

<b>Kaplan v Park S. Tenants Corp.</b>
2014 NY Slip Op 30708(U)
March 18, 2014
Supreme Court, New York County
Docket Number: 157669/13
Judge: Arthur F. Engoron
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 37

-----x  
MICHAEL KAPLAN, et al.,

Plaintiffs,

- against -

PARK SOUTH TENANTS CORP., et al.,

Defendants.  
-----x

Index Number: 157669/13

Sequence Number: 004

Decision and Order

Arthur F. Engoron, Justice

In compliance with CPLR 2219(a), this Court states that the following papers, numbered 1 through 4, were used on this motion for a preliminary injunction:

Papers Numbered:

Moving Papers (collectively) .....	1
Opposition Affidavit of Reed Rubcy .....	2
Opposition Affidavits of Eliseo, Scorrano, Lipman & Santelli .....	3
Opposition Affidavits of Barry Kohn .....	4

Upon the foregoing papers, the motion is granted to the extent set forth below.

Prequel

Not for the first time, a case on the Court’s docket evokes childhood. It’s early 1960, and five young boys form the Clarabell Club, named after the “Howdy Doody Show” clown. The club’s *raison d’etre* is to collect dues in order to fund bowling and pizza parties. Nationwide, the quadrennial political primaries are underway, object lessons in democracy and “majority rule.” The boys elect club officers and set the weekly dues at 25 cents. One boy asks, “So, whatever the majority says, goes? So, like, if the majority says that I have to walk down the block naked, I have to?” The club president answers, “No, you don’t have to walk down the block naked, but if you don’t, you’ll have to quit the club.”

The instant litigation raises the same basic issues: What are the limits of majority rule? What recourse does a minority have?

Basic Background and Contentions

This action pits the proprietary lessees of an apartment against the co-operative corporation that owns the subject building, which is run by a Board of Directors (“the Board”), and four of its directors (plaintiff Michael Kaplan being the fifth). Plaintiffs seek to compel defendants to allow

plaintiffs to do the following: (1) install an "exterior" air conditioning ("A/C") system, including placing three condenser units on the (arguably) private terrace adjoining plaintiffs' apartment and creating a two inch (diameter?) hole in an exterior wall to connect it to the interior components; and (2) relocate a telecommunications conduit from the center of plaintiffs' bathroom to the wall thereof.

The subject proprietary lease(s) (Moving Exh. A), ¶ 21(a), provides, simply put, that any alterations, including the ones here at issue (which involve a "terrace"; "air conditioning"; "electrical conduits"; "wiring"; "intercommunication or alarm system"), may not be made without the Board's "prior written consent," said consent not to be "unreasonably withheld." Plaintiffs essentially argue that the Board is violating that provision by unreasonably withholding consent to the aforesaid work. Defendants essentially argue that the work would violate the House Rules and be "contrary to longstanding board policy," and is "based on a reluctance to set a precedent for similar applications."

On or about January 30, 2014, plaintiffs requested that defendants consent to the aforesaid work. Moving Exh. B. Accompanying the request were "detailed specifications [and] mechanical plans." By letter dated February 3 (Moving Exh. C) defendants' architect, Reed Rubey, responded that the proposal "did not comply with Building requirements in that it called for piercing the external walls of the Building to accommodate wiring and refrigerant piping to service condensers not housed within the apartment but externally on the outdoor terrace/roof of the Building."

Michael Kaplan states (Moving Aff ¶ 4) that the A/C system "require[s] only one two-inch hole, and the exterior wall adjacent to our private terrace already contains many similar 'piercings.'" Plaintiff's A/C expert (see Moving Exh. D, ¶ 1), Frank Cocco, states (*id.*, at ¶¶ 6, 8) as follows:

6. The three condensers that Plaintiffs now seek to install on their private terrace are small, lightweight, state-of-the-art Daikin condenser units [that] are some of the most energy-efficient condensers on the market, and they make virtually no sound at all, as they are equipped with internal vibration isolation pads that eliminate any vibration or sound . . . . The condensers will not be visible to, or otherwise adversely affect, any other resident of the Building.

\* \* \*

8. Due to their very small size and light weight, the units pose no threat whatsoever to the structural integrity of the terrace on which they would sit. In fact, there are already several, much larger building exhaust and air handling systems, and a huge mechanical room [see Moving Exh. F], that already sit on Plaintiffs' private terrace.

