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| <b>Read v SL Green Operating Partnership, LP</b>   |
| 2003 NY Slip Op 30046(U)   |
| October 20, 2003   |
| Supreme Court, New York County   |
| Docket Number: 0113478/3478  |
| Judge: Emily Jane Goodman  |
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| This opinion is uncorrected and not selected for official publication.   |

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

PRESENT: Hon. EMILY JANE GOODMAN

PART 12

Justice

Diane Reade

INDEX NO. 113478-03

- v -

SL Green Operating Partnership

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 001

MOTION CAL. NO. \_\_\_\_\_

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

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

Cross-Motion:  Yes  No

Upon the foregoing papers, it is order d that this motion is decided in accordance with the attached decision.

MOTION/CASE IS RESPECTFULLY REFERRED TO

JUSTICE

J.S.C.

DATED: \_\_\_\_\_

Dated: 10/20/03

J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

SCANNED  
OCT 21 2003

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : I.A.S. PART 17

..... X  
DUANE READE,

Plaintiff,

Index No. 113478/03

- against -

SL GREEN OPERATING PARTNERSHIP, LP.

-----X  
**EMILY JANE GOODMAN, J.S.C.:**

Upon the foregoing papers, it is ordered that Duane Reade’s motion (1) to consolidate this action with a housing court proceeding (which has now been dismissed), (2) for an injunction with respect to passenger elevator service and (3) for an order requiring that the installation of pipes in the basement be done in a manner that does not constitute a trespass or interfere with Duane Reade’s use of the basement is denied for the reasons stated on the record on October 16,2003 and for the reasons stated herein. As noted on the record, Duane Reade has no standing to deny access based on Article 13 of the Supplemental Rider to the lease (the “Master Lease”) between Ninth Avenue Assoc. and Holmes Protection Inc. (Defendant purchased the premises in June 1998 and ADT Security Services Inc. is a successor to Holmes Protection Inc.). ADT Security Services Inc. (“ADT”) has not declined to grant access and has taken no position in this dispute. Duane Reade’s argument that its sublease between it and ADT gives it standing to deny access to Defendant based upon the Master Lease, is unavailing. Although Duane Reade did not point to any particular provision in its sublease to support its position, it

mentioned its right to quiet enjoyment of the premises at oral argument. However, as this Court noted on the record, Article 5 Section 5.1 of the sublease between Duane Reade and ADT only provides that Duane Reade shall have the peaceful and quiet use of the premises without hindrance from ADT. Furthermore, based on the plans submitted and the Affidavit of James R. Pesci, a construction manager with 18 years experience, the proposed work represents a minimal intrusion into Duane Reade's basement space, which will not disturb its quiet enjoyment thereof. Although Article 5 Section 5.6 of the lease limits ADT's right to access, Defendant's right to access is not affected. Because Duane Reade has not established that it has the right to deny access to Defendant based upon the Master Lease, the Court need not interpret whether the Master Lease would in fact allow a tenant to deny access under the circumstances of this case.

Although Duane Reade has sought to enjoin the unsafe operation of the passenger elevators, it has not shown that it is entitled to an injunction. The allegations that the elevators were unsafe were made in the Affidavit of the Vice President and General Counsel of Duane Reade, Inc., but she did not explain how she, an attorney, had personal knowledge of the issue. Moreover, the elevator log book which was submitted in support of the motion indicated on its face that it was "Attorney/Client work product/ prepared in anticipation of litigation." As it is unclear who prepared it and whether it was prepared by someone with personal knowledge, Duane Reade has failed to prove its entitlement to an injunction.

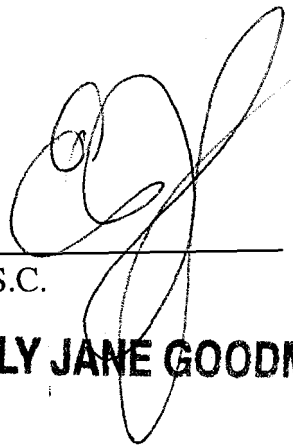
It is hereby

ORDERED that the motion is denied in its entirety.

**This constitutes the Decision and Order of the Court.**

Dated: October 20, 2003

ENTER:



J.S.C.  
**EMILY JANE GOODMAN**