City of New York v Torkian Group LLC
2020 NY Slip Op 31048(U)
April 27, 2020
Supreme Court, New York County
Docket Number: 450018/2019
Judge: James E. d'Auguste
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. JAMES EDWARD D'AUGUSTE** — ***Justice*** **PART** **IAS MOTION 55EFM**

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INDEX NO. 450018/2019

MOTION DATE 11/20/2019

MOTION SEQ. NO. 001

CITY OF NEW YORK,

Plaintiffs,

-against-

TORKIAN GROUP LLC, 110 GREENWICH I LLC, 110 GREENWICH II LLC, 311 WEST 50 REALTY LLC, 488 SEVENTH LLC, NYAT LLC A/K/A NYATLEASE A/K/A BEDROSE, DAVID TORDJMAN, YOHAN ATLAN, THE LAND AND BUILDING KNOWN AS 110 GREENWICH STREET, BLOCK 53, LOT 33, COUNTY, CITY AND STATE OF NEW YORK, THE LAND AND BUILDING KNOWN AS 311 WEST 50TM STREET, BLOCK 1041, LOT 19, COUNTY, CITY AND STATE OF NEW YORK, THE LAND AND BUILDING KNOWN AS 488 7TH AVENUE, BLOCK 786, LOT 42, COUNTY, CITY AND STATE OF NEW YORK, AND "JOHN DOE" 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 TORK3AN GROUP LLC, 110 GREENWICH I LLC, 110 GREENWICH H LLC, 311 WEST 50 REALTY LLC, 488 SEVENTH LLC, NYAT LLC A/K/A BEDROSE, DAVID TORDJMAN, YOHAN ATLAN, AND ANY PERSON CLAIMING ANY RIGHT, TITLE OR INTEREST IN THE REAL PROPERTY WHICH IS THE SUBJECT OF THIS ACTION,

Defendants.

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Upon the foregoing papers the motion is decided in accordance with the attached decision.

4/27/2020

DATE **JAMES EDWARD D'AUGUSTE, J.S.C.**

CHECK ONE:	[ ]	**CASE DISPOSED**		[ ]	**NON-FINAL DISPOSITION**	
	[ ]	**GRANTED**	[ ] **DENIED**	[ ]	**GRANTED IN PART**	[x] **OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[x]	**SUBMIT ORDER**	
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ] **REFERENCE**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 55
--X
THE CITY OF NEW YORK,

Plaintiff,

-against-

TORKIAN GROUP LLC, *et al.*,

Defendants.
--X

DECISION

Index No. 450018/2019
Mot. Seq. No. 001

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

In this action to abate a public nuisance, plaintiff the City of New York ("City") seeks, *inter alia*, an order enjoining defendants Torkian Group LLC ("Torkian"); 110 Greenwich I LLC; 110 Greenwich II LLC; 311 West 50 Realty LLC; 488 Seventh LLC; the Land and Building known as 110 Greenwich Street, Block 53, Lot 33, located in the County, City, and State of New York; the Land and Building known as 311 West 50th Street, Block 1041, Lot 19, located in the County, City, and State of New York; the Land and Building known as 488 7th Avenue, Block 786, Lot 42, located at the County, City, and State of New York (collectively, the "Owner Defendants") and each of them, their agents, employees, representatives, and all persons acting individually or in concert with them from (1) using or occupying, or permitting the use or occupancy of, any of the dwelling units in the buildings located at 110 Greenwich Street, 311 Greenwich Street, 311 West 50th Street, and 488 7th Avenue, all located in Manhattan (collectively, the "Subject Buildings") for less than thirty (30) consecutive days; (2) booking, offering, or advertising any dwelling units in the Subject Buildings for occupancy of less than thirty (30) consecutive days; and (3) 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 in violation of several provisions of the New York Multiple Dwelling Law ("MDL"), the Administrative Code of the City of New York ("Admin.

Code" or "Administrative Code"), and the New York City Building Code ("Building Code"). NYSCEF Doc. No. 82, at 2-3.