[\*3]  
Mr. Cocco also states, in some detail, that the apartment requires "approximately 12 tons of cooling capacity," and that due to limitations in space-with-outside-access in the apartment and the limitations of the building's electrical system, an interior system could at most generate 8 tons of cooling capacity. Defendants dispute that the electrical system would be insufficient.

According to plaintiffs, and not significantly disputed by defendants, an exterior A/C system has various advantages (most of which you do not need to be an HVAC expert or a mechanical engineer to appreciate) to the plaintiffs and/or to the defendants, over an interior system (which defendant is willing to approve): they are easier to maintain; they do not take up otherwise-usable interior space; they are more powerful; they pose no threat of interior noise, vibration, or leaks; and there is no (or less) heat loss in winter. Furthermore, "the Board has already permitted a *different* resident from the floor below [plaintiffs] to place her own condenser unit on our private terrace [see Moving Exh. G]."

The terrace is, indeed, "private," or, at the very least "semi-private," as Lease ¶ 7 provides, in part, as follows:

If the apartment includes a terrace ... the Lessee shall have and enjoy the exclusive use of the terrace ..., subject to the applicable provisions of the Lease and to the use of the terrace ... by the Lessor to the extent herein permitted. The Lessee's use thereof shall be subject to such regulations as may, from time to time, be prescribed by the Directors."

Defendants do not claim that any other tenant uses or has access to the 22<sup>nd</sup> floor terrace at issue. Michael Kaplan states (Moving Aff ¶ 9) that defendants are "apparently motivated by personal animus towards me." Defendants deny this. Kohn Aff. ¶¶ 26-30. There does not appear to be any objective evidence of animus.

Plaintiffs have submitted (Moving Exh. H) the affidavit of the owner of an "engineering consulting firm" who states (¶ 2) that "the air conditioning system that currently exists does not adequately cool the unit, due in part to three factors that are unique to the unit." He states (1) (¶ 3) that "the Building's heating and hot water pipes run directly below plaintiff's floor and emit radiant heat"; (2) (¶ 4) that "most of the air intake vents in the unit have been sealed by [defendant]"; and (3) (¶ 5) that because the apartment is so large, "an average air conditioning system will be inadequate." Defendants claim that they are not to blame for the sealing of the vents, but they do not dispute that they are sealed.

Plaintiffs argue that any claim by defendant that granting plaintiffs permission would invite "hundreds of shareholders to seek to do the same" is merely pretextual, inasmuch as there are only two terraces on the building.

Michael Kaplan states (Moving Aff ¶ 33) that he is "a 73[-]year-old man who suffers from certain cardiovascular conditions ... that require me to reside in an adequately cooled residence."

He attaches a doctor's note to this effect, which also mentions Mr. Kaplan's diabetes and "Parkinsonism." (The Court notes in passing the Mr. Kaplan has appeared in court on this case on more than one occasion, and the doctor's description appears, to a layperson's eyes, apt). Defendants point out that the doctor's note is not sworn to or otherwise admissible.

Plaintiffs have offered (Moving Aff ¶ 39) to have the same contractor that installed the telecommunications conduit, or the same contractor that defendant uses to service it, to relocate it over to the bathroom wall. They "have also offered to assume all risk and cover all costs in the unlikely event that the relocation process – which is expected to take no more than an hour – causes any harm to the building's telecom system."

#### The Instant Motion

Plaintiffs now move, pursuant to CPLR Article 63, to enjoin defendants from "taking any action to prevent Plaintiffs from installing three Daikin air conditioning condenser units on the private terrace that adjoins Plaintiffs' apartment [and] taking any action to prevent Plaintiffs from relocating a telecom riser that runs through the center of Plaintiffs' bathroom ... to the wall of the bathroom."

#### Discussion

##### Standard for Preliminary Injunction

The New York standard for granting a preliminary injunction is well established: a movant must show (1) the likelihood of success on the merits; (2) irreparable injury absent the granting of a preliminary injunction; and (3) a balancing of the equities that favors the movant's position.

Aetna Ins. Co. v Capasso, 75 NY2d 860, 862 (1990); W.T. Grant Co. v Srogi, 52 NY2d 496, 517 (1981).

##### Likelihood of Success On the Merits

In this Court's view, plaintiffs are likely to prevail on their claim that defendants have failed to fulfill their obligation, set forth in Proprietary Lease ¶ 21(a), not unreasonably to withhold consent to plaintiffs' proposed plans. Indeed, defendants have even failed to fulfill their obligation to consider the plans.

