| **Equinox Hudson St., Inc. v Hudson Leroy LLC** |
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| 2015 NY Slip Op 31917(U) |
| October 9, 2015 |
| Supreme Court, New York County |
| Docket Number: 651695/12 |
| Judge: Cynthia S. Kern |
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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EQUINOX HUDSON STREET, INC.,

Plaintiff, Index No. 651695/12

-against-

HUDSON LEROY LLC AND
MOUNTBATTEN EQUITIES ,L.P.,

Defendants.

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**HON. CYNTHIA KERN, J.S.C.**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for :_____

| Papers | Numbered |
|---|---|
| Notice of Motion and Affidavits Annexed..... | 1 |
| Answering Affidavits and Cross Motion..... | 2 |
| Replying Affidavits..... | 3 |
| Exhibits..... | 4 |

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Plaintiff Equinox Hudson Street, Inc. ("Equinox") previously brought a motion for a Yellowstone injunction staying the cure period that expired on January 29, 2013 and tolling plaintiff's time to cure the alleged default. It also sought leave to amend the complaint to assert causes of action for the injunctive relief sought in the motion. The court granted plaintiff's motion in its entirety. Defendants now move to vacate that Yellowstone injunction and for summary judgment dismissing the sixth, seventh and eighth causes of action relating to the Yellowstone injunction. As will be explained below, the motion is denied in its entirety.

The relevant facts are as follows. Since on or about September 2010, Equinox has been operating a health club and fitness center at the Printing House Building located at 421 Hudson

Street pursuant to a sublease with defendant Hudson Leroy LLC ("Hudson"). Hudson had served a written default notice upon Equinox which alleged that the noise from Equinox's spin cycling studio was too loud and unreasonably annoyed and inconvenienced other occupants of the building in violation of section 4.04 of the sublease. The notice gave Equinox until January 29, 2013 to cure the alleged default. In response to the notice, Equinox brought a motion for a Yellowstone injunction. It alleged in support of the motion that no default existed under the sublease as Equinox had complied with all of the requirements and conditions of section 4.04 of the sublease and has already taken all necessary steps to minimize any alleged noise or vibrations. It further alleged that if the court found that a default has occurred, Equinox was ready, willing and able to cure any defective performance under the sublease. The court granted the motion for a Yellowstone injunction, finding that Equinox had met all of the requirements for a Yellowstone, including sufficiently establishing that it was prepared and maintained the ability to cure any alleged default if it was established that such default existed.

This court finds that defendants have failed to establish any basis for vacating the Yellowstone injunction previously issued by this court. Equinox continues to maintain, as it did in the original motion, that it is not in default of any provision of the sublease and that it has complied with all of the requirements and conditions of section 4.04 of the sublease and has already taken all necessary steps to minimize any alleged noise or vibrations. Since the issuance of the Yellowstone injunction in 2013, Equinox alleges it has spent over $50,000: (a) conducting extensive expert acoustic tests and inspections in cooperation with AGBH Printing House Holdings, LLC ("AGBH"), which owns 81 units in the premises and has been performing construction work in the building to prepare their units for sale, and the Condominium's

management; (b) installing approximately 1,000 square feet of acoustic rubber tile in its strength training area; (c) installing dead lift platforms and cushions; (d) changing the use of fitness equipment in its group fitness classes; and (e) installing signs and enforced its "no weight drop" policy with staff and members. It also alleges that despite the foregoing efforts, minor noise and vibration may at times still be audible or felt outside of its premises because the demolished demising west wall of Equinox's cycling studio has not yet been re-built by AGBH. It further alleges that in order to reduce the noise once the construction by AGBH is completed, Equinox and its experts are developing and carefully coordinating plans for the renovation of its cycling studio with AGBH, including the reconstruction of Equinox's side of the demolished west demising wall. Equinox alleges it will be ready and able to finish resolving any previously alleged noise or vibration complaints once the relevant AGBH construction is substantially completed and field conditions at the site substantially improve. Equinox also continues to maintain that it has a continuing desire and ability to cure any default if a determination is made that a default actually exists despite the foregoing efforts. Based on the current allegations by Equinox that it has taken all steps that it can take at the present time to reduce the noise and will take further steps once the AGBH construction is completed and its continuing allegation that it is prepared to cure any default if a judicial determination is made that it is in default, the court finds that there is no basis for vacating the Yellowstone injunction previously issued by the Court.

Moreover, defendants have failed to establish that they are entitled to summary judgment dismissing the sixth, seventh or eighth cause of action relating to the Yellowstone injunction as there are material issues of fact in dispute as to whether Equinox is in violation of any provision

of the sublease by permitting unreasonable noise or vibrations to be transmitted from its premises.

Based on the foregoing, the motion is denied in its entirety. This constitutes the decision and order of the court.

Dated: 10/9/15

Enter: _____ J.S.C.

CYNTHIA S. KERN
J.S.C.