In Motion Sequence No. 001, the City, in the same order to show cause, pursuant to MDL Section 306, CPLR 6313, and Administrative Code Sections 7-707, 20-703(d), 27-2122, and 28-205.1, also seeking an order granting the City a preliminary injunction enjoining defendants NYAT LLC a/k/a NYAT LEASE a/k/a BEDROSE ("Bedrose"), David Tordjman ("Tordjman"), and Yohan Atlan ("Atlan") (collectively, the "Operator Defendants"),[1] their agents, employees, representatives, and all persons acting individually or in concert with them during the pendency of this action from (1) using or occupying, or permitting the use or occupancy of, any of the dwelling units in the Subject Buildings, or in any Class "A" dwelling unit in all other buildings in the City of New York for less than thirty (30) consecutive days; (2) booking, offering, or advertising any dwelling units in all other buildings in the City of New York for occupancy of less than thirty (30) days; and (3) disposing of, modifying, or in any other matter interfering with the digital or paper documents, photographs, and records maintained in connection with the management, operation, use and occupancy of the Subject Buildings, or in any other Class "A" dwelling unit in all other buildings in the City of New York. *Id.* at 3.[2] Defendants Tordjman and Atlan cross-move,

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[1] According to the Verified Complaint, defendant Bedrose is a limited liability company organized under the laws of the State of New York, with its principal office located at 326 Avenue S in Brooklyn, New York. NYSCEF Doc. No. 1, ¶ 34. According to its own website, defendant Bedrose "specialize[s] in supplying furnished apartments for short-term stay[s] in New York City to people in need of a ready-to-be-lived-in-home." *Id.* (alterations in original) (citation omitted). Defendant David Tordjman is a licensed real estate broker in New York State, who is a principal officer of defendant Bedrose, and manages its rentals. *Id.*, ¶ 35. Defendant Tordjman is also the Executive Vice President of Norman Bobrow & Co., Inc., a representative commercial real estate firm. *Id.* Defendant Yohan Atlan, the registered agent for NYAT LLC according to the New York State Department of State records, is a tax preparer and registered agent of Defendant Bedrose. *Id.*, ¶ 36. Defendant Atlan was also a senior partner at CPA Tax Planning for nine (9) years. *Id.*

[2] Motion Sequence No. 001 also seeks a temporary restraining order ("TRO"), pursuant to MDL Section 305, CPLR 6313, and Administrative Code Sections 7-710, 7-711, 2-703(d), 27-2122, 28-103.13, and 28-205.1, enjoining both the Owner Defendants and the Operator Defendants and their

pursuant to CPLR 3211(a)(7), seeking an order dismissing the complaint in its entirety as against them and Bedrose. For the reasons stated herein, the City's motion is granted as to the Operator Defendants who are enjoined from taking the respective actions stated above, and the cross-motion to dismiss the complaint is denied.

Factual and Procedural Background

The Verified Complaint states seven causes of action for: (1) Statutory Public Nuisance – Building Code violations – illegal conversion from residential use to transient occupancy (Admin. Code § 7-701); (2) Statutory Public Nuisance – Building Code violations – illegal occupancy (Admin. Code § 28-118.3.2); (3) Statutory Public Nuisance – Building Code violations – work without a permit (Admin. Code § 28-105.1); (4) Violation of the MDL (MDL § 4.8(a)) (prohibiting the use of a Class "A" multiple dwelling for any purpose other than that of a permanent residence);

