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| <b>Goldstone v Gracie Terrace Apt. Corp.</b>                                                                                                                                                                                                                     |
| 2012 NY Slip Op 33221(U)                                                                                                                                                                                                                                         |
| September 27, 2012                                                                                                                                                                                                                                               |
| Sup Ct, New York County                                                                                                                                                                                                                                          |
| Docket Number: 604235/07                                                                                                                                                                                                                                         |
| Judge: Debra A. James                                                                                                                                                                                                                                            |
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: DEBRA A. JAMES**  
*Justice*

**PART 59**

MARO A. GOLDSTONE and THOMAS R. NEWMAN,  
  
Plaintiffs,

Index No.: 604235/07

Motion Date: 07/03/12

Motion Seq. No.: 13

- v -

GRACIE TERRACE APARTMENT CORPORATION,  
  
Defendant.

The following papers, numbered 1 to 3 were read on this order to show cause for a preliminary injunction.

**FILED**

Order to Show Cause -Affidavits -Exhibits

Answering Affidavits - Exhibits

Replying Affidavits - Exhibits

OCT 09 2012

**NEW YORK**

**COUNTY CLERK'S OFFICE**

|          |   |
|----------|---|
| No (s) . | 1 |
| No (s) . | 2 |
| No (s) . | 3 |

**Cross-Motion:**

☐ Yes

☒ No

Plaintiff Maro A. Goldstone (Goldstone) moves pursuant to CPLR §6301 for an order preliminarily enjoining defendant from performing any work in, at or to Penthouse B, One Gracie Terrace, New York, New York 10028 ("PH-B") that will or may result in decreasing the interior dimensions of the rooms, hallways and closets in PH-B and make them any smaller than they were on January 15, 1973, the date of the closing of the conversion of One Gracie Terrace to cooperative ownership and February 25, 1987, the date of Plaintiff's proprietary lease.

In their complaint, plaintiffs allege that defendant constructively evicted them from PH-B, breached plaintiff Goldstone's proprietary lease and warranty of habitability as a result of its negligence in causing the flooding of the PH-B when the water tank above the PH-B overflowed

1. CHECK ONE: ..... ☐ CASE DISPOSED

2. CHECK AS APPROPRIATE: MOTION IS: ☐ GRANTED

3. CHECK IF APPROPRIATE ... ☐ SETTLE ORDER

☒ NON-FINAL DISPOSITION

☒ DENIED ☐ GRANTED IN PART ☐

OTHER

☐ SUBMIT ORDER

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

in August 2003 and in failing to prosecute the repairs in a timely fashion. After years of protracted litigation in this lawsuit culminating in a summary determination of liability on plaintiffs' claim that defendant breached the proprietary lease in failing to make the repairs, defendant prepared a plan for repairs and prosecution of the work and hired a contractor, who is currently carrying out exterior repairs of One Gracie Terrace, and poised to begin the interior renovations of PH-B. Plaintiffs object to that portion of the plan that calls for the installation of insulation on the inside of PH-B's exterior walls, complaining that it will decrease the interior dimensions of all of the rooms of PH-B, making them significantly smaller than as originally constructed in 1951.

Defendant opposes the motion, arguing that plaintiffs have not made the appropriate showing for such provisional relief.

This court concurs with defendant.

The proprietary lease provides that

If the apartment or the means of access thereto or the building shall be damaged by fire or other cause...the Lessor shall at its own cost and expense...repair or replace or cause to be repaired or replaced, with materials of a kind and quality then customarily in the buildings or the type of the building, the apartment and the means of access thereto, including the walls, floors, ceiling, wiring and conduits in the apartment.

Plaintiffs do not allege that the defendant's plan calls for the use of anything other than materials of a kind and quality that are customarily, at the time of the repairs, in the buildings or the type of building like One Gracie Terrace. Therefore, plaintiffs have not demonstrated a likelihood of success on the merits of their claim that the defendant's plan for the installation of insulation breaches the terms of the proprietary lease. See 78<sup>th</sup> & Park Corp v Hochfelder, 262 AD2d 204 (1<sup>st</sup> Dept 1999). Nor have plaintiffs "cited any law that permits a unit owner to dictate the nature

of the repairs that the cooperative board undertakes.” See 510 East 84<sup>th</sup> Street v Genitrini, 2009 NY Slip Op 32082(U) (NY Co Sup Ct).

The injuries that plaintiffs may suffer from the *de minimis* diminution in the square footage of their home is compensable by a monetary award. Plaintiffs measure of damages would include some or all of the maintenance charges attributable to the space that is ultimately lost in the renovation. Dinicu v Groff Studios Corp, 257 AD2d 218, 223 (1<sup>st</sup> Dept 1999).

Finally, the balance of the equities weigh in defendant’s favor. Genitrini, ibid.

Accordingly, it is hereby

ORDERED that plaintiffs’ motion for a preliminary injunction is denied.

This is the decision and order of the court.

Dated: September 27, 2012

ENTER:

~~Debra A. James~~  
J.S.C.  
**DEBRA A. JAMES**  
**FILED**  
OCT 09 2012  
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