

33 Bond St. (LIHTC) LLC v Bowe
2019 NY Slip Op 33237(U)
October 30, 2019
Supreme Court, Kings County
Docket Number: 521216/19
Judge: Debra Silber
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : PART 9**

_____x

33 BOND ST. (LIHTC) LLC,

Plaintiff,

DECISION / ORDER

-against-

Index No. 521216/19

Motion Seq. No. 1

DEVON BOWE, "JOHN DOE" and "JANE DOE,"

Date Submitted: 10/24/19

Defendants.

_____x

Recitation, as required by CPLR 2219(a), of the papers considered in the review of plaintiff's order to show cause for a preliminary injunction and related relief.

Papers	NYSCEF Doc.
Order to Show Cause and Exhibits Annexed	<u>1-11</u>
Answering Affidavits	_____
Reply Affidavits	_____
Other: _____	_____

**Upon the foregoing cited papers, the Decision/Order on this application is
as follows:**

Plaintiff is the owner of a condominium unit known as the "Affordable Housing Unit" located at the 33 Bond Street, Brooklyn, N.Y. (herein "plaintiff"). This condominium unit contains approximately 143 apartments. Defendant is a rent stabilized tenant residing in apartment #411 (herein "apartment") at the Building. Plaintiff alleges that the defendant has refused to provide plaintiff access to the apartment to treat and remediate a serious insect and roach infestation.

Plaintiff commenced this action by summons and complaint dated September 26, 2019, asserting causes of action for injunctive relief, enjoining defendant from preventing plaintiff's employees and agents from entering the apartment to perform

treatment and remediation of the insect and roach infestation; declaratory relief declaring that plaintiff has a right to access the apartment; and attorneys' fees. Plaintiff moves for an order requiring defendant to provide unfettered access into and throughout the apartment for the purpose of treating and remediating the insect and roach infestation, and provides affidavits in support from several people with personal knowledge of the situation. Defendant has not appeared, nor has he opposed the motion.

New York City Administrative Code § 27-2008 requires a tenant to allow an owner access to the tenant's dwelling in order to make repairs or improvements required by law. CPLR § 6301 grants this court the power to issue an order directing the defendant to perform an act for the benefit of plaintiff, or to refrain from performing an act which would be injurious to the plaintiff. A preliminary injunction may be granted under CPLR article 63 when the party seeking such relief demonstrates (1) a likelihood of success on the merits; (2) the prospect of irreparable injury and (3) a balance of equities tipping in the moving party's favor (*see Doe v Axelrod*, 73 NY2d 748 [1988]).

Plaintiff is entitled to have access to the apartment in order to exterminate and to otherwise treat and remediate the insect and roach infestation, as is outlined in the affidavit of Junior Gomez, Licensed Pesticide Technician, annexed to the motion. If plaintiff is not granted access to the apartment plaintiff will suffer irreparable injury in that the infestation will spread to other apartments and the apartment will be in violation of the New York City Housing Code, thereby detracting from the value of the apartments. The equities lie in plaintiff's favor to gain access to the apartment in order to treat and remediate the insect and roach infestation documented in the motion

papers, which includes photos. Plaintiff has met the requirements for a preliminary injunction (*see 41-47 Nick LLC v Hammond*, 2015 N.Y. Misc. LEXIS 5514 [Sup Ct, Nassau Co 2015; *Morales v Schwimmer*, 31 Misc 3d 1217(A) [Sup Ct Kings Co 2011]).

Accordingly, it is hereby **ORDERED** that plaintiff's motion is granted on default, and it is further

ORDERED, that defendant Devon Bowe (and any occupants of his apartment), shall: a) provide access into and throughout apartment #411 located at 33 Bond Street, Brooklyn, N.Y., to the plaintiff owner, its management company, its contractors, servants, agents or employees for the purpose of treating and remediating the insect and roach infestation in the apartment, as described in the moving papers; b) refrain from interfering with plaintiff owner, its management company, its contractors, servants, agents or employees in their efforts to treat and remediate the insect and roach infestation condition in apartment #411, which is described in the moving papers; c) provide such access within five (5) days from the date of service upon him of a copy of this Order with Notice of Entry; and d) provide such access between the hours of 8:00 a.m. and 6:00 p.m., once per week, but not on weekends and holidays, until the condition shall have been corrected, in plaintiff's sole determination, and it is further

ORDERED, that plaintiff owner, its management company, contractors, servants, agents or employees, including locksmiths and exterminators, shall have access to apartment #411 solely for the purpose of treating and remediating the insect and roach infestation in apartment #411, which is described in the moving papers, and it is further

ORDERED that plaintiff shall have the right to discard or remove for cleaning any of defendants' personal property necessary for treating and remediating the insect and

roach infestation, at defendant's sole cost and liability, and it is further

ORDERED, that plaintiff, its management company, its contractors, servants, agents or employees shall exercise such access in a manner that will not unreasonably interfere with the use of apartment #411 by defendant for its intended purpose.

Should defendant fail to comply with this order, plaintiff may move to hold defendant in contempt of this order.

The branch of the motion which seeks costs and counsel fees is denied, with leave to renew. Defendant's time to interpose an answer to the summons and complaint has not run as yet.

This shall constitute the decision and order of the court.

Dated: October 30, 2019

ENTER:



Hon. Debra Silber, J.S.C.

**Hon. Debra Silber
Justice Supreme Court**