Amelius v Grand Imperial LLC
2016 NY Slip Op 32330(U)
November 29, 2016
Supreme Court, New York County
Docket Number: 155226/2016
Judge: Kathryn E. Freed

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 2

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RICHARD AMELIUS, SINJA CHO,
ILONA FARKAS, OLGA PAPKOVITCH,
JESSE ZHU,

Plaintiffs,

DECISION/ORDER
Index No.155226/2016
Mot. Seq. Nos. 001 and 002

-against-

GRAND IMPERIAL LLC, IMPERIAL V LLC,
IMPERIAL COURT MANAGEMENT,
MICHAEL EDELSTEIN,

Defendants.

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KATHRYN E. FREED, J.S.C.:

RECITATION, AS REQUIRED BY CPLR 2219(a), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS MOTION:

PAPERS	NUMBERED[1]
MOT. SEQ. NO. 001	
ORDER TO SHOW CAUSE, AFFS. IN SUPP. AND EXHIBITS ANNEXED	19, 2-14
MEMORANDUM OF LAW IN SUPP	15
AFF. OF GOOD FAITH	16
QUEZADA AFF. IN OPP. AND EXHIBITS ANNEXED	20-30
CHEHEBAR AFF. IN OPP. AND EXHIBITS ANNEXED	33-34
REPLY AFF. IN FURTHER SUPP	106
CHEHEBAR AFF. IN FURTHER OPP. AND EXHIBITS ANNEXED	112-114
HANNAFORD AFF. IN FURTHER SUPP	119
KRIST AFF. IN SUPP. AND EXHIBITS ANNEXED	120-123
SO-ORDERED STIPULATIONS	139-140
MOT. SEQ. NO. 002	
ORDER TO SHOW CAUSE, KRIST AFF. IN SUPP. AND EXHIBITS ANNEXED	271, 65-71
PUGACH AFF. IN SUPP. AND EXHIBITS ANNEXED	72-83
SANTIAGO AFF. IN SUPP. AND EXHIBITS ANNEXED	84-89

[1] Unless otherwise indicated, the papers are referred to the document numbers assigned to them by the New York State Courts Electronic Filing System (NYSCEF).

MEMORANDUM OF LAW IN SUPP.....90
AFFIRMATION OF GOOD FAITH.....92
CHEHEBAR AFF. IN OPP. AND EXHIBIT ANNEXED.....93-94
KIRST REPLY AFF. AND EXHIBITS ANNEXED.....99-101
CHEHEBAR AFF. IN FURTHER OPP. AND EXHIBITS ANNEXED.....102-105
HANNAFORD AFF. IN SUPP.....107
KIRST AFF. IN FURTHER SUPP. AND EXHIBITS ANNEXED.....115-118
McCARTHY AFF. IN OPP, QUEZADA AFF. IN OPP.....318-319
MEMO OF L AW IN OPP.....320

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THE MOTIONS IS AS FOLLOWS:

This decision and order resolves motion sequence numbers 001 and 002. The Imperial Court Hotel is a 227-unit single-room occupancy (hereinafter "SRO") multiple dwelling located at 307 West 79th Street, New York, New York, owned and operated by defendants. Plaintiffs Richard Amelius, Sinja Cho, Ilona Farkas, Olga Papkovich and Jesse Zhu (hereainfter collectively referred to as "the tenant plaintiffs") are all rent-stabilized long-term tenants in the building. The tenant plaintiffs claim that defendants are utilizing the building for short-term stays in violation of the Multiple Dwelling Law and in contravention of the warranty of habitability applicable to their tenancies. They move, by order to show cause (motion sequence No. 001), for a preliminary injunction directing defendants to immediately cease renting rooms to individuals staying less than 30 days at a time. Defendants submit written opposition.

