Board of Mgrs. of the S. Start v Grishanova
2013 NY Slip Op 33560(U)
February 7, 2013
Sup Ct, New York County
Docket Number: 159101/2012
Judge: Carol R. Edmead

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. CAROL EDMEAD Justice PART 35

The Board of Managers of the South Star

-v-

Sophie Grishanova

INDEX NO. 159101/2012
MOTION DATE 1/30/13
MOTION SEQ. NO. 002

The following papers, numbered 1 to ____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

In accordance with the accompanying Memorandum Decision, it is hereby

ORDERED that the motion by plaintiff pursuant to CPLR 5104 and Judiciary Law 756 for an order holding defendant Sophie Grishanova in contempt of court for willful violation of the temporary restraining order ("TRO") issued by this Court on December 21, 2012, imprisoning and fining defendant for such contempt, directing defendant to comply with the TRO, and directing defendant to pay counsel fees is granted as follows:

ORDERED and ADJUDGED that defendant Sophie Grishanova is guilty of contempt of court for failure to comply with the TRO issued by this Court on December 21, 2012 and Sophie Grishanova shall comply with such TRO, pay $250.00 per day from December 27, 2012 through January 9, 2013 (the date of the last Log Book entry), and appear for a hearing on the Preliminary Injunction on March 6, 2013, 10:00 a.m.; and it is further

ORDERED that defendant Sophie Grishanova has the opportunity to purge herself of the contempt by complying with TRO *and* tendering payment to plaintiff of the amount directed above within twenty (20) days of receipt of this order; and it is further

ORDERED that upon proof by affidavit of service of a certified copy of this order with notice of entry thereof upon defendant Sophie Grishanova, personally served and the failure of Sophie Grishanova to comply with such TRO, an application may be made *ex parte* for an order of commitment, directed to the Sheriff of the City of New York or to the Sheriff of any county

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

Dated: _____ _____ J.S.C.

1. CHECK ONE: ..... ☐ CASE DISPOSED ☐ NON-FINAL DISPOSITION

2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER

3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER

☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

within the State of New York to produce defendant Sophie Grishanova before the Justice presiding in IAS Part 35, New York County, or if the IAS Justice of Part 35 is unavailable, to the Justice presiding in Ex Parte Part, for a hearing pursuant to Section 772 et seq. of the Judiciary Law to determine whether she shall be committed to custody for contempt of court; and it is further

ORDERED that the issue of the amount of reasonable attorneys' fees and costs due to the plaintiff is hereby referred to Hon. Ira Gammerman to hear and determine; and it is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry on all parties and the Special Referee Clerk, Room 119M, within 30 days of entry to arrange a date for the above reference to a Special Referee (Hon. Ira Gammerman); and it is further

ORDERED that the motion for a Preliminary Injunction (001) is held in abeyance pending compliance with this order.

This constitutes the decision and order of the Court.

2/7/2013 ENTER: _____ J.S.C.

HON. CAROL EDMEAD

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 35

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THE BOARD OF MANAGERS OF THE SOUTH STAR,

Plaintiff,

-against-

SOPHIE GRISHANOVA,

Defendant.

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Index No.: 159101/2012

Motion Seq. # 002

HON. CAROL R. EDMEAD, J.S.C.

MEMORANDUM DECISION

In this action for a preliminary injunction, plaintiff, the Board of Managers (the "Board") of The South Star (the "Condominium"), moves pursuant to CPLR 5104 and Judiciary Law 756 for any order holding defendant Sophie Grishanova ("defendant") in contempt of court for willful violation of the temporary restraining order issued by this Court on December 21, 2012 (the "TRO"), imprisoning and fining defendant for such contempt, direct defendant to comply with the TRO, and directing defendant to pay counsel fees for at least $15,000 (plus counsel fees associated with appearing in Court on January 30, 2013 as directed by the Court).

Factual Background

According to plaintiff, defendant has owned Unit 11A in the Condominium located at 80 John Street, New York, New York since March 2011.

