

**Theroux v Resnicow**

2019 NY Slip Op 34911(U)

July 29, 2019

Supreme Court, New York County

Docket Number: Index No. 154642/2017

Judge: Gerald Lebovits

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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: HON. GERALD LBOVITS PART IAS MOTION 7EFM

Justice

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INDEX NO. 154642/2017

JUSTIN THEROUX,

02/27/2019,

Plaintiff,

MOTION DATE 02/27/2019

MOTION SEQ. NO. 001 004

NORMAN J. RESNICOW and BARBARA RESNICOW,

Defendants,

- and -

**DECISION + ORDER ON  
MOTION**

71 WASHINGTON PLACE OWNERS, INC. and BOARD OF  
DIRECTORS OF 71 WASHINGTON PLACE OWNERS,  
INC.,

Nominal Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 60, 61, 62 were read on this motion to/for PRELIMINARY INJUNCTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 154, 155, 174, 175, 176 were read on this motion to/for PRELIMINARY INJUNCTION

*Pryor Cashman LLP* (Eric D. Sherman, Bryan T. Mohler, and Rebecca L. Matte of counsel), for plaintiff.

*Peter M. Levine, Esq.*, New York, for defendants Norman J. Resnicow and Barbara Resnicow.

Gerald Lebovits, J.:

Plaintiff, Justin Theroux, is neighbors with defendants Norman J. Resnicow and Barbara Resnicow in a co-operative apartment building at 71 Washington Place in New York County. Theroux and the Resnicows have been engaged for several years in an ongoing quarrel that escalated to litigation and motion practice before this court. This decision and order relates to two motions Theroux filed for preliminary injunctive relief under CPLR 6311, consolidated here for disposition.

Theroux seeks (i) to enjoin Norman Resnicow from trespassing on Theroux's property; and (ii) to enjoin Norman Resnicow from harassing, intimidating, or otherwise influencing witnesses or potential witnesses in this litigation. The motions are granted.

**Trespass.** Theroux contends that he is entitled to preliminary injunctive relief based on Resnicow's repeated trespasses on Theroux's property. Resnicow's principal argument in response is that many of the alleged trespasses were justified by the need to abate a private nuisance caused by Theroux himself. But this court has rejected that argument and declared Resnicow's conduct to constitute a trespass. (*See Theroux v Resnicow*, Index No. 154642/2017, 2019 NY Slip Op 31819 (U), at \*6-\*7 [Sup Ct, NY County June 25, 2019].)

Resnicow also contends that preliminary injunctive relief is unnecessary because Theroux's motion papers fail to allege that Resnicow has continued to trespass on Theroux's property. But in other filings made after briefing on this motion, Theroux identifies several additional acts of trespass. Resnicow also does not explain why granting this injunction would impose an unreasonable burden on him to comply — particularly in light of this court's decision and order defining the boundary line between each party's share of the roof deck. (*See id.*)

**Witness Harassment.** Theroux claims that Norman Resnicow has engaged in verbal and written harassment of several of his neighbors who are on the 71 Washington Place co-op board, and thus both nominal defendants and witnesses (or prospective witnesses) in this matter. This court previously granted Theroux a temporary restraining order on this claim, based on detailed affidavits from individuals describing highly unpleasant interactions with Resnicow related to his dispute with Theroux. Theroux later moved to have this court hold Resnicow in contempt for violating the TRO; the parties ultimately settled that motion, with Resnicow paying legal fees.

Theroux is entitled to a preliminary injunction. Preventing harassment or intimidation of witnesses is crucial to our system of justice, so that no party may "influence a proceeding and obtain an outcome therein through extra-judicial means." (*Kalyanaram v New York Inst. of Tech.*, Index No. 107961/2007, 2007 WL 4226677, at \*3 [Sup Ct, NY County Oct. 15, 2007], *aff'd on appeal from final judgment* 63 AD3d 435, 435 [1st Dept 2009].) Theroux has submitted ample evidence that Resnicow has harassed and sought to intimidate other residents of his building regarding this action, including retaliating against them for having submitted to this court sworn statements that support Theroux's position in the case. Theroux has also submitted evidence that Resnicow continued to do so after this court entered a temporary restraining order prohibiting such conduct. Resnicow's counsel has not given this court any authority indicating that the grant of preliminary injunctive relief would be inappropriate here.<sup>1</sup>

Accordingly, for the foregoing reasons it is

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<sup>1</sup> At most, Resnicow's counsel argues that in *Kalyanaram*, the propriety of the injunction against witness harassment did not come before the appellate court. (*See* NYSCEF No. 176, at 1.) That is not correct. The order in which trial court Justice Diamond *explained* the grant of injunctive relief was not before the court on appeal, because it was subsumed in the final judgment in the case. But the final judgment included an injunction against witness harassment (*see Kalyanaram*, 2007 WL 8307431, at \*2 [Sup Ct, NY County Nov. 15, 2007]); the propriety of that injunction was contested on appeal (*see* Brief for Respondent-Respondent at 31-32, *Kalyanaram*, 2008 WL 8156919 [1st Dept Dec. 10, 2008]); and the First Department expressly affirmed the grant of injunctive relief (*see Kalyanaram*, 63 AD3d at 435).

ORDERED that upon service of a copy of this order with notice of entry, Norman Resnicow is enjoined and restrained, during the pendency of this action, from doing or suffering to be done, directly or through his wife, his attorney, or any other third party, any of the following acts:

- (i) Entering Theroux's property without permission;
- (ii) Harassing, intimidating, threatening, or in any way influencing witnesses and prospective witnesses who have given, or may give, testimony in this action;
- (iii) Communicating, orally or by written or any other means, with Bradley Calcaterra, David McCorkle, Tim Walch, or Richard Porras about the present action, without written prior permission from their attorneys; and
- (iv) Using abusive language or posture in communications, orally or by written or any other means, with any resident of 71 Washington place, all of whom are potential witnesses in this action;

and it is further

ORDERED that Theroux serve a copy of this order with notice of entry upon all parties.

7/29/2019 DATE					 GERALD LEBOVITS, J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					REFERENCE