The City of New York moves, by order to show cause (motion sequence No. 002), among other things, to intervene as a plaintiff in the action and for a preliminary injunction enjoining defendants from allowing any occupancy of the rooms in the premises for less than 30 days, or from advertising or making any bookings for same, based public nuisance theories.[2] Defendants

[2] During the initial appearance on the City's proposed order to show cause, this Court indicated its intention to permit the City to intervene, before there had been an opportunity for defendants to oppose its request. While the parties apparently took this Court's comments on the

submit written opposition to the branch of the City's motion seeking a preliminary injunction.

Following oral argument, and after a review of the papers submitted and relevant statutes and case law, **the City's motion for a preliminary injunction is granted (motion sequence No. 002), and the tenant plaintiffs' motion for a preliminary injunction is denied (motion sequence No. 001).**

LEGAL AND FACTUAL BACKGROUND

The Imperial Court was first built in 1906 and, since it was granted its first certificate of occupancy in March 1943, it has been classified as a class A building within the meaning of the Multiple Dwelling Law. (Doc. No. 31); *see* Multiple Dwelling Law § 4 (8), (16).[3] Defendants concede that, prior to amendments to the Multiple Dwelling Law that took effect in 2010 and 2011, they rented out SRO units at the Imperial Court for periods of as few as seven days. (Doc. No. 20.) Although at the time of commencement of this lawsuit there were over 500 bookings

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record to constitute an order, the CPLR requires orders to be in writing. *See* CPLR 2219 (a); *Nam Tai Elecs., Inc. v UBS PaineWebber Inc.*, 46 AD3d 486, 487 (1st Dept 2007). No written order was made, nor was the transcript so ordered. However, the parties thereafter entered into a stipulation that provided that this Court had granted the City's application to intervene as a plaintiff and that a summons and complaint had been served on the proposed intervenor-defendants identified by the City. This Court so ordered that stipulation on August 10, 2016. (Doc. No. 139.) In the absence of an objection, and in light of the City's clear right to intervene, either as of right (*see George v Grand Bay Assoc. Enter. Inc.*, 45 AD3d 451, 452 [1st Dept 2007]) or as a matter of discretion in the interest of fairness and judicial economy (*see Wells Fargo Bank N.A. v McLean*, 70 AD3d 676, 676-677 [2d Dept 2010]), this Court considers the branch of the City's motion seeking to intervene as having been granted as of August 10, 2016. The caption shall be amended accordingly.

[3] While defendants refer to the Imperial Court as a new-law tenement, it does not appear that the denomination carries with it a legal significance that distinguishes it from other class A multiple dwellings. *See generally City of New York v 330 Cont. LLC*, 60 AD3d 226, 228 (1st Dept 2009).

remaining to be fulfilled, the number has been ever-dwindling and, as of the time of this decision, as few as 40 to 50 remain. (Doc. Nos. 112-117, 344.)

Among the legal developments most relevant to this case is the decision in *City of New York v 330 Cont. LLC* (60 AD3d 226, 233-234 [1st Dept 2009]). There, the Court interpreted former Multiple Dwelling Law § 4 (8) (a) to provide that units in class A multiple dwellings could be rented out for periods as short as seven days, provided that the majority of the units in the building were occupied for permanent resident purposes. *Id.* The Court reasoned that this holding comported with the way the statute defined a class A multiple dwelling, namely that it would be "occupied, *as a rule*, for permanent residence purposes." Former Multiple Dwelling Law § 4 (8) (a) (emphasis added). Following that decision, the Legislature amended the Multiple Dwelling Law to provide, among other things, that "[a] class A multiple dwelling shall *only* be used for permanent resident purposes." Multiple Dwelling Law § 4 (8) (a) (emphasis added); *see* L 2010, ch 225 § 8, as amended by L 2010, ch 566, § 3.

