

<b>Dexter Props., LLC v Pliego</b>
2006 NY Slip Op 30805(U)
May 26, 2006
Supreme Court, New York County
Docket Number: 115281/05
Judge: Barbara R. Kapnick
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IA PART 12

-----X  
DEXTER PROPERTIES, LLC,

Plaintiff,

- against -

JESSICA PLIEGO and THE WEST SIDE  
SRO LAW PROJECT,

Defendants.

-----X  
BARBARA R. KAPNICK, J.:

DECISION/ORDER  
Index No. 115281/05  
Motion Seq. No. 001

Plaintiff Dexter Properties, LLC, the owner of a multi-unit building - the Dexter Hotel - located at 345 West 86th Street in Manhattan consisting primarily of single room occupancy units ("SRO"), claims that defendant Jessica Pliego made a reservation with plaintiff on September 3, 2005 to rent one of its units - Unit 903 - on a transient and shared basis at the rate of \$30.00 per day.

Plaintiff also claims that defendant Pliego, with the express prodding and instructions of co-defendant The West Side SRO Law Project ("Law Project"), sent a letter dated September 14, 2005 demanding that plaintiff provide her with a permanent rent-stabilized residential lease for the unit. Plaintiff further claims that the New School withdrew from a previously executed lease agreement for the rental of a block of rooms, after its president was contacted by City Council Member Gail Brewer to inform the New School about the plaintiff's legal problems and the anticipated litigation.

**FILED**  
JUN 05 2006  
COUNTY CLERK'S OFFICE  
NEW YORK

The Complaint seeks damages arising out of plaintiff's purported reliance on defendant Pliego's alleged misrepresentations and a judgment declaring that defendant Pliego is not entitled to a rent stabilized lease because Unit 903 is exclusively used for transient occupancy (first cause of action).

Plaintiff also seeks judgment declaring that: (i) defendant Pliego's rental agreement for the unit is void *ab initio* due to fraud (second cause of action); (ii) defendant Pliego is not entitled to a rent stabilized lease and permanent tenancy rights because she is an illegal alien and thus does not have a 'primary residence' in this country (third cause of action); and (iii) any lease and rights which defendant Pliego may have to the unit are limited to non-exclusive occupancy (fourth cause of action).

In addition, plaintiff seeks (i) rescission of Pliego's occupancy agreement, immediate possession of the Unit and fair and reasonable use and occupancy for the unit at the rate of \$60.00 per day (fifth cause of action); (ii) to hold the defendants Pliego and the Law Project jointly and severally liable for the Law Project's purported interference with plaintiff's business and contractual rights (sixth cause of action); (iii) an injunction requiring defendant Pliego to grant plaintiff immediate access to the unit and to allow plaintiff to rent Unit 903 to other individuals on a shared basis (seventh cause of action); (iv) a judgment enjoining

the Law Project from interfering with plaintiff's business, including advising and instructing individuals to rent rooms as transitory tenants and then demand leases and permanent tenancy rights to their accommodations, and directing the Law Project to immediately cease and desist from interfering in any manner with the plaintiff's rental of blocks of rooms (eighth cause of action); and (v) an award of nominal and punitive damages sustained as a consequence of defendant's tortious interference with plaintiff's business (ninth cause of action).

Plaintiff now moves by order to show cause for an order:

(1) enjoining defendant Pliego from refusing to grant plaintiff access to Unit 903 so that it may show and rent that room on a shared, transitory basis;

(2) enjoining defendant Pliego from engaging in, encouraging or acquiescing to any conduct or acts of omission which prevent the plaintiff from renting Unit 903 on a shared and transient basis and

(3) requiring defendant Pliego to pay use and occupancy to the plaintiff *pendente lite*.

That portion of the motion seeking an order requiring defendant Pliego to pay use and occupancy is granted in accordance with the decision dictated on the record on December 7, 2005, whereby defendant Pliego was directed to pay use and occupancy to plaintiff in the amount of the last regulated rent for the unit, \$76.68 per week, without prejudice to either side.

However, serious allegations have been raised herein and in a related lawsuit, City of New York v. Dexter Properties, L.L.C., Dexter 345 Inc., Jay Wartski, Robert Goicochea, and the Land and Building thereon known as 345 West 86th Street, New York, New York, Block 1248, Lot 11, Index No. 401778/05, that plaintiff is in violation of the New York City Building Code and the New York City Zoning Resolution which bar plaintiff from using any portion of the subject premises as a "transient hotel".

Moreover, although section 2520.11(g)(1) of the Rent Stabilization Code provides that rooms or other housing accommodations in hotels where such housing accommodations are used for transient occupancy are exempt from the Rent Stabilization Law so long as they maintain that status, section 2520.11 does not grant the landlord the right to unilaterally designate which units in the housing accommodation are to be granted transient occupancy status, nor does it expressly override the provision of section 2522.5(a)(2) of the Rent Stabilization Code which provides that

"[f]or housing accommodations in hotels rented to an occupant who has never had a lease, such occupant may at any time during his or her occupancy request a lease and the owner must, within 15 days after such request, grant a lease commencing on the date such request was made at a rent which does not exceed the legal regulated rent, for a term of at least six months."

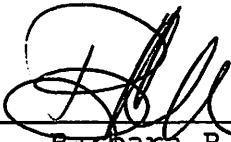
Accordingly, based on the papers submitted and the oral argument held on the record on December 7, 2005 and May 24, 2006,

this Court finds that plaintiff cannot demonstrate a likelihood of success on the merits.

Those portions of plaintiff's motion seeking a preliminary injunction are, therefore, denied.

This constitutes the decision and order of this Court.

Date: May 26 2006

  
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Barbara R. Kapnick  
J.S.C.

**BARBARA R. KAPNICK**  
J.S.C.

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