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

PRESENT: MARILYN SHAFER J.S.C. Justice PART

Nicole A. De Soignes

- v -

Comasek Florse Tenant

INDEX NO. 112044/02

MOTION DATE

MOTION SEQ. NO. 002

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	

SCANNED
SEP 04 2002

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion is granted pursuant to attached Decision

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

Dated: 9/24/02

MARILYN SHAFER J.S.C.

J.S.C.

Check one: ☐ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 36

..... x

NICOLE A. DE SOIGNIES,

Plaintiff, **INDEX NO.: 112044/02**

-against-

CORNASESK HOUSE TENANTS' CORP.,

Defendant.

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MARILYN SHAFER, J.S.C.:

Plaintiff Nicole **A.** De Soignies is the proprietary lessee and owner of the shares allocated to three cooperative apartments (1B, 2B and 5A) in defendant Cornasesk House Tenants' Corp.'s building at 238 East 84th Street in Manhattan (Building). All three apartments are currently occupied by her subtenants for either a month to month tenancy, or for a one year term.

In a letter dated December 11, 1972, and provided to plaintiff, defendant stated that defendant's shareholders are allowed to unconditionally sublet their apartments for the duration of their ownership (Soignies Aff., Ex. E).

Subsequently, plaintiff purchased the shares allocated to the three apartments in 1972, 1973 and 1980 as an investment "nest egg'' for her retirement. Allegedly, in reliance upon the December 11, 1972, letter: it is undisputed that, with defendants' knowledge and approval, she has never lived in the apartments, and has sublet them to various subtenants for the past thirty years. In each case, plaintiff submitted to defendant a sublet application package, along with a "good faith" check of $250.

By a letter, dated March 13, 1991, the Board notified plaintiff that she was in violation of the Proprietary Leases for apartments 1B and 5A, and that she failed to provide the $1,000

subletting fee required pursuant to a sublet policy that was revised in June of 1987. In addition, defendant denied her request to sublet apartment 2B, stating that unless she brought herself into compliance, defendant would have to initiate action to terminate her Proprietary Leases. Plaintiffs counsel, by a letter dated March 28, 1991, reminded defendant of plaintiff's unconditional right to sublet the apartments, that they were purchased solely for investment purposes, and that the sublet fee was unreasonable. Defendant thereafter took no further action, and kept accepting plaintiffs sublet packages for each of the units.

In December 2000, defendant's Board of Directors (the Board), sought to establish a new sublet policy, which includes, among other things, a $350 sublet application fee and an additional assessment 20% surcharge per month for each apartment that is sublet. The proposed sublet policy was rejected by at least 75 % of the shareholders. Plaintiff alleges that the Proprietary Leases require that such a policy be accepted by at least 75%. On August 21,2001, the Board made additional changes to the subletting policy adding, among other things, a provision restricting the subletting of apartments to two out of every four years and reducing the surcharge on the monthly maintenance to 10% for every sublet apartment. Again, the Board allegedly did not receive the requisite shareholder approval.

On May 25,2002, plaintiff received 10-day notices to cure for each of the apartments by either certified mail or regular mail. Each notice to cure identically states that plaintiff is in violation of paragraphs 14, 15 and/or 16 of her Proprietary Leases because she does not occupy the premises, and has sublet the apartments without first obtaining defendant's consent. Additionally, the notices to cure provide that defendant will terminate the leases and seek to recover possession of the premises unless plaintiff cures said default, on or before June 7,2002,

pursuant to paragraph 31(c) of the leases.

On June 5, 2002, plaintiff commenced this action for declaratory and injunctive relief and simultaneously moves, by order to show cause for a *Yellowstone* and in the alternative, pursuant to CPLR 6301, for an order temporarily restraining and preliminarily enjoining defendant from terminating plaintiff's Proprietary Leases. By an order dated June 13, 2002, this court temporarily restrained defendant from terminating plaintiffs Proprietary Leases pending the determination on the instant motion and tolling plaintiffs time to cure the purported breaches alleged in each of the notices so that the Proprietary Leases will not terminate pending a determination on the merits.

DISCUSSION

It is well settled that a *Yellowstone* injunction allows a leaseholder which has been threatened with a termination of its lease to seek injunctive relief tolling the cure period before the lease expires in order to preserve the lease until the merits of the dispute can be settled in court (*Post* v 120 *East End Ave.* ***Corp.***, 62 NY2d 19, 25 [1984]).

Plaintiff argues that she needs this relief because, unless the *Yellowstone* injunction is granted, defendant is free to terminate her Proprietary Leases before she has an opportunity to seek a declaration of her right to sublet. Plaintiff maintains that she is not in violation of her Proprietary Leases because, as an inducement for her to purchase the apartments for investments purposes, defendant granted her an unconditional right to sublet her apartments for the duration of her ownership. In opposition, defendant argues that plaintiff has illegally sublet the apartments without its consent and in violation of her Proprietary Leases; therefore, she is not

entitled to a *Yellowstone* injunction, because as a residential leaseholder, her interests are adequately protected by RPAPL § 753(4). Therefore, defendant maintains that the Civil Court is the proper forum for this dispute, not the Supreme Court.