In the leading case of Levandusky v One Fifth Ave., 75 NY2d 530 (1990) (Kaye, J.), the Court of Appeals held that the "business judgment rule," "[d]eveloped in the context of commercial enterprises," which prohibits "judicial inquiry into actions of corporate directors 'taken in good faith and in the exercise of honest judgment in the lawful and legitimate furtherance of corporate purposes,'" applies as well to cooperative apartment corporations. Id. at 537-538 (citations omitted). Plaintiffs have not attempted to show that the House Rules were adopted other than pursuant to defendants' "business judgment."

However, here, the proprietary lease trumps the business judgment rule.

[\* 5]

In view of the language in ¶ 21(a) of the proprietary lease, plainly indicating that consent to plaintiffs' requests to build additions on the roof areas to which they held exclusive rights could not be unreasonably withheld, the IAS court properly held that preconditions imposed by defendant cooperative corporation's board upon the grant of plaintiffs' requests had to be reasonable and, accordingly, were not sheltered from review by the business judgment rule.

Rosenthal v One Hudson Park, Inc., 269 AD2d 144, 144 (1<sup>st</sup> Dept 2000) (citations omitted) (emphasis added); accord, Seven Park Ave. Corp. v Green, 277 AD2d 123 (1<sup>st</sup> Dept 2000). The First Department's skeletal opinion in Rosenthal does not describe the proposed "additions on the roof areas," but based on the opinion's language alone, Rosenthal was requesting far more extensive and intrusive changes than are the instant plaintiffs. Furthermore, the court there noted that "plaintiffs recognize that they are liable for actual costs that their construction will impose on defendant's cooperative corporation." Here, there will not be any costs imposed on defendants, and what is proposed could not even be categorized as "construction."

Had Rosenthal and its progeny not existed, this Court would still rule that the proprietary lease(s) take precedence over the House Rules, as the former predate(s) the latter, and "first in time, first in right." A co-op board should not be able to run roughshod over rights previously established by contract.

This Court wholeheartedly agrees with and adopts plaintiffs' reasons and reasoning (Moving Memorandum at 14-15) as to why defendants' refusal to consent to plaintiffs' proposal is unreasonable:

(i) Mr. Kaplan is [a] 73[-]year-old man who suffers from certain cardiovascular conditions... that require him to reside in an adequately cooled residence; (ii) the existence of hot water pipes that run directly beneath, and emit radiant heat from, the floor of the Unit; (iii) the fact that most of the air intake vents in Plaintiffs' [apartment], and only Plaintiffs' [apartment] have been sealed...; (iv) the proposed supplemental air conditioning units would be placed on Plaintiffs' private terrace, directly adjoining the [apartment]; (v) the proposed air conditioning units make virtually no sound and will not be visible to, or otherwise adversely affect, any other residents in the Building; (vi) [the Board] has already permitted a different resident to place her air conditioning unit on *plaintiffs'* private terrace; and (vii) Plaintiffs' private terrace is already filled with other protrusions, and an additional protrusion will make no aesthetic difference.

See generally, Second on Second Café, Inc. v Hing Sing Trading, 66 AD3d 255 (1<sup>st</sup> Dept 2009), which affirmed a mandatory injunction compelling a landlord to allow its tenant to install "a new exterior exhaust vent on the roof of the building, along with the necessary ducts between the kitchen and the roof, and further directing the landlord to execute the permit applications

required for such work," even though the duct would run through a portion of the building that was not apart of the demised premises.

Plaintiffs are equally correct, or at least convincing, as to the telecommunications conduit, which currently runs right through the middle of plaintiffs' bathroom. Mr. Kohn states that the telecommunications conduit is "original" to the building, "operates with nearly 50 year old, fragile wires," and that "[e]xperience has been that efforts at movement have created loss of service for all tenants on the line, for up to weeks or months." Kohn Aff. ¶ 37. Mr. Kohn does not claim any engineering expertise, and his statements are vague. Surely in our hyper-connected "Internet" age, some old wires can be moved over a few feet, by the very same contractor(s) who installed or service them, without losing function for weeks on end. (Although not relevant to today's decision, the Court notes that defendants' offer to "accommodate" plaintiffs (Kohn ¶ 38), by allowing them to "put up a protective cover to keep the riser safe from impact or a small wall which will have a similar effect," is more suggestive of plaintiffs' capitulation than defendants' compromise.)