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respective agents, employees, representatives and all persons acting individually or in concert with them from (1) interfering with the City's right to have immediate and unhindered access for its Fire Department of the City of New York ("FDNY") Fire Protection Inspectors and New York City Department of Buildings ("DOB") Building Inspectors, including but not limited to those personnel assigned to the New York City Mayor's Office of Special Enforcement ("OSE"), to lawfully enter the Subject Buildings, in their normal course of duty, for the purpose of inspecting the Subject 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 Building Code, New York City Fire Code ("Fire Code"), Administrative Code, MDL, and other applicable laws and rules that are directly related to transient use violation or violations stemming from transient use; (2) using or occupying, or permitting the use or occupancy of any residential units in the Subject Buildings for less than thirty (30) consecutive days, except those units currently so occupied, which must be vacated by Monday (Jan. 14, 2019) by 11:59 P.M.; (3) permitting the use or occupancy of any additional residential units at the Subject Buildings for less than thirty (30) consecutive days; (4) registering an new persons at the Subject Buildings for use or occupancy for less than thirty (30) consecutive days; (5) booking, offering, or advertising any units at the Subject Buildings for or occupancy for less than thirty (30) consecutive days, either on their own internet sites or on other travel-related internet sites not directly operated by defendants; and (6) 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. *Id.* at 3-5. The TRO was issued on January 10, 2019. NYSCEF Doc. No. 82, at 6.

(5) Building Code violations – illegal change of occupancy (Admin. Code §§ 28-118.3.1, 28-101.5, 28-118.3.2, 28-118.3.4, 28-118.3); (6) New York City Consumer Protection Law ("CPL") – Deceptive trade practices (Admin. Code §§ 20-700, 20-701); and (7) Common Law Nuisance – seeking an injunction and compensatory and punitive damages. NYSCEF Doc. No. 1.

According to the unrefuted facts as alleged in the complaint, the first Subject Building is a thirteen-story Class "A" multiple dwelling building containing sixty (60) Class "A" permanent residential dwelling units located at 110 Greenwich Street in Manhattan ("110 Greenwich"). The second Subject Building is a seven-story Class "A" multiple dwelling building containing 102 Class "A" permanent residential dwelling units located at 311 West 50th Street in Manhattan (311 West 50th"). The third Subject Building is a thirteen-story Class "A" multiple dwelling building containing 108 Class "A" permanent residential dwelling units located at 488 7th Avenue in Manhattan ("488 7th Avenue"). Defendant Torkian, founded in 1992 by non-party brothers Hersel and Behrooz (Ben) Torkian, owns and develops commercial and residential real properties in and around New York City, including the three Subject Buildings. The City brings this action to shut down the alleged illegal transient accommodations that defendants are advertising or permitting to be advertised online in the Subject Buildings on internet platforms such as, *inter alia*, www.Airbnb.com ("Airbnb"), www.HomeAway.com ("HomeAway"), www.TripAdvisor.com ("TripAdvisor"), and www.Booking.com (collectively, "internet platforms"). Through OSE's investigation, the City has identified approximately forty-four (44) allegedly illegal online listings—thirty-five (35) listings on Airbnb, eight (8) listings on HomeAway, and one (1) listing on TripAdvisor—that advertise transient rentals in the Subject Buildings, along with evidence indicating that defendants have been and are deceptively renting said Class "A" units for less than thirty (30) days without disclosing that such occupancy is both illegal and unsafe. Due to the aforementioned listings, the City alleges that, between February 2015 and October 2018,

approximately 1,029 transient rental transactions occurred in at least thirteen (13) of the subject units, generating more than $1,179,000 in revenue.

The City asserts that the use of a Class "A" apartment for transient stays of less than thirty (30) days is prohibited by the MDL and by the Administrative Code as an illegal conversion, an illegal occupancy, and an unsafe condition due to increased fire safety risks and other public health issues. These risks arise because, *inter alia*, transient occupants of Class "A" apartments are not provided with sufficient fire safety protections—including fire suppression devices, alarms, and emergency lighting—which would be required in transient dwellings (*e.g.*, hotels). According to the City, the lack of adequate fire safety, combined with the transient tenants' unfamiliarity with the Subject Buildings, significantly increases the risk of injury to individuals in the event of a fire.

The complaint also alleges that the units in the Subject Buildings are regularly and deceptively advertised on the aforementioned internet platforms for short term stays—using enticing titles to enhance rental traffic—in violation of the MDL and the CPL. The City provides examples of these advertisements, which are titled, for example, "Ultra Luxurious Designer Large Apartment – Top Floor – Fitness, Doorman, Terrace" or "Amazing FiDi LOFT Steps 9/11 Tall Ceiling True NYC" at the nightly rates of approximately $385 and $199, respectively. NYSCEF Doc. No. 1, ¶ 6.

