

**Metro Sixteen Hotel, LLC v Davis**

2016 NY Slip Op 32235(U)

November 1, 2016

Supreme Court, New York County

Docket Number: 159720/2013

Judge: Kelly A. O'Neill Levy

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 19

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METRO SIXTEEN HOTEL, LLC, HIREN SHAH a/k/a  
HARRY SHAH, MEYER MUSCHEL, SAM CHANG,  
MANDA ASSOCIATES, LLC, and GAMAL WILLIS,

Plaintiffs,

- against -

ROLAND DAVIS,

Defendant.

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DECISION AND  
ORDER

Index No. 159720/2013

Mot. Seq. 005

**KELLY O'NEILL LEVY, J.:**

Plaintiffs brought this action against their tenant alleging abuse of process. Plaintiffs Meyer Muschel and Manda Associates, LLC move pursuant to CPLR 3212 for summary judgment as to liability against defendant Roland Davis on the second cause of action; and permanently enjoining Mr. Davis from commencing or filing any action, proceeding, motion or submission in any court, agency, commission, or tribunal within the City or State of New York against any one or more of the movants and/or their affiliates and employees relating directly or indirectly to the property located at 338-340 Bowery in Manhattan without prior approval of the Administrative Judge of the court or of the commissioner of the agency, commission, or tribunal in which the filing is to be made, unless Mr. Davis is represented by an attorney.<sup>1</sup> The motion is granted for the reasons set forth below.

**Facts**

The defendant, Roland Davis, is a permanent resident of 338-340 Bowery, New York, which is currently owned by Metro Sixteen Hotel, LLC ("Metro") who purchased it in 2007

<sup>1</sup> Plaintiffs Metro Sixteen Hotel, LLC, Hiren Shah a/k/a Harry Shah, Sam Chang, and Gamal Willis discontinued their claims against defendant per stipulation dated June 18, 2015, so ordered by this court after allocution.

from plaintiff Meyer Muschel.<sup>2</sup> In 2009 Davis filed, *pro se*, the first of what would become a series of over 20 lawsuits against Muschel and Metro, asserting violations of the implied warranty of habitability, harassment, and numerous other causes of action. Each of the actions has been dismissed for lack of merit or on default. Davis has nonetheless continued to file lawsuit after lawsuit against Muschel and Metro. As a result, plaintiffs moved for a preliminary injunction barring Davis from filing any further lawsuits against Muschel without prior approval of the Administrative Judge of the court or of the commissioner of the agency, commission, or tribunal in which the filing is to be made, unless Mr. Davis is represented by an attorney. The motion for preliminary injunction was granted by decision/order of Judge Anil C. Singh on September 15, 2014.

Plaintiffs now seek to extend the injunction and permanently enjoin Mr. Davis from filing further lawsuits unless the aforementioned requirements are met. Defendant opposes the motion and seeks a jury trial to resolve alleged issues of fact.

### **Discussion**

To prevail on a summary judgment motion, the movant must prove that “if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party.” *See* CPLR 3212; *see also Meridian Mgt. Corp. v. Cristi Cleaning Serv. Corp.*, 70 AD3d 508, 510 (1st Dep’t 2010), quoting *Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853 (1985) (“[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case.”) Once the movant meets this requirement, “the burden then shifts to the opposing party to produce evidentiary proof in admissible form sufficient to

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<sup>2</sup> Mr. Muschel is a managing member of plaintiff Manda Associates, LLC and previously served as special counsel to Metro. Muschel Aff. at ¶ 1. Manda Associates, LLC serves as managing agent of the property.

establish the existence of a material issue of fact that precludes summary judgment and requires a trial.” *Ostrov v. Rozbruch*, 91 AD3d 147, 152 (1st Dep’t 2012), citing *Alvarez v. Prospect Hosp.*, 68 NY2d 320, 324 (1986).

Plaintiffs’ motion for summary judgment is granted. It is undisputed that defendant has filed multiple meritless lawsuits against plaintiffs. Further the plaintiffs have shown, through relevant exhibits and affidavits, that the defendant is merely seeking to inconvenience and badger the plaintiffs. See Paioff Aff. Ex. 4 and 16 (exhibiting an email exchange between the parties illustrating an attempt by the defendant to extract money from the plaintiff); Paioff Aff. Ex. 6 (showing defendant provoking the plaintiff by inquiring about his personal life and insulting him to his rabbi); see also Paioff Aff. Ex. 13 (showing defendant threatening plaintiff with litigation while using explicit terms).

As plaintiffs have met their initial burden, defendant must come forward with a triable issue of fact. The evidence that the defendant has offered in opposition is insufficient to defeat the motion. As the First Department has held, once, as here, the movant has met its prima facie burden, the opposing party must offer *substantiated* assertions in opposition to establish that genuine triable issues of fact exist. See *Kornfeld v. NRX Tech.*, 93 AD2d 772, 773 (1st Dep’t 1983). Defendant’s opposition to the motion, which includes over 150 exhibits, does not set forth a triable issue of fact and merely details the overwhelming evidence that he has used the judicial system to aggravate the plaintiffs.