RPAPL § 753(4) states that "in the event that such proceeding [a summary proceeding to recover possession] is based upon a claim that the tenant or lessee has breached a provision of the lease, the court shall grant a ten day stay of issuance of the warrant, during which time the respondent may correct such breach."

Defendant's arguments are unpersuasive. RPAPL § 753(4) "does not appear to deal with cases where a tenant requires affirmative equitable relief only available in the Supreme Court by way of a declaration of rights on a complex question of law with respect to the breach of the lease or where, as here, reformation may be required, or where a tenant may require specific performance to direct that a landlord give him **a** lease renewal or to direct that a landlord provide prescriptive (co-op) purchase rights notwithstanding a lease violation or to direct that a landlord consent to a sublease under section 226-b of the Real property Law notwithstanding an alleged illegal sublet as grounds for a notice to cure" *(Wilen* v *Harridge House Assoc.*, **94** AD2d 123, 128, *supra).*

Here, plaintiff has been subletting her apartments for nearly 30 years without limitation, and, throughout her ownership, it is undisputed that she has submitted to defendant sublet packages for each of the apartments. The issue in this case is whether, notwithstanding the language of the Proprietary Leases, the leaseholder is entitled either to a declaratory judgment or to a reformation establishing that the parties agreed to, and have operated upon the basis that, plaintiffs unconditional subletting of the apartments is authorized ***(id.*** at 130). Therefore, since

Civil Court would not have jurisdiction in this case, and plaintiff cannot obtain complete relief in that court, the plaintiff is entitled to apply to the Supreme Court for a *Yellowstone* injunction ***(see,*** *Post* v *120 East End Ave. Corp.*, 62 NY2d 19, 28, *supra)*. In any event, even if Civil Court did have jurisdiction over this matter, and it was found that plaintiff has been illegally subletting, in light of the underlying difficulties associated with vacating three apartments, it cannot be said that the 10-day cure period available pursuant to RPAPL § 753(4) would be sufficient *(see, Seligmann* v *Parcel One Co.*, 170 AD2d 344, 345 [1st Dept 1991]).

The courts have granted *Yellowstone* injunctions routinely to avoid forfeiture of the leaseholder's rights and, in doing so, they accepted far less than the normal showing required for preliminary injunctive relief *(id.* at 26). "An applicant rarely has been required to demonstrate a likelihood of success, irreparable injury, and that the equities favored preliminary relief as those terms are traditionally understood" *(id.)*. To grant *Yellowstone* relief, plaintiff must demonstrate that she holds a valuable lease; that she received a notice to cure; that she requested injunctive relief prior to the termination of her lease; and that she is prepared and maintains the ability to cure the alleged default by any means short of vacating the premises (*Garland* v *Titan West Assoc.*, 147 AD2d 304, 308 [1st Dept 19891). Although a *Yellowstone* injunction is generally applicable to commercial leaseholders, certain residential leaseholders have not been barred from its relief *(see, Saada v Master Apt.,* 152 Misc 2d 861, 867 [Sup Ct, New York County 19913; *Wilen* v *Harridge House Assoc.*, 94 AD2d 123, 127 [1st Dept 1983]; *see also, Parker v 304 East 73rd Street Corp.*, 241 AD2d 361 [1st Dept 19971 [where owner of 19 cooperative apartments was granted a *Yellowstone* injunction which stayed cooperative's notice to cure pending the determination of the issues raised in plaintiffs complaint.]).

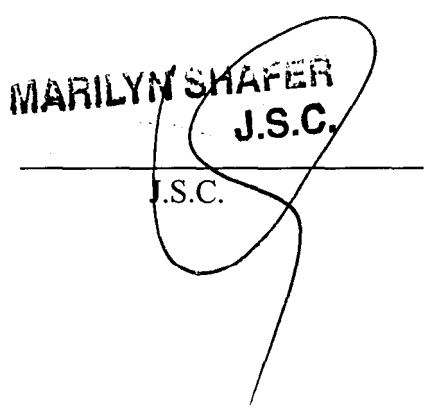
Here, plaintiff has successfully established that she is entitled to *Yellowstone* injunctive relief in that she owns the shares, and is the residential leaseholder of three cooperative apartments (1B, 2B and 5A) in defendants building; she was served with notices to cure for each of the apartments; she applied for injunctive relief within the cure period; and the record shows that she has the desire and ability to remedy the situation if a ground for termination for any of the proprietary leases is found to exist.

The court need not address the parties other contentions.

Accordingly, it is hereby

ORDERED that plaintiffs motion for a *Yellowstone* injunction is granted tolling the period in which to cure the alleged violation in her Proprietary Leases during the pendency of this action.'

Dated: August 23, 2002



'The parties have agreed that plaintiff will continue to pay the maintenance on the units.