

<b>City of New York v Pavlenok</b>
2019 NY Slip Op 32548(U)
August 21, 2019
Supreme Court, New York County
Docket Number: 451832/2018
Judge: James E. d'Auguste
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At Individual Assignment Part 55  
of the Civil Branch of the Supreme Court  
of the State of New York, held in and for  
the County of New York at the Courthouse,  
111 Center Street, New York, New York,  
on the 21st day of August, 2019.

PRESENT:

Hon. James E. d'Auguste, J.S.C.

-----X  
THE CITY OF NEW YORK,

Index No. 451832/2018

Plaintiff,

~~PROPOSED~~  
**PRELIMINARY**  
**INJUNCTION ORDER**

-against-

ALEXANDRA PAVLENOK a/k/a ALEXANDRA  
PAVLENKO a/k/a ALEXANDRA A. PAVLENKO a/k/a  
ALEXANDRA PAVLVNOK a/k/a ALEXANDRA  
PAZLENOK a/k/a ALEXANDRA PAVLENCO a/k/a  
ALEKSANDRA PAVLENOK a/k/a ALEKSANDRA N.  
PAVLENOK a/k/a ALEXANDR PAVLENOK,  
EKATERINA PLOTNIKOVA, STEPAN SOLOVYEV,  
JOHN AND JANE DOE NUMBERS 1 THROUGH 10,  
fictitiously named parties, true names unknown, the  
parties intended being the managers or operators of the  
business being carried on by Defendants,

Defendants.

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UPON READING AND FILING the Affirmation with exhibits of Special Assistant  
Corporation Counsel Stephanie Klein, dated September 12, 2018 ("Klein Affm."); (2) the  
Affidavit with exhibits of DOB Supervisory Building Inspector Vladimir Pugach, sworn to on  
September 10, 2018 ("Pugach Affid."); (3) the Affidavit with exhibits of DOB Associate  
Building Inspector Marco Botticelli, sworn to on September 7, 2018 ("Botticelli Affid."); (4) the

Affidavit of DOB Associate Building Inspector Ricky Chung, sworn to on September 7, 2018 (“Chung Affid.”); (5) the Affidavit of DOB Associate Building Inspector Eduardo Cautela, sworn to on September 10, 2018 (“Cautela Affid.”); (6) the Affidavit of DOB Associate Building Inspector Valeri Filatov sworn to on September 10, 2018 (“Filatov Affid.”); (7) the Affidavit with exhibits of Fire Protection Inspector Taiwo Adebo, sworn to on September 10, 2018 (“Adebo Affid.”); (8) the Affidavit with exhibits of Fire Protection Inspector Richard Brown, sworn to on September 10, 2018 (“Brown Affid.”); (9) the Affidavit of New York City Police Department Detective Joseph Giglio, sworn to on June 16, 2018 (“Giglio Affid.”); (10) the Affirmation with exhibits of short-term guest Wendy George, affirmed on June 22, 2018; (11) the previously filed Affidavit of FDNY Chief of Fire Prevention Ronald A. Spadafora (“FDNY Fire Safety Affid.”), annexed to the Klein Affm. as Exhibit “2”; (12) the previously filed DOB Executive Director of Technical Affairs & Code Development Constadino (Gus) Sirakis (“DOB Fire Safety Affid.”), annexed to the Klein Affm. as Exhibit “3”; (13) the Summons dated September 6, 2018; (13) the Complaint duly verified by Sheryl Neufeld, Esq. on September 6, 2018, and filed with the Clerk of the Court on September 12, 2018; and (14) the Affirmation of Emergency and Pursuant to Rule 202.7(f) by Stephanie Klein, Esq., dated September 12, 2018; together with the accompanying Memorandum of Law in Support of the City’s Motion by Order to Show Cause for a Temporary Restraining Order and a Preliminary Injunction (Motion Sequence 001, filed electronically in this matter as NYSCEF documents 1-98); and

UPON READING AND FILING Defendants’ Affirmation with exhibits in Opposition to the City’s Motion for Preliminary Injunction filed on December 12, 2018 (NYSCEF Documents 106-123), Defendants’ Cross Motion to Dismiss the Verified Complaint along with an

Affirmation with exhibits in Support filed on January 17, 2019 (NYSCEF Document 131-155), and the City's Affirmation with exhibits in Reply to Defendants' Cross Motion to Dismiss Verified Complaint filed January 18, 2019 (NYSCEF Documents 157-159); and

UPON READING AND FILING the City's Memorandum of Law with exhibits filed on December 28, 2018 in support of a Motion to Dismiss Defendants' Affirmative Defenses and Counterclaim asserted in their Verified Answer filed on December 11, 2018 (NYSCEF Document 105), (Motion Sequence 002, NYSCEF Document 126-129); and

UPON READING AND FILING Defendants' Memorandum of Law with an exhibit filed on January 22, 2019 in opposition to the City's Motion to Dismiss the Affirmative Defenses and Counterclaim (NYSCEF Document 161), and the City's Affirmation with an exhibit filed on January 28, 2019 in Reply to Defendants' Opposition to the City's Motion to Dismiss the Affirmative Defenses and Counterclaim (NYSCEF Documents 165-166);

WHEREAS on September 13, 2018, the Court granted the City's motion for a Temporary Restraining Order pending the hearing of the motion for a Preliminary Injunction Order, that Defendants' and each of them, their agents, employees, representatives and all persons acting individually or in concert with them are enjoined pursuant to Multiple dwelling Law § 306. CPLR 6313, and Admin. Code §§ 20-703(d), 27-2122, and 28-205.1 from (NYSCEF Document 99):

