

<b>25 CPW City Views, LLC v Cohen</b>
2020 NY Slip Op 30161(U)
January 22, 2020
Supreme Court, New York County
Docket Number: 152876/2018
Judge: James E. d'Auguste
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 55

-----X  
25 CPW CITY VIEWS, LLC &  
HEDY SLOAN STEMPLER

Plaintiffs,

Index No.  
152876/2018

LINDA COHEN,

Defendants.

-----X  
**Hon. James E. d'Auguste**

Motion sequence nos., 001 and 002 are consolidated for disposition and are disposed of in accordance with the following decision and order.

Plaintiffs 25 CPW City Views, LLC (25 CPW) and Hedy Sloan Stempler (Stempler) move by order to show cause for a preliminary injunction (motion seq. no. 001), pursuant to CPLR 6301, enjoining defendant Linda Cohen (Cohen) from:

- (1) contacting Stempler or any occupant of apartment 18H at 25 Central Park West, NY, NY (18H);
- (2) appearing at the front door of 18H;
- (3) ringing the doorbell of 18H;
- (4) placing any material under the door of 18H;
- (5) shouting, screaming, yelling, or engaging in physical or verbal threats directed at Stempler or any occupant of 18H;

(6) engaging in any assault, abuse, harassment, or intimidation of Stempler or any occupant of 18H;

(7) going onto the 18th floor of the apartment building at 25 Central Park West, New York, NY;

(8) interfering with comforts or conveniences of 25 CPW or Stempler; and

(9) creating or permitting any disturbing noises or activities, including the creation of noxious odors, that interfere with 25 CPW or Stempler's use and enjoyment of 18H.

Defendant Cohen moves for an order (motion seq. no. 002), pursuant to CPLR 6301, that in the event the plaintiffs' application for injunctive relief is granted, then Cohen seeks an order enjoining 25 CPW and Stempler from harassing, menacing, threatening, or stalking Cohen.

Plaintiffs' motion for injunctive relief is granted and defendant's motion is denied.

### **BACKGROUND**

25 CPW owns apartment 18H and leased the premises to Stempler since December 28, 2016 (NYSCEF Doc. No. 1, complaint ¶¶ 1-2, 5). Cohen owns and is the sole occupant of apartment 17H, which is located directly below 18H in the same building (*id.*, ¶¶ 3-4). Prior to leasing 18H to Stempler, 25 CPW leased 18H to nonparties Matthew Slosar and Byron Kantrow Slosar (Prior Tenants) (*id.*, ¶ 6).

Plaintiffs assert that Cohen has been engaged in escalating harassment of Stempler, and that Cohen previously tormented the Prior Tenants who ended up not renewing their

lease because of Cohen’s harassment (*id.*, ¶¶ 7-17). This harassment of the Prior Tenants included Cohen making frequent false complaints of noise emanating from 18H, even when the Prior Tenants were away on vacation, and making disparaging remarks to them (*id.*, ¶ 7). Cohen would use her broom to bang on her ceiling to complain of noise, during times when tenants were not expected to be quiet, i.e. between 8 a.m. and 11 p.m. She would make noise complaints, including about the Prior Tenants’ dog, to the building management, Julie Friedman Realty (Realty), which investigated and found the complaints baseless (*id.*, ¶¶ 8-9). Cohen herself would make noise, beating drums and chanting, and burning odors would waft from her apartment up to 18H to the Prior Tenants’ annoyance (*id.*, ¶¶ 10-11). Matthew Slosar and Byron Kantrow Slosar both submit affidavits detailing Cohen’s harassment against them, including her actions in banging with her broom or other objects on her ceiling complaining of their noises, even complaining that their morning showers were too noisy (NYSCEF Doc. No. 18, affidavit of Matthew Slosar [Matthew aff]; NYSCEF Doc. No. 46, affidavit of Byron Kantrow Slosar [Byron aff]). She complained that their dog’s toenails were too noisy on the carpeted floors, and complained of their “personal habits,” confronting them and making disparaging remarks about their sexual orientation (*id.*, ¶ 10). Cohen also harassed the Prior Tenants’ housekeeper not to use the vacuum or any bleach when cleaning 18H (NYSCEF Doc. No. 46, Byron aff, ¶ 8). They were forced to lodge numerous complaints against her, and, at the end of their lease, decided not to renew because they could no longer suffer her conduct (*id.*, ¶ 13).

