SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. KATHRYN E. FREED** **PART** **IAS MOTION 2**

Justice

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INDEX NO. 155226/2016

RICHARD AMELIUS, SINJA CHO, ILONA FARKAS, OLGA PAPKOVITCH, JESSE ZHU, CITY OF NEW YORK,

Plaintiffs,

MOTION SEQ. NO. 016

- v -

GRAND IMPERIAL LLC, IMPERIAL V LLC, IMPERIAL COURT MANAGEMENT, MICHAEL EDELSTEIN, THE LAND AND BUILDING KNOWN AS 307 WEST 79TH STREET, BLOCK 1244,1018, COUNTY, CITY AND STATE OF NEW YORK, IMPERIAL SUCCESS LLC, F & M IMPERIAL LLC, FLORENCE EDELSTEIN, JOHN DOE AND JANE DOE, NUMBERS I THROUGH 10, FICTITIOUSLY NAMED PARTIES, TRUE NAMES UNKNOWN, THE PARTIES INTENDED BEING THE MANAGERS OR OPERATORS OFTHE BUSINESS BEING CARRIED ON BY DEFENDANTS GRAND IMPERIAL LLC, IMPERIAL V LLC, IMPERIAL COURT MAN...,

DECISION AND ORDER

Defendants.

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The following e-filed documents, listed by NYSCEF document numbers (Motion 016) 642, 643, 644, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667

were read on this motion to/for DISMISS.

In this nuisance abatement action, defendants move, pursuant to CPLR 3211, to dismiss the claims against them to the extent that they are based on seven-day stays at the subject building that occurred while a judgment of this Court (Hunter, J.) was in effect, before it was subsequently reversed on appeal. Plaintiffs oppose. Plaintiff City of New York's cross motion under this sequence number, pursuant to CPLR 3212, has been denied, without prejudice. (Doc. No. 660.) For the reasons that follow, defendants' motion is granted.

This Court has outlined the facts of this case in two prior decisions (57 Misc 3d 835, 837-839 [Sup Ct, NY County 2017]; 2016 NY Slip Op 32330[U] [Sup Ct, NY County 2016]) and will only briefly summarize them for the disposition of this motion. The Imperial Court Hotel is a 227-unit single-room occupancy multiple dwelling located at 307 West 79th Street, New York,

NY. Prior to amendments to the Multiple Dwelling Law that took effect in 2010 and 2011, former Multiple Dwelling Law § 248 (16) "permitted single room occupancy owners to rent their rooms for periods as short as seven days." (*Matter of Grand Imperial, LLC v New York City Bd. of Stds. & Appeals*, 137 AD3d 579, 579 [1st Dept 2016], *lv denied* 28 NY3d 907 [2016].) Defendants have attempted to advance the legal position that the amendments to the Multiple Dwelling Law did not apply to their use pursuant to the savings clauses of Multiple Dwelling Law § 366 (1), and that the savings clauses permitted them to continue to rent rooms in the building for periods as short as seven days. As is most relevant to this motion, this Court (Hunter, J.) agreed with this position in a decision and judgment granting Grand Imperial's article 78 petition to annul a decision by the New York City Board of Standards and Appeals which held that the savings clauses did not apply. (Doc. No. 644.) The ultimate effect of the judgment was a judicial determination that defendants were permitted to rent rooms in the building for seven-day periods. Although the judgment was reversed on appeal (*see Matter of Grand Imperial, LLC v New York City Bd. of Stds. & Appeals*, 137 AD3d at 579), defendants now contend that plaintiffs are barred, as a legal matter, from asserting their nuisance claims to the extent that they are based on seven-day stays that took place during the time between when the judgment was issued and when defendants were served with notice of entry of the decision of the Appellate Division, First Department, which reversed the judgment.

Contrary to both the tenant plaintiffs' and the City's contentions that this motion is procedurally improper, this motion was discussed explicitly and extensively during several conferences with this Court's staff, during which all parties represented that they agreed that it would narrow the issues in a useful and appropriate manner. After the conferences, the parties executed a stipulation inviting the motion, which included a briefing schedule. (Doc. No. 626.)

Nowhere in the stipulation did any party voice an objection to the timing or procedural propriety of this motion, nor was this Court made aware that any of the plaintiffs objected to it at any time before the opposition was filed. The parties and this Court "charted a procedural course" that led to the making of this motion so, regardless of whether that course "deviate[s] from the path established by the CPLR," the motion is entitled to a "full consideration of [its] merits." (*Reeps v BMW of N. Am., LLC*, 160 AD3d 603 [1st Dept 2018]; *see Corchado v City of New York*, 64 AD3d 429 [1st Dept 2009].) The time for plaintiffs to object to the procedural propriety of the motion was during the conferences with this Court or, at the latest, when the stipulation was executed.

Turning to the merits of the motion, it is well settled that "a final judgment or order represents a valid and conclusive adjudication of the parties' substantive rights unless and until overturned on appeal. Furthermore, while an appeal from a final judgment or order may leave an inchoate shadow on the rights defined therein, those rights are nonetheless fully enforceable in the absence of a judicially issued stay pending appeal." (*Da Silva v Musso*, 76 NY2d 436, 440 [1990]; *see Neville v Martin*, 38 AD3d 386, 387 [1st Dept 2007], *lv dismissed* 2 NY3d 906 [2007].) Further, "an appeal by the State, a political subdivision thereof, or their officers or agencies does not suspend the operation of the order or judgment and restore the case to the status which existed before it was issued. A motion decided by an order does not become undecided and the declaratory provisions of a judgment are not undeclared when a governmental party serves a notice of appeal therefrom." (*Matter of Pokoik v Department of Health Servs. of County of Suffolk*, 220 AD2d 13, 15 [2d Dept 1996]; *cf. Matter of State of New York v Richard TT.*, 127 AD3d 1528, 1528-1529 [3d Dept 2015].) Since the judgment granting the petition pursuant to CPLR article 78 is declaratory rather than executory in nature – that is to say, it did

not direct any specific future action but, instead, adjudicated the respective rights of the parties – CPLR 5519 (a) (1) did not apply upon the City's appeal, and the City would have been required to move for a stay of the declaratory provisions of the judgment in order to stay them, which it did not do.

Defendants operated pursuant to the declaratory provisions of a lawful judgment and, unless and until either a stay was issued or they were served with notice of entry of an order reversing the judgment, they were free to abide by the provisions of the judgment they had specifically applied for and received. Nothing in the opposition papers provides a basis on which to depart from this principle.

Accordingly, it is hereby

ORDERED that the motion is granted, and the complaints are dismissed to the extent that they are predicated on the illegality of seven-day stays taking place from April 23, 2015 to April 8, 2016; and it is further

ORDERED that the parties are directed to appear for a preliminary conference on July 11, 2018 at 11:00 a.m.

5/30/2018
DATE

KATHRYN E. FREED, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
	X	GRANTED		DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT		REFERENCE

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