

Columbia Condominium v Ullah
2012 NY Slip Op 30438(U)
February 22, 2012
Sup Ct, NY County
Docket Number: 100559/12
Judge: Joan A. Madden
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. JOAN A. MADDEN
Justice

PART 11

Columbia Condominiums

INDEX NO.: 100559/12

Plaintiff,

MOTION DATE: 2/14/12

- v -

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MOTION SEQ. NO.:

MOTION CAL. NO.:

Defendant.

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 the attached memorandum decision &
Order.

Dated:

February 22, 2012

FILED

J.S.C.

FEB 28 2012

NEW YORK
COUNTY CLERK'S OFFICE

Check one: ☐ FINAL DISPOSITION

☒ NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, PART 11

-----X
THE COLUMBIA CONDOMINIUM BY ITS
BOARD OF MANAGERS,

Index No. 100559/12

Plaintiff,

-against-

FARRIN B. ULLAH, "JOHN DOE" and
"JANE DOE", the names being unknown to
plaintiff, it being intended to designate tenants
and/or occupants of the premises described in the
complaint herein, if any, defendants,

Defendants.

-----X
JOAN A. MADDEN, J

FILED

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Plaintiff the Columbia Condominium, by its Board of Managers ("the Condominium"), moves for a preliminary injunction enjoining and restraining defendants Farrin B. Ullah, John Doe and Jane Doe, from "(i) denying [the Condominium] and/or its agents access to apartment 25E/F ("the Unit") at 275 West 96th Street, New York, New York to make necessary repairs and to remediate an existing mold condition therein, [and] (ii) renting rooms in the Unit to any third party or otherwise permitting transient occupancy of the Unit in return for payment, fee or other consideration." Ms. Ullah opposes the motion on various grounds, including the Condominium's failure to give her a reasonable opportunity to remediate, or a sufficient opportunity to demonstrate that conditions do not exist warranting immediate repair by the Condominium.

In order to establish entitlement to a preliminary injunction, a party must demonstrate a likelihood of success on the merits, irreparable harm in the absence of injunctive relief, and the balancing of equities in [its] favor. Aetna Insur. Co. v. Cappasso, 75 NY2d 860 (1990).

For the reasons below, I conclude the Condominium has shown that it is entitled to a preliminary injunction requiring Ms. Ullah to permit a mold abatement contractor to remediate the mold condition in the subject bathroom at the Unit. Significantly, while Ms. Ullah disputes the seriousness, the extent, and cause of the condition, she does not dispute that a mold condition exists in her bathroom.

In support of its application, the Condominium submits, *inter alia*, reports by Edward Olstead, an Industrial Hygienist, certified by the American Academy of Industrial Hygienists, and offered testimony by Mr. Olstead at the hearing held in connection with the motion. Mr. Olstead inspected the areas in question; the wall in the hallway of the 25th floor and the wall in Ms. Ullah's bathroom. The walls share metal studs which provide common structural support. Upon visual inspection, Mr. Olstead found mold on the hallway wall from the base to about five feet up the wall and in the bathroom in an area of missing tiles. Mr. Olstead took mold samples from the wallpaper and sheetrock in the hall and from the sheetrock in Ms. Ullah's bathroom where numerous pieces of tile were missing. Mr. Olstead also took mold air samples from the hallway and the bathroom.

According to Mr. Olstead, the lab tests showed extremely elevated levels of mold (spores) in the samples from the wallpaper and sheetrock in the hall and bathroom. Moreover, the air samples from the hallway and bathroom showed elevated levels when compared with air samples from outside the building.¹ Mr. Olstead opined that based on the lab results and his visual

¹Mr. Olstead testified New York City Department of Health guidelines indicate this is the comparison of air samples used to evaluate whether elevated levels are present in the subject space. According to Olstead's report, air sample taken from inside the 25th floor hallway had elevated levels of spores in the air of 400,000 fungal structures per cubic meter of air, while the outside air measured had very low levels of spores at 26 fungal

inspection mold was present to an extent which required remediation.

Mr. Olstead also testified that in his opinion the mold was not caused by water leaking from an upstairs apartment, as alleged by Ms. Ullah. He based this opinion on the pattern of mold growth in the hallway and the condition of the metal studs. Mr. Olstead explained that the likely source of the water which caused the mold was a chronic leak through bathroom tiles as the mold is evident from the floor to about five feet and diminishes as the height of the wall increases. In contrast, Mr. Olstead testified if the water leaked from the apartment above, mold would be expected to grow from the ceiling down. Moreover, Mr. Olstead based his opinion on the rusted condition of the metal studs which, in his opinion, suggested a chronic leak. According to Mr. Olstead, the size of the area requiring remediation is 40 square feet in the bathroom and 50 square feet in the hallway, and remediation of these areas under Department of Health guidelines, requires professional abatement.

The Condominium has the right under Article 6, Section 6.17-1 of the Bylaws to enter the unit to make necessary repairs provided the unit owner is given written notice as required by Article 6, Section 6.10 of the Bylaws. Here, the Condominium gave Ms. Ullah written notice that the mold needed to be remediated. While Section 6.10 the Bylaws provides a unit owner with five days from the date of the written notice to make repairs, here since Ms. Ullah received written notice of the need to remediate from the Board by letter dated November 7, 2011, the Board has complied.

I conclude that under its second cause of action for a permanent injunction seeking relief with respect to the mold condition, the Condominium has established that it is likely to succeed

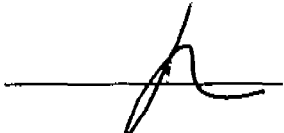
structures per cubic meter of air.

ORDERED that the undertaking is fixed in the sum of \$5,000² conditioned that the Condominium, if it is finally determined that it was not entitled to an injunction will pay to defendants all damages and costs which may be sustained by reason of this injunction; and it is further.

ORDERED that the preliminary injunction is granted to the extent that defendants Farrin B. Ullah, John Doe and Jane Doe, upon the posting of the undertaking and on 48 hours written notice, are enjoined and restrained to grant the Condominium and/or its agents access to apartment 25E/F ("the Unit") at 275 West 96th Street, New York, New York to make necessary repairs and to remediate an existing mold condition therein; and it is further

ORDERED that the temporary restraining order enjoining Ms. Ullah renting rooms in the Unit to any third party or otherwise shall continue pending further order of the court, except that . at this time, the temporary restraining order does not apply to Melissa Elie or Guillaume Caron.

DATED: February 22 2012


FILED

J.S.C.

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²The court is setting the undertaking at \$5,000 based Ms. Ullah's submission of estimates from two contractors for the mold remediation work in the subject bathroom, one for \$2,400 and the other for \$3,800. Thus, in the event it is later shown that the mold remediation work performed in Ms. Ullah's apartment was not necessary, the \$5,000 bond will enable the Condominium to pay to Ms. Ullah all damages and costs that may be sustained as a result of the injunction. See CPLR 6212.