After the Prior Tenant moved out, 25 CPW renovated 18H, installing additional soundproofing to address Cohen’s complaints, at a cost of over \$4,000.00 (NYSCEF Doc. No. 1, compl, ¶ 18, and NYSCEF Doc. No. 39). Cohen complained of the noise during renovations, and delayed the performance of such renovations, which in turn delayed 25 CPW in its attempts to re-lease the premises (*id.*, ¶ 19). 25 CPW submits the affidavit of one of its principals, Svetlana Wasserman, who attests that Cohen has been an incessant nuisance and has harassed her neighbors to the point of attaining their departure from their units by making frivolous and unfounded noise complaints (NYSCEF Doc. No. 47, affidavit of Svetlana Wasserman [Wasserman aff], ¶¶ 2-4). She details Cohen’s harassment of the workers performing the renovations, and that Cohen wrote an email which she slipped under Wasserman’s own apartment door, accusing and threatening Wasserman and her family (*id.*, ¶¶ 12-13). She refers to various letters, notes, and emails from Cohen annexed to plaintiffs’ order to show cause demonstrating Cohen’s harassing behavior (NYSCEF Docs. Nos. 6, 7, 8, 9, 11, 12, 15).

25 CPW asserts that, to accommodate Cohen, it chose Stempler as a new tenant as she is a “quiet, single, elderly lady who lived on the Premises [in the building] since 1997” (*id.*, ¶ 5). On December 28, 2016, Stempler took occupancy of 18H (NYSCEF Doc. No. 17, affidavit of Lewis Friedman [Friedman aff], ¶ 2). Stempler suffers from multiple sclerosis and asserts that the stress from Cohen’s relentless harassment of her has exacerbated her symptoms and has been detrimental to her health (NYSCEF Doc. No. 16, affidavit of Hedy Sloan Stempler [Stempler aff], ¶ 2; NYSCEF Doc. No. 79, attending

physician statement by Brian R. Apatoff, MD, PhD). She asserts that Cohen's harassing behavior has escalated since December 2017.

On February 1, 2018, Cohen put a note on Stempler's door stating:

"If you continue to harass me in any way, forget about sleeping! I will make it my business to make your life as miserable as you try to make mine (which you do every day and for no reason!) Believe me I have had enough of your pounding me with heavy objects and whatever else you can do to disturb and hurt me. I will give it right back you [sic] in spades. You are a creepy sick lady with nothing better to do than harass and disturb me at all hours . . . I am totally sick of you and your sinister pranks which disturb me and keep me up at all hours, again, for no reason, as I have done nada to you other than [sic] point out your excess weight. Got it!"

(NYSCEF Doc. No. 6; Stempler aff, ¶ 5).

Later, during that same week in February, Cohen slipped various notes under Stempler's door saying things such as "Sweet Dreams fat Piggy" with angry face emoji stickers, and a dead face emoji, and the note allegedly was covered with garlic powder (Stempler aff, ¶ 6; NYSCEF Doc. No. 7).

On February 22, 2018, Stempler asserts that there was some strange white powder on her door knob, and her doorbell had been defaced with a black substance, which she reported to the "front desk." The front desk then sent up the service elevator employee to clean. Sometime thereafter, a second note was left for Stempler stating "I am taking you to court you nasty destructive intrusive creep" (Stempler aff, ¶7; NYSCEF Doc. No. 8), and a third note was left for her which said "Sleep tight Pig Face Someone is watching u" with a drawing of two eyes and signed "sshhh" (Stempler aff, ¶ 9; NYSCEF Doc. No. 9).

Stempler states that during this time period Cohen incessantly rang her doorbell, and one night screamed loudly “I know you’re in there, open up, open up or else” (Stempler aff, ¶ 10; NYSCEF Doc. No. 10). Stempler contacted both a member of the board of the condominium association, and Lewis Friedman of Realty, the manager of the property, with her concerns (NYSCEF Doc. No. 10).

On February 23, 2018, Cohen took the service elevator up to Stempler’s floor, rang her doorbell, then banged repeatedly on her door. When Stempler finally opened the door, with her cell phone camera ready, Cohen allegedly threw garlic powder all over her and thrust an orange in her face (*id.*, ¶¶ 3-4). Stempler submits copies of her cell phone pictures of Cohen with the garlic and orange (NYSCEF Doc. No. 5).

