

<b>227-229 E. 14th St. Hous. Dev. Fund Corp. v Vaknine</b>
2018 NY Slip Op 31745(U)
March 30, 2018
Supreme Court, New York County
Docket Number: 153557/2016
Judge: Kathryn E. Freed
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. KATHRYN E. FREED**

**PART 2**

*Justice*

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227-229 EAST 14TH STREET HOUSING DEVELOPMENT  
FUND CORPORATION

**INDEX NO. 153557/2016**

Plaintiff,

- v -

**MOTION SEQ. NO. 003, 004**

ELI VAKNINE,

Defendant.

**DECISION AND ORDER**

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The following e-filed documents, listed by NYSCEF document number 164, 165, 166, 167, 168, 169, 170, 171, 173, 182, 183, 184, 187, 188

were read on this motion to/for INJUNCTION/RESTRAINING ORDER

In this action for, among other things, ejectment, defendant moves, among other things, to amend his answer to add a cause of action for breach of fiduciary duty and discriminatory treatment in plaintiff's refusal to allow him to sublet the unit. (Seq. No. 003.) Plaintiff moves, among other things, for injunctive relief preventing defendant from subletting the apartment that is the subject of this lawsuit, as well as for costs and sanctions. (Seq. No. 004.)

Since a closing on the property has taken place, and defendant has transferred all of his rights thereto, the branch of plaintiff's motion for injunctive relief is rendered moot, as is the branch of defendant's motion seeking relief related to the property itself and to rights as a shareholder.

Turning to the branch of defendant's motion to amend the answer, "leave to amend pleadings should be freely granted, absent prejudice or surprise resulting therefrom, unless the proposed amendment is palpably insufficient or patently devoid of merit." (*Y.A. v Conair Corp.*,

154 AD3d 611, 612 [1st Dept 2017]; *Risk Control Assoc. Ins. Group v Maloof, Lebowitz, Connahan & Oleske, P.C.*, 151 AD3d 527, 527 [1st Dept 2017], *lv dismissed* 30 NY3d 1056 [2018].) Although this action was commenced in 2016, the parties have engaged in limited disclosure thus far, since their disputes have mainly been legal rather than factual in nature. Their preliminary conference took place on September 19, 2017, and compliance conferences have been systematically adjourned since then. Further, the parties' disputes have now been distilled to claims for damages, and this Court can discern no prejudice in permitting defendant to amend his answer. However, the only additional claim that defendant wishes to assert relates to plaintiff's refusal to allow him to sublet the apartment. Since this Court's prior order negated defendant's possessory interest in the property, he had no right of possession to sublet. Thus, the proposed amendment is patently without merit.

Defendant's subletting of the property was plainly in contravention of this Court's order, which required him to, among other things, turn the keys to the apartment over to plaintiff. Defendant's reluctance to conform his behavior with the mandates of this Court's order required plaintiff to make the motion under motion sequence No. 004 for an injunction. Plaintiff should be reimbursed for costs and fees associated with the making of that motion. (*See generally* 22 NYCRR 130-1.1; *Clark v Allen & Overy, LLP*, \_\_\_ AD3d \_\_\_, 2018 NY Slip Op 01558 [1st Dept 2018]; *Jiggets v New York City Human Resources Administration*, 156 AD3d 552, 553 [1st Dept 2017].)

Accordingly, it is hereby

ORDERED that the branch of defendant's motion seeking leave to amend his answer is denied, and the motion is in all other respects denied, as moot (mot. seq. No. 003); and it is further

ORDERED that the branch of plaintiff's motion for injunctive relief is denied, as moot (mot. seq. No. 004); and it is further

ORDERED that the branch of plaintiff's motion for costs and sanctions is granted, and the question of the amount of costs and reasonable attorney's fees associated with the making of the motion for injunctive relief is referred to a special referee to hear and report – or, if the parties so agree, to hear and determine – that issue (mot. seq. No. 004); and it is further

ORDERED that the aforementioned issue is referred to the Special Referee Clerk (Room 119 M, 646-386-3028 or [spref@courts.state.ny.us](mailto:spref@courts.state.ny.us)) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this Court at [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh) at the "Local Rules" link), shall assign the issue to an available Special Referee as specified above; and it is further

ORDERED that plaintiff's counsel shall serve a copy of this order with notice of entry, together with a completed an Information Sheet (which can be accessed at <http://www.nycourts.gov/courts/ljd/supctmanh/SR-JHO/SRP-InfoSheet.pdf>) containing all the information called for therein, on the Special Referee Clerk by fax (212-401-9186) or email

spref@courts.state.ny.us, and, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referee's Part.

3/30/2018

DATE

  
KATHRYN E. FREED, J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED
- SETTLE ORDER
- DO NOT POST

DENIED

- NON-FINAL DISPOSITION
- GRANTED IN PART
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT

OTHER

APPLICATION:

CHECK IF APPROPRIATE:

REFERENCE