While public policy generally mandates free access to the courts, the court “will not tolerate the use of the legal system as a tool of harassment” [*Sassower v. Signorelli*, 99 A.D.2d 358, 359 (2d Dep’t 1984)] and courts have awarded permanent injunctions as a result of the misuse of the judicial system or for malicious prosecution. See *Banushi v. Law Off. of Scott W. Epstein*, 110 AD3d 558, 558 (1st Dep’t 2013) (“[n]otwithstanding the public policy requiring free access to the courts, the motion court’s order barring plaintiff from initiating

further litigation . . . unless he is represented by counsel was justified by plaintiff's continuous and vexatious litigation against defendants."); *Capogrosso v. Kansas*, 60 AD3d 522, 523 (1st Dep't 2009) ("the injunction barring plaintiff from initiating further litigation without prior court approval was justified in light of the evidence of plaintiff's repeated abuse of the judicial process and her penchant for vexatious conduct."); *Dimery v. Ulster Sav. Bank*, 82 AD3d 1034 (2d Dep't 2011) (as a result of a plaintiff's "vexatious" lawsuits, she was precluded from bringing further motions without the court's permission); *Sassower v. Signorelli*, 99 AD2d 358, 359 (2d Dep't 1984) ("a litigious plaintiff pressing a frivolous claim can be extremely costly to the defendant and can waste an inordinate amount of court time . . . Thus, when, as here, a litigant is abusing the judicial process by hagrinding individuals solely out of ill will or spite, equity may enjoin such vexatious litigation.").

To prove abuse of process, the plaintiff must prove that the defendant "(1) regularly issued process, either civil or criminal, (2) [with] an intent to do harm without excuse or justification, and (3) use of the process [was] in a perverted manner to obtain a collateral objective." *Curiano v. Suozzi*, 63 NY2d 113, 116 (1984) (affirming the Appellate Division's reversal of the trial court's denial of a motion to dismiss because the elements of abuse of process were not sufficiently met). Applying that standard here, the court finds that the plaintiffs have satisfied each element. Mr. Davis has filed over 20 lawsuits against the plaintiffs over the last 10 years and has yet to prevail on a single one. Moreover, the defendant's communication with the plaintiffs shows that the lawsuits were meant to badger the plaintiffs. Davis has on numerous occasions accosted and threatened the plaintiffs regarding the various lawsuits. *See* Paioff Aff. Ex. 4 and 16.

Plaintiffs are seeking to make permanent the temporary injunction they have already been granted. The standard of proof for a permanent injunction is the same as that for a preliminary injunction except that the movant must prevail on the cause of action that has led

it to seek equity damages. *See Davis v. City of N.Y.*, 2014 NY Slip Op 30704(U) §10 (Sup. Ct., N.Y. County 2014) (“the standard for obtaining a permanent injunction is essentially the same as that for a preliminary injunction with the exception that plaintiff must actually succeed on the merits of the case”); *see also Brady v. State of N.Y., Inc.*, 959 NYS2d 88 (Ct. Cl. 2012) (“the central inquiry is whether the individual is abusing the judicial process through vexatious litigation”). As shown above, the plaintiffs have met their burden and the defendant has not presented any issue of fact for trial. The defendant has not used the judicial system in the manner intended and the plaintiffs have been forced to spend tens of thousands of dollars defending themselves against unsubstantiated claims. As a result, the motion for summary judgment is granted and plaintiffs are entitled to a permanent injunction against the defendant. *See Banushi*, 110 AD3d at 558; *Capogrosso*, 60 AD3d at 523; *Dimery*, 82 AD3d at 1035.

Accordingly, it is hereby

ORDERED that the motion of plaintiffs Meyer Muschel and Manda Associates, LLC for summary judgment as to liability against defendant Roland Davis on the second cause of action, and permanently enjoining Roland Davis from commencing or filing any action, proceeding, motion or submission in any court, agency, commission, or tribunal within the City or State of New York against any one or more of the movants and/or their affiliates and employees relating to the property located at 338-340 Bowery in Manhattan without prior approval of the Administrative Judge of the court or of the commissioner of the agency, commission, or tribunal in which the filing is to be made, unless Mr. Davis is represented by an attorney, is granted and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that in light of the fact that the first cause of action for malicious prosecution seeks the same permanent injunction which the court is granting pursuant to this

decision/order, the court sua sponte dismisses that cause of action against Roland Davis without prejudice and the Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the court.

Date: November 1, 2016

Kelly O'Neill Levy  
**HON. KELLY O'NEILL LEVY**, J.S.C.