

524 Grand St. LLC v 522 Grand Holdings LLC

2019 NY Slip Op 32635(U)

August 29, 2019

Supreme Court, Kings County

Docket Number: 506865/19

Judge: Leon Ruchelsman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8
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524 GRAND STREET LLC,,
Plaintiff, Decision and order
- against - Index No. 506865/19

522 GRAND HOLDINGS LLC, D & G CONSTRUCTION
NY, INC., NUVE CORPORATION, RM CONSTRUCTION
AND DEVELOPMENT CORP., JJS MANAGEMENT INC.,
QUINCY STREET MANAGEMENT, FLORENTINA WEISS,
DAVID WEISS, DAVID SNIR, JENNIFER DAVID,
& GM INSURANCE BROKERAGE INC.,
Defendants, August 29, 2019

MS # 792

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved pursuant to CPLR §6301 seeking a preliminary injunction staying the defendant from entering the plaintiff's property. The defendants have cross-moved seeking access to the plaintiff's property pursuant to RPAPL §881. The motions have been opposed respectively. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

The parties are next door neighbors and the defendants sought access to plaintiff's property to perform work. On February 14, 2019 the defendant 522 Grand Street Holdings LLC signed an access agreement entitled a 'Limited License and Indemnification Agreement'. However, the defendant failed to provide necessary insurance documentation or provide requisite notice prior to entering the premises. Nevertheless, on February 21 the defendants entered the premises and installed roof protections. The defendants asserted the entry was a misunderstanding, however, the

plaintiff asserts the defendant has continued to access plaintiff's property in violation of the access agreement. The plaintiff now moves seeking to enjoin the defendant from any further access to the plaintiff's property.

Conclusions of Law

It is well settled that to obtain a preliminary injunction the moving party must demonstrate: (1) a likelihood of success on the merits, (2) an irreparable injury absent the injunction; and (3) a balancing of the equities in its favor (Volunteer Fire Association of Tappan, Inc., v. County of Rockland, 60 AD3d 666, 883 NYS2d 706 [2d Dept., 2009]). In this case the basis for the injunction is grounded in the fact it is alleged the failure to grant such relief will cause harm to the plaintiff since the property is being accessed without authorization. The defendant does not deny those allegations *per se* but argues the relationship is complicated, the plaintiff was at fault for failing to execute the access agreement and that in any event the better course of action is to convert this action to an action pursuant to RPAPL §881. Thus, concerning the preliminary injunction, even if issues of fact exist it is still apparent the moving party has a likelihood of success on the merits, (see, Borenstein v. Rochel Properties, 176 AD2d 171, 574 NYS2d 192 [1st Dept., 1991]). This is especially true where the denial of an injunction would disturb

the status quo and render the continuation of the lawsuit ineffectual (Masjid Usman, Inc., v. Beech 140, LLC, 68 AD3d 942, 892 NYS2d 430 [2d Dept., 2009]). Thus, the moving party is not required to present 'conclusive proof' of its entitlement to an injunction and "the mere fact that there indeed may be questions of fact for trial does not preclude a court from exercising its discretion in granting an injunction" (Ying Fung Moy v. Hohi Umeki, 10 AD3d 604, 781 NYS2d 684 [2d Dept., 2004]).

The plaintiff has presented sufficient evidence it has a likelihood of success on the merits and will suffer irreparable harm if the injunction is not granted. Therefore, the motion seeking a preliminary injunction enjoining the defendants from entering plaintiff's property is granted.

Turning to the defendant's request to convert the action into an RPAPL §881 action, such request is denied. In order to be entitled to access pursuant to RPAPL §881 the defendant, the petitioner, must petition for a license to enter the premises of the adjoining neighbor for necessary improvements or repairs and the adjoining landowner has refused access (Queens College Special Projects Funds Inc., v. Newman, 154 AD3d 943, 62 NYS3d 517 [2d Dept., 2017]). The court must consider numerous factors including the nature and extent of the access, the duration of the access, the protections to the adjoining property, the lack of alternative means of conducting the work and measures to insure financial

compensation in case of damage (see, Chirichella v. BCBS Lorimer LLC, 2017 WL 3386257 [Supreme Court Kings County 2017]). Thus, procedurally the petitioner must present the evidence upon making the petition and the court can evaluate the petition and make a determination. In this case the request to convert the action was really done to avoid the imposition of an injunction. Therefore, the request to covert is improper at this juncture. Upon a proper petition with all necessary information the court will consider the request in an appropriate manner.

So ordered.

ENTER:



DATED: August 29, 2019
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC

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FILED
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