One afternoon Stempler received a call at her door by EMTs who indicated that they had received a call that there was a “very unwell lady here,” she told them that she had just woken up, and then they left (Stempler aff, ¶ 11). She believes that Cohen was behind this call. She contends that Cohen has complained to her, to the front desk, and to the police, that she disturbs Cohen by flushing her toilet (*id.*, ¶ 12; *see* NYSCEF Doc. No. 11), and that she drops heavy objects, like a bowling ball, on the floor and moves furniture (Stempler aff, ¶ 13; *see* NYSCEF Doc. No. 12). Cohen has made such complaints against Stempler in the middle of the night and has succeeded in getting the front desk people to come up and awaken Stempler (NYSCEF Doc. No. 52, affidavit of Jessica Quinn, ¶ 2). Upon further inquiry, the property managers have determined that the complaints by Cohen appeared to lack merit (*id.*; *see also* NYSCEF Docs. Nos. 50, 51, affidavit of Eric Lyons [resident

manager of building]). Stempler asserts that Cohen smokes marijuana or burns something she cannot identify, and the noxious fumes invade Stempler's apartment, making her sick. She attests that she is afraid of Cohen, and fears leaving her apartment lest she run into her in the building or on the street and is afraid that Cohen will throw something at her more dangerous than garlic powder and inflict serious injury on her (Stempler aff, ¶¶ 13-14).

Based on these assertions, Stempler and 25 CPW brought this action seeking recovery for six causes of action: (1) by 25 CPW for nuisance; (2) by Stempler for nuisance; (3) by Stempler for intentional infliction of emotional distress; (4) by 25 CPW for tortious interference with prospective business relations; (5) by 25 CPW for violation of condominium by-laws; and (6) by both for injunctive relief (NYSCEF Doc. No. 1, compl ¶¶ 26-61).

Cohen has answered the complaint, denying the material allegations, asserting 27 affirmative defenses, and asserting six counterclaims. The counterclaims allege that plaintiffs are harassing her, being a nuisance, stalking, menacing, intentionally inflicting emotional distress, and seek a permanent injunction (NYSCEF Doc. No. 33).

Plaintiffs seek a preliminary injunction, enjoining Cohen's allegedly long, vicious, and escalating harassment of Stempler and other occupants of 18H. They submit the affidavits of Stempler, the Prior Tenants, and Lewis Friedman of Realty, attesting to this harassment campaign. They contend that they have shown a likelihood of success on the merits of their claim for intentional infliction of emotional distress, contending that Cohen's conduct can be characterized as atrocious and beyond the bounds tolerated by a

civilized society, as it is a vicious campaign without justification to terrorize a defenseless multiple sclerosis (MS) victim. They urge that Cohen’s relentless and increasingly vicious acts have caused extreme anxiety to Stempler, and that Cohen should be held accountable. They further argue that they have demonstrated a likelihood of success on their nuisance claim as well, since they show that Cohen’s unjustifiable actions have interfered with 25 CPW’s enjoyment of 18H as the owner, and deprived Stempler of her enjoyment as the tenant in 18H. Plaintiffs assert that Stempler’s MS condition will continue to be adversely affected by Cohen’s harassment, and that this physical harm is potentially irreparable. Finally, they urge that the equities balance in their favor, as the harm to Stempler’s mental and physical well-being by Cohen’s continued and escalating harassment and assault outweighs any harm to Cohen in prohibiting her from continuing such harassment while the action is proceeding.

In opposition and in support of her cross motion, Cohen attests that Stempler’s affidavit is misleading and lacks context. She states that Stempler has been engaged in an extended harassment campaign against her which has exacerbated her health issues. She asserts that Stempler “regularly scrapes chairs or furniture on the floor and bangs repeatedly on her floor” (NYSCEF Doc. No. 28, affidavit of Linda Cohen, ¶¶ 3-7). She confirms that she sent numerous emails complaining to management about Stempler, and that she called the police to complain and file a report (*id.*, ¶ 8). She admits that she was knocking on Stempler’s door many times on February 23, 2018, but states that she was doing so because Stempler was banging on her floor with some object in order to disturb