Defendants have attempted to advance the legal position that, notwithstanding the amendments to the statute, the Multiple Dwelling Law savings clauses permitted them to continue renting the units for periods as short as seven days. *See* Multiple Dwelling Law 366 (1). Defendants advanced this position before the Department of Buildings, the Board of Standards and Appeals, this Court (Hunter, Jr., J.), the Appellate Division, First Department and, finally, the Court of Appeals. Skipping to the end of those legal developments, the Appellate Division held that the amended 30-day minimum occupancy provision applies to the Imperial Court, as a class A multiple dwelling, notwithstanding the savings clauses (*see Matter of Grand Imperial, LLC v New York City Bd. of Stds. & Appeals*, 137 AD3d 579, 579 [1st Dept 2016]) and, on

November 17, 2016, the Court of Appeals denied defendants' motion for leave to appeal from the order (motion No. 2016-865). Thus, it is now beyond any dispute that stays of less than 30 days at the Imperial Court violate the Multiple Dwelling Law.

The seven-day stays at issue in this action have been almost exclusively reservations that were made following the decision of this Court (Hunter, Jr., J.) (Doc. No. 32), in which it was held that the savings clauses of the Multiple Dwelling Law permitted seven-day stays at the Imperial Court, but before the decision of the Appellate Division, First Department, which reversed the Supreme Court decision. Throughout the course of this litigation, defendants have maintained that the seven-day stays have been legal because the reservations were made while the decision of this Court (Hunter, Jr., J.) was in effect. The tenant plaintiffs and the City, of course, have disputed this contention.

In any event, now that the Court of Appeals has denied defendants' motion for leave to appeal, defendants concede, in a letter to the court dated November 18, 2016, that this legal development settles the issue of their entitlement to lease out units at the Imperial Court for periods of less than 30 days. (Doc. No. 344.) In the letter, Charles Chehebar, Esq., attorney for defendants, stated that defendants have "begun the process of cancelling the remaining 40 [seven-day] reservations at the Imperial Court." Chehebar represented that defendants "anticipate that this process will be completed within days and that any reservations after November 25, 2016 will in fact be terminated." He further stated that defendants are attempting to relocate guests who were due to arrive after that date. At least for purposes of determining the motions for a preliminary injunction, defendants have abandoned their position that Justice Hunter's decision shielded their actions with a cloak of legality. Instead, they now assert that

their decision to cancel all remaining bookings has rendered the motions for a preliminary injunction moot.

Turning to the allegations, the tenant plaintiffs have made various complaints about the seven-day tenants in affidavits submitted in support of their request for a preliminary injunction. Amelius averred that multiple units on the seventh floor of the Imperial Court, where he resides, have been used for short-term stays. (Doc. No. 4.) He stated that the short-term tenants interfere with his ability to use the garbage room, kitchen and common bathroom. For example, Amelius averred that the short-term tenants "leave garbage and dirty pots and dishes in the common kitchen without cleaning them," and that he had "seen food being cooked on the stove without anyone monitoring it." It is unclear how Amelius could know that food being cooked on the stove without being monitored is attributable to seven-day tenants. He further contended that short-term tenants cause an increase in vermin infestation, and that they "smoke cigarettes or marijuana." Amelius stated that the disproportionate time required to attend to the short-term occupants leads to delays in amenities such as mail distribution for him and the other long-term tenants.

Cho stated, in her affidavit in support of the motion for a preliminary injunction, that she lives on the sixth floor of the Imperial Court and that defendants are renting out multiple units on that floor to short-term tenants. (Doc. No. 5.) Cho shared some of Amelius's complaints and, additionally, averred that the common bathroom on the sixth floor has a problematic leak and a collapsed ceiling. It is not at all clear from her affidavit how the problems in the bathroom on her floor are attributable to short-term tenants. Cho also stated that the short-term tenants tend to arrive in groups with luggage, thus taking up inordinate amounts of space in the elevators and

making it harder for long-term tenants to use the elevator in a timely fashion. According to Cho, the short-term tenants are more likely to have all-night parties than the long-term tenants.