Defendants' opposition to the instant motion is from the "If the facts are not in your favor, argue the law" school. Here, "the law" is not so much common law or statutory law, but the law as laid down by defendants themselves. Pursuant to House Rules issued by the Board, effective July 1, 2007 (Kohn Exhibit A), which was well before plaintiffs purchased two or all of the three apartments that they are now fusing into one, condensers on a terrace are *verboten*:

**House Rule for Balconies/Terraces**

- Only outdoor designated tables, chairs and planters are permitted on balconies . . . . No other items are permitted.

As noted above, pursuant to Lease ¶ 7, use of a terrace is "subject to such regulations as may, from time to time, be prescribed by the Directors." The Board prescribed the House Rules. *Ergo*, goes defendants' argument, condensers are not permitted on terraces. Defendants also point out that at various times, in various documents, plaintiffs' agreed to abide by the House Rules. Kohn Aff. ¶ 2c-e. However, the Board adopted the House Rules pursuant to the business judgment rule, which, pursuant to Rosenthal, supra, is subservient to the proprietary lease.

Interestingly, a major impetus for adopting the House Rules was the Co-op's having had to spend five million dollars from March 2006 through April 2007 to repair exterior areas of the building. Kohn Aff ¶¶ 16-17. The deterioration and damage were, at least partly, caused by all manner of tenant misbehavior, including having "installed private refrigeration equipment, heavy planters [and] heavy structures [in which] to house files and personal belongings" on terraces, balconies, and roofs. Id. ¶ 17. Moreover, *sacrebleu*, "a number of tenants . . . permitted their dogs to relieve themselves on the balcony or terrace areas." Id. ¶ 18. The Board's response was to ban all items save the narrow list of approved items. Id. ¶ 19. "Permitting . . . violations by plaintiffs would merely invite all other tenants to . . . install and maintain equipment which threatens the safe condition of and access to the roof and Building's facilities." Id. ¶ 20. Except that plaintiffs are

not asking to “violate” the rules, they are asking that an exception be made, and their equipment threatens nothing of the sort (most certainly not dog pee).

As best this Court can discern, defendants’ main motivation in refusing permission and in defending this case (putting aside accusations of personal animus, and ignoring the problematic pretexts) is the usual “But what if everyone else asks to do the same thing”? *Id.* ¶¶ 20 *et seq.* If that happens, the Board should do its duty to evaluate all requests objectively and fairly. The outcome may be that only one request is “reasonable”; or that only five tenants, presumably the first five, can be accommodated; or maybe everyone can have a small condenser or two or three in the great outdoors. This Court has never seen the logic of denying a benefit to one person because not everyone else can have the same benefit, unless “everyone else” is eight-years-old. In any event, although defendants are attempting to “address all tenants under the same rules, and do nothing more than treat the Kaplan apartmen[t] equally with the others,” *id.* ¶ 21, plaintiffs and their apartment are not equal to everyone else, for the reasons discussed herein. In Seven Park Ave., *supra*, the final factor in affirming an order to remove a “half bath” was the Board’s “reluctance to set a precedent for similar applications.” Here, the Kaplans’ dissimilar situation will tamp down or eliminate “similar” applications; presumably, everyone living at Seven Park Avenue had space in his or her apartment for an additional half bath; but the Kaplans’ terrace is unique, or nearly so, as is the confluence of their other circumstances.

Defendants also argue, *ad nauseam*, that plaintiffs have failed to comply with an Alteration Agreement (Kohn Exh. D) that the parties entered into in early 2013. As a general matter, this Court is rather surprised that defendants would rely on an agreement that the Court, in a prior decision, has already found to be largely, if not totally, irrelevant to the question of the exterior components of plaintiffs’ proposed A/C system (a finding that the Court sees absolutely no reason to revisit).

One instance of defendants’ reliance on the Alteration Agreement is the statement by defendants’ architect, Reed Rubey, that an exterior A/C system would “violate[s] Building Rules (apparently the House Rules) [and] the Alteration Agreement provisions.” Rubey Aff ¶¶ 11-12. So, rather than heed this Court’s admonition that the Alteration Agreement does not shield defendants from their contractual obligation to assess whether plaintiffs’ proposal for an exterior A/C system is reasonable, defendants have now extended and compounded that error to include the House Rules. However, plaintiffs’ proprietary lease obligates defendants to consider alteration requests “reasonably,” the irrelevant Alteration Agreement and the House Rules (*see Rosenthal*, *supra*) notwithstanding. In fact, Rubey’s statement that he did, indeed, “consider” plaintiffs’ architectural drawings and found that the system they proposed violated the House Rules is risible. Of course the system, which is not composed of tables, chairs, or planters, would, *sans* an exemption, “violate” the House Rules; which is why Rubey should have “considered” whether the system was reasonable. Defendants’ continuing refusal to evaluate, “on the merits,” whether plaintiffs’ proposal is reasonable, rather than just opine that it violates the House Rules and the Alteration Agreement is, by itself, reason to grant the instant motion (and defendants’ reliance on that refusal herein borders on the “frivolous,” as defined in 22 NYCRR Part 130).

In their oversized, redundant, and largely unauthorized “reply” papers defendants continue to maintain that in evaluating plaintiffs’ proposal for an exterior A&C system, they had to go no further than determine that it violated the House Rules. “Both Mr. Rubey and Dr. Kohn attest that each considered the [exterior system and] observed that it violated Building rules.” Reply Memo at 22-23. To them, that was “end of story.” However, the proprietary lease (not to mention common sense), seen through the lens of Rosenthal, required a “reasonableness review” on the merits, not an automatic denial.

The misapprehension – or at least misstatement – that plaintiffs are seeking to “violate” the House Rules permeates defendants’ papers. Thus we get (Memorandum at 9), “If plaintiffs were permitted to install equipment on the ... terrace in violation of the ... House Rules ... then others are likely to do the same.” Plaintiffs are not looking to violate the House Rules; plaintiffs are looking to have defendants fulfill their contractual obligation to review plaintiffs’ proposal and not withhold their consent “unreasonably.” Consent would represent an “exception” or “exemption,” not a “violation.” Defendants’ obtuseness is further evidenced by the following quote from Meadow Lane Equities Corp. v Hill, 2008 WL 4278018 (Sup Ct, Nassau County 2008), aff’d 63 AD3d 710 (2d Dept 2009) (Defendants’ Memo at 9): “all current or future unit owners could deem themselves entitled to disobey certain of the By-Laws ... without obtaining necessary approval.” Consistent with this description, the Second Department wrote (id. at 702), “the defendants made not only the permitted alterations, but also, some they had agreed not to make, as well as certain others for which permission was never requested.” In the instant case not only have plaintiffs not used self-help to install exterior condensers “without permission,” they have been rather patient throughout this incrementally dragged-out litigation, all the while losing time and money.

Defendants also purport to rely on Bryant v One Beckman Place, 73 AD3d 616 (1<sup>st</sup> Dept 2010). Bryant is so completely distinguishable from the instant case, the difficult part is knowing where to begin; just about every sentence in Bryant is a far cry from the instant case. Simply put, there, the work (construction of internal walls and a private elevator) was infinitely more extensive than that proposed here; the actual construction was undertaken without permission and proceeded full steam ahead until the building padlocked the premises; and the relief sought was vastly different from the relief plaintiffs seek here.

#### Ultimate Relief

“Absent extraordinary circumstances, a preliminary injunction will not issue where to do so would grant the movant the ultimate relief to which he or she would be entitled in a final judgment.” Board of Mgrs. v Nehrich, 73 AD3d 822, 824 (2d Dept 2010). The quote is recent, but the concept is ancient. See Yome v Gorman, 242 NY 395, 401-402 (1926) (Cardozo, J.) (competing factors need to be weighed to determine where corpses should be buried):

The order [below] restrains the defendants from interfering with the removal of the bodies by the plaintiff during the pendency of the action. If it stands, there will be nothing left to try, for the bodies will be removed before the cause is

brought to hearing. Such an injunction, if ever permissible in advance of final judgment, is plainly inappropriate unless the undisputed facts are such that a trial is a futility. Bachman v. Harrington, 184 N. Y. 458, 77 N. E. 657. If there are motives to be probed and opposing equities to be weighed, there must be the searching scrutiny of a trial and the sanction of a judgment.