On or about December 21, 2012, plaintiff made an application, by order to show cause, for the TRO to enjoin defendant from, *inter alia*, renting out her Unit for less than 30 days and

permitting any visitor to stay in the Unit as long as she is not using the Unit as her residence.[1] In support of the application, plaintiff submitted, *inter alia*, the affidavit of the Board's president Patrick Kennell, dated December 18, 2012 (the "Kennell Affidavit"), a print-out of "Front Desk Instructions" concerning the Unit from January 2012 through December 17, 2012 (the "Front Desk Instructions"), copies of passports and state issued driver's licenses of eight individuals with the Unit number "11A" notation on each, emails between plaintiff and defendant concerning her alleged illegal use of the Unit, a tenant ledger showing the imposition of $1000 fines levied against the Unit based on defendant's violations of the "no-hotel apartment policy" (Exh. G, email page 2 of 3), and the Condominium By-laws.

The Kennell Affidavit indicated that in May 2012, one of defendant's short term guests approached the front desk in the Condominium lobby requesting "her deposit back." Kennell then went on "craigslist.org" and saw defendant's Unit advertised as a short term rental, along with photographs of her Unit which were later confirmed by the Condominium's maintenance staff as her Unit. Plaintiff maintained that the Multiple Dwelling Law and the Condominium By-laws prohibit transient occupancy of the Unit by even non-paying visitors as long as defendant is not using the Unit as her residence. Thus, argued plaintiff, even if defendant's numerous visitors were not paying customers, their occupancy still violated the By-laws and Multiple Dwelling Law because defendant had not been residing in her Unit. The two exceptions to the rule permitting occupancy for fewer than 30 consecutive days did not apply since

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[1] Along with filing the order to show cause, plaintiff filed the complaint seeking a preliminary injunction enjoining defendant, or any person or entity acting on her behalf or in concert with her, from: (a) letting, subletting, or renting out for less than 30 days unit 11A in the Condominium (the "Unit"); and (b) permitting any visitor to stay in the Unit, regardless of whether such visitor pays for his or her stay, as long as defendant is not using the Unit as her residence, in violation of the New York State Multiple Dwelling Law (the "Multiple Dwelling Law") and the Condominium by-laws (the "By-Laws").

defendant had not used the Unit as her residence for the last year. Further, (1) the occupants were not "living within the household" with her, and (2) she was not temporarily absent from the Unit and received "monetary compensation" for their occupancy. Thus, defendant had been and continued to operate a short term rooming house at the Condominium, renting out the Unit for days or weeks at a time to transients in violation of the By-laws and Multiple Dwelling Law.

Plaintiff also argued that the Condominium unit owners would suffer irreparable harm without the injunction. The unit owners were concerned about the risk to their families' safety and security posed by large numbers of strangers (none of whom had a background check) passing through the Unit and the Condominium's lobby and hallways on a routine basis. The New York state legislature even labeled the practice of furnishing short term rentals in a residential building as "fundamentally unsafe" and "dangerous" because of the increased risk of fire caused by the presence of transients in such buildings. Moreover, under New York law, the ongoing nuisance and interference with the unit owners' use and enjoyment of their property caused by defendant's illegal rooming house business was sufficient to establish the existence of irreparable harm.

Third, argued plaintiff, the balance of equities favored the Board. The Board only requested that defendant discontinue her illegal use of the Unit. And, there was no prejudice to defendant under these circumstances, in light of her failure to pay fines, common charges and assessments on the Unit while at the same time apparently profiting from her unlawful endeavor.[2]

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[2] In defendant's affirmation in opposition to the initial, preliminary injunction motion (dated January 1, 2013, and served on January 13, 2013), defendant argues that plaintiff has no likelihood of success on the merits of their Complaint and the equities are in favor of the defendant. Defendant pointed out a review of the Front Desk Instructions for Unit 11A showed only four entries for persons permitted to Unit 11A for the past two months. (Exhibit B), consisting of (1) Konstantin Zaliznyak, a real estate broker assisting in finding a buyer for the Unit, and who does not reside at the Unit; (2) Harrison Karp, defendant's fiancée; (3) Katya Zakharova (defendant's relative)

On December 21, 2013, after an in-court conference with counsel for both parties, the Court issued the TRO. The TRO "restrained" defendant from "(a) letting, subletting, or renting out for less than thirty days unit 11A (the 'Unit') in The South Star (the 'Condominium') . . . and (b) permitting any visitor to stay in the Unit for more than five (5) consecutive days, regardless of whether such visitor pays for his or her stay, as long as Grishanova is not using the Unit as her residence" pending the hearing of the preliminary injunction. Counsel for defendant, Peter Mammis ("Mammis") "accepted service of process [of the signed Order to Show Cause] before the Court" (page 2), and the matter was adjourned to January 29, 2013, 11:30 a.m. for a hearing on the preliminary injunction.

