Metered Appliances, Inc. v Central Park Place Condominium
2006 NY Slip Op 30601(U)
October 26, 2006
Supreme Court, New York County
Docket Number: 115053/06
Judge: Shirley Werner Kornreich

[* 1]

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

PRESENT: KORNREICH Justice PART 54

METERED APPLIANCES, INC.

- v -

CENTRAL PARK PLACE CONDOMINIUM

INDEX NO. 115053/06

MOTION DATE

MOTION SEQ. NO. 01

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 ...	1
Answering Affidavits — Exhibits	2, 3
Replying Affidavits	

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed decision

FILED
NOV 03 2006
COUNTY CLERK
NEW YORK

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 10/26/06

SHIRLEY WERNER KORNREICH J.S.C.

J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST

[* 2]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

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METERED APPLIANCES, INC.,

Plaintiff,

-against-

CENTRAL PARK PLACE CONDOMINIUM,

Defendant.

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Index No.: 115053/06

DECISION and ORDER

KORNREICH, SHIRLEY WERNER, J.:

Plaintiff brings this order to show cause seeking a preliminary injunction to enjoin defendant from: terminating its lease for the laundry room of defendant condominium; evicting it from the laundry room; removing its equipment and machinery from the premises; reletting the laundry room to another company; and barring plaintiff from accessing the premises to operate, maintain or service the laundry equipment. Defendant opposes the request.

Facts

Plaintiff, a company that owns, operates, maintains and services metered laundry equipment, entered into a six-year lease with defendant, a condominium complex, on April 9, 2002. The lease provided for two spaces for "exclusive use" by plaintiff as a laundry room, one to contain three washers and three dryers and one to contain four washers and four dryers. Further, plaintiff was to pay $1,675 monthly as rent and was to have exclusive control of the time and hours during which the premises were to be open.. However, the lease stated: "Tenant shall always be entitled to receive as minimum compensation for each day of the rental period, the cash equivalent of the price of one (1) washing cycle per installed washer, per unit and one (1)

drying cycle per installed dryer, per unit and the rental due shall be adjusted accordingly."[1] The cost for a cycle of each machine was to be $1.75. In addition, the agreement explicitly states that it is a lease, not a license, is not revocable at will and affords plaintiff all the rights permitted a tenant under the law. Should there be a breach by either party, the parties agreed to notify the other in writing by certified mail, return receipt requested, and to permit a sixty day cure period, before a default could be declared. Finally, the lease provided:

> In the Event that Landlord declares Tenant to be in default of this Lease for other than failure to pay rent, the Landlord agrees not to deny the Tenant access to the premises nor will Landlord remove or disconnect or cause to be removed or disconnected the Tenant's coin operated equipment until such time as the claimed default has been finally adjudicated by a court of law, provided that Tenant continues to pay Landlord the rent.

On July 24, 2006, counsel for the condominium sent a writing to plaintiff by certified mail, return receipt requested, notifying it that it was $19,706 in default on rental payments. On September 29, 2006, the condominium sent plaintiff a notice of default declaring it to be in default of the lease due to its failure to pay $19,706 in outstanding charges since July, 2006. This action followed.

In its complaint, plaintiff alleges that, unless it grosses $2,410 per month ($1,675 + $735 in minimum monthly usage), it is not obligated to pay $1,675 in rent. Plaintiff's complaint further alleges that it, therefore, adjusted its payments accordingly since October, 2005. The complaint seeks specific performance of the lease, money damages for breach of contract going back to the start of the lease, a preliminary and permanent injunction and damages for unjust enrichment. In this Order to Show Cause, plaintiff contends that it will lose a valuable leasehold

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[1] Assuming a thirty day month, this would equal $735 monthly.

should its lease be terminated, that it will be irreparably harmed by termination of its lease and that it is not in breach of its lease.

