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SUPREME COURT-STATE OF NEW YORK
SHORT FORM ORDER
Present:

HON. TIMOTHY S. DRISCOLL
Justice Supreme Court

----------x	**TRIAL/IAS PART: 22**
ELIQUE STABLES, LLC,	**NASSAU COUNTY**
Plaintiff,	**Index No: 016605-10**
	Motion Seq. No: 1
-against-	**Submission Date: 9/17/10**
GOLD COAST FARM, INC. and	
DOROTHY BURKE,	
Defendants.	
----------x	

Papers Read on this Motion:

Order to Show Cause, Affidavit in Support, Attorney's Affirmation and Exhibits..x

This matter is before the court on the Order to Show Cause filed by Plaintiff Elique Stables, LLC ("Elique" or "Plaintiff") on September 3, 2010 and submitted on September 17, 2010. For the reasons set forth below, the Court denies the Order to Show Cause in is entirety and vacates the temporary restraining order issued by the Honorable John M. Galasso on September 3, 2010.

BACKGROUND

A. Relief Sought

Plaintiff seeks an Order 1) restraining the Defendants, and all persons acting on their behalf, pending the determination of this action, from a) commencing any action or proceeding, or continuing to engage in the use of self-help, to dispossess the Plaintiff from the premises demised to the Plaintiff at 62 Hegemans Lane, Old Brookville, New York ("Premises"); b) interfering with the Plaintiff's possession, use, occupancy, management and quiet enjoyment

of the Premises; and c) interfering with the Plaintiff's business, clients, employees or horses at the Premises; and 2) restoring Plaintiff's possession, use, occupancy and quiet enjoyment of the Premises.

B. The Parties' History

The Complaint (Ex. 1 to OSC) alleges as follows:

Elique is a domestic limited liability company located in Nassau County, New York. Defendant Gold Cost Farm, Inc. ("Gold Coast") is a New York corporation of which Defendant Dorothy Burke ("Burke") is an officer, director and shareholder. According to public records, Burke is the fee owner of the Premises, which she previously owned with her late husband.

In the first cause of action, Plaintiff seeks a declaratory judgment as to Elique's estate or interest in, and right to possess or occupy, the Premises. The Premises has been used as a horse riding and equestrian facility to which improvements, including barns and an indoor riding area, have been made. Elique has operated a full-service equestrian business known as "The Old Brookville Equestrian Center" and "Hunters Grove" and owns and/or boards approximately 48 horses at the Premises.

In or about June of 2009, Elique and Gold Coast negotiated a lease agreement regarding the Premises. Gold Coast agreed that Elique would use and occupy the Premises as a full-service equestrian center, and that Elique was entitled to the possession, use and quiet enjoyment of existing barns, buildings and other facilities including the Show Barn and Indoor Arena.

In or about July of 2009, Elique and Gold Coast agreed to create a year-to-year tenancy, renewable on a year-to-year basis ("Lease"). The right of occupancy under the Lease began on August 1, 2009 and the annual rent ("Rent") was $300,000, payable in monthly installments of $25,000. Gold Coast delivered possession of the Premises to Elique, and Elique entered into possession of the Premises on or about August 1, 2009.

Since entering into possession of the Premises, Elique has operated a full-service equestrian center and made extensive improvements to the Premises. Elique paid the Rent due from August 2009 through July of 2010. On or before August 1, 2010, Elique tendered and Gold Coast accepted a Rent check of $25,000 for the rent due on August 1, 2010. The Lease was renewed ("Renewal") on August 1, 2010. Elique submits that the Lease is in full force and effect

and, therefore, it is entitled to occupy the Premises through and including July 31, 2011.

Elique allges, further, that Gold Coast has wrongfully asserted that Elique's tenancy is a month-to-month tenancy terminable upon proper notice. Gold Coast issued a notice ("Notice") (Ex. A to Compl.) purporting to terminate Elique's tenancy on August 31, 2010. Elique submits that 1) the Notice is ineffective to terminate its Lease; and, 2) even assuming, *arguendo*, that the tenancy is a month-to month-tenancy, the Notice did not effectively terminate that tenancy.

In the first cause of action, Elique seeks a declaratory judgment that 1) a year-to-year lease exists between Elique and Gold Coast; 2) the year-to-year lease was duly renewed on or before August 1, 2010; 3) Elique is entitled to the use, possession, occupancy and quiet enjoyment of the Premises for one year, and year-to-year, beginning August 2, 2010; 4) the Notice is null and void, and of no force and effect; and 5) Defendants are enjoined from commencing any proceeding to recover possession of the Premises from Elique based on the Notice.

In the second cause of action, Elique alleges that it made substantial expenditures, repairs and improvements to the Premises in reliance on the Defendants' representations that they would enter into a long-term lease with Elique and with the encouragement of Defendants in the course of those representations. Elique also alleges that Defendants agreed that, if the Premises were sold to a third party before the expiration of a long-term lease, Defendants would "take such steps as may be required to allow Elique to receive all or a portion of its investments to [the] Premises" (Compl. at ¶ 38). Elique alleges that Defendants breached their promise to enter into a long-term lease, and seeks damages in excess of $250,000 for damages that it incurred in reliance on Defendants' alleged promise.

