

1380 Madison Ave., L.L.C. v 17 E. Owners Corp.

2007 NY Slip Op 30172(U)

March 1, 2007

Supreme Court, New York County

Docket Number: 0601386

Judge: Herman Cahn

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

PRESENT: Cahn
Justice

PART 49m

1380 Madison Ave

INDEX NO. 601386 b3

MOTION DATE 10/16/06

MOTION SEQ. NO. 008

MOTION CAL. NO. _____

- v -

17 East 22nd St Corp.,

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 ordered that this motion

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION IN MOTION SEQUENCE

FILED
MAR 07 2007
NEW YORK COUNTY CLERK'S OFFICE

Dated: 3/1/07 He Col
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE

MIMI

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: I.A.S. PART 49
-----X

1380 MADISON AVENUE, L.L.C.,

Plaintiff,

-against-

Index No. 601386/03
Action No. 1

17 EAST OWNERS CORP., ALEX TAYLOR, MARY
TAYLOR, STEPHEN PERKINS, JOSHUA BEDERSON,
ISABELLE BEDERSON, WILLIAM MURRAY JR.
PETER DUPONT, ADRIAN LICHTER, ANN LICHTER,
LEE MALLET, CAROLINE HARTY, JOSEPH
HANSEN, KAREN HANSEN, MARVIN KRISTEIN,
VERA-RONY KRISTEIN, JEREMY DIAMOND,
ALEXANDRA LEBENTHAL, CATHERINE JACKSON,
FREDERICK BRAID, STEVE BERMAN, LISA
BERMAN, CYRILA LAYLAND, MASSIMO PINELLI,
STACY PINELLI, POLLY BROWN, DENNIS
DROUSHIOTIS and CARYN E. ERICKSON,

DECISION AND ORDER

Defendants.
-----X

17 EAST 96TH OWNERS CORP.,

Plaintiff,

-against-

Index No. 108695/04
Action No. 2

MADISON 96TH ASSOCIATES, L.L.C.,

Defendant.
-----X

HERMAN CAHN, J:

Plaintiff, 1380 Madison Avenue, L.L.C. (Madison) seeks an injunction prohibiting the defendants in Action No. 1, both corporate and individual, from communicating with the plaintiff corporation, other than through their attorneys. Plaintiff also moves to direct the defendants to produce the following documents: (1) any surveys or inquiries into any settlement or foundation

condition with respect to the buildings located at 17 East 96th Street and 21 East 96th Street (a/k/a 1380 Madison Avenue) that are in the possession, custody or control of defendants; (2) the identity of all persons requesting or directing the request of any such surveys or inquiries; (3) the dates of any such requests or directions; (4) the purpose for which any such surveys or inquiries were made; and (5) the results of any such surveys or inquiries.

Madison is the former owner of a two-story building, which was located at 1380 - 1388 Madison Avenue, in Manhattan. Defendant 17 East 96th Owners Corp., s/h/a/ 17 East Owners Corp. (Owners Corp.) is the owner of a residential cooperative apartment building located at 17 East 96th Street, which is located immediately to the west of Madison's premises. Both buildings share a common boundary of approximately 100 feet.

A brief history of this hard fought matter follows:

For a number of years prior to the commencement of this action, Owners Corp. and its proprietary lessees maintained window air conditioners which protruded into the air space over Madison's property. In September 2002, Madison entered into a contract to sell the property, which required that Madison obtain the removal of the air conditioners prior to closing. Madison commenced Action No. 1 in May 2003, to secure the removal of those air conditioners. Madison was granted partial summary judgment in October 2003, wherein this court declared that Madison had the exclusive right to the immediate use, possession, and enjoyment of the air space above its real property, and that Owners Corp. was then in violation of that right by virtue of the air conditioning units protruding from its property (Order dated October 10, 2003, affirmed 12 AD3d 156 [1st Dept 2004]).

On February 2, 2004, Madison sold the property to Madison 96th Avenue LLC (Madison

96). As of the February 2004 closing date, Owners Corp. had not removed the air conditioning units. Madison 96 continued the action against Owners Corp. and, on June 3, 2004, began demolition work at the property.

On June 10, 2004, Owners Corp. commenced an action against Madison 96 (Action No. 2), alleging that Madison 96 had not obtained proper construction permits in that it had not provided notice to the adjoining landowners, including Owners Corp., of the impending demolition and foundation work, as required by the New York City Building Code §§ 27-165 and 27-169. Owners Corp. also alleged that during construction, glass had fallen on its property which constituted a safety threat to its residents and workers, as well as a trespass.

On December 21, 2004, the parties settled a portion of Action No. 1, pursuant to which the residents agreed to remove their air conditioners.

In January 2006, Madison 96 was granted leave to serve an amended complaint naming the individual tenants of Owners Corp. as defendants.

As to that portion of the motion for an injunction, Madison 96 alleges that, on April 28, 2005, while its building was under construction, Jamison Weiner, a principal of Madison 96 received several harassing and threatening phone calls at night from defendant Stephen Perkins, a tenant of Owners Corp. Weiner informed the police and contacted the attorney for Owners Corp.

On September 9, 2006, the tenants of Madison 96 received the following letter from an anonymous sender:

Residents of 21 East 96 Street

You may have noticed the surveyors across from your building last week. They were confirming that the building, which was build on a very "quick & dirty" mat foundation is starting to settle unevenly.

You would be well advised to talk with Messrs. Boesky & Weiner and an attorney as this settling is going to cost you a considerable sum of money to correct if, indeed, it can be corrected

(Steves Aff., Ex. D).

On the basis of this letter and the late-night phone calls, Madison 96 now seeks to enjoin defendants from all future communication with Madison 96 and the tenants of Madison 96 other than those communications made by the attorneys for the defendants.

The late-night phone calls have been referred to the police and Madison 96 has not complained of further harassment. The letter, which on its face is neither threatening nor harassing, and expresses an opinion, constitutes protected speech. Freedom of expression is guaranteed by both our State Constitution as well as the Federal Constitution. Unless speech presents a clear and present danger of some serious substantive damage, it may not be forbidden (Delano Village Companies v Orridge, 147 Misc 2d 302 [Sup Ct, NY County 1990], citing People v Dietze, 75 NY2d 47 [1989]). The motion for an injunction is therefore denied.

However, if plaintiff or its officers or employees are subjected to harassing phone calls or other harassment, the proper course would be to make a complaint thereof to the law enforcement authorities.

As to that part of the motion seeking to compel the production of documents concerning settlement or foundation conditions, all discovery disputes in this case have been referred to Hon. Beverley Cohen, who has been designated referee to supervise disclosure. Further, Owners Corp. asserts that it has already produced those documents in its possession which concern settlement or foundation conditions and that, in fact, Madison 96 has failed to comply with directives to produce documents regarding its own investigation into this issue. That part of the motion to

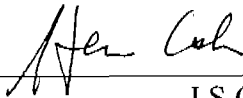
compel is therefore denied. The parties may bring the matters before Referee Cohen, for further directions, etc.

Accordingly, based upon the foregoing, it is

ORDERED that the motion by Madison 96th Associates, LLC, for an injunction and to compel the production of documents is denied.

Dated: March 1, 2007

ENTER:



J.S.C.