

Berezanskiy v. Daddy O'S BBQ & Sports Bar, Inc., L&T 53441/14

June 15, 2016

Cite as: Berezanskiy v. Daddy O'S BBQ & Sports Bar, Inc., L&T 53441/14, NYLJ 1202759979373, at *1 (Civ., RI, Decided June 3, 2016)

CASENAME

Glen Berezanskiy, Petitioner v. Daddy O'S BBQ & Sports Bar, Inc., Respondent

L&T 53441/14

Judge Philip Stranieri

Decided: June 3, 2016

ATTORNEYS

Petitioner: Lester J. Figueroa, Esq., Borah, Goldstein, Altschuler, Nahins & Goidel, P.C.

Respondent: Nicholas M. Moccia.

DECISION/JUDGMENT

*1

Petitioner, Glen Berezanskiy's, as Receiver, predecessor in interest, Block 7406 Lot 41/45 LCC, commenced this commercial summary proceeding against the respondent, Daddy O's BBQ and Sports Bar, Inc., alleging that the respondent failed to pay rent as due under the terms of a written lease for the premises known as ground floor commercial restaurant at 35 Androvette Street, Staten Island, New York.

There is no need to recite the tortured two year history of this litigation. The most recent stipulation between the parties was "so ordered" by the court on January 14, 2016. In it respondent acknowledged owing petitioner, \$167,386.96 for rent, additional rent, and use and occupancy through the date of the stipulation. A money judgment in that amount was entered by the clerk of the court. A warrant of eviction was initially issued on February 11, 2016. It was never received by the marshal, so a replacement warrant was issued on March 8, 2016.

Currently before the court is respondent's application for a stay of its eviction. Respondent seeks the stay alleging that within six months it will be able to purchase the note from the current note holder which is the basis of a foreclosure action in Supreme Court, Richmond County (Index #135101/13) in which the original petitioner herein is the defendant, for \$550,000.00. Respondent asserts that it has \$25,000.00 being held by an attorney to show its good faith.

The respondent has not shown that any of the judgment amount has been paid. Petitioner confirms that the respondent has failed to pay any of the judgment amount. In addition, respondent agreed to vacate the premises by February 14, 2016 if the

judgment was not paid. Respondent has neither paid nor vacated the premises as agreed. It is also clear that no use and occupancy has been paid since January 14, 2016 despite it having been awarded in the stipulation of that date.

*2

And the winner of this year's "Chutzpa" Award is respondent Daddy O's BBQ & Sports Bar Inc. According to the petition, respondent has failed to pay rent or use and occupancy since July 2014 thereby making it impossible for the landlord to pay his mortgage forcing the landlord into foreclosure. Now respondent seeks to remedy the situation by walking away from the monies owed the landlord, including the judgment in this proceeding, and buying out the note from the plaintiff in the foreclosure. The respondent would then be able to be substituted for the current plaintiff in the foreclosure and foreclose on the debtor, who is the landlord to whom the respondent has failed to pay rent for almost two years which threw the landlord into being a defendant in the foreclosure action. Respondent must have spent too much time in the barbeque business and is "ribbing" everyone.

Also in the January 14, 2016 stipulation the respondent agreed not to seek anymore stays of the eviction.

Respondent's order to show cause is denied in its entirety. Respondent has established that its representations and word are not any good. Respondent seeks to take Samuel Goldwyn's comment that "a verbal contract isn't worth the paper it's written on" to a new level making "a written contract not worth the paper it's written on" the standard.

The court notes that the original petition is apparently incorrect in that it indicates the parties had an oral lease. It is clear that there was written lease whose term ran from July 1, 2011 to June 30, 2016 and set forth yearly rental amounts. It set the rent for lease year 2015-2016 at \$6,200.00 a month. It also has the name of the tenant as "Daddy's BBQ & Sports Bar, Inc." and not as set forth in the caption "Daddy (space) O's." The former is the name registered with the Department of State. There is also another entity registered with the Department of State using the address of the premises in question. This second entity is Daddy's BBQ Inc. and it is not a party to this action. Any of these defects are deemed to be ministerial and waived by the parties entering into numerous stipulations settling this matter over the course of the litigation.

All stays are lifted. The marshal may execute on the current warrant. No further marshal's notice is necessary.

Real Property Actions & Proceedings Law §747-a requires a respondent seeking a stay of execution of a warrant to either pay the judgment amount to the petitioner or pay that amount into court. Neither of which was done before making the current order to show cause. This being the case, the clerk is directed not to accept any further applications for a stay of eviction by respondent unless accompanied by a bank or certified check in the amount of \$198,386.96 payable to the receiver-petitioner herein or the clerk of the court. This is calculated by taking the judgment amount of \$167,386.96 and adding to it use and occupancy required to be paid by the respondent in the stipulation of settlement in the amount of \$6,200.00 a month as set forth in the written lease for the five months of February, March, April, May and June 2016, an additional \$31,000.00.

The foregoing constitutes the decision and order of the court.

Dated:

Staten Island, NY