

Dreytser v 195 Realty, LLC

2009 NY Slip Op 32482(U)

February 18, 2009

Supreme Court, New York County

Docket Number: 401140/08

Judge: Marcy S. Friedman

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

PRESENT: Friedman
MARCY S. FRIEDMAN, J.S.C. Justice

PART 57

VLADIMIR DREYTSER

- v -

195 REALTY

INDEX NO. 40140/08
MOTION DATE _____
MOTION SEQ. NO. 4
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

1, 1A, 1B
2, 2A, 2B
3

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion is determined as per decision/order dated 2-18-09.

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

FILED
FEB 20 2009
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 2-18-09

M. Friedman
MARCY S. FRIEDMAN, J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK – PART 57

PRESENT: Hon. Marcy S. Friedman, JSC

_____ x

VLADMIR DREYTSER, et al.,

Plaintiffs,

- against -

195 REALTY, LLC, et al.,

Defendants.

_____ x

Index No.: 401140/08

DECISION/ORDER

FILED
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COUNTY CLERK'S OFFICE
NEW YORK

Plaintiff, Yobanny Ramos, is one of many plaintiffs in this multi-party action which seeks a declaratory judgment determining that plaintiffs' landlords are obligated to accept their Section 8 vouchers. Plaintiff Ramos seeks to stay her landlord, defendant M&R Realty, LLC ("M&R Realty"), from prosecuting a summary non-payment proceeding, entitled M&R Realty Company LLC v Ramos (Civ Ct, New York County, Index No. L&T 74687/08), pending the determination of this action. The summary proceeding seeks plaintiff's eviction from an apartment 2F at 55 Overlook Terrace, which she occupies with her two children.

It is well settled that a preliminary injunction is a drastic remedy which will be granted "only where the movant shows a likelihood of success on the merits, the potential for irreparable injury if the injunction is not granted and a balance of equities in the movant's favor (Grant Co. v Srogi, 52 NY2d 496, 517; McLaughlin, Piven, Vogel, Inc. v Nolan & Co., 114 AD2d 165, 172, lv denied 67 NY2d 606)." (Chernoff Diamond & Co. v Fitzmaurice, Inc., 234 AD2d 200, 201 [1st Dept 1996].) "The movant has the burden of establishing a right to this equitable remedy." (McLaughlin, Piven, Vogel, 114 AD2d at 172.) It is further settled that the purpose of a

preliminary injunction is to maintain the status quo (Matter of 35 New York City Police Officers v City of New York, 34 AD3d 392 [1st Dept 2006]) and that, even where factual disputes exist, a preliminary injunction should be granted where necessary to preserve the status quo provided that a showing is made that irreparable harm will result absent the injunction. (See State of New York v City of New York, 275 AD2d 740 [2d Dept 2000]; U.S. Ice Cream Corp. v Carvel Corp., 136 AD2d 626 [2d Dept 1988].)

In the instant action, summary judgment motions have been briefed and argued, and plaintiff makes a sufficient showing of merit to support the requested stay. Irreparable harm to plaintiff Ramos will result if the summary proceeding is not stayed during the determination of this action.

It is accordingly hereby ORDERED that plaintiff Ramos' motion for a preliminary injunction is granted to the following extent: Defendant M&R Realty, LLC, its agents and employees, are stayed from prosecuting a summary non-payment proceeding, entitled M&R Realty Company LLC v Ramos (Civ Ct, New York County, Index No. L&T 74687/08), pending the determination of this action, on condition that plaintiff pay to M&R Realty use and occupancy in the amount of two hundred dollars per month for the months January and February 2009 within ten days after service of a copy of this order with notice of entry; and that commencing in March 2009, plaintiff pay to M&R Realty use and occupancy in the amount of two hundred dollars per month as and when due. All payments of use and occupancy shall be without prejudice.

This constitutes the decision and order of the court.

Dated: New York, New York
February 18, 2009

FILED
FEB 20 2009
COUNTY CLERK'S OFFICE
NEW YORK
Marcy Friedman
MARCY FRIEDMAN, J.S.C.
MARCY S. FRIEDMAN, J.S.C.