

**Hunter v Royal Charter Props., Inc.**

2014 NY Slip Op 32564(U)

September 29, 2014

Supreme Court, New York County

Docket Number: 153555/2014

Judge: Donna M. Mills

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

PRESENT: DONNA M. MILLS  
*Justice*

PART 58

RENA HUNTER and ROBERT ANDERSON,

INDEX No. 153555/14

Plaintiff,

MOTION DATE \_\_\_\_\_

-v-

MOTION SEQ. No. 002

ROYAL CHARTER PROPERTIES, INC.,

MOTION CAL No. \_\_\_\_\_

Defendant.

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion.

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits... 1

Answering Affidavits- Exhibits \_\_\_\_\_ 2

Replying Affidavits \_\_\_\_\_

CROSS-MOTION: \_\_\_\_\_ YES  NO

Plaintiffs, Rena Hunter and Robert Anderson seek an Order pursuant to CPLR § 2221 to reargue this Court's prior Order dated July 2, 2014 which, inter alia, denied plaintiffs' petition for a preliminary injunction.

"A motion for reargument, addressed to the discretion of the court, is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law. Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided" (*Foley v Roche*, 68 AD2d 558 [1<sup>st</sup> Dept. 1979]).

In the July 2, 2014 decision which dismissed the action, this Court mistakenly believed that the Housing Court action was resolved by way of stipulation. Since the Court erred in its assumption, the plaintiffs' motion for reargument shall be granted.

In the underlying action, plaintiffs seek a preliminary injunction staying the defendant Royal Charter Properties Inc.'s holdover proceeding and a declaratory judgment regarding the plaintiffs' claim for succession and assorted tenancy claims.

The plaintiff, Rena Hunter is the tenant of the subject premises. The plaintiff, Robert Anderson is an undertenant of Rena Hunter. On or about June 11, 2013, the defendant commenced a proceeding against Rena Hunter with the service of a Motion to Cure, Notice of Termination and Notice of Petition and Petition. It is the Court's understanding that the Housing Court action between the parties has been marked off the calendar for several months, and is inactive at this time.

The purpose of a preliminary injunction is to protect the movant through preservation of the status quo until there is a determination on the merits of the litigation. (13 Weinstein–Korn–Miller, N.Y. Civ Prac ¶ 6301.02[3]). Such relief is granted "where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff." CPLR 6301. The party seeking such relief must establish a likelihood of success on the merits, irreparable injury, and a balancing of the equities the movant's favor. *Doe v.*

*Axelrod*, 73 N.Y.2d 748, 750 (1988).

Generally, the injunction will be issued only upon a showing that the "defendant's wrongful acts are occurring or are threatened and reasonably likely to occur". Siegel, N.Y. Prac § 328, at 499 (3d ed). [An] injunction should be granted if the activity complained of will cause irreparable injury to the party seeking such relief before a trial can be held to resolve the underlying controversy. In this context, irreparable 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 A.D.2d 567, 569 (1st Dept 1978).

Applying the aforementioned principles, this Court holds that the irreparable injury alleged by plaintiffs here is not proven in light of the status of the Housing Court action which has been marked off the calendar and is currently inactive. Moreover, this Court finds that plaintiffs can pursue their defenses in Housing Court and attack the holdover petition on the merits.

Accordingly, it is

ORDERED that the motion to reargue is granted; and it is further

ORDERED that, upon reargument, the Court vacates the prior order, dated July 2, 2014 which dismissed the action; and it is further

ORDERED that the plaintiffs' request for a preliminary injunction is denied, and the temporary restraining order is vacated; and it is further

ORDERED that the defendant is directed to answer or move within 20 days upon service of this Order with notice of entry; and it is further

ORDERED that all parties shall appear at a preliminary conference to ascertain the status of this action on November 7, 2014, at 10:00 A.M., in Part 58, Room 574, 111 Centre Street, New York, New York 10013.

Dated: 9/29/14

Check one:  FINAL DISPOSITION

  
\_\_\_\_\_  
J.S.C.  
**DONNA M. MILLS, J.S.C.**  
 NON-FINAL DISPOSITION