on April 30, 2024 (*see* NYSCEF No. 1 at 6 [prayer for relief].)

This court therefore concludes that plaintiff's current summary-judgment motion may, and should, be decided on its merits.

II. Whether Plaintiff is Entitled to Summary Judgment

Plaintiff seeks summary judgment declaring that tenant's lease (and thus defendants' right to use and occupy the premises) expired on April 30, 2024. This court holds that plaintiff is entitled to the requested declaration, for the same reasons discussed in this court's oral decision on motion sequence 002. (*See* NYSCEF No. 25 at Tr. 18-25.) Defendants do not offer any argument or evidence on this motion that might rebut or undermine those reasons. Defendants' affirmative defenses are similarly without merit and are therefore dismissed.

Given this court's conclusion on when the lease expired, this court also holds that plaintiff is entitled to summary judgment awarding a writ of ejectment against defendants. And Plaintiff is entitled to a permanent injunction restraining tenant or the other defendants from interfering with plaintiff's right to occupy or take possession of those premises.

To support its requested monetary relief, plaintiff relies on an affidavit of the president of its board, accompanied by a rent ledger. (*See* NYSCEF No. 39 [affidavit]; NYSCEF No. 40 [ledger].) This evidence establishes prima facie that defendants have not paid U&O from May 1, 2024 through September 16, 2025, except for the month of May in 2025; and that defendant tenant owes \$30 in unpaid rent from before the lease expired. Defendants do not offer any countervailing arguments or evidence.

With respect to the amount that has accrued in U&O over that period, the lease provides that in the event of a holdover following the expiration or termination of the lease, the tenants or occupants will be responsible for U&O assessed at double the monthly lease rental of \$1,875, or \$3,750/month. (*See* NYSCEF No. 10 at § 29 [c].) The court concludes that this rate represents a reasonable approximation of the fair-market rental value of the premises for purposes of U&O.¹ Defendants do not offer any argument or evidence with respect to the appropriate monthly rate of U&O.

Plaintiff also seeks an award against defendant Nina Rey of plaintiff's reasonable attorney fees incurred in this action. Plaintiff is entitled to these fees under § 17 (c) (2) of the lease. The request is granted.

Accordingly, it is

ORDERED that plaintiff's motion for summary judgment is granted; and it is

ORDERED, ADJUDGED, AND DECLARED that defendant Nina Rey's lease of the premises at issue expired on April 30, 2024, and that defendants have no right to use or occupy the premises after April 30, 2024; and it is further

ORDERED that plaintiff is entitled to possession of apartment 3B located at 655 Riverside Drive, New York, New York, as against defendants, and the Sheriff of the City of New York, County of New York, upon receipt of a certified copy of this decision and order and payment of proper fees, is directed peaceably to place plaintiff in possession accordingly upon the expiration of 7 days from receipt of the decision and order; and it is further

ORDERED that upon the expiration of 7 days from service of notice of entry of this decision and order, plaintiff may exercise all acts of ownership and possession of apartment 3B located at 655 Riverside Drive, New York, New York, including entry thereto, as against defendants; and it is further

¹ That this court previously awarded interim, prospective U&O at the rate of the monthly rental in the lease (rather than the double-rent holdover rate) does not require the court to base the amount of any final U&O award on the monthly rental. (*See Levinson v 390 W. End Assoc., L.L.C.*, 22 AD3d 397, 402 [1st Dept 2005] [holding that the Court's setting a particular "rate of use and occupancy pendente lite is without prejudice to the rights of either party with respect to the ultimate determination of any issue in this action"].)


ORDERED that defendants are enjoined from obstructing or interfering in any way with plaintiff's ability to access the premises; and it is further

ORDERED that plaintiff is awarded a judgment against defendants, jointly and severally, for unpaid U&O accruing from May 1, 2024, through September 16, 2025, in the amount of \$60,125, with interest on that sum running at the statutory rate from January 2, 2025; and it is further

ORDERED that plaintiff may enter a supplemental judgment against defendants, jointly and severally, for U&O accruing from September 17, 2025, through the date of vacatur, at the holdover rate of \$3,750/month, with the amount of U&O to be determined by motion made on notice within 30 days of entry of this order; and it is further

ORDERED that plaintiff may enter a supplemental judgment against defendant Nina Rey for \$30, plus the amount of plaintiff's reasonable attorney fees in this action, with the amount of those fees to be determined by motion made on notice, supported by appropriate documentation, within 30 days of entry of this order; and it is further

ORDERED that plaintiff serve a copy of this order with notice of its entry on defendants; and on the office of the County Clerk (using the NYSCEF document type "Notice to the County Clerk - CPLR § 8019 (c)"), which shall enter judgment accordingly.

<u>4/9/2026</u> DATE			 HON. GERALD LEBOVITZ J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE