Grand Imperial, LLC v City of New York
2019 NY Slip Op 30257(U)
February 4, 2019
Supreme Court, New York County
Docket Number: /
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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INDEX NO. 150741/2018

GRAND IMPERIAL, LLC,

Petitioner,

MOTION SEQ. NO. 001

- v -

THE CITY OF NEW YORK, THE NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS, THE NEW YORK CITY DEPARTMENT OF BUILDINGS

DECISION, ORDER & JUDGMENT

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 13, 38, 39, 40, 41, 42, 43, 44, 46

were read on this motion to/for ARTICLE 78 PETITION

In this Article 78 proceeding, petitioner Grand Imperial, LLC moves to annul the Environmental Control Board's ("ECB") Superseding Appeal Decision and Order of September 21, 2017. That order reversed the December 14, 2016 decision of OATH Hearing Officer Neil Tolciss, which had dismissed summons numbers 035169578H, 035169579J, 035169580R, 035169582K and 035169581Z against petitioner. Petitioner further moves to reinstate the said decisions of Hearing Officer Tolciss, thereby dismissing the subject summonses. Respondents oppose the petition, arguing that the ECB's final determination should not be disturbed and that the subject summonses should remain in effect. For the reasons set forth below, the petition is granted, the Superseding Appeal Decision and Order are annulled, and the summonses are dismissed.

Petitioner is one of the owners of the real property and building located at and known by the street address of 307 West 79th Street, New York, New York ("the Building"), also known as the Grand Imperial Hotel. The respondents are the City of New York ("the City") and various City agencies: the ECB, Office of Administrative Trials and Hearings ("OATH") and the New York City Department of Buildings ("DOB"). This Court has outlined the facts of this case in numerous prior decisions, but specifically refers to 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 subject building is a 227-unit single-room occupancy multiple dwelling which, prior to amendments to the Multiple Dwelling Law that took effect in 2010 and 2011, the 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].

Pursuant to the 2010 and 2011 amendments to the Multiple Dwelling Law, the City issued multiple violations against petitioner as Grand Imperial LLC. Petitioner appealed those violations and its position was upheld in a New York State Supreme Court decision, Index No. 100704/2014 by Alexander W. Hunter, Jr., J.S.C., issued April 22, 2015. As is most relevant to this petition, Justice Hunter held that petitioners were allowed to continue short term rentals, i.e., rentals as short as seven days, pursuant to the savings clause of Multiple Dwelling Law §366(1) and granted Grand Imperial's article 78 petition to annul a decision by the New York City Board of Standards and Appeals and thereby dismissed the violations against petitioner. Justice

Hunter's decision was subsequently appealed and reversed by the Appellate Division, First Dept. See *Matter of Matter of Grand Imperial*, id.

On March 28, 2016, respondents City and DOB issued the five subject summonses to petitioner alleging violations of applicable City and State regulations. The issuance date occurs after the First Department published its decision reversing this Court, but prior to the City's service of Notice of Entry on Petitioner. Petitioner therefore contends that the summonses were invalid. The respondents argue, inter alia, that because the First Department had already issued their decision, the summonses were valid.

The respondents' opposition to the petition raises several affirmative defenses. First, the City urges that this matter must be transferred to the Appellate Division because petitioner challenges the results of a final determination by OATH based on substantial evidence as set forth in the administrative record. The City also emphasizes the broad discretionary powers of administrative agencies and the latitude to which their findings are entitled. The Court finds it unnecessary to deal with either argument, since petitioner does not challenge the agencies' evidentiary findings or their broad powers to make such findings. Rather, petitioner argues that OATH wrongly upheld the subject violations because they were issued while the parties were still subject to Justice Hunter's decision and prior to petitioner being served by the City with Notice of Entry of the First Department's reversal of that decision.

Respondents also argue that the summonses were valid at the time they were issued because "an order of the court becomes effective upon the date it was entered by the clerk of the

court, not on the date notice of entry was served...The date that notice of entry is served is irrelevant to the date that the Court's order becomes effective and binding upon the parties." Doc. No. 7, ¶103. Additionally, respondents argue that the petitioner was aware that the Appellate Department decision had been issued, so it should be binding on it. Finally, respondents argue, citing CPLR 5519(a)(1), that there was an automatic stay of Justice Hunter's decision as soon as the City appealed it. Doc. No. 36, p 11.

Regarding respondents' position about the effects of judgments, appeals and notice of entry, 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.

With respect to a successful party's enforcement of a judgment, it has consistently been held that:

> "an order must be entered and notice of entry served before an order may be enforced or appealed. (CPLR 2220[a]; 5513[a].)" (*Talcott Factors v Larfred Inc.*, 115 AD2d 397, 400 [1st Dept 1985]); see also, *Cultural Center Commn. v Kokoritsis*, 103 AD2d 1018 [4th Dept 1984] [Where a party's rights will be affected by an order, the successful party must serve a copy of the order on the adverse party in order to give it validity; (*McCormick v Mars Assoc.*, 25 AD2d 433 [2d Dept 1966]); *see also,* Siegel, NY Prac. §250, p 309; 2AWeinstein-Korn-Miller, NY Civ Prac, par 2220.02; 2 Carmody-Wait 2d, NY Prac, § 8;105, p 124)."; *Lyons v Butler*, 134 AD2d 576, 577 [2d Dept 1987]). Indeed, it is a long-established general principle that service of the order on the adverse party is necessary to give it validity (Siegel, NY Prac . §250, p 378 [2d ed]; *see Cygler v MVAIC*, 234 NYS2d 18,19)."

Matter of Raes Pharm. v Perales, 181 AD2d 58, 62 (1st Dept. 1992).

It is evident that requiring service of the notice of entry is necessary to prevent a successful party from taking an unfair advantage of an unsuccessful party that may not be aware of the change in legal circumstances. Petitioners 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.

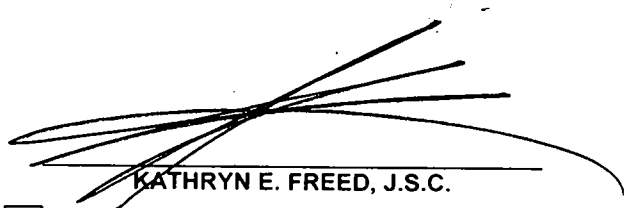
Finally, this Court points out that it has previously held in this matter that complaints or violations that are predicated on the illegality of seven day stays which occurred from April 23, 2015 to April 8, 2016 must be dismissed. See *Amelius v Grand Imperial LLC*, 2018 WL 2710165 (2018), 2018 N.Y. Slip Op. 31066(U). This Court sees no reason to depart from that position.

Therefore, in accordance with the foregoing, it is hereby:

ORDERED AND ADJUDGED that the petition is granted, and it is further

ORDERED AND ADJUDGED that the Environmental Control Board's Superseding Appeal Decision and Order dated September 21, 2017 is annulled and summons numbers 035169578H, 035169579J, 035169580R, 035169582K and 035169581Z are therefore dismissed against petitioner; and it is further

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



2/4/2019
DATE

KATHRYN E. FREED, J.S.C.

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