Farkas stated that she lives on the seventh floor of the Imperial Court, and repeated many of the complaints made by the other tenant plaintiffs. (Doc. No. 6.) For example, she complained that the short-term tenants do not properly dispose of their trash, which attracts vermin, and that they smoke cigarettes. Farkas averred that the housekeeping for short-term tenants is disturbing, since the carts to change linens block the hallways and make it difficult to move around while they are there. Farkas complained that the housekeeping has been generally disturbing, including the fact that the workers make excessive noise and take up room in the common elevators, which they use as a dumbwaiter.

Papkovitch averred that she lives on the ninth floor of the building, and that several units on that floor were being used for short-term stays. (Doc. No. 7.) Her complaints were very similar to that of the other tenant plaintiffs, namely that the short-term tenants contribute to garbage in the hallways, noise and smoke. She also shared the complaint that the housekeeping staff's carts block the hallways and generally disturb her.

Zhu stated that he lives on the ninth floor of the Imperial Court, and his complaints mirrored many of those made by the other tenant plaintiffs. (Doc. No. 8.)

The City, on the other hand, asserts that seven-day stays in the Imperial Court are a matter of public concern. (Doc. No. 90.) It contends that the stays not only violate public policy inasmuch as they contribute to the housing shortage, but they are also dangerous, since they do not comport with the applicable building and fire codes.

When this Court signed the tenant plaintiffs' order to show cause, it granted their request

for a temporary restraining order (hereinafter "TRO") to the extent that defendants were "stayed from renting to any new persons . . . which would allow any persons to occupy rooms at the Imperial Court . . . for less than 30 consecutive days." (Doc. No. 19.) After the City moved for contempt, alleging that defendants had violated the TRO (motion sequence No. 004), the City withdrew the motion by stipulation. The apparent confusion revolved around the interpretation of the initial TRO and, specifically, the inclusion of the word "rent" in the order. Defendants took this word to mean that they were permitted to allow new short-term residents in the Imperial Court, provided that they not require payment. While this Court acknowledged the ambiguity of the word "rent," the intent of the TRO was to preclude all new short-term tenancies and, to remedy the ambiguity, the stipulation, which this Court so-ordered, modified the TRO by providing that "defendants and their agents, employees, representatives and all persons acting individually or in concert with them, are restrained from allowing any new person to occupy [units in the Imperial Court] for less than 30 consecutive days." (Doc. No. 222.)

Following developments pursuant to which the City was permitted to intervene (*supra,* n 2), it filed what it termed a summons and a "proposed verified complaint in intervention." (Doc. No. 108.) The proposed verified complaint in intervention named defendants in addition to those named by the tenant plaintiffs, namely the building in rem, Imperial Success, LLC, F & M Imperial LLC, Florence Edelstein, and other John Doe defendants.

POSITIONS OF THE PARTIES

The tenant plaintiffs argue that they are entitled to a preliminary injunction, based on what they allege to be violations of the warranty of habitability (*see* Real Property Law § 235-b),

the New York City Tenant Protection Act (*see* Administrative Code of City of N.Y. § 27-2005 [d]), the common law private nuisance doctrine, and the statutory ban on deceptive business practices (*see* General Business Law § 349 [a]). Defendants counter that the tenant plaintiffs are not likely to succeed on the merits of any of their claims. They further argue that the tenant plaintiffs have failed to establish a sufficient nexus between short-term stays and the alleged harms that they have suffered for the court to conclude that the element of irreparable harm has been met. Finally, defendants contend that the balance of the equities does not favor the tenant plaintiffs.

The City maintains that it is entitled to a preliminary injunction on the basis of public nuisance, based on violations of the Multiple Dwelling Law, and the applicable Building and Fire Codes. Defendants counter, as limited by their letter to this Court abandoning their theory that the stays were legal based on the time the reservations were made (with respect to these motions), that the City's claims are barred by the applicable statute of limitations and since any violations of the Building and Fire Codes are de minimis. Defendants further maintain that the balance of the equities does not favor the City.

