

<b>11-15 St. Nicholas Ave. HDFC v Shaw</b>
2018 NY Slip Op 32550(U)
October 9, 2018
Supreme Court, New York County
Docket Number: 656214/16
Judge: Nancy M. Bannon
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 42

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11-15 ST. NICHOLAS AVENUE HDFC,

Plaintiff,

Index No. 656214/16

v

ORDER

ROBERT SHAW, ABC MANAGEMENT CORP.,  
d/b/a ABC REALTY, JP MORGAN CHASE  
& CO., ANN BROOKS, and MARTA BATIZ,

Defendants.  
-----X

NANCY M. BANNON, J.:

WHEREAS the court, by Decision and Order dated May 1, 2018,  
having appointed Howard Miller to act as receiver of the  
plaintiff 11-15 St. Nicholas Avenue HDFC and the real property  
owned by 11-15 St. Nicholas Avenue HDFC; and

WHEREAS the court, by Decision and Order dated July 27,  
2018, having denied, without prejudice to renewal, the motion of  
the receiver to appoint his law firm as general counsel of 11-15  
St. Nicholas Avenue HDFC and to appoint several other entities as  
landlord-tenant counsel, property manager, and accountant; and

WHEREAS the court, by Decision and Order dated October 9,  
2018, having granted the motion of Howard Miller to be relieved  
as receiver;

NOW, upon the court's own motion, and in accordance with  
CPLR 6405, it is

ORDERED that Mark L McKew, Esq., 1725 York Avenue, Suite 29A, New York, New York 10128, telephone number 212-876-6783, email address mmckew@mckewlaw.com, be and hereby is appointed to act as the receiver of 11-15 St. Nicholas Avenue HDFC and the real property that said corporation owns at 11-15 St. Nicholas Avenue, New York, New York, with the usual powers and duties of a receiver during the pendency of this proceeding for the benefit of the petitioner of all the rents and profits now due and unpaid or may become due and issuing out of the subject property; and it is further,

ORDERED that the receiver is authorized to forthwith take charge and enter into possession of the subject property; and it is further,

ORDERED that the receiver is authorized to retain the services of a managing agent or real estate management corporation in connection with the day-to-day management of the subject property, such managing agent or real estate management corporation to be entitled to reasonable fees in the management of the corporation and the property; and it is further,

ORDERED that, before entering upon his duties, the receiver shall be sworn to faithfully and fairly discharge the trust committed to him and shall execute to the People of the State of New York and with the Clerk of this court an oath and undertaking with sufficient sureties, in the sum of \$1,500,000, which may be

in the form of an insurance policy or insurance bond, the costs of which shall be borne by 11-15 St. Nicholas Avenue HDFC, conditioned upon the faithful discharge of his duties as such receiver; and it is further,

ORDERED that the receiver be and hereby is directed to demand, collect, and receive from the occupants, tenants, and/or licensees in possession of the subject property, or other persons liable therefor, all the rents, maintenance fees, assessments, and license fees now due and unpaid or hereafter to become fixed and due; and it is further,

ORDERED that the receiver may institute and prosecute suits for the collection of rent, maintenance fees, assessments, and license fees, and other charges now due or hereafter to become due or fixed, and summary proceedings for the removal of any tenants, tenant-shareholders, or licensees or other persons therefrom; and it is further,

ORDERED that pursuant to the provisions of General Obligations Law § 7-105, anybody holding any deposits or advances of rental as security under any lease or license agreement affecting space in the subject property shall turn over such deposits or advances to the receiver within five days after the receiver shall have qualified, and the receiver shall thereupon hold such security subject to such disposition thereof as shall be provided by order of this court to be made and entered in this

proceeding; and it is further,

ORDERED that if any of the tenants or tenant-shareholders, their contractors, agents, and/or employees are in possession of expired or unexpired leases, agreements, correspondence, notices, and registration statements relating to the subject property, they shall immediately deliver them to the receiver; and it is further,

ORDERED that the receiver shall not incur any expenses on his own behalf, including fees and commissions due to him or his attorney, in excess of \$2,500.00, and is prohibited from incurring obligations in excess of the monies in his hands without further order of the court or the consent of the defendants' attorney, except, however, that the receiver is permitted to incur expenses above and beyond such monies collected for the purposes of procuring the necessary insurance, as described above, and in securing bond and surety, as described above, provided that, if the receiver expends money for the cost of obtaining that insurance, bond, and surety, that money shall be reimbursed to him by the plaintiff; and it is further,