The City contends that defendants have ignored the City's extensive pre-litigation administrative enforcement efforts to enjoin this unlawful transient rental activity for approximately four years, from February 2015 to September 2018, which include, but are not limited to, the following: (1) conducting nine (9) Administrative Code inspections in response to complaints or as part of an ongoing investigation to determine the legality and safety of the Subject Buildings' occupancy; (2) finding illegal transient use on each of those nine (9) Administrative Code inspections; (3) issuing twenty-three (23) violations with orders from the DOB to correct the

violating conditions; and (4) imposing over $64,800 in civil penalties. Defendants have also refused to comply with the law and have not stopped their allegedly illegal and unsafe transient operations. One of the reviews stated that "[m]any units are operated as hotel rooms (google the address and you'll find it listed as a hotel) - so there is a daily flow of random tourists in the lobby and elevators." *Id.*, ¶ 10 (alteration in original).

In response, OSE, an investigation unit that observes, *inter alia*, health, safety, and fire code compliance in buildings throughout New York City, has continued to find illegal transient use at the Subject Buildings, as recently as September 2018. The first set of illegal transient violations was issued against 311 West 50th on February 2, 2017, with certificates of correction submitted on March 2, 2017. However, less than ten (10) months later, the City conducted another Administrative Code inspection and again discovered alleged illegal transient use at 311 West 50th. The same pattern allegedly took place at least three more times between December 2017 and September 2018. Based upon this pattern of behavior, the City has concluded that the Owner Defendants have no intention of properly monitoring, preventing, or stopping the alleged illegal transient activity in the Subject Buildings and are simply treating the monetary penalties that are imposed and filing certificates of correction as a cost of doing business. The City supports this conclusion in pointing to the fact that defendant Torkian Group has regularly submitted certificates of correction to the DOB after each violation and before the first hearing date for said violation to mitigate the penalties imposed, confirming that each time the transient use has been discontinued in a specific apartment and throughout the building. *See* Certificates of Occupancy, *infra*.

The City now brings this action to, first, stop the public nuisance being maintained by defendants at the Subject Buildings, including: (1) the alleged illegal rental of permanent residential Class "A" dwelling units to transient occupants without having the required more stringent and safety features required in buildings designed for transient occupancy; (2) the

creation of significant security risks in the Subject Buildings that the staff is not equipped to handle as associated with transient occupancy, which includes a degradation in the quiet peace and enjoyment, safety, and comfort of the permanent residents in the Subject Buildings caused by noise, filth, and excessive traffic of unknown transient occupants; and (3) the unlawful reduction of permanent housing available to New York City residents when there is a legislatively declared housing emergency. The City also brings this action, second, to stop defendants from committing deceptive trade practices against visitors and tourists seeking short-term accommodations in New York City by allegedly illegally advertising and promoting the booking of permanent residential Class "A" units for transient use.

On June 6, 2019, this Court "So-Ordered" a Stipulation of Settlement and Consent Judgment by and between the City and the Owner Defendants granting the City, *inter alia*, permanent injunctive relief and monetary relief in the amount of $300,000. NYSCEF Doc. No. 155. Accordingly, the opposition only addresses the Operator Defendants: Bedrose, Tordjman, and Atlan.

Discussion

The City essentially requests two injunctions: (1) to enjoin defendants from the illegal use or occupancy of the Subject Buildings and (2) to enjoin defendants from advertising for what would be an illegal use or occupancy of the Subject Buildings. Typically, "[a] party seeking a preliminary injunction must demonstrate, by clear and convincing evidence (1) a likelihood of success on the merits, (2) irreparable injury absent the granting of the preliminary injunction, and (3) a balancing of the equities in the movant's favor." *Gilliland v. Acquafredda Enters., LLC*, 92 A.D.3d 19, 24 (1st Dep't 2011). However, recognizing the public's compelling interest in ensuring that building and fire safety codