

Levey v Rutyna

2013 NY Slip Op 31828(U)

August 7, 2013

Supreme Court, New York County

Docket Number: 156344/2013

Judge: Debra A. James

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: DEBRA A. JAMES
Justice

PART 59

JOANNE LEVEY,

Index No.: 156344/2013

Plaintiff,

Motion Date: 08/06/13

- v -

Motion Seq. No.: 001

JACK RUTYNA, KRASSI RUTYNA, SPECTRUM
NY INC, WOJCIECH OKTAWIEC, RA and PATH
ARCHITECTURE, PC,
Defendants.

Motion Cal. No.: _____

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

PAPERS NUMBERED
<u>1</u>
<u>2</u>
<u>3</u>

Order to Show Cause -Affidavits -Exhibits _____

Answering Affidavits - Exhibits _____

Replying Affidavits - Exhibits _____

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

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that plaintiff's order to show cause for a preliminary injunction must be denied in all respects.

Plaintiff seeks provisionally to bar further construction activities by defendants. While plaintiff may be entitled ultimately to a permanent injunction against such activities (see Lesron Junior v Feinberg, 13 AD3d 90 [1st Dept 1961]), the court declines to grant such relief at this juncture (Residential Bd. Of Mgrs. of Columbia Condominium v Alden, 178 AD2d 121 [1st Dept 1991]). In addition, as the parties' dueling surveys and

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

affidavits "raise sharp issues of fact," the court shall exercise its discretion to deny preliminary relief (Residential Bd. of Mgrs., ibid, at 123).

Plaintiff does not claim that future construction activities under defendants' plan will result in additional encroachments on her building, so she has not established irreparable harm with respect to her trespass claim. Moreover, to the extent that plaintiff seeks to compel defendants to submit certain filings with the New York City Department of Buildings (DOB), she has not demonstrated the likelihood of success on the merits of any cognizable claim that would yield such a remedy, though certainly such filings may be the subject of discovery demands. The court notes that, in any event, compelling the production of such records or their filings is inconsequential to preserving the status quo, i.e. arresting any further harm to plaintiff, to wit, the alleged instability of her building arising from defendants' lowering of the ceiling height in the basement of their building or the removal of structural members of that building that defendants plan in the future.

The undersigned takes judicial notice sua sponte that plaintiff's recourse for preventing injury or property damage posed by any safety hazard upon defendants' resumption of work, which is only speculative at this time, is to enlist an immediate response from DOB's Building Enforcement Safety Team (B.E.S.T.)

unit. In fact, as set forth in the documents submitted by defendants, plaintiff has sought the intervention of DOB with respect to defendants' construction activities on many occasions over the last two months and DOB has determined each and every complaint to be unwarranted and unfounded. It is even more troubling that plaintiff offers no comment to the defendants' sworn assertions that plaintiff comes to the court with unclean hands because she and her husband are running an illegal dormitory for college students and a music studio in contravention of the applicable laws pertaining to the certificate of occupancy of their home and that her husband has committed vandalism against defendants' property.

Finally, with respect to plaintiffs claim that defendants' negligence in carrying out inaccurate plans will result in damage to her building's foundation and integrity, (which proposed plans defendants claim to have withdrawn), such injury is compensable by monetary damages.

Accordingly, it is hereby

ORDERED that the order to show cause of plaintiff for a preliminary injunction enjoining defendants from taking any action to perform any construction activities on 319 West 112th Street, New York, New York and to compel defendants to submit certain filings to the New York City Department of Buildings pertaining to any such construction is denied; and it is further

ORDERED that the defendants shall serve and file an answer to the complaint pursuant to the CPLR.

This is the decision and order of the court.

Dated: August 7, 2013

ENTER:

Debra A. James
J.S.C.

DEBRA A. JAMES