ORDERED that the receiver shall promptly deposit all monies received by him at the time he receives said money, in his own name as receiver, in a commercial bank of his choosing, provided that the commercial bank shall be authorized to do business in New York and the relevant account shall be opened at a branch

located in Manhattan (the depository) and that no withdrawals shall be made therefrom except as directed by this court or on a draft or check signed by the receiver and countersigned by the surety on his undertaking; and it is further,

ORDERED that the depository shall send monthly statements of deposits into and withdrawals from the account of the depositor receiver to the receiver and the attorney for the petitioner; and it is further,

ORDERED that the receiver is authorized to pay the taxes, assessments, water charges, sewer rents and charges, and charges for electricity, as well as the operational expenses of the subject property, and the cost of all insurance required by the terms of the cooperative corporation's by-laws or operating agreement, provided that, if the receiver expends money for any of those expenses, that money shall be reimbursed to him by the petitioner, and the receiver may, after notice to the defendants, (a) rent or lease units in the subject property for terms not exceeding two years, (b) approve the sale of shares and issue a proprietary lease referable to an ownership interest in those units, (c) make secure the subject property and safeguard it from the elements and from acts of theft or vandalism, (d) comply with all requirements of any department or other authority having jurisdiction, (e) take such further action that a prudent owner or manager would with respect to the subject property to preserve

its value; and it is further,

ORDERED that the tenants, tenant-shareholders, licensees, or other persons in possession of the units in the subject property attorn to the receiver and turn over to him all rents, license fees, and other charges of such property now due and unpaid or that may hereafter become due to the plaintiff corporation; and that, during the pendency of this proceeding, the plaintiff corporation and any person purporting to act on its authority, and their agents, other than those designated or retained by the receiver, be, and hereby are, enjoined and restrained from (a) collecting the rents, license fees, and other charges of the subject property, (b) contracting to lease, rent, license, partition, or sell the subject property or any portion thereof, (c) approving or disapproving sales of shares in the plaintiff corporation referable to apartment units in the subject property or issuing proprietary leases in connection therewith, (d) interfering with the receiver or in any way with the subject property or its possession, (e) transferring or removing or in any way disturbing any of the occupants thereof; and it is further,

ORDERED that all tenants, tenant-shareholders occupants, employees, and licensees of the property and other persons liable for the rents be and hereby are enjoined and restrained from paying any rent or license fees or other charges for such

property to any person or corporation other than the receiver or his designees; and it is further,

ORDERED that all parties to this action turn over to the receiver all rents collected from and after the date of this order; and it is further,

ORDERED that all persons now or hereafter in possession of the subject property, or any part thereof, and not holding such possession under valid and existing leases or tenancies, do forthwith surrender such possession to the receiver, subject to emergency laws, if any; and it is further,

ORDERED that the receiver, after paying the expenses of the management and care of the subject property as provided above retain the balance of the monies that may come into his hands until the termination of the receivership; and that then, after deducting therefrom his proper fees and disbursements in amounts approved by this court, retain said monies in his hands until the further order of this court and provide a final accounting to the attorney for the parties of all funds received and/or disbursed by the receiver; and it is further,

ORDERED that the receiver shall continue as receiver until further order of this court; and it is further,

ORDERED that, upon proper motion of the receiver to settle his final account, the fees of the receiver shall be paid in accordance with CPLR 8004; and it is further,



ORDERED that the receiver, or any party hereto may, at any time, on proper notice to all parties who may have appeared in the proceeding and who have not waived such notice, apply to this court for further and other instructions or powers necessary to enable the receiver properly to fulfill his duties; and it is further,

ORDERED that the appointee named herein shall comply with section 35a of the Judiciary Law and CPLR 6401-6404, RPAPL 1325, and Rule 36 of the Chief Judge, and file all reports, statements, oaths, or other documents as required by law or directive of the court or Chief Judge; and it is further,

ORDERED that the receiver shall not make any secondary appointments without the prior written approval of the court, and that the receiver shall apply in a separate application for the appointment of a managing agent, landlord-tenant counsel, if applicable, accountant, or other management services professional pursuant to Rule 36.1 of the Uniform Court Rules; and it is further,

ORDERED that the outgoing receiver, Howard Miller, shall serve a copy of this Order with notice of entry upon the incoming receiver and upon all parties by overnight delivery within 10 days of the entry of this order.

This constitutes the Decision and Order of the Court.

Dated: October 9, 2018

ENTER: 

J.S.C.

**HON. NANCY M. BANNON**