Cohen. She asserts that she did not throw any garlic powder at Stempler but admits to placing the various notes on Stempler’s door with the name-calling and threats (*id.*, ¶¶ 10-11). Cohen claims she did so because Stempler was “repeatedly pounding on her floor during all hours of the day and night solely out of her bizarre spite for me” (*id.*, ¶ 11). She contends that leaving an angry note for Stempler was “entirely appropriate in that situation” (*id.*, ¶ 13). In response to Stempler’s assertions that she was ringing the doorbell incessantly and yelling out, Cohen admits this behavior as “partially true” (*id.*, ¶ 16). She contends that she went upstairs to tell Stempler to stop banging on her floors and she raised her voice when Stempler refused to answer her door (*id.*). Cohen states that she did not know why the EMTs came to Stempler’s door, but stated that when she called the police, “the police must have determined that Mrs. Stempler was unwell and requested medical support” (*id.*, ¶17). She asserts that while plaintiffs contend that 18H was soundproofed, no soundproofing would prevent noise from intentional and repeated banging on the floor (*id.*, ¶ 18). She states that she is a petite and frail woman, and not a physical danger to anyone. Finally, she urges that if the Court is inclined to enter an order preventing any behavior, it should bar both sides from engaging in abusive behavior (*id.*, ¶¶ 23, 25). She does not submit any other affidavits.

Cohen argues that if plaintiffs’ allegations are true, they should have filed a police report so that Cohen could be investigated criminally. Plaintiffs’ failure to do so indicates that they do not believe in the veracity of their allegations. She also argues that a court of equity will not undertake to enforce the criminal law or enjoin the commission of a crime.

Cohen further maintains that plaintiffs fail to demonstrate a likelihood of success on the merits as the facts are sharply disputed as to who is the aggressor. She argues that the potential that Stempler’s health will deteriorate without an injunction fails to show irreparable harm, and, that her own health conditions are being exacerbated by Stempler’s conduct. As to the balance of equities, Cohen urges that to grant plaintiffs’ application would be to assume Cohen committed gross criminal law violations when Stempler is the aggressor.

In opposition to Cohen’s cross motion, Stempler submits another affidavit in which she “categorically den[ies] ever having banged or pounded on the floor of Apartment 18H, scraped furniture or any other heavy objects across such floor” (NYSCEF Doc. No. 43, affidavit of Hedy Sloan Stempler, dated July 3, 2018 [Stempler reply aff] ¶ 2). She states that she would be very hard-pressed to lift much less move any heavy objects with her MS, but states that she walks with a cane. She points out that there are no other noise complaints about her from anyone other than Cohen, but that there have been numerous complaints against Cohen. Stempler also points out that Cohen admits to the February 23, 2018 confrontation and does not deny that Stempler took the photos of her. She also admits to having placed the various notes under Stempler’s door which contain disturbing threats, and call Stempler names, disparaging her appearance (*id.*, ¶¶ 2-7).

Plaintiffs also submit the affidavits of the Prior Tenants who state that Cohen continually and maliciously harassed them (NYSCEF Doc. Nos. 44, 46). They affirm that she repeatedly banged on her ceiling during normal, non-quiet hours, complaining that their

morning showers were too noisy, but banged drums and burned noxious substances in her own apartment. Svetlana Wasserman (NYSCEF Doc. No. 47), a principal of 25 CPW, attests to Cohen’s actions in harassing Stempler, the Prior Tenants, and other neighbors by making frivolous noise complaints, 25 CPW’s efforts to accommodate her, Cohen’s actions in harassing the workmen soundproofing 18H, other tenants in the building, and Wasserman’s own family with abusive letters and emails.

Peter Lowenkron, an owner who rents out apartment 17I in the building, submits an affidavit attesting that Cohen has harassed tenants in his apartment with noise complaints when the tenants were simply using the apartment in a normal, everyday manner, such as taking a morning shower (NYSCEF Doc. Nos. 48 and 49 [email from 17I tenant about Cohen’s actions and attaching two Cohen letters to her complaining of noise]). Eric Lyons, the resident manager of the building, attests to Cohen’s constant noise complaints against at least four tenants in the building, including Stempler, the Prior Tenants, and tenants in apartments 17I and 17G, and unequivocally affirms that “in no instance were any of Cohen’s noise complaints found to have any merit whatsoever,” and no other tenant corroborated Cohen’s complaints (NYSCEF Doc. No. 50, affidavit of Eric Lyons, ¶¶ 2-8). Lyons also states that other tenants have corroborated that Cohen has made loud noises and banged on her ceiling, was beating drums, and burned noxious substances in her apartment (*id.*, ¶ 8). Similarly, Jessica Quinn, an employee of Douglas Elliman Property Management, attests that on at least one occasion, Cohen made a very late night noise complaint against Stempler, which resulted in Stempler being awoken in the middle of the

night by the front desk. Quinn affirms that, upon further inquiry, the complaints appeared to lack merit, and that the same thing reportedly occurred with the Prior Tenants (NYSCEF Doc. No. 52). Finally, plaintiffs submit the affidavit of John Timlin, a principal of Westpoint Construction Inc., the soundproofing contractor for 18H, who attests to the work done on 18H in August 2016 (NYSCEF Doc. Nos. 54-57).