Defendant, in opposition to the instant Order to Show Cause, opposes the sought-after preliminary injunction. It explains that one of the subject laundry rooms is located in the basement and the other on the fourth floor. It contends that plaintiff is not providing repair and maintenance of the laundry machines, as required by the contract, since plaintiff has commenced reducing its rental payments. Defendant alleges that its complaints to plaintiff are to no avail. Defendant further contends that the machines are malfunctioning and, other than collecting money from the machines, plaintiff has breached its contract and "abandoned" the building. Citing to a line of Third Department cases, which follow *Todd v. Krolick*, 96 A.D.2d 695 (3d Dept. 1983), *aff'd.* 62 N.Y.2d 836 (1984), defendant alleges the agreement here is a revocable license, not a lease according plaintiff an interest in property. It argues that plaintiff has an adequate remedy at law by seeking money damages and should not be afforded injunctive relief. Finally, it argues that, even if the agreement is a lease, plaintiff has not made out the requisites necessary for a *Yellowstone* injunction since it did not state that it is read, willing and able to cure its default.

Conclusions of Law

The Court may grant a preliminary injunction where plaintiff shows: (1) probability of success on the merits; (2) danger of irreparable injury in the absence of an injunction; and (3) balance of the equities in its favor. Aetna Ins. Co. v. Capasso, 75 N.Y.2d 860, 862 (1990). Here, plaintiff has met its burden.

A license for real property is defined as "a mere personal or revocable privilege to

perform an act or series of acts on the land of another...[It] does not operate to confer on, or vest in, licensee any title, interest, or estate in such property." *Black's Law Dictionary*, (5th ed.1979). On the other hand, an agreement will be considered a lease, rather than a license, when it demises exclusive use and occupancy of premises for a fixed period for a specific rent and where the landlord expressly recognizes the agreement as a lease, in the contract itself, and conveys property rights to the tenant. *Coinmach Corp. v. Harton Assocs.*, 304 A.D.2d 705, 706 (2d Dept. 2003). *See also Coinmach Corp. v. Fordham Hill Owners Corp.*, 3 A.D.2d 312, 313 (1st Dept. 2004)(lease exists where plaintiff granted exclusive rights to install, operate and maintain coin-operated laundry machines in laundry rooms).

Although the papers here do not make clear if plaintiff is afforded a key to the laundry rooms or if specific spaces are covered in the agreement, the agreement between the parties appears to be a lease and not a license. The agreement demised two laundry rooms for a specific period and rent to plaintiff for plaintiff's exclusive use and stated that it was a lease and was not revocable at will. *See Id.* The agreement here is distinguishable from *Todd, supra*. Unlike the contract in *Todd* and its progeny, this agreement was not extinguishable upon conveyance of the property, was irrevocable and assignable and excluded other laundry services from the premises for the period of the agreement. Moreover, the agreement here declares the intent of the parties to be to create a lease affording plaintiff the rights of a tenant.

In addition, the court finds irreparable injury is likely should injunctive relief not be granted. Plaintiff stands to lose a valuable leasehold as well as its machines should defendant be permitted to evict it, remove its machines, relet the premises and bar plaintiff from access. Finally, the equities militate in plaintiff's favor. So long as it maintains the laundry machines and

pays the $1,675 in monthly rent during the pendency of this action the status quo will be maintained. Also, it is impossible for the court to order use and occupancy in an amount other than that stated in the lease since it appears from the papers that the monthly use of the laundry machines varied, defendant alleges breach of the lease by plaintiff and defendant has not yet answered the complaint. Moreover, the court does not find the requisites of *Yellowstone* relief preclude the present injunctive relief, since the default here involves payment of rent, an issue submitted to the court to resolve which, upon resolution, will be the cure and seeks termination of the parties agreement – eviction. Accordingly, it is

ORDERED that plaintiff's motion to enjoin defendant from terminating its lease for the laundry room of defendant condominium; evicting it from the laundry room; removing its equipment and machinery from the premises; reletting the laundry room to another company; and barring plaintiff from accessing the premises to operate, maintain or service the laundry equipment, during the pendency of this proceeding, on condition that plaintiff maintain and service the laundry machines and pay use and occupancy to defendant, in the amount of $1,675 on the first of each month as well as $1,675 for the month of October, 2006, to be paid on or before November 1, 2006. All of the payments, as well as the maintenance and servicing of the machines, are to occur without prejudice to the rights of either party to this action; and it is further

ORDERED that the parties are to appear in Part 54 at 9:30 in the forenoon, on November 16, 2006 for a preliminary conference.

The foregoing constitutes the decision and order of the Court.

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Date: October 26, 2006
New York, New York

SHIRLEY WERNER KORNREICH