

Davidowitz v 105 E. 29th St. Owners Corp.
2006 NY Slip Op 30828(U)
March 15, 2006
Supreme Court, New York County
Docket Number: 117788/05
Judge: Judith J. Gische
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 10

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SUSAN DAVIDOWITZ and NOAH KLEIN,

Plaintiffs,

-against-

105 EAST 29TH ST. OWNERS CORP.,
MILTON McC. GATCH, RENEE KINSELLA,
DEBORAH BROWN and ERIC PLOUMIS,

Defendants.

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Decision/Order

Index No.: 117788/05

Seq. No. : 001

Present:

Hon. Judith J. Gische

J.S.C.

Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this (these) motion(s):

Papers

Numbered

Pltf's OSC#1 w/JDS affirm, affirm in support (SD), exhs	1
Def's affid in oppos (JS) w/RK affid in oppos, affirm in oppos (SW), exhs	2
Pltf's reply affirm (JDS) w/SD reply affirm, exhs	3

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Upon the foregoing papers, the decision and order of the court is as follows:

Plaintiff, Susan Davidowitz, is the owner and proprietary lessee of a residential cooperative apartment located at 105 East 29th Street, New York, New York, Unit 4 ("apartment"). Co-plaintiff, Noah Klein, is her husband and also resides in the apartment. They presently seek a Yellowstone "type" injunction, or alternatively, a traditional preliminary injunction. The defendants are the cooperative corporation that owns the building and other shareholder-occupants therein. Plaintiffs seek to toll any time periods that may be running by reason of a September 16, 2005 Notice of Objectionable Conduct; a October 3, 2005 Notice of Objectionable Conduct and a December 6, 2005 Warning of Objectionable conduct. They also seek to restrain

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defendants from taking any actions to terminate plaintiffs' proprietary lease on account fo claimed objectionable conduct by either or both of the plaintiffs. Defendants oppose the motion in all respects.

The claims underlying this dispute primarily emanate from a dog incident and conflicting opinions about which dog owner is responsible for bad dog behavior. At its core, plaintiffs claim that the cooperative's notifications are false and pretextual to effect their eviction from the cooperative building in retaliation for a discrimination complaint plaintiffs made. Although the papers submitted are voluminous, and the parties have a myriad of legal and factual disputes, the legal issue before the court on this motion is quite simple. The court's inquiry is limited to determining whether there is any basis: [1] to enjoin the defendants from commencing an eviction proceeding against plaintiffs or [2] to invoke the Supreme Court's equitable jurisdiction to toll rights and remedies of the parties.

The legal answer to this question is no. This court's determination does not turn upon the bona fides of either parties' legal or factual contentions about whether the plaintiffs have engaged in objectionable conduct or not. The decision is informed by points of law.

First it is clear that plaintiffs can assert all of their claims in a defensive posture, should any eviction proceeding actually be commenced against them. Indeed, defendants represent that there is no contemplated eviction proceeding at this time. If and when a summary eviction proceeding is commenced, however, all of the disputed factual and legal contentions raised by the parties can be addressed by the Housing Part of the Civil Court which not only has jurisdiction over the issues, but a unique

expertise to resolve this landlord tenant dispute. Thus, no injunction is necessary to prevent any irreparable injury. CPLR § 6301; Olympic Tower Condominium v. Cocoziello, 306 AD2d 159 (1st dept. 2003).

Second, equitable relief of tolling periods to effect a cure only applies if the circumstances in dispute are ones that can legally be cured. In this case, the notices sent do not specify any cure period that is currently running. Nor do plaintiffs rely on any provision of the proprietary lease that would justify any tolling of any applicable cure period. Moreover, plaintiffs have not made any showing that are willing to and can cure any default, were they found to have engaged in objectionable conduct. In general, objectionable conduct is not even susceptible to a cure period. RPAPL § 753 [3]; Diaz v. Jones, 181 Misc2d 603 (NYC Civ. Ct. 1999)

Even if the claimed objectionable conduct is ultimately founded in a summary proceeding, and even if plaintiffs are legally entitled to cure, the claimed conduct still involves circumstances that can be cured within the 10 day period provided in RPAPL § 753 [4]. See: Stolz v. 111 Tenant's Corp., 3 AD2d 421 (1st dept. 2004); Kluasner v. Frank, 96 AD2d 653 (1st dept. 1983).

Thus, the motion for preliminary injunctive relief is denied. This court's decision bears upon plaintiffs' cause of action for a permanent injunction as well. Since defendants have not cross moved for any relief, the court will not dismiss this cause of action at this time. Since there are additional causes of action in the complaint, however, the court directs that the parties appear for a preliminary conference on **April**

27, 2006 at 9:30 a.m. at the courthouse located at 80 Centre Street, Part 10, Room 122.

In accordance herewith it is hereby :

ORDERED that plaintiffs' motion for injunctive relief is denied in its entirety and it is further

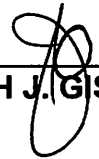
ORDERED that the parties are directed to appear for a preliminary conference on **April 27, 2006 at 9:30 a.m.** in the Courthouse located at 80 Centre Street, Part 10, Room 122; and it is further

ORDERED that any requested relief not expressly granted herein is denied.

This shall constitute the decision and order of the Court.

Dated: New York, New York
March 15, 2006

So Ordered:



HON. JUDITH J. GISCHE, J.S.C.

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