Plaintiffs argue that Cohen fails to show a probability of success on her claims, submitting only her own affidavit, in contrast to the numerous affidavits submitted by plaintiffs from other tenants and people employed by the building showing Cohen's harassment of Stempler as well as other tenants. In addition, they point out that Cohen admits that she did the things Stempler accuses her of doing. They contend that half of Cohen's counterclaims are for causes of action that do not exist, like harassment, stalking and menacing. They urge that Cohen fails to demonstrate irreparable injury, as her allegations of health issues are purely conclusory. They contend that the equities do not balance in her favor as she appears to be hypersensitive to sounds, like toilet flushing, coming from Stempler's apartment even after extensive soundproofing, and complains of noises regardless of the time of day (i.e., even during non-quiet hours) or when the occupants are away on vacation. If relief were granted to Cohen, plaintiffs argue that Stempler would not be able to flush her toilet or walk around her apartment.

In reply, Cohen seeks to submit a video of an incident on June 9, 2018 which she claims shows Stempler aggressively taking phone pictures of Cohen in the building lobby. The purported video is provided through an internet link to what appears to be from a

Dropbox account, a cloud storage service. The only other proof she attempts to submit is what she asserts is an audio recording she made on June 28, 2018 which she claims shows Stempler dropping a heavy object on the floor at 11:30 p.m. As with the video, the recording is linked to a Dropbox account.

A TRO in plaintiffs' favor was entered on April 4, 2018 (NYSCEF Doc. No. 21), and defendant Cohen's TRO request was denied (NYSCEF Doc. No. 27).

### DISCUSSION

Plaintiffs' motion for a preliminary injunction is granted, and defendant's cross motion is denied.

On a preliminary injunction motion, the movant must show a probability of success on the merits, irreparable injury absent the grant of the relief, and a balance of equities in the movant's favor (CPLR 6301; *Nobu Next Door, LLC v Fine Arts Hous., Inc.*, 4 NY3d 839, 840 [2005]). "Proof establishing these elements must be by affidavit and other competent proof, with evidentiary detail" (*Scotto v Mei*, 219 AD2d 181, 182 [1<sup>st</sup> Dept 1996]; see CPLR 6312 [a]). The determination of such a motion lies within the sound discretion of the trial court (see *Ciminello Property Assocs. v New 970 Colgate Ave. Corp.*, 173 AD3d 447, 448 [1<sup>st</sup> Dept 2019]; *Scialdone v Stepping Stones Assoc., L.P.*, 148 AD3d 950, 952 [2d Dept 2017]).

An injunction may be granted even where there are factual questions for trial, so long as the movant can demonstrate a probability of success on the merits (CPLR 6312 [c];

*see 1234 Broadway LLC v West Side SRO Law Project, Goddard Riverside Community Ctr.*, 86 AD3d 18, 23 [1<sup>st</sup> Dept 2011] [movant “need not tender conclusive proof beyond any factual dispute establishing ultimate success in the underlying action,” just a clear right to the relief]; *Ying Fung Moy v Hoho Umeki*, 10 AD3d 604, 605 [2d Dept 2004] [conclusive proof not necessary; likelihood of success may be found even when disputed facts]; *Four Times Sq. Assoc. v Cigna Invs.*, 306 AD2d 4, 5 [1<sup>st</sup> Dept 2003] [“likelihood of success on the merits may be sufficiently established even where the facts are in dispute and the evidence is inconclusive”). This Court finds that while the parties have submitted conflicting affidavits, injunctive relief in plaintiffs’ favor should be granted.

To assert a claim for private nuisance, the plaintiff must establish the following elements: “(1) an interference substantial in nature, (2) intentional in origin, (3) unreasonable in character, (4) with a person's property right to use and enjoy land, (5) caused by another's conduct in acting or failure to act” (*Copart Indus. v Consolidated Edison Co. of N.Y.*, 41 NY2d 564, 570 [1977]; *see also Domen Holding Co. v Aranovich*, 1 NY3d 117, 124 [2003] [nuisance is implicated by a pattern of continuity or recurrence of objectionable conduct]; *Chelsea 18 Partners, LP v Sheck Yee Mak*, 90 AD3d 38, 41 [1<sup>st</sup> Dept 2011]; *61 W. 62 Owners Corp. v CGMEMP LLC*, 77 AD3d 330, 334 [1<sup>st</sup> Dept 2010], *aff'd as modified* 16 NY3d 822 [2011]). Conduct in this context is intentional when the defendant acts with the purpose of causing the invasion, knows that it will result, or is substantially certain it will result, from his or her conduct (*Copart Indus. v Consolidated Edison Co. of N.Y.*, 41 NY2d at 571; *see 61 W. 62 Owners Corp. v CGMEMP LLC*, 77

