

Siskind v Board of Directors of 50 W. 67th St. Inc.

2018 NY Slip Op 32398(U)

September 20, 2018

Supreme Court, New York County

Docket Number: 653634/2018

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

-----X

MARCY SISKIND,

Plaintiff,

- v -

THE BOARD OF DIRECTORS OF 50 WEST 67TH STREET INC.,
EMIGRANT MORTGAGE COMPANY, INC., 50 WEST 67TH
STREET INC.,

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47

were read on this motion to/for

INJUNCTION/RESTRAINING ORDER

ORDER

Upon the foregoing documents, it is

It appearing to this Court that a cause of action exists in favor of the plaintiff and against the defendant Emigrant Mortgage Company and that the plaintiff is entitled to a preliminary injunction on the ground that such 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, as set forth in the following decision, it is

ORDERED that the undertaking is fixed in the sum of \$ 17,000 to be paid in certified funds or money order to such defendant within five (5) days of service of a copy of this order with notice of entry, and in the sum of \$ 8,000 in certified funds or money

order to be paid to such defendant on October 1, 2018, and thereafter \$7,672.40 in certified funds or money order to be paid to such defendant on the first day of each and every month until final disposition of this action conditioned that the plaintiff, if it is finally determined that she was not entitled to an injunction, will pay to the defendant all damages and costs which may be sustained by reason of this injunction; and it is further

ORDERED that defendant, its agents, servants, employees and all other persons acting under the jurisdiction, supervision and/or direction of defendant, are enjoined and restrained, during the pendency of this action, from doing or suffering to be done, directly or through any attorney, agent, servant, employee or other person under the supervision or control of defendant or otherwise, any of the following act(s): commencing any legal proceeding, including but not limited to a non-judicial foreclosure sale of the shares of 50 West 67th Street Inc. allocated to apartment 6E7E, based on any alleged default by plaintiff under the proprietary lease, lease for her storage unit, and/or the mortgage repayment agreement. and it is further

ORDERED that should plaintiff fail to make the foregoing undertaking, upon service and filing by defendant of a Notice of Default thereof, the court shall issue an order vacating the preliminary injunction, with no further notice; and it is further

ORDERED that counsel are directed to appear for a preliminary conference in Room 331, 60 Centre Street, New York, New York on December 4, 2018, at 9:30 AM.

DECISION

This court finds plaintiff has come forward with evidence that at the time of the issuance of Notice of Default, the maintenance charges, which were the sole subject of such Notice of Default, under the proprietary lease and storage lease were fully paid. Therefore, she demonstrated a clear right to the vacatur of Notice of Default and the reinstatement of the repayment agreement. See Chrysler Corp. v Fedders Corp., 63 AD2d 567, 568-569 (1st Dept. 1978).

As for fixing the undertaking pursuant to CPLR 6312(b), plaintiff is correct that as the tenant, who had an obligation to pay rent in 1414 Holdings, LLC v BMS-PSO, LLC, (226 AD3d 641, 643-644 [1st Dept. 2014]), plaintiff borrower, here, "would be required to pay these [mortgage] amounts independent of any preliminary injunction" so any outstanding mortgage arrears would not represent possible "damages and costs which may be sustained by reason of [the] injunction".

Therefore, in its discretion, this court fixes an undertaking that plaintiff must make, in an amount sufficient to cover attorneys' fees and costs that defendant may incur in the herein action by reason of the preliminary injunction.

9/20/2018
DATE

Debra A. James
DEBRA A. JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE