

**Glad v Osborne Tenants Corp.**

2008 NY Slip Op 33188(U)

November 25, 2008

Supreme Court, New York County

Docket Number: 112770/08

Judge: Walter B. Tolub

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

PRESENT: Tolub  
Justice

PART 15

John Glad  
- v -  
OSBORNE TENANTS CORP

INDEX NO. 112770/08  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 1  
MOTION CAL. NO. \_\_\_\_\_

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

IS DECIDED

IN ACCORDANCE WITH A COMPANION ORDER APPLICABLE TO THIS MATTER

**FILED**  
NOV 28 2008  
COUNTY CLERK'S OFFICE  
NEW YORK

Dated: 11/26/08

[Signature]  
**TOLUB** J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 15

-----x  
JOHN GLAD and LARISA GLAD

Plaintiffs,

-against-

OSBORNE TENANTS CORP.,

Defendant.

Index No. 112770/08  
Mtn Seq.001

FILED  
CLERK OF THE COURT  
COUNTY OF NEW YORK  
OFFICE

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**WALTER B. TOLUB, J.:**

This is a motion for a residential Yellowstone injunction extending Plaintiffs' time to cure any violations of the proprietary lease, enjoining the Defendant from taking possession of Plaintiffs' apartment and preventing Defendant from causing the Plaintiffs to forfeit their proprietary lease.

Facts

Defendant, Osborne Tenants Corp (Osborne) is an 1885 landmarked New York cooperative apartment building located at 205 West 57<sup>th</sup> Street. Plaintiffs are retired and primarily live in Washington, D.C.

Roughly ten years ago, Plaintiffs bought apartment 1CD at the Osborne. In March 2008, Plaintiffs purchased apartment 2CA at the Osborne on the condition that they would sell apartment 1 CD withing eighteen months. Apartment 2CA was in poor condition and in need of extensive renovation.

Plaintiffs primarily wanted to relocated the bathroom in

apartment 2CA. Such an alteration would require demolition and plumbing work. Additionally, removal of the bathroom tiles is considered a major alteration by the Cooperative's Alteration Guideline Policy (Defendant Ex. C).

Plaintiffs retained an architect and a construction manager, had alteration plans prepared, submitted the plans to the Osborne and paid an alteration fee. Plaintiffs claim that the managing agent informed them that the Board of the Osborne approved the alteration plans subject to their compliance with the requirements of the Osborne architect. Plaintiffs commenced work on the apartment and stripped the wallpaper in the bathroom, removed the old tiles from the bathroom wall and removed the baseboard in the living room. All materials were preserved so that they would not be destroyed during the demolition and relocation of the bathroom.

In July 2008, Plaintiffs allowed their son and his friend to spend a few weeks in apartment 2CA during their summer vacation. Plaintiffs' son noticed a loose brick exposed by the removal of the tiles and pulled it out. When the friend took a shower, water leaked through the ceiling of the Osborne's lobby, but no damage was caused.

The Plaintiffs' acknowledged the incident, apologized and offered to repair any damage. Defendant argues that pursuant to the Cooperative's Alteration Guideline Policy (Defendant Ex. C),

a written alteration agreement is required to perform major alterations such as the one in apartment 2CA. Defendant further argues that no such agreement was entered into and that Plaintiffs therefore performed unauthorized work.

Based on the Plaintiffs performing unauthorized work and the incident where the shower leaked into the building's lobby, the Osborne served the Plaintiffs with a notice to cure, requiring all work to cease and the apartment be restored to the status quo before the alterations began within a ten day period. In order to comply with the notice to cure and return the apartment to the condition it was in before the alterations, the Plaintiffs claim they need permission from the Board and a permit from the Department of Buildings (DOB) but provide no evidence that a DOB permit is required. Defendant argues that no DOB permit is required and that Plaintiffs' can cure all violations within a ten day period.

Plaintiffs argue that instead of facilitating the cure, the Board has refused to approve their plans, refused to allow estimators onto the Premises and have prevented them from complying with the notice to cure. Plaintiffs now seek residential Yellowstone injunction preventing the Defendant from taking possession of Plaintiffs' apartment, enjoining Defendant from causing the Plaintiffs to forfeit their proprietary lease and extending their time to cure.

### Discussion

Plaintiffs' motion for a Yellowstone injunction is denied. By its enactment, RPAPL §753(4), has effectively halted the need for residential tenants to obtain a Yellowstone because the statute provides residential tenants protection by granting them an additional ten days to cure a violation (Post v. 120 East End Ave. Corp., 62 NY2d 19 [1984]). The rationale of RPAPL 753(4), presumes that the Civil Court can grant full relief and that the tenant will be unable to make the necessary showing to invoke the equitable powers of the Supreme Court (Id.)

Yellowstone injunctions are routinely granted to prevent the forfeiture of a tenant's interest (Post v. 120 East End Ave. Corp., 62 NY2d 19 [1984]). The purpose of a Yellowstone injunction is to allow a tenant confronted by a threat of termination of the lease, to obtain a stay tolling the running of the time to cure, so that after a determination of the merits, the tenant may cure the defect and avoid forfeiture of the leasehold (Long Island Gynecological Services, PC v. 1103 Steward Ave. Assoc., 224 AD2d. 591 [2d Dept 1996]).

In the instant matter, to have the case remain in Supreme Court, the Plaintiffs would have to be unable to cure all violations within a ten day period. Plaintiffs make a blanket argument, unsupported by any evidence, that they require a DOB permit to make the necessary repairs and that ten days is an

insufficient amount of time to cure the violations.

Defendant has established that a DOB permit is not required to make the repairs necessary in the apartment. Maneswar Cheempalapati, the project manager at Defendant's architectural firm, submitted an affidavit stating that the proposed restoration plans do not require a DOB permit (Def. Ex. "Cheem Off." and Ex. H). Additionally, the Affidavit of Edward Davis, the Osborne's President, states that once Plaintiffs respond to open issues in the proposed restoration plans and enter into an alteration agreement, they will be permitted to restore the apartment. Under such circumstances, Plaintiffs can complete the work within the ten day statutory stay provided for in RPAPL §753(4).

The Court recognizes that at this juncture it appears that the Defendant is thwarting the alteration of the apartment as proposed by the Plaintiffs. While the Defendant is free to commence summary proceedings, it cannot do so until there is a good faith effort to approve the underlying plans submitted by the Plaintiffs and a good faith effort to enter into a written alteration agreement as required by the Cooperative's Alteration Guideline Policy. Alternatively, Defendant will provide adequate reasons for not approving alteration plans and entering into an alteration agreement with the Plaintiffs before commencing any summary proceedings.

It follows that Plaintiffs' motion for a Yellowstone injunction must be and is denied. Accordingly, it is

ORDERED that Plaintiffs' motion for a Yellowstone injunction is denied; and it is further

ORDERED that Defendant is enjoined from commencing a summary proceeding until there is a demonstrated good faith effort to approve plaintiff's restoration plans. This approval should be made in the form of a written alteration agreement, and, in the event that the parties require additional judicial intervention, they should make the appropriate applications to this court; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly

This memorandum opinion constitutes the decision and order of the Court.

Dated: 11/21/08

*WBT*  
\_\_\_\_\_  
HON. WALTER B. TOLUB, J.S.C.

FILED  
COUNTY CLERK'S OFFICE  
NEW YORK