LEGAL CONCLUSIONS

"A preliminary injunction substantially limits a defendant's rights and is thus an extraordinary provisional remedy requiring a special showing. Accordingly, a preliminary injunction will only be granted when the party seeking such relief demonstrates a likelihood of ultimate success on the merits, irreparable injury if the preliminary injunction is withheld, and a balance of equities tipping in favor of the moving party." *1234 Broadway LLC v West Side SRO*

Law Project, 86 AD3d 18, 23 (1st Dept 2011) (citations omitted); *see 276-8 Pizza Corp. v Free*, 118 AD3d 591, 593 (1st Dept 2014).

"To establish a likelihood of success on the merits, a prima facie showing of a reasonable probability of success is sufficient; actual proof of the petitioner's claims should be left to a full hearing on the merits. A likelihood of success on the merits may be sufficiently established even where the facts are in dispute and the evidence need not be conclusive." *Barbes Rest. Inc. v ASRR Suzer 218, LLC*, 140 AD3d 430, 431 (1st Dept 2016) (internal quotation marks, brackets and citations omitted); *see 1234 Broadway LLC v West Side SRO Law Project*, 86 AD3d at 23-24. On the other hand, a motion for a preliminary injunction is properly denied where "conflicting affidavits raise[] sharp issues of fact." *See Buchanan Capital Mkts., LLC. v DeLucca*, ___ AD3d ___, ___, 2016 NY Slip Op 07611, *1 (1st Dept 2016) (internal quotation marks and citation omitted); *but see 1234 Broadway LLC v West Side SRO Law Project*, 86 AD3d at 23 (requiring that a hearing be held where the papers on a motion for a preliminary injunction presented issues of fact).

To establish irreparable harm, an individual plaintiff must show that he or she cannot be compensated by money damages. *See U.S. Re Companies, Inc. v Scheerer*, 41 AD3d 152, 155 (1st Dept 2007). On the City's application for a preliminary injunction, however, "irreparable injury is presumed from the continuing existence of an unremedied public nuisance." *City of New York v 330 Cont. LLC*, 60 AD3d 226, 228 (1st Dept 2009).

"The balancing of the equities requires the court to determine the relative prejudice to each party accruing from a grant or denial of the requested relief." *Barbes Rest. Inc. v ASRR Suzer 218, LLC*, 140 AD3d at 432 (citation omitted); *see Bell & Co., P.C. v Rosen*, 114 AD3d

411, 411 (1st Dept 2014). In this regard, the court should bear in mind whether the preliminary injunction would upset or maintain the status quo. *See Buchanan Capital Mkts., LLC. v DeLucca*, 2016 NY Slip Op 07611, *1; *Barbes Rest. Inc. v ASRR Suzer 218, LLC*, 140 AD3d at 432; *Fieldstone Capital, Inc. v Loeb Partners Realty*, 105 AD3d 559, 560 (1st Dept 2013).

Finally, "[t]he decision to grant or deny a preliminary injunction lies within the sound discretion of the trial court." *Gilliland v Acquafredda Enters., LLC*, 92 AD3d 19, 24 (1st Dept 2011); *see Barbes Rest. Inc. v ASRR Suzer 218, LLC*, 140 AD3d at 431.

The tenant plaintiffs did not meet their burden for a preliminary injunction. As an initial finding, the behaviors of the seven-day tenants and the Imperial Court staff do not rise to the level of a breach of the warranty of habitability, tenant harassment or private nuisance attributable to defendants. Nor do they constitute deceptive business practices such that the tenant plaintiffs can assert them in this context.

