

Chateua v Seagrave Establishment, Inc.

2001 NY Slip Op 30053(U)

October 15, 2001

Supreme Court, New York County

Docket Number:

Judge: Barbara R. Kapnick

Republished from New York State Unified Court
System's E-Courts Service.

Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: BARBARA R. KAPNICK
Justice

PART 12

Frances Chateau

INDEX NO. 112849/01

MOTION DATE _____

- v -

MOTION SEQ. NO. 001

Seagrave Establishment, Inc.

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	_____
Answering Affidavits — Exhibits _____	_____
Replying Affidavits _____	_____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE WITH
ACCOMPANYING MEMORANDUM DECISION**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

Dated: 10/15/01

[Signature]
J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION
BARBARA R. KAPNICK
J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IA PART 12

-----X
FRANCOIS CHATEAU,

Plaintiff,

- against -

SEAGRAVE ESTABLISHMENT, INC.,

Defendant.
-----X

DECISION/ORDER
Index No. 112849/01
Motion Seq. No. 001

BARBARA R. KAPNICK, J. :

Plaintiff Francois Chateau, the tenant of residential property located at 177 East 75th Street, Apartment 6AB, New York, New York (the "demised premises") commenced this action against defendant-landlord Seagrave Establishment, Inc. seeking a temporary, preliminary and/or a permanent injunction pursuant to First National Stores, Inc. v. Yellowstone Shopping Center, Inc., 21 N.Y.2d 30 (1968) (first cause of action); a judgment declaring that defendant has waived its right to enforce any "no pet" provision that may exist in plaintiff's **lease for** the demised premises (second cause of action); a judgment declaring that the notice to cure dated June 22, 2001, which alleges that plaintiff is in violation of the terms of his lease by harboring a dog in the apartment, is defective and a nullity (third cause of action); and a judgment awarding plaintiff attorney's fees in an amount to be determined by the Court (fourth cause of action).

Plaintiff now moves for an order pursuant to CPLR §§ 6301 and 6313:

(1) staying and tolling the expiration of the cure period set forth in the Notice to Cure dated June 22, 2001 pending this Court's determination of plaintiff's rights under the lease;

(2) temporarily, preliminarily and/or permanently enjoining and restraining defendant, its agents, attorneys, representatives and all persons known and unknown acting on its behalf or in concert with it, in any manner and any means from:

(a) terminating or attempting to terminate plaintiff's lease dated October 25, 1995 which was extended by lease renewal agreement dated October 9, 2000 and/or tenancy at the demised premises;

(b) commencing or attempting to commence any proceeding or action to evict or eject plaintiff from the demises premises; and

(c) taking any action to interfere in any manner with plaintiff's possession of the demised **premises**.

Defendant cross-moves for an order dismissing this action on the ground that plaintiff can obtain **full** protection of his tenancy rights in the context of a summary proceeding in the Civil Court of the City of New York.

The courts of this State have repeatedly held that the "Civil Court has jurisdiction of landlord tenant disputes (see CCA 204) and when it can decide the dispute,..., it is desirable that it do so (citation omitted)." Post v. 120 East End Avenue, 62 N.Y.2d 19, 28 (1984).


"In the instant case, however, Civil Court cannot afford 'complete relief' to plaintiff, which seeks equitable relief available only in Supreme Court; the limited injunctive and restraining authority of Civil Court does not extend to the matter in dispute (**see**, Civil Court Action § 203(o))." North Waterside Redevelopment Co. v. Febbraro, 256 A.D.2d 261, 262 (1st Dep't 1998), lv. to app. dism'd, 93 N.Y.2d 888 (1999). See also, Trump Village Section 3, Inc. v. Sinrod, 219 A.D.2d 590 (2nd Dep't 1995). The cross-motion to dismiss this action must, therefore, be denied.

As to plaintiff's motion, this Court notes that defendant's own notice to cure alleges that "[o]n April 2, 2001 the landlord's agents became aware of the fact that [plaintiff was] harboring a dog in [his] apartment." However, it appears that defendant failed to commence a summary proceeding or action to enforce the lease provision prohibiting the keeping of such household pets within three months thereafter, as required pursuant to section 27-2009.1(b) of the New York City Administrative Code. See, Metropolitan Life Insurance Co. v. Friedman, 205 A.D.2d 303 (1st Dep't 1994); cf., Trump Village Section 3, Inc. v. Sinrod, supra at 592.

Accordingly, plaintiff's motion is granted and defendant, its agents, attorneys, representatives and all persons acting on its behalf or in concert with it, are preliminarily enjoined from terminating or attempting to terminate plaintiff's lease and/or tenancy, from commencing or attempting to commence any proceeding or action to evict or eject plaintiff, and taking any action to interfere in any manner with plaintiff's possession of his apartment based on the Notice to Cure dated June 22, 2001.

This constitutes the decision and order of this Court.

Dated: October 15, 2001


BARBARA R. KAPNICK
J.S.C.

BARBARA R. KAPNICK
J.S.C.