AD3d at 334-335; *Chelsea 18 Partners, LP v Sheck Yee Mak*, 90 AD3d at 43). However, not every intrusion will constitute a nuisance, the issue is “whether a defendant's use of his or her property constitutes an unreasonable and ‘continuous invasion of [the plaintiff's property] rights’” (*Ewen v Maccherone*, 32 Misc 3d 12, 14 [App Term 1<sup>st</sup> Dept 2011], quoting *Domen Holding Co. v Aranovich*, 1 NY3d at 124; see also *Golub v Simon*, 28 AD3d 359, 360 [1<sup>st</sup> Dept 2006]; *Rodriguez–Nunci v Clinton Hous. & Dev. Co.*, 241 AD2d 339, 340 [1<sup>st</sup> Dept 1997]).

Here, through the affidavits of Stempler, the Prior Tenants, Lowenkron, as well as the affidavits of the resident property managers, Lyons and Quinn, and of Friedman, the property manager for 25 CPW, plaintiffs demonstrated a pattern of recurring objectionable conduct, and that Cohen’s interference was substantial. These affidavits show that Cohen was repeatedly and significantly disturbing Stempler’s right to use and enjoy 18H by not only banging on Stempler’s floors at all hours of the day and night, but by confronting Stempler at her apartment door, throwing garlic powder at her, banging on her door, yelling and shouting at her not only during the day, but late at night; insisting that the front desk knock on Stempler’s door, waking her up in the middle of the night; calling the police; and repeatedly attaching on or slipping under her door threatening, insulting, and degrading notes. Plaintiffs submitted copies of Cohen’s notes to her, as well as emails Cohen sent to the property managers constantly complaining about Stempler. Cohen’s behavior began when Stempler moved in, and apparently has escalated to physical confrontations.

Plaintiffs submitted the Prior Tenants' affidavits as proof that Cohen made similar unfounded noise complaints against them, and that they refused to renew their lease because of it. Similarly, Lowenkron, the owner of apartment 17I, adjacent to Cohen's apartment, attested that Cohen made the identical claims against tenants in 17I for noises they were making in simply using the apartment in a normal manner, such as taking a morning shower, flushing the toilet, or using the kitchen in the evening, and Cohen sent emails and left notes for those tenants (NYSCEF Doc. Nos. 48-49). 25 CPW submits proof that it expended over \$4,000.00 in soundproofing 18H in August and September 2016, and that the installations met or exceeded New York City Code requirements, falling within the "Superior Soundproofing Category" for the flooring in 18H (NYSCEF Doc. Nos. 54-57).

Plaintiffs also demonstrated that Cohen's disturbances of plaintiffs were intentional. Cohen, herself, admits that she purposely engaged in this behavior. The repeated nature of Cohen's acts and the fact that they occurred at all hours of the day and night, often deliberately waking Stempler, establishes the third and fourth elements of the nuisance claim, that the interference was unreasonable and affected Stempler's and 25 CPW's rights to use and enjoy the apartment (*see 61 W. 62 Owners Corp. v CGM EMP LLC*, 77 AD3d at 334).

In opposition, Cohen offered nothing but her own affidavit, claiming that her admitted intrusions were warranted in response to noise Stempler was making in moving around in 18H. Her complaints about Stempler's noises, however, are not corroborated by other evidence, or even any factual detail. Indeed, her assertions that Stempler was