More importantly, while many of the tenant plaintiffs' complaints certainly reflect that they have been inconvenienced, they are predominantly complaints about the general maintenance of the Imperial Court rather than harms that seem directly linked to seven-day tenants. This Court is not convinced that the relief that the tenant plaintiffs seek – an injunction precluding the Imperial Court from hosting seven-day tenants – would alleviate the harms that they claim are being committed. Even giving the tenant plaintiffs the benefit of the doubt with respect to their maintenance complaints, those complaints could be alleviated through enforcement of non-smoking policies, additional servicing of the facilities and better cleaning. The tenant-plaintiffs' complaints could exist in buildings that house exclusively long-term tenants, and do not seem, in this Court's view, to be in any way unique to a building housing

short-term tenants, with perhaps the exception of complaints related to housekeeping. It should also be noted that defendants strongly disputed the tenant plaintiffs' characterization of the maintenance of the building, primarily through the affidavit of Gleny Quezada, the building manager of the Imperial Court. (Doc. No. 20.) Finally, although the balance of the equities has shifted in light of the dwindling number of seven-day stays hosted at the Imperial Court, a preliminary injunction precluding seven-day stays at the outset of this litigation would have dramatically altered the status quo by precluding defendants from honoring many more reservations than are at issue now.

The City, however, stands on firmer ground. It is now abundantly clear that stays at the Imperial Court for periods of less than 30 days are not permissible under the Multiple Dwelling Law. *See Matter of Grand Imperial, LLC v New York City Bd. of Stds. & Appeals*, 137 AD3d at 579. While, in addition to this violation, the City has asserted other, specific violations of Fire and Building Codes, there is no reason to go further than the Multiple Dwelling Law. In the memorandum approving the amendments to the Multiple Dwelling Law, Governor Patterson noted that "transient uses" of class A multiple dwellings "pose fire hazards, remove affordable housing from the market and create unfair competition for law-abiding hotels." Governor's Mem approving L 2010, ch 225 § 8, as amended by L 2010, ch 566, § 3, Bill Jacket. Thus, the City's argument that stays of under 30 days violate the public policy of this State seems plain in light of the clear legislative intent in enacting the amendments to the Multiple Dwelling Law. Any violations of Building and Fire Codes, while certainly lending additional credence to the City's claims that short-term use is a public nuisance, would be merely in addition to the other harms that the amendments were design to prevent – namely to alleviate housing shortages in New

York City and prevent unfair competition to hotels. At any rate, such use constitutes a violation of the certificate of occupancy even in the absence of fire and building code violations. Thus, although well researched and ably argued, it is not necessary for this Court to parse through the detailed issues surrounding the Imperial Court's compliance with the Fire and Building Codes in order to find a violation sufficient to support the City's motion for a preliminary injunction. Seven-day stays at the Imperial Court, in and of themselves, violate the public policy of this State and the Imperial Court's certificate of occupancy as a class A multiple dwelling.

Defendants' argument that the statute of limitations bars the City's claims is without merit, at least for purposes of the preliminary injunction application, since the motion is addressed to alleged ongoing violations at the Imperial Court, not the older alleged violations.

Defendants' contention that it is not necessary for this Court to issue a preliminary injunction, because they have voluntarily ceased seven-day stays, is without merit. As the City's papers have established, defendants' bookings did not immediately cease after the First Department's decision was rendered. The validity of the stays occurring after the ruling, merely because the contracts were entered into beforehand, is dubious at best. Furthermore, in the context of the City's prior motion for contempt, it was brought to light that defendants had invited in additional short-term guests, albeit without requesting payment. While this use of the Imperial Court did not violate the letter of the temporary restraining order as it existed at the time, which merely precluded the defendants from renting units to new tenants, it certainly did not follow the spirit of the order.

The fact that defendants have ceased to use the Imperial Court for seven-day stays merely has the effect of shifting the balance of the equities sharply in favor of the City. The status quo,

now, is a lack of seven-day stays. Further, "the City has an ongoing right to ensure that defendants do not subsequently recommence their illegal activities in the same location." *City of New York v Hassan*, 128 AD3d 419, 420 (1st Dept 2015) (internal quotation marks, brackets and citations omitted). Thus, the City is entitled to a preliminary injunction.

