

**Wu v Valley Park Estates Owners Corp.**

2008 NY Slip Op 33049(U)

November 7, 2008

Supreme Court, Nassau County

Docket Number: 12935/08

Judge: Antonio I. Brandveen

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**SHORT FORM ORDER**

**SUPREME COURT - STATE OF NEW YORK**

Present: ANTONIO I. BRANDVEEN  
J. S. C.

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JACK WU,		TRIAL / IAS PART 32
	Plaintiff,	NASSAU COUNTY
	- against -	Index No. 12935/08
VALLEY PARK ESTATES OWNERS CORP.,		Motion Sequence No. 001
	Defendant.	
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The following papers having been read on this motion:

Notice of Motion, Affidavits, & Exhibits . . . . .	<u>1</u>
Answering Affidavits . . . . .	<u>2</u>
Replying Affidavits . . . . .	<u>3</u>
Briefs: Plaintiff's / Petitioner's . . . . .	_____
Defendant's / Respondent's . . . . .	_____

The plaintiff seeks a preliminary injunction staying the cure period set forth in the notice and enjoining the defendant, its agents, servants and employees, and all persons acting on its behalf, pending the hearing and determination of this action, from commencing any summary or other proceeding to terminate or cancel the proprietary leasehold interest and the proprietary lease of the plaintiff with respect to the premises, including but not limited to terminating or canceling the plaintiff's leasehold interest, or the lease, based upon the notice of default dated June 3, 2008, and served on or about June 5, 2008, or the purported defaults alleged; interfering with the plaintiff's right of possession of the premises; commencing a summary holdover or other proceeding to

recover possession of the premises; commencing any action to declare the plaintiff's leasehold interests in the premises canceled or terminated; taking any other action to terminate or cancel the plaintiff's proprietary leasehold interests based upon that notice of default; and staying and tolling the plaintiff's time to cure the alleged defaults claimed in the notice of default pending the hearing and determination of this Court of the plaintiff's application. The plaintiff contends the relief is sought on the grounds (1) the plaintiff has demanded a permanent injunction, and the acts of the defendant, if committed during the pendency of the action, would irreparably and unfairly injure the plaintiff since the plaintiff has a right to cure any alleged default, if a default is found by this Court to exist. (2) the time to cure the default, if not waived, i.e., alternative daycare for the plaintiff girlfriend's dog cannot be effectively accomplished in the cure period contained in that notice. The defendant opposes the motion as (1) untimely; (2) the plaintiff's arguments have no merit, to wit the matter should be decided in the landlord/tenant Court, the plaintiff is in default of the lease, the plaintiff acknowledges his dog resides in the subject unit, so the sole question is whether the girlfriend's dog is kept there, too in violation of the lease since the girlfriend resides there; (3) these violations are substantial. The plaintiff replies to the defense opposition by indicating (1) there is no violation of the lease; (2) the plaintiff is actively seeking to sell this property so the plaintiff can move to another place; and (3) the defendant has, since the inception of this action, followed the plaintiff with video cameras and added fabricated surcharges to the plaintiff's monthly

statements. This Court has carefully reviewed and considered all of the parties' papers submitted with respect to this motion.

The plaintiff is a lessee and shareholder of 1807 Shirley Avenue, apartment 1, Valley Stream, New York, which is part of the cooperative complex. The defendant is a cooperative corporation, and the proprietary lessor of that property comprising 108 buildings with 438 units covering more than 17 acres. The defense attorney points, in an opposing affirmation dated August 8, 2008, to the plaintiff's affidavit dated June 27, 2008, the House Rules, revised and implemented as of April 2006, the Valley Park Estates Admissions Committee's residential questionnaire dated September 21, 2005, signed by the plaintiff and the Angela Wang, the plaintiff's girlfriend from Queens, and the Valley Park Estates' apartment application from on or about September 2005. The defense attorney asserts the plaintiff acknowledged his dog, to wit "a small Pomeranian" resides in the subject unit, so the only issue is whether "Storm," the other dog owned by Wang is kept at that unit in violation of the plaintiff's proprietary lease obligation. The defense attorney also points to the opposing affidavit dated August 8, 2008, by Jose Pastrana, the managing agent of the cooperative, who indicates the defendant's position is Wang resides at the subject unit which contradicts the plaintiff's assertions about Wang's residency and "Storm" staying at the subject apartment, as contained in the plaintiff's sworn statement. Pastrana states he saw the plaintiff walking "Storm," which weighs more than 35 pounds approximately three to four times a week in violation of the House

rules. Moreover, Carmella Antione, another shareholder in the cooperative, residing at 181 Shirley Avenue, apartment number three, which is diagonal from the plaintiff's unit, states, in an affidavit dated August 10, 2008, seeing the plaintiff walking Wang's 35 pound dog around the grounds of the cooperative almost every single day of the week for some time.

The rights and obligations of the shareholders in this cooperative corporation are set forth in the proprietary lease, including paragraph 10 (a) and 10 (b) which together state specific house rules, to wit:

No more than one dog with a weight limitation of 35 lbs. or one cat per household will be permitted. No shareholder, subtenant or any shareholder or guest shall be permitted to house either permanently or temporarily within any home, or garage, or within the grounds of The Cooperative, any breed of dog classified or commonly identified as a 'Pit Bull' or a 'Rottweiler'. In the best interests of the Cooperative Community at large, no such animals shall be permitted upon the grounds of The Cooperative at any time, or for any purpose whatsoever.

On or about June 3, 2008, the defense served a notice to cure upon the plaintiff because the defendant's position is the plaintiff violated these house rules by housing more than one dog at the subject unit, and housing a dog more than 35 pounds commonly identified as a pit bull. The defense contends such a violation of any one of these house rules constitutes a substantial breach of the lease. Moreover, the defense asserts the plaintiff did not cure these violations, and failed to stay the running of the cure period within 30 days from June 3, 2008, but the plaintiff did obtain the instant temporary restraining order on July 16, 2008, almost two weeks after the cure period expired.

CPLR 6301 provides:

A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff. A temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had.

CPLR 6312 (a) provides:

On a motion for a preliminary injunction the plaintiff shall show, by affidavit and such other evidence as may be submitted, that there is a cause of action, and either that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action and tending to render the judgment ineffectual; or that the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff.

CPLR 6312 (c) provides:

Provided that the elements required for the issuance of a preliminary injunction are demonstrated in the plaintiff's papers, the presentation by the defendant of evidence sufficient to raise an issue of fact as to any of such elements shall not in itself be grounds for denial of the motion. In such event the court shall make a determination by hearing or otherwise whether each of the elements required for issuance of a preliminary injunction exists.

The Appellate Division holds:

In order to prevail upon a motion for a preliminary injunction, the moving party has the burden of demonstrating, by clear and convincing evidence,

that (1) the movant will succeed on the merits of the action, (2) the movant will suffer irreparable injury absent the issuance of a preliminary injunction, and (3) the balance of equities is in favor of the movant (*see*, CPLR 6301; *W.T. Grant Co. v. Sroggi*, 52 N.Y.2d 496, 438 N.Y.S.2d 761, 420 N.E.2d 953; *Walter Karl, Inc. v. Wood*, 137 A.D.2d 22, 528 N.Y.S.2d 94; *Family Affair Haircutters v. Detling*, 110 A.D.2d 745, 488 N.Y.S.2d 204; *Zurich Depository Corp. v. Gilenson*, 121 A.D.2d 443, 503 N.Y.S.2d 415) *Price Paper and Twine Co. v. Miller*, 182 A.D.2d 748, 749, 582 N.Y.S.2d 746 [2<sup>nd</sup> Dept., 1992].


Here, the plaintiff has failed to submit sufficient proof, as a matter of law, to show the plaintiff would succeed on the merits of the action and that the balance of equities is in his favor absent the granting of a preliminary injunction.

Accordingly, the petition is dismissed.

So ordered.

Dated: November 7, 2008

ENTER:



J. ANTONIO I. BR...  
**ENTERED**

NOV 10 2008

**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**

FINAL DISPOSITION XXX

NON FINAL DISPOSITION