Here, there will be something “left to try” after compliance with today’s injunction: whether the Board’s refusal is reasonable (assuming, that is, that the Board has not, by its continuing refusal to consider whether the proposal is “reasonable,” waived the right to claim that it is not). If the Court determines that the refusal is reasonable, the Court can order plaintiffs to remove the condenser units from the roof and the piping from the wall, patch the hole, and reposition the telecommunications conduit. None of this remedial work would be time-consuming, dangerous, invasive or expensive. Cf. Second on Second Café, Inc. v Hing Sing Trading, 66 AD3d 255 (1<sup>st</sup> Dept 2009) (\$9,000 potential cost of remediation no bar to tenant installing, per preliminary injunction, exterior vent and interior duct work). In any event, the no-final-relief “rule” is not hard and fast. E.g., Ixis North Am. Inc. v Solow Bldg. Co. II, LLC., 16 Misc 3d 1120(A) (Sup Ct, NY County 2007) (Lehner, J.) (granting preliminary injunction constituting ultimate relief of allowing completion of renovations).

#### Other Arguments

This court has considered defendants’ other purported justifications for refusing to grant consent, whether set forth in the instant papers or in prior submissions in this overly-litigated dispute, such as that defendants would not be able to “control” the contractors that plaintiffs would use to install and/or service the condenser units (silly); that placement of the condensers might void the building’s roof warranty (it will not; Moving Exh. N); and that a late November(!) visit to the apartment found no heat abnormalities (Kohn Exh. E), and considers them tenuous at best, absurd at worst. Defendants’ argument (Kohn Aff. ¶ 12) that only Mr. Kaplan’s “conclusory, personal, unsubstantiated assertion supports [his] claims” that heat is radiating from the pipes below his apartment is belied by the affidavit of Mr. John J. Marie III (Moving Exh. H). In any event, a court may issue a preliminary injunction even if the parties dispute some facts. CPLR 6312 (added in 1996). To the extent that defendants claim that plaintiffs have not paid certain fees imposed by the Board (Kohn Aff ¶¶ 5-9), defendants may pursue such matters as counterclaims in this continuing litigation or otherwise.

#### Irreparable Injury

“[I]rreparable injury means a continuing harm resulting in substantial prejudice caused by the acts sought to be restrained if permitted to continue pendente lite.” Chrysler Corp. v Fedders Corp., 63 AD2d 567, 569 (1st Dept 1993). “Damages compensable in money and capable of calculation, albeit with some difficulty, are not irreparable.” Sportschanel Assocs. v Natl. Hockey League, 186 AD2d 417, 418 (1st Dept 1992). Here, there would be no way to calculate the harm to plaintiffs if they are forced to endure excessive heat, particularly if Mr. Kaplan’s heart or other health problems were to be exacerbated thereby.

### Balancing of the Equities

A balancing of the equities favors the movant where “the irreparable injury to be sustained by the plaintiff is more burdensome to it than the harm caused to defendant[s] through imposition of the injunction.” Burmax Co v B & S Industries, 135 AD2d 599, 601 (2d Dept 1987); accord, Kurtz v Zion, 61 AD2d 778, 779 (1st Dept 1978). Here, under all the circumstances, imposition of an injunction will not harm defendants significantly (albeit there will be some extra foot traffic and other minuscule inconveniences).

### Individual Defendants

Relying on Weinreb v 37 Apts. Corp., 97 AD3d 54 (1<sup>st</sup> Dept 2012), defendants seem to argue, in effect, that any injunction should issue against the Board only, not against the individual defendants. Although that case and this are on different procedural footings, based thereon this Court will limit its preliminary injunction to the corporation itself, with the caveat that, as stated in Weinreb, 97 AD3d at 58, “An injunction against a corporation ‘is enforceable against not only th[at] corporation . . . but also the persons who act for it in the transaction of its business, that is, corporate officers and agents with knowledge of the injunction’ (67A NY Jur 2d, Injunctions § 212).” This Court does not expect the individual defendants to interfere with the work permitted by today’s decision, even if the injunction does not name them individually.

### Conclusion

Thus, for the reasons set forth herein, (1) the motion is granted; and (2) this Court hereby enjoins the Park South Tenants Corp., and those acting or purporting to act on its behalf, from taking any action to prevent plaintiffs from (a) completing the installation of the “exterior” air conditioning system at issue herein, including the placement of three Daikin air conditioning condenser units on the 22<sup>nd</sup>-floor terrace and the running of the necessary conduit through a wall of the building; and (b) relocating the subject telecommunications conduit from the center of plaintiffs’ bathroom to the wall thereof. This injunction is, of course, conditional on plaintiffs’ adhering to (1) the plans they have previously submitted to defendants, and (2) the New York City Building Code and/or other municipal regulations. Any dispute as to the matters set forth in the immediately-preceding sentence shall be referred to the Court for resolution.

Cour  
Dated: March 18, 2014



Arthur F. Engoron, J.S.C.