Before concluding, this Court notes that there are six pending motions, all brought by the City, including two motions to dismiss affirmative defenses and four discovery related motions. In the City's first motion to dismiss certain affirmative defenses (motion sequence No. 003), which has been submitted and argued, defendants oppose the motion and argue that the City lacks standing to seek dismissal of affirmative defenses appearing in their answer to the tenant plaintiffs' complaint. Additionally, the City has moved to dismiss certain affirmative defenses appearing in defendants' answer to its own complaint in intervention (motion sequence No. 009). It is noted that the City could have easily avoided this procedural predicament by coordinating its efforts with the tenant plaintiffs and requesting either that they directly join in the motion or that they move themselves. The tenant plaintiffs undoubtedly would have done so. (Doc. No. 197.) In any event, the City's first motion to dismiss certain affirmative defenses (motion sequence No. 003) is held in abeyance pending submission of the City's second motion to dismiss certain affirmative defenses (motion sequence No. 009), so that they may be resolved together.

Accordingly, it is hereby:

ORDERED that the tenant plaintiffs' motion for a preliminary injunction (motion sequence No. 001) is denied; and it is further

ORDERED that the City's motion for a preliminary injunction (motion sequence No. 002) is granted; and it is further

ORDERED that defendants and intervenor-defendants, their agents, employees, representatives and all persons acting individually or in concert with them, during the pendency of this litigation, are enjoined from using or occupying, or permitting the use or occupancy of, any of the dwelling units in the Imperial Court Hotel for less than 30 consecutive days, and from booking, offering or advertising any dwelling units in the Imperial Court Hotel for less than thirty consecutive days; and it is further

ORDERED that the action shall bear the following caption:

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RICHARD AMELIUS, SINJA CHO, ILONA FARKAS, OLGA PAPKOVITCH, JESSE ZHU,

Plaintiffs,

-against-

Index No.: 155226/2016

GRAND IMPERIAL LLC, IMPERIAL V LLC, IMPERIAL COURT MANAGEMENT, MICHAEL EDELSTEIN,

Defendant.

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THE CITY OF NEW YORK,

Intervenor-Plaintiff,

-against-

GRAND IMPERIAL LLC, IMPERIAL V LLC, IMPERIAL COURT MANAGEMENT LLC, MICHAEL EDELSTEIN, THE LAND AND BUILDING KNOWN AS 307 WEST 79th STREET, BLOCK 1244, LOT 8, County, City and State of New York, IMPERIAL SUCCESS LLC, F & M IMPERIAL LLC, FLORENCE EDELSTEIN, and "JOHN DOE" and "JANE DOE," numbers 1 through 10, fictitiously named parties, true names unknown, the parties intended being the managers or operators of the business being carried on by defendants GRAND IMPERIAL LLC, IMPERIAL V LLC, IMPERIAL COURT MANAGEMENT, IMPERIAL SUCCESS LLC, and/or F & M IMPERIAL LLC, and any person claiming any right, title or interest in the real property which is the subject of this action,

Intervenor-Defendants.

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and it is further,

ORDERED that counsel for the City shall serve a copy of this order with notice of entry

on the County Clerk (Room 141B), by filing with NYSCEF a completed "Notice to the County Clerk" (NYSCEF Form EF-22, available on the NYSCEF site), within 20 days after this order is uploaded to NYSCEF, and the clerk is directed to mark the court's records to reflect the change to the caption; and it is further,

ORDERED that counsel for the City shall serve a copy of this order with notice of entry on the General Clerk's Office (Room 119) pursuant to e-filing protocol at genclerk-ords-non-mot@nycourts.gov, within 20 days after this order is uploaded to NYSCEF, and the clerk is directed to mark the court's records to reflect the change to the caption; and it is further,

ORDERED that counsel for the City is directed to serve a copy of this order with notice of its entry on all parties within 20 days after it is uploaded to NYSCEF; and it is further

ORDERED that this constitutes the decision and order of the court.

DATED: November 29, 2016

ENTER:

Kathryn E. Freed, J.S.C.

HON. KATHRYN FREED
JUSTICE OF SUPREME COURT