- a. Interfering with the Plaintiff CITY's right to have immediate and unhindered access for its FDNY Fire Protection Inspectors and DOB Building Inspectors, including but not limited to those personnel assigned to the Mayor's Office of

Special Enforcement, to lawfully enter the Subject Buildings<sup>1</sup> or in any other Class A dwelling unit in all other buildings in the City of New York where Defendants may have advertised, offered, maintained, operated occupancy for less than thirty consecutive days, in their normal course of duty, for the purpose of inspecting the buildings and any parts thereof, and any signs or service equipment contained therein or attached thereto, at all reasonable times, pursuant to relevant and applicable regulations and unobstructed by Defendants, to determine the Subject Buildings' compliance with the provisions of the New York City Building Code, the New York City Fire Code, as well as all other relevant provisions of the Admin. Code, the Multiple Dwelling Law, any currently applicable administrative orders, and other applicable laws and rules; and

- b. Using or occupying, or permitting the use or occupancy of any residential unit in the Subject Buildings for transient use and/or as illegal short-term rentals, except those units currently so occupied, which must be vacated by September 17, 2018 (noon) 12PM, unless otherwise directed by any subsequently issued DOB order to vacate sooner, and from further permitting the use or occupancy of such currently occupied units for transient use and/or as illegal short-term rentals immediately after the current occupants leave; and
- c. Permitting the use or occupancy of any additional residential unit at the Subject Buildings or in any other Class A dwelling unit in all other buildings in the City of New York for transient use and/or as illegal short-term rentals; and

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<sup>1</sup> 12 John Street, New York, NY, 40 Water Street, New York, NY, 151 Stanton Street, Unit 151A, New York, NY, 153 Stanton Street, Unit 153A, New York, NY, 159 Bleecker Street, New York, NY, 238 Gates Avenue, Brooklyn, NY and 17-12 Menahan Street, Queens, NY (hereinafter the "Subject Buildings")

- d. Registering any new persons at the Subject Buildings for transient short-term occupancy of less than a thirty-day stay; and
- e. Booking or advertising any units at the Subject Buildings or in any other Class A dwelling units in all other buildings in the City of New York for short-term transient use, either on their own internet sites or on other travel-related internet sites not directly operated by Defendants; and
- f. Disposing of, modifying, or in any other manner interfering with the digital or paper documents, photographs and records maintained in connection with the management, operation, use and occupancy of the Subject Buildings;

WHEREAS on January 29, 2019 the Court having heard arguments from counsels for both parties concerning the City's Motion for a Preliminary Injunction, Defendants' Cross Motion to Dismiss the Verified Complaint, and the City's Motion to Dismiss Affirmative Defenses and Counterclaim;

WHEREAS due deliberation having been had, and upon the memorandum decision of this Court dated July 3, 2019 (NYCEF Documents 168-169), the Court granted the City's Motion for a Preliminary Injunction, denied Defendants' Cross Motion to Dismiss the Verified Complaint, granted the City's Motion to Dismiss Defendants' third and fourth affirmative defenses and first counterclaim, and requested settle order on notice;

NOW, on Notice of Stephanie Klein, Esq., attorney for the City of New York it is hereby

ORDERED that the City's Motion for a Preliminary Injunction pursuant to Multiple Dwelling Law § 306, CPLR §§ 6301 and 6311, § 20-703(d) of the New York City Administrative Code ("Admin. Code") and Consumer Protection Law, § 27-2122 of the Admin. Code and Housing Maintenance Code, and § 28-205.1 of the Admin. Code and Building Code is

GRANTED, and Defendants Alexandra Pavlenok, Ekaterina Plotnikova, Stepan Solovyev, their agents, employees, representatives and all persons acting individually or in concert with them, during the pendency of this action are enjoined from:

- a. Using or occupying, or permitting the use or occupancy of, any of the dwelling units in the seven Subject Buildings, located at: (1) 12 John Street, New York, NY, (2) 40 Water Street, New York, NY, (3) 151 Stanton Street, Unit 151A, New York, NY, (4) 153 Stanton Street, Unit 153A, New York, NY, (5) 159 Bleecker Street, New York, NY, (6) 238 Gates Avenue, Brooklyn, NY, and (7) 17-12 Menahan Street, Queens, NY, or in any other Class A dwelling unit in all other buildings in the City of New York for less than thirty consecutive days in violation of the law;
- b. Booking, offering, or advertising any dwelling units in the Subject Buildings or in any other Class A dwelling unit in all other buildings in the City of New York for occupancy of less than thirty consecutive days in violation of the law; and
- c. Disposing of, modifying, or in any other manner interfering with the digital or paper documents, photographs, and records maintained in connection with the management, operation, use and occupancy of the Subject Buildings; it is

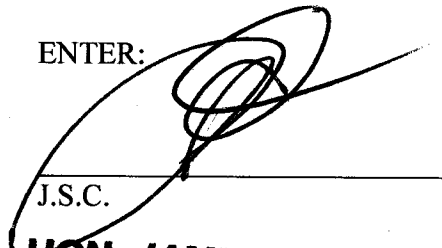
ORDERED that Defendants' Cross Motion to Dismiss the Verified Complaint is DENIED; and it is

FURTHER ORDERED that City's Motion to Dismiss Affirmative Defenses and a Counterclaim is GRANTED, and Defendant's third and fourth affirmative defenses are stricken and the counterclaim is dismissed.

Dated: New York, NY

August 21, 2019

ENTER:



J.S.C.

HON. JAMES E. d'AUGUSTE

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