In the third cause of action, Elique reaffirms its allegations in support of the second cause of action and seeks damages for the Defendants' alleged unjust enrichment.

In their Answer and Counterclaim, Defendants deny many of the allegations in the Complaint. Defendants admit, *inter alia*, that 1) Edward Haug, Esq. ("Haug"), either in his own behalf or on behalf of Plaintiff, operated and continues to operate an equestrian business at the Premises; 2) Burke agreed that Haug could operate an equestrian business on a portion of the Premises; 3) Burke allowed Haug to take possession of a portion of the Premises on or about

August 1, 2009; 4) Haug paid $25,000 per month to his landlord of the Premises as required by an oral, month-to-month tenancy; and 5) Haug made certain expenditures to a portion of the Premises. Defendants deny making the alleged representations to Plaintiff regarding a long-term tenancy.

Defendants also assert several affirmative defenses, including that the claims asserted in the Complaint are barred by the statute of frauds. In addition, Defendants interpose two counterclaims based on their allegations, *inter alia*, that 1) Burke entered into an oral lease with Haug for a portion of the Premises; 2) Haug may have chosen to occupy Elique on that portion of the Premises; 3) Burke and Haug agreed that the lease would be on a month-to month basis; 4) Burke gave timely notice to Haug and Plaintiff that the month-to-month tenancy would terminate on August 31, 2010; 5) Burke rejected the money proferred for rent for September of 2010; and 6) notwithstanding the effective termination, Haug refused to vacate the Premises. Defendants seek damages of $25,000 for every month that Haug continues to occupy the Premises. Defendants also submit that Plaintiff is not entitled to enjoin Defendants from commencing any action or proceeding to evict Plaintiff from the Premises.

In her Affidavit in Support, Allison L. Haug ("Allison"), the Managing Member of Elique, affirms the truth of the allegations in the Complaint. With respect to whether a balancing of the equities favors Elique, and whether Elique would suffer irreparable harm without injunctive relief, Haug submits that 1) Elique has an "active, ongoing and valuable business that will be destroyed if the defendants are permitted to use self-help to put Elique out of business, interfere with its employees and clients, and dispossess without [there] being an adjudication of Elique's rights" (Haug Aff. at ¶ 45); 2) Gold Coast will not be prejudiced if the Court awards injunctive relief; and 3) Defendants' conduct has affected Gold Coast's business, *e.g.*, by causing certain employees to quit.

In her Affidavit in Opposition, Burke affirms as follows:

Neither she, Gold Coast, nor anyone acting on their behalf ever resorted to self-help to dispossess Plaintiff from the Premises, or interfered with its possession of the Premises or operation of Elique. In addition to being the owner of the Premises, Burke is an attorney who is aware of the inappropriateness of self-help in a dispute like the one before the Court. Burke

affirms that she provided Plaintiff with the Notice in anticipation of commencing a landlord and tenant proceeding pursuant to the Real Property Actions and Proceedings Law ("RPAPL"). Burke notes, further, that Haug's affidavit fails to provide specific incidents of the alleged self-help by Defendants, such as names of individuals who engaged in such conduct, or the dates on which the alleged conduct was conducted.

Burke also disputes Haug's contentions with respect to the balancing of equities and irreparable harm aspects of the requested relief. Burke affirms that, in light of Defendants' position that its issuance of the Notice was appropriate, Defendants were required to reject Plaintiff's tender of the September 2010 rent. To have done otherwise would have undermined the effectiveness of the Notice. Thus, Burke has lost the benefit of that $25,000 Rent payment, which the Court should consider in evaluating Plaintiff's application.

In addition, if the Court were to enjoin Defendants from pursuing the lawful remedy of eviction pursuant to the RPAPL, Defendants would be deprived of Rental income while that proceeding was ongoing. Moroever, such a restraint would affect Defendants' to lease the Premises to third parties, thereby depriving Defendants of much-needed income.

On September 3, 2010, the Honorable John M. Galasso signed a temporary restraining order ("TRO") which directed that, pending the hearing and determination of this motion and the entry of an Order thereon, the Defendants and all persons acting on their behalf are stayed and enjoined from 1) using self-help to dispossess the Plaintiff from the Premises; 2) interfering with the Plaintiff's possession, use, occupancy and quiet enjoyment of the Premises; and 3) interfering with the Plaintiff's business at the Premises. Justice Galasso denied that portion of Plaintiff's proposed TRO which sought to 1) stay and enjoin the Defendants from commencing any action or proceeding to dispossess the Plaintiff from the Premises; and 2) direct the Defendant to "restore the [P]laintiff to possession, use, occupancy and quiet enjoyment of the [Premises]."

C. The Parties' Positions

Plaintiff submits that it has demonstrated its right to relief by establishing 1) its right to the continued use, possession, occupancy and quiet enjoyment of the Premises based on the alleged year-to-year tenancy, 2) Defendants' inappropriate use of self-help, 3) the ineffectiveness of the Notice, 4) the adverse effects on Elique's viability if injunctive relief is denied, and 5) the

lack of prejudice to Gold Coast if the Court grants the requested injunctive relief.

Defendants oppose Plaintiff's application, submitting that 1) Plaintiff has provided no proof of Defendants' allegedly improper conduct; 2) Plaintiff occupied the Premises pursuant to an oral agreement regarding a month-to-month tenancy, as supported by the fact that Plaintiff made monthly Rental payments; 3) Plaintiff has provided no documentation in support of its claim of a year-to-year tenancy; 4) Plaintiff has provided no documentation in support of its claim that Plaintiff made improvements in reliance on promises made by Defendants; 5) the Notice was proper and legal; 6) Plaintiff will have the opportunity to assert its claims in any eviction proceeding brought by the landlord of the Premises pursuant to the RPAPL and, thus, Plaintiff has an adequate remedy at law if and when the landlord commences a dispossess proceeding; and 7) enjoining the landlord from instituting an eviction proceeding pursuant to the RPAPL would substantially prejudice Plaintiff.

RULING OF THE COURT

A. Standards for Preliminary Injunction

A preliminary injunction is a drastic remedy and will only be granted if the movant establishes a clear right to it under the law and upon the relevant facts set forth in the moving papers. *William M. Blake Agency, Inc. v. Leon*, 283 A.D.2d 423, 424 (2d Dept. 2001); *Peterson v. Corbin*, 275 A.D.2d 35, 36 (2d Dept. 2000). Injunctive relief will lie where a movant demonstrates a likelihood of success on the merits, a danger of irreparable harm unless the injunction is granted and a balance of the equities in his or her favor. *Aetna Ins. Co. v. Capasso*, 75 N.Y.2d 860 (1990); *W.T. Grant Co. v. Srogi*, 52 N.Y.2d 496, 517 (1981); *Merscorp, Inc. v. Romaine*, 295 A.D.2d 431 (2d Dept. 2002); *Neos v. Lacey*, 291 A.D.2d 434 (2d Dept. 2002). The decision whether to grant a preliminary injunction rests in the sound discretion of the Supreme Court. *Doe v. Axelrod*, 73 N.Y.2d 748, 750 (1988); *Automated Waste Disposal, Inc. v. Mid-Hudson Waste, Inc.*, 50 A.D.3d 1073 (2d Dept. 2008); *City of Long Beach v. Sterling American Capital, LLC*, 40 A.D.3d 902, 903 (2d Dept. 2007); *Ruiz v. Meloney*, 26 A.D.3d 485 (2d Dept. 2006).

A plaintiff has not suffered irreparable harm warranting injunctive relief where its alleged injuries are compensable by money damages. *See White Bay Enterprises v. Newsday*, 258

A.D.2d 520 (2d Dept. 1999) (lower court's order granting preliminary injunction reversed where record demonstrated that alleged injuries compensable by money damages); *Schrager v. Klein*, 267 A.D.2d 296 (2d Dept. 1999) (lower court's order granting preliminary injunction reversed where record failed to demonstrate likelihood of success on merits or that injuries were not compensable by money damages).

E. Application of these Principles to the Instant Action

The Court concludes that Plaintiff has not demonstrated its right to injunctive relief because it has not demonstrated a likelihood of success on the merits. Specifically, 1) Plaintiff has provided no specific allegations in support of its claims, *e.g.*, that Defendants have engaged in self help and taken steps to destroy Plaintiff's business reputation; Allison's affidavit provides no details regarding the time, place or nature of any of Plaintiff's allegedly improper conduct; 2) Plaintiff has provided no documentation in support of its claim that the tenancy was a year-to-year tenancy, and the monthly Rental payments are equally consistent with Defendants' position that the tenancy was a month-to-month tenancy; and 3) Plaintiff has provided no documentation in support of its claim that it made improvements to the Premises in reliance on representations by Defendants, which Defendants deny.

Although Plaintiff's failure to demonstrate a likelihood of success on the merits renders injunctive relief inappropriate, the Court further notes that Plaintiff has not demonstrated a balancing of the equities in its favor, or irreparable harm without injunctive relief. First, Plaintiff has provided no details in support of its claim, *e.g.*, that Defendants' conduct has adversely affected its business. Second, in light of Plaintiff's failure to proffer details in support of its claim that Defendants have engaged in self-help, Plaintiff's claim that Defendants will continue to engage in that conduct without injunctive relief is similarly unpersuasive. In addition, the Court concludes that Defendants would suffer a hardship, by virtue of its loss of rental income, if the Court prevented Defendants from commencing an eviction proceeding. Finally, Plaintiff will have the opportunity to litigate the issues it has raised here, including the effectiveness of the Notice, at any eviction proceeding initiated by Defendants.

In light of the foregoing, the Court denies Plaintiff's Order to Show Cause and vacates the TRO.

All matters not decided herein are hereby denied.

This constitutes the decision and order of the Court.

The Court directs counsel for the parties to appear before the Court for a Preliminary Conference on October 28, 2010 at 9:30 a.m.

ENTER

DATED: Mineola, NY
September 28, 2010

HON. TIMOTHY S. DRISCOLL
J.S.C.