Three weeks later on January 11, 2013, and before the date of the hearing, plaintiff filed the instant application for order to show cause holding defendant in contempt of court for violating the TRO. After the TRO was issued, plaintiff implemented certain protocols to monitor and record the activity of defendant and any of her guests or tenants through the Building's concierge desk and outside of defendant's Unit. To access a unit in the Building, one must pass in front of the Building's concierge, where a member of the concierge staff is always stationed. The concierge staff members recorded each instance that defendant and her visitors or tenants

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footnote 2 cont'd.

and Pavel Nevmerzhitsky (the relative's significant other), both of which "reside" in the Unit; and (4) Peter Opie, the roommate of defendant's relative and of the relative's significant other at the Unit. Plaintiff submitted a Residential Unit Deed, dated December 22, 2012, purporting to transfer the Unit from defendant to herself and Ekaterina Zakharova so as to show that her relative, Zakharova, is currently part owner of the Unit. Thus, except for the real estate broker, these individuals reside in the Unit. Defendant claims that the By-Laws (§ 6.14.1) state that "[a] residential unit may be occupied by the individual Unit Owner or members of such Unit Owner's family, guests or domestic employees."

Defendant also argued that plaintiff did not cite any instance of any disturbance, let alone "ongoing and imminent threat," resulting from any occupant of Unit 11A. Further, the fines allegedly imposed by the Board were conceived to harass the defendant.

entered and exited the Building.

Plaintiff maintains that defendant never stayed overnight at the Building, that the occupants did not vacate the Unit after the TRO was issued and that defendant did not use the Unit as her residence while they continued to stay at her Unit. The log book of pages from December 22, 2012 through January 9, 2013 (Exh. 2), shows that defendant was at the Building only six times, for a total of only three hours and 17 minutes, and thus, did not reside in the Unit while the TRO was in effect. The log book entries also show that the occupants resided in her Unit for a total of 13 consecutive days, proving that they resided overnight in the Unit. Plaintiff also submitted video footage (and more than 80 screen shots) of the various occupants entering and exiting the Unit after the TRO was issued, and showing defendant knocking on the door to her own Unit to gain entry on two separate occasions. Also, affidavits of eye witnesses, consisting of staff members of the Building's concierge and the Board's vice-president, indicate that the affiants saw individuals entering into defendant's Unit after the TRO was issued.

Plaintiff argues that the mere act of defendant's disobedience is sufficient to find her in contempt under Judiciary Law 753(A), as defendant had knowledge of the TRO, and the rights of plaintiff have been impeded, impaired, defeated and prejudiced by defendant's disobedience. The Condominium is not a hotel, and thus, not expected to comply with fire and safety codes for transient use. Plaintiff also contends that defendant did not serve the Board with any notice of her intent to lease the Unit for a period of more than 30 days, and has not complied with any of the other requirements of Article 8 governing leases of the units of the Condominium. If defendant is accepting rent, she is either violating the TRO, or the By-laws, which gives the Board the right to proceed with summary eviction proceedings against defendant. Therefore,

plaintiff requests that the Court imprison defendant, and fine her pursuant to Judiciary Law 773 at $250 per day until she complies with the TRO. Further, pursuant to Judiciary Law 773, defendant is liable to plaintiff for the costs of plaintiff's instant application. Plaintiff's counsel spent 30 hours preparing and filing this application, and an additional 15 hours, in reviewing and/or preparing additional papers and appearing in Court on this application, at the hourly rates of $295, $350, and $415 per hour for two attorneys and one supervising attorney who worked on this motion.

The Court signed the order to show cause on January 14, 2013, directing defendant to appear in Court on January 29, 2013 at 11:00 a.m. for a hearing on the motion for contempt. The Court also directed opposition papers to be filed by January 28, 2013.

Defendant opposes the instant contempt motion,[3] arguing that plaintiff wasted the Condominium's limited resources and installed cameras solely on the floor where the defendant's Unit is located in its attempts to spy on the defendant; yet plaintiff does not authenticate the video footage. The dvd video, which plaintiff annexes to its motion, is not properly authenticated and, therefore, inadmissible. And, the events allegedly depicted on the video are also inadmissible as they are nothing more than a description of events on an unauthenticated exhibit.

Even if the video were properly authenticated, the people to which plaintiff refers as the "Illegal Occupants" are actually Katya Zakharova and her significant other Pavel Nevmerzhitsky and perhaps their friend, Peter Opie. Ms. Zakharova is not the defendant's lessee and is not her

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[3] Defendant's opposition to the contempt motion, though dated January 23, 2013, was e-filed on January 30, 2013.

visitor, but a co-owner of the Unit pursuant to the recorded Deed to the Unit. The only other person who may have been at the Unit is a broker which the defendant retained to help sell the Unit. Thus, defendant did not violate the Order.

Plaintiff also erroneously concludes that defendant is not residing at the Unit. While the term "residence" is not legally defined, *indicia* of the more narrow term "primary residence" include "(1) the tenant's use or nonuse of the apartment address on a tax return, motor vehicle registration, driver's license, or other publicly filed document, (2) the tenant's use or nonuse of the apartment's address as a voting address, (3) whether the tenant has lived in the apartment for fewer than 183 days in a calendar year, and (4) whether the tenant has subleased the apartment." Defendant attests that she maintains the Unit as her residence as has done so since the issuance of the TRO (citing Rent Stabilization Code (9 N.Y.C.R.R.) § 2520.6(u)).

Defendant did not let the Unit nor did she have any visitor at the Unit for more than five (5) consecutive days since the issuance of the TRO.

Moreover, plaintiff has not established that the defendant had knowledge of the TRO. Defendant attests that she had "no knowledge of the subject Order [and] did not see it until somebody delivered a copy of this motion to my office" (on, according to her counsel, January 16, 2013). Also, while plaintiff served defendant's counsel with pleadings at the December 21, 2012 hearing, it did not serve your defendant's counsel with the instant motion.

And, there are no allegations or proof of how plaintiff's rights were in any way prejudiced.

Perhaps a significant portion of the 30 alleged hours plaintiff's counsel spent preparing and filing this motion drafting the five duplicate affidavits of the aforesaid concierge staff.

Defendant's counsel took less than four hours to draft these opposition papers. If the Court intends to issue sanctions, it should be as against either plaintiff or plaintiff's counsel for its lies.

In reply,[4] plaintiff argues that defendant's deceitful attempt to circumvent the TRO by purporting to sell the Unit to one of the unauthorized occupants and back to her self, jointly, is an end-run, and violates the By-laws right of first refusal under Section 8.1 thereof. And, any sale or lease of a Unit is deemed voidable at the Board's election. The Real Property Transfer Report states that it was a "sale" between "Relatives or Former Relatives," and defendant failed to give the Board notice of the offer to purchase the Unit before consummating the sale. The Board issued a resolution on January 16, 2013 voiding the sale, and thus, defendant has not purged her contempt of the TRO.

Defendant's counsel's acceptance of service of the Order to Show Cause with TRO in Court imputes knowledge of same on his client, defendant here, and thus, she cannot deny knowledge of the TRO even if her counsel purposely did not provide her with a copy of the Order to Show Cause. Defendant's counsel drafted and notarized the signatures on the deed the day after the TRO was issued. Under the circumstances, it is improbable that counsel did not notify defendant of the TRO.

On January 29, 2013, counsel for both parties appeared in Court in the morning for argument on the contempt motion. Defense counsel insisted that the transfer of the Unit was a "gift" to defendant's *relative*, and that in such case, defendant was not in violation of the TRO.

Thus, the Court directed defense counsel to provide supporting documentation, such as birth certificates, showing that the person to whom the Unit was transferred was in fact a relative

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[4] The Reply papers were filed on January 30, 2013.

(Transcript, pp. 9-10), as well the defendant, herself and her "relative" in Court later that same day at 3:00 p.m. for testimony on this issue.

However, since plaintiff's counsel claimed he had jury selection in Kings County later that same day, the Court directed the parties to appear the following day at 10:00 a.m., with a Russian interpreter, translated documents showing the relation, the Real Property Transfer document showing that the transfer was a "gift," and their passports (Transcript, pp. 11-13). Finally, the Court directed that if defendant's counsel is "on trial because you select, I will need the Judge in the part so I can confirm . . ." and directed defendant's counsel to provide "a copy of their passports, and a copy of the translated birth certificates. (Transcript, p. 15). Counsel was to "let us know by, at the close of business today" whether he was to begin trial the following day.

The Court did not receive any email from defendant's counsel by the close of business January 29, 2013.

However, on January 30, 2013, at 9:34 a.m., the Court received a forwarded email (dated January 29, 2013) with attachments from plaintiff's counsel, in which defense counsel requested an adjournment of the January 30th 10:00 a.m hearing because he had "a jury trial in Kings County," and needed to obtain the translated documents.

In response, on January 30th, the Court advised defense counsel that unless he provided the name of the Judge and the court for the matter in which he was actually engaged, this Court would hold the hearing "that afternoon" and hold defendant in contempt "for non appearance." Defense counsel replied with the names of the cases for which he was scheduled to appear on January 30th, *to wit*: an order to show cause/jury selection (the "Hepburn matter"), order to show cause on Dellis v Moundrakis in "l.i.c. supreme," and a settlement/trial on Pelligrino v Wood in

Queens, Civil, but failed to provide the names of the Judges, as instructed (Court Exh. III, Email, 10:26 a.m.).

The Court again advised defense counsel to provide the name of the Judges, and that unless he was on trial, the Court did not consider him to be actually engaged.

Fifteen minutes later, plaintiff's counsel provided the Court with a print-out from e-courts, showing that the Hepburn matter defendant's counsel claimed was scheduled for jury selection was in fact scheduled for *the following day* (January 31st). (Emails, dated January 29-January 30, 2013).

Accordingly, the Court advised all parties to appear with witnesses in Part 35 at 2:30 p.m. and that defendant would be held in contempt if counsel or defendant did not appear.

At 2:30 p.m., the Court proceeded with the hearing on the contempt motion. Plaintiff's counsel appeared, with the Board's President, and William Ritter ("Ritter") appeared on behalf of the defendant (at Mr. Mammis' request) to obtain an adjournment of the hearing. Ritter advised that Mr. Mammis was "in Kings County picking a jury" (Transcript, p. 2), but again, the name of the Judge was not provided. Defendant, herself, did not appear, as instructed, and there was no reason proffered to the Court for defendant's nonappearance. The Court then noted the above email exchanges and the fact that Mr. Mammis was advised, but failed to provide the Court with proper notice of his actual engagement, including, names of the Judge who was presiding over the alleged matters, and the date and time of probable conclusion of the matters (Transcript, p. 3). In light of defendant's counsel failure to ever provide the names of the Judges for the matters on which he was allegedly engaged, and the e-court print out showing that the Hepburn matter was *not* scheduled for trial on January 30th, the Court found defendant in contempt of court.

Discussion

Contempt: CPLR 5104 & Judiciary Law 756

CPLR 5104, entitled "Enforcement of judgment or order by contempt," provides:

> Any . . . order, or any part thereof, not enforceable under either article fifty-two or section 5102 may be enforced by serving a certified copy of the judgment or order upon the party or other person required thereby or by law to obey it and, if he refuses or wilfully neglects to obey it, by punishing him for a contempt of the court.

Judiciary Law 753, governing the Court's power to punish for civil contempts, provides:

> A. A court of record has power to punish, by fine and imprisonment, or either, a neglect or violation of duty, or other misconduct, by which a right or remedy of a party to a civil action or special proceeding, pending in the court may be defeated, impaired, impeded, or prejudiced, in any of the following cases:
>
> 3. A party to the action . . . for any other disobedience to a lawful mandate of the court.[5]

A TRO "is enforceable through civil contempt proceedings" pursuant to CPLR 5104 (*Zodkevitch v Feibush*, 7 Misc 3d 1106(A), 851 NYS2d 62 (Table) [Supreme Court, New York County, 2007] *citing* CPLR 5104; NY Jud. L. Section 753(A)(3)").