dropping bowling balls or other heavy objects are somewhat incredible given that Stempler is elderly, has MS, and walks with a cane. The only other proof she submits, a purported audio recording of noises coming from Stempler's apartment on June 28, 2018, as well as a video of Stempler taking cell phone photos of Cohen in the building lobby on June 9, 2018, are inadmissible because they are unauthenticated, lack any foundation and were provided only with an apparent link to a Dropbox account. In addition, it is unclear how Stempler's actions in taking a photo of Cohen was causing her various complaints against Stempler. Lyons and Quinn, the resident property managers for the building, attested that Cohen's complaints about Stempler lacked merit, and that she made the same unsubstantiated noise complaints about the Prior Tenants, and the neighboring tenants in both 17I and 17G, even when the apartments were vacant (NYSCEF Doc. Nos. 50-53). In fact, Lyons unequivocally stated that Cohen made numerous noise complaints, and that "in no instance were any of Cohen's noise complaints found to have any merit whatsoever," and that no other tenant or occupant complained of the noise that Cohen alleged was occurring (NYSCEF Doc. No. 50, Lyons aff, ¶ 8). Even if Cohen's affidavit raised a factual issue as to whether Stempler had been making noises that were disturbing Cohen, this factual issue does not subvert plaintiffs' establishment of a clear right to relief (*see Matter of Advanced Digital Sec. Solutions, Inc. v Samsung Techwin Co., Ltd.*, 53 AD3d 612, 612 [2d Dept 2008] [existence of fact issue alone does not justify denial of motion]; *Sau Thi Ma v Xuan T. Lien*, 198 AD2d 186, 187 [1<sup>st</sup> Dept 1993] ["even when facts are in dispute, the nisi prius court can find that a plaintiff has a likelihood of success on the merits, from

the evidence presented, though such evidence may not be ‘conclusive’”] [citation omitted]).

Plaintiffs have also demonstrated irreparable injury. An injury is irreparable when it cannot be adequately compensated by money damages, or when there is no pecuniary standard to measure damages (see 67 NY Jur 2d Injunctions section 17, citing *Poling Transp. Corp. v A & P Tanker Corp.*, 84 AD2d 796, 797 [2d Dept 1981]; see also *Di Fabio v Omnipoint Communications, Inc.*, 66 AD3d 635, 636-637 [2d Dept 2009]). The movant must show that the injury is threatened and imminent (*Family-Friendly Media, Inc. v Recorder Tel. Network*, 74 AD3d 738, 739 [2d Dept 2010]), and what constitutes such injury depends not only on the facts but upon the discretion of the court (see *Matter of Samuelsen v Yassky*, 29 Misc 3d 840, 848 [Sup Ct, NY County 2010] [Singh, J.]). Stempler is elderly and has MS, and attests that she is afraid of Cohen, afraid to leave her apartment, and fears that with the clear escalation of the conduct, Cohen may throw something more dangerous than garlic powder on her. She details the nightly assault on her quiet enjoyment of her apartment. She asserts that the constant stress Cohen has inflicted upon her has exacerbated her many serious MS symptoms (see NYSCEF Doc. No. 79, attending physician statement). This is sufficient to demonstrate irreparable injury under the circumstances of Cohen’s escalating harassment to warrant injunctive relief (see *61 W. 62 Owners Corp. v CGM EMP LLC*, 77 AD3d at 335; *Parkmed. Co. v Pro-Life Counselling*, 91 AD2d 551, 552-553 [1<sup>st</sup> Dept 1982] [preliminary injunction issued to prevent

screaming, shouting, physical and verbal threats, assault harassment, abuse and intimidation]).

As to the balance of the equities, they clearly tip in favor of granting relief to plaintiffs. The potential harm to Stempler’s health and well-being if an injunction is not issued has been demonstrated. Cohen’s harassment is persistent, disruptive, escalating and frightening Stempler in her own home. There is no apparent harm to Cohen by prohibiting her from contacting, appearing at Stempler’s door or on the 18<sup>th</sup> floor of the building, or from shouting or screaming at her, or engaging in verbal or written threats or intimidating her.

Cohen’s argument that this Court lacks jurisdiction to issue the preliminary injunction, because the relief sought is a criminal protective order, is rejected. Plaintiffs are not seeking a criminal protective order; rather, they are seeking to enjoin Cohen’s harassing behavior which is affecting plaintiffs’ enjoyment of their property in 18H. The case upon which Cohen relies, *People ex rel. Bennett v Laman* (277 NY 368, 376 [1938]) is not to the contrary. The Court of Appeals in that case stated that while a court of equity will not enjoin the commission of a crime, “the criminal nature of an act will not deprive equity of the jurisdiction that would otherwise attach” so long as it seeks to protect some proper interest (*id.* at 376). Here, plaintiffs seek to enjoin a private nuisance that is interfering with their property rights, and not to punish Cohen for her past acts, whether criminal or not. This clearly falls within the equity jurisdiction of this Court. Thus, plaintiffs satisfy the requirements for a preliminary injunction, and their motion is granted.

Cohen’s motion for preliminary injunctive relief, however, fails to meet such requirements. Cohen fails to demonstrate a likelihood of success on the merits of her claims. In her answer, she purports to assert counterclaims for nuisance, harassment, stalking, menacing, and intentional infliction of emotional distress. She fails to make any showing that she will succeed on the merits of any of these counterclaims; in fact, she does not mention any of her claims. She asserts only that Stempler is the aggressor, and has banged on the floor of her apartment, and scraped chairs and furniture, solely to harass Cohen (NYSCEF Doc. No. 28, answering affidavit of Linda Cohen, ¶ 7). At the same time, however, she admits to her confrontations with Stempler, and that she authored and delivered the various notes to Stempler. This proof falls woefully short of her burden in seeking injunctive relief. “Conclusory statements lacking factual evidentiary detail warrant denial of a motion seeking a preliminary injunction” (*1234 Broadway LLC v W. Side SRO Law Project, Goddard Riverside Community Ctr.*, 86 AD3d at 23). Cohen’s attempt, in her reply papers, to submit what she claims is video proof that Stempler was stalking her, and audio proof of Stempler’s noises, fails to save her application. As discussed above, the video and audio recordings are not authenticated, provided only by an apparent link to DropBox, and lacking any foundation for the submission of such proof.

The court further notes that plaintiffs recently responded to Cohen’s reply by submitting proof that sound monitoring equipment was installed in Cohen’s apartment from June 4, 2019 through September 23, 2019. They submit a noise monitoring report for the period of June 4, 2019 to July 8, 2019, and an affidavit from an engineer, James W.

Pugh, PhD, P.E. (Dr. Pugh), who states that he has expertise in evaluating the measurement of levels of sound intensity through decibel readings as indicated in the noise monitoring report (NYSCEF Doc. Nos. 76-77, 80). Dr. Pugh states that, in his opinion to a reasonable degree of scientific certainty, there is no correlation between the sound complaints from Cohen’s apartment (17H) and an increased sound decibel level in the apartment except for one instance, and, in that one instance, the elevated decibel level was minimal (NYSCEF Doc. No. 80, affidavit of James Pugh, PhD, P.E., ¶ 3). He concluded that there is a lack of acceptable correlation between Cohen’s complaints and any increased decibel readings. Even without this additional proof by plaintiffs, as discussed above, Cohen failed to demonstrate a likelihood of success on the merits of her counterclaims. Therefore, her application for injunctive relief is denied.

Due deliberation having been had, and it appearing to this Court that a cause of action exists in favor of the plaintiffs and against the defendant and that the plaintiffs are entitled to a preliminary injunction on the ground that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiffs’ rights respecting the subject of the action and tending to render the judgment ineffectual, as set forth in the above decision, and the plaintiffs have demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of acts, which, if committed or continued during the pendency of this action, would produce injury to the plaintiffs, as set forth in the above decision, it is

ORDERED that the undertaking is fixed in the sum of \$2,500.00 conditioned that plaintiffs, if it is finally determined that they were 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 Linda Cohen and her 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 acts:

- (1) contacting Stempler or any occupant of apartment 18H at 25 Central Park West, NY, NY (18H);
- (2) appearing at the front door of 18H;
- (3) ringing the doorbell of 18H;
- (4) placing any material under the door of 18H;
- (5) shouting, screaming, yelling, or engaging in physical or verbal threats directed at Stempler or any occupant of 18H;
- (6) engaging in any assault, harassment, or intimidation of Stempler or any occupant of 18H;

(7) going onto the 18<sup>th</sup> floor of the apartment building at 25 Central Park West, NY, NY; and

(8) interfering with comforts or conveniences of 25 CPW or Stempler; and it is further

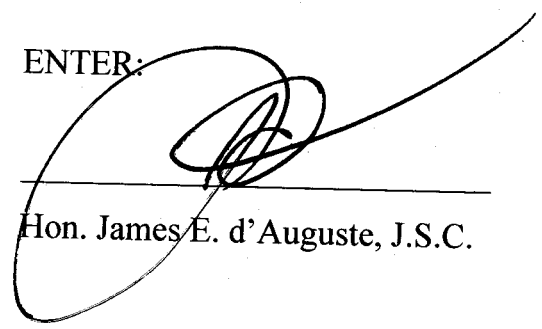
ORDERED that the TRO entered on April 10, 2018 is vacated; and it is further

ORDERED that the motion of defendant Linda Cohen for a preliminary injunction is denied; and it is further

ORDERED that counsel are directed to appear for a preliminary conference in Room 103, 71 Thomas St, New York, NY, on March 11, 2020, at 10:00 a.m.

Dated: January 22, 2020

ENTER:

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