SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

Rose Group Park Avenue LLC v. Third Church Christ, Scientist, of New York City

Rose Group Park Avenue LLC, 2026 NY Slip Op 02737 (Supreme Court of the State of New York Appellate Division First Department 2026) · No. Index No. 651390/19; Appeal No. 6503; Case No. 2024-00961 · Decided April 30, 2026

SUMMARY

The Appellate Division, First Department unanimously affirmed a judgment awarding damages and declaratory and injunctive relief to the tenant in a lease dispute. The court addressed the lease's audit limitations, gross-sales calculations, use of premises, shared facilities and equipment, alterations, signage, repairs, and related contractual rights.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Kennedy, J.P.; Gesmer, J.; González, J.; Rosado, J.; Chan, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	April 30, 2026
DOCKET	Index No. 651390/19; Appeal No. 6503; Case No. 2024-00961
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment awarding plaintiff damages and declaratory and injunctive relief, bringing up for review an order entered after a nonjury trial that granted part of plaintiff's claims and denied part of defendant's counterclaims.
STANDARD OF REVIEW	The Appellate Division reviewed the judgment and the findings following a nonjury trial for whether the trial court's determinations were supported by the record and correctly applied the lease and governing law.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Third Church Christ, Scientist, of New York City v. Rose Group Park Avenue LLC

TOPICS

contract interpretation · landlord tenant · declaratory judgment · equitable relief · appellate procedure

PRACTICE AREAS

contracts · landlord-tenant law · real estate litigation · commercial litigation · equitable remedies

QUESTIONS PRESENTED

1. Whether the lease limited the landlord's right to audit the tenant's gross sales and demand supporting records to the preceding one-year period.
2. Whether service charges paid directly to employees of the tenant's affiliate were excluded from gross sales under the lease.
3. Whether the tenant could redact tax-return information unrelated to gross sales before producing the returns.
4. Whether the trial court properly enforced the lease's arbitration procedure for allocating façade-repair costs.
5. Whether the tenant's annually renewable use of the premises on 17 Wednesdays required the landlord's consent and whether the landlord could terminate the lease without a notice to cure.
6. Whether the lease made the tenant's use subordinate to the landlord's use for all purposes and whether the tenant acquired nonexclusive rights to specified areas through improvements and the landlord's acquiescence.
7. Whether the landlord was entitled to use the tenant affiliate's lighting and audiovisual equipment, object to minor nonstructural alterations, erect signs without permission, or require additional auditorium setup beyond the lease.

HOLDINGS

1. Sections 3.5(E) and (G) of the lease limited the landlord's audit of the tenant's gross sales and supporting documents to the preceding one-year period; after that period, the landlord could no longer challenge the tenant's gross-sales calculation or the sufficiency of documents for that year.
2. The landlord's challenge to amounts allegedly underreported through payments to the tenant's affiliate was also limited to the lease's one-year audit period, and service charges paid directly to the affiliate's employees were excluded from gross sales under section 3.5(D)(ii).
3. The tenant was required to provide relevant third-party payroll records for future audits but could not be compelled to produce them for audits of earlier years, and the tenant could redact tax-return information unrelated to gross sales.
4. The tenant's future use of the premises on 17 Wednesdays per year required the landlord's consent; the landlord could not terminate the lease on that basis without serving a notice to cure; and the tenant's use was not an incurable defect on the record presented.

5. The lease did not make the tenant's use subordinate to the landlord's use for all purposes; the tenant acquired a nonexclusive right to occupy specified areas based on improvements and acquiescence; the landlord had no right under the lease to use the affiliate's newly installed audiovisual equipment; minor nonstructural alterations and repairs were properly rejected as a basis for relief; and the injunction concerning signs and the auditorium setup was properly upheld.

KEY QUOTATIONS

> *"These provisions support the trial court's conclusion that, after the one-year period, the landlord no longer has a right under the lease to challenge the tenant's calculation of gross sales or the sufficiency of the documents provided for that year."* ([*1])

> *"While broad, these sections demonstrate that defendant is not entitled to records or information contained within documents beyond those specifically relevant to gross sales."* ([*2])

FACTUAL BACKGROUND

The parties' lease governed a commercial tenancy and included provisions limiting the landlord's audits of the tenant's gross sales, defining gross sales, regulating access to records, and addressing use of the premises, alterations, signs, equipment, and repairs. The tenant and landlord disputed audit demands, alleged underreporting involving an affiliate, use of the premises on Wednesdays, operation of a reading room, rights to certain storage and office areas, equipment use, alterations, signage, and façade-repair costs. The trial court awarded the tenant damages, declaratory relief, and injunctive relief, and rejected portions of the landlord's counterclaims.

PROCEDURAL HISTORY

Supreme Court, New York County, after a nonjury trial, granted plaintiff's claims in part and denied defendant's counterclaims in part. The court entered an order on October 26, 2023, and a judgment on January 26, 2024. Defendant appealed, and the Appellate Division unanimously affirmed the judgment to the extent appealed from, with costs.

DISPOSITION

affirmed

CASES CITED

- Rose Group Park Ave. LLC v. Third Church Christ, Scientist, of N.Y. City, 198 AD3d 506, 507 (1st Dept 2021)
- Diarrassouba v. Consolidated Edison Co. of N.Y. Inc., 123 AD3d 525, 525 (1st Dept 2014)
- Village Ctr. for Care v. Sligo Realty & Serv. Corp., 95 AD3d 219, 222 (1st Dept 2012)
- Empire State Bldg. Assoc. v. Trump Empire State Partners, 245 AD2d 225, 229 (1st Dept 1997)
- Rose Group Park Ave. LLC v. New York State Liquor Authority, 93 AD3d 1, 12 (1st Dept 2012), lv denied, 18 NY3d 953 (2012)

- Simon & Son Upholstery, Inc. v. 601 W. Assoc., 268 AD2d 359, 360 (1st Dept 2000)
- Duane Reade, Inc. v. Cardtronics, LP, 54 AD3d 137, 140 (1st Dept 2008)
- Harar Realty Corp. v. Michlin & Hill, 86 AD2d 182, 186 (1st Dept 1982), lv dismissed, 57 NY2d 836 (1982)