"In order to find that contempt has occurred in a given case, it must be determined that a lawful order of the court, clearly expressing an unequivocal mandate was in effect." (*McCormick v Axelrod,* 59 NY2d 574, 583 [1983]). In this regard, for a defendant to be found in violation of the TRO, the following circumstances must exist:

> a decree granting injunctive relief, whether temporary or permanent, 'must define

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[5] Judiciary Law 756, also cited by plaintiff, contains notice and warning provisions concerning an application to hold a party in contempt of court, and defendant does not challenge the adequacy as to the form of the motion for contempt.

> specifically what the enjoined person must or must not do, in language so clear and explicit that a layman can understand what he is expected to do, or refrain from doing, without placing the one enjoined in the position of acting at his peril. Stated otherwise, an injunction should plainly indicate to the defendant specifically all the acts which he is thereby restrained from doing without calling upon him for inferences, or any conclusions only to be arrived at by a more or less uncertain process of reasoning, and about which the parties might well differ in opinion either as to facts or law.'"
> (*Xerox Corp. v Neises*, 31 AD2d 195, 295 NYS2d 717 [1st Dept 1968]).

It must also appear with reasonable certainty, that the order has been disobeyed, and that the party to be held in contempt must have had knowledge of the court's order...." (McCormick v Axelrod, 59 NY2d 574, 583 [1983] [citations omitted]; *Gryphon Domestic VI, LLC v APP Intern. Finance Co.*, 58 AD3d 498, 871 NYS2d 115 [1st Dept 2009]). "The mere act [of disobedience], regardless of motive, is sufficient to sustain a finding of civil contempt if such disobedience defeats, impairs, impedes or prejudices the rights of a party." (*Commissioner of Labor v Hinman*, 103 AD2d 886, 887 [3d Dept 1984]).

Here, the elements are sufficiently satisfied.

At the outset, inasmuch as Counsel for defendant expressly accepted service of the TRO on behalf of defendant, this Court finds that defendant is deemed properly served of the TRO for purposes of CPLR 5104. CPLR 2103 (b) provides that "Except where otherwise prescribed by law *or order of court*, papers to be served upon a party in a pending action shall be served upon the party's attorney (emphasis added); *Raes Pharmacy, Inc. v Perales*, 181 AD2d 58, 586 NYS2d 579 [1st Dept 1992] ("The term 'papers' [under CPLR 2103(b)] includes notices, pleadings, orders and judgments (3Carmody–Wait 2d, NY Prac § 20:8)). In the Order to Show Cause, dated December 21, 2012, which contains the TRO, the pre-printed paragraph calling for personal service is cross-out, and superceded by the notation that "Counsel for defendant has accepted

service of process before the Court." Thus, defendant cannot be heard to complain of lack of knowledge, or service, of the TRO in light of her counsel's acceptance of service of same. Moreover, defendant does not deny knowledge of the *terms* of the TRO, and counsel appearing in Court to request the adjournment on her behalf did not assert that she had no knowledge of the *terms* of the TRO. Indeed, defendant's counsel of record prepared defendant's deed of transfer of her Unit one day after the TRO was issued, so as to support defendant's claim that the occupants therein were part owners of the Unit. Such documentation supports the conclusion that defendant was aware of the terms of the TRO, as early as the day following its issuance (*i.e.*, December 22, 2013), and counsel's contention that "Defendant actually never *saw the Order* until a copy of the instant motion was delivered to her office on January 16, 2013" is inconsequential under the circumstances (emphasis added) (*see Rosado v Edmundo Castillo Inc.*, 54 AD3d 278, 865 NYS2d 12 [1st Dept 2008] (stating that even if defendants "were not served with the TRO until the later date, the record indicates they had knowledge of the terms of the TRO, and thus were not entitled to avoid its effects by failing to appear at the October 4 hearing or inquire further about the proceeding")).

The TRO clearly and unambiguously precluded defendant from renting out her Unit for less than 30 days, and precluded her from allowing *any* visitor to stay in her Unit for more than five consecutive days, regardless of whether such visitor pays for his or her stay, as long as defendant is not using the Unit as her residence.

The video taped footage and screen shots (supplemented by the affidavits) submitted in support of the contempt motion amply support the position that defendant is not using the Unit as her residence, and that visitors were permitted to stay in her Unit for more than five consecutive

days. As one example, the Log Book entries show defendant absent from the Building from January 2, 2013, approximately 4:00 p.m, on until six days later on January 8, 2013, approximately 6:00 p.m., during which period, male and female occupants stayed in her Unit overnight three times. It is also noted that defendant (and her boyfriend) were not at the Building between December 27 and January 1, 2013 (6 days), except for a few minutes and at the most, 15 minutes; on one occasion she did not go upstairs to the Unit and on another occasion her boyfriend checked the mail. It appears from the video footage on December 29, 2012, approximately 1:44 p.m, that one of the occupants is going out in the hallway, in a bathrobe, walking in the direction of the trash compactor, and returning to the unit. The video footage also shows defendant, on December 30th (appx. 1:25 p.m.)[6] knocking on her own door or ringing the bell, and being let into her own Unit by the occupants therein. While defendant is seen (per the Log Book) in the Building on January 2, 2013 for a few hours, she is not seen from January 3 through January 9 (the date of the last Log Book entry), except for eight minutes to "check the mail only-never went up."

Any claim that defendant did not violate the TRO is insufficiently supported by the record. Defendant failed to appear on January 30th, as directed, and her counsel's failure to appear is inexcusable. It "is important to adhere to the position . . . declared a decade ago that if the credibility of court orders and the integrity of our judicial system are to be maintained, a litigant cannot ignore court orders with impunity" (*Henderson-Jones v City of New York*, 87 AD3d 498, 928 NYS2d 536 [1st Dept 2011] *citing Gibbs v St. Barnabas Hosp.*, 16 NY3d 74, 81, 917 NYS2d 68, 942 NE2d 277 [2010] [internal quotation marks, alteration, and citations omitted]).

[6] See screenshots 31-52.

Section 125.1(b) of the Rules of the Chief Administrator of the Courts states: "[e]ngagement of counsel shall mean actual engagement on trial or in argument before any state or federal trial or appellate court, or in a proceeding conducted pursuant to rule 3405 of the CPLR and the rules promulgated thereunder." Of particular importance herein, subsection (c) provides that "where an attorney has conflicting engagements in the same court or different courts, *the affected courts shall determine* in which matters adjournments shall be granted and in which matters the parties shall proceed." (Emphasis added). By failing to provide this Court with the name of the Judges before whom defense counsel was to appear, defense counsel deprived this Court of the ability to determine, with the other Judges, which matters would take precedents and which were to be adjourned. Not only did defense counsel fail to provide the Court with the names of the Judges, documentation was presented to the Court showing that contrary to Mr. Mammis' contention, the Hepburn matter was *not* being tried on January 30th. Moreover, Mr. Ritter provided no reason to the Court as to why defendant, herself, did not appear in Court on January 30th; otherwise, "there would be no contempt because we [the Court] would have started" the hearing (Transcript, p. 5).

Additionally, any purported attempt to show that defendant's visitors have an ownership interest in the property is undermined by the fact that (1) the Real Property Transfer form shows defendant's purported transfer of the Unit as a "sale" and (2) the Board has a right of first refusal, under the Condominium By-laws, which defendant allegedly violated by transferring her Unit to another party without first offering it to the Condominium.[7] Defendant failed to present

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[7] Article 8.1.1 of the By-laws provide that the Unit Owner "who receives a bona fide offer to (a) purchase such Unit's Owner's Residential Unit . . . , which the Offeree Unit Owner intends to accept, shall give notice . . . to the Residential Board of the receipt of such Outside Offer . . . [which] shall constitute an offer . . . to sell such Unit

sufficient evidence that she is exempt from the By-laws in this regard, or that the transfer constituted a "gift."

Further, plaintiff established that defendant's disobedience defeated, impaired, impeded or prejudiced plaintiff's rights. The By-laws clearly prohibit Unit owners from "transient" occupancy of the Unit (see Section 6.14.2), and permit occupancy of the Unit by the Unit's owner or members of such Unit Owner's family, guests or domestic employees, "In order to provide for congenial occupancy of the Property and for the protection of values of the Units." Defendant's current use of the Unit clearly frustrates the stated purpose of this Condominium community and poses a potential threat to the safety to its occupants. By failing to appear at the hearing on January 30th, plaintiff (and the Court) were unable to explore the purported merits of defendant's claims, which, are in any event, belied by the record thus far.

Therefore, in light of the above, the Court finds defendant in contempt of court for violating this Court's TRO.

Attorneys' Fees

Pursuant to Judiciary Law 773, . Amount of fine

> If an actual loss or injury has been caused to a party to an action or special proceeding, by reason of the misconduct proved against the offender, and the case is not one where it is specially prescribed by law, that an action may be maintained to recover damages for the loss or injury, a fine, sufficient to indemnify the aggrieved party, must be imposed upon the offender, and collected, and paid over to the aggrieved party, under the direction of the court. The payment and acceptance of such a fine constitute a bar to an action by the aggrieved party, to recover damages for the loss or injury.

Thus, upon a finding that defendant is guilty of contempt of court, legal fees incurred as a result of defendant's contemptuous conduct are recoverable by plaintiff pursuant to Judiciary

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Owner's Residential Unit to the Residential Board . . . ."

Law § 773 (*Blutreich v Amalgamated Dwellings*, 7 AD3d 269, 775 NYS2d 530 [1st Dept 2004]). Therefore, the Court directs a hearing with testimony concerning costs and expenses incurred by plaintiff in preparing and litigating the instant motion for contempt (*see Ahmad v Naviwala*, 14 AD3d 819, 788 NYS2d 254 [3d Dept 2005]).

Conclusion

Based on the foregoing, it is hereby

ORDERED that the motion by plaintiff pursuant to CPLR 5104 and Judiciary Law 756 for an order holding defendant Sophie Grishanova in contempt of court for willful violation of the temporary restraining order ("TRO") issued by this Court on December 21, 2012, imprisoning and fining defendant for such contempt, directing defendant to comply with the TRO, and directing defendant to pay counsel fees is granted as follows:

ORDERED and ADJUDGED that defendant Sophie Grishanova is guilty of contempt of court for failure to comply with the TRO issued by this Court on December 21, 2012 and Sophie Grishanova shall comply with such TRO, pay $250.00 per day from December 27, 2012 through January 9, 2013 (the date of the last Log Book entry), and appear for a hearing on the Preliminary Injunction on March 6, 2013, 10:00 a.m.; and it is further

ORDERED that defendant Sophie Grishanova has the opportunity to purge herself of the contempt by complying with TRO *and* tendering payment to plaintiff of the amount directed above within twenty (20) days of receipt of this order; and it is further

ORDERED that upon proof by affidavit of service of a certified copy of this order with notice of entry thereof upon defendant Sophie Grishanova, personally served and the failure of Sophie Grishanova to comply with such TRO, an application may be made *ex parte* for an order

of commitment, directed to the Sheriff of the City of New York or to the Sheriff of any county within the State of New York to produce defendant Sophie Grishanova before the Justice presiding in IAS Part 35, New York County, or if the IAS Justice of Part 35 is unavailable, to the Justice presiding in Ex Parte Part, for a hearing pursuant to Section 772 et seq. of the Judiciary Law to determine whether she shall be committed to custody for contempt of court; and it is further

ORDERED that the issue of the amount of reasonable attorneys' fees and costs due to the plaintiff is hereby referred to Hon. Ira Gammerman to hear and determine; and it is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry on all parties and the Special Referee Clerk, Room 119M, within 30 days of entry to arrange a date for the above reference to a Special Referee (Hon. Ira Gammerman); and it is further

ORDERED that the motion for a Preliminary Injunction (001) is held in abeyance pending compliance with this order.

This constitutes the decision and order of the Court.

Dated: February 7, 2013

Hon. Carol Robinson Edmead, J.S.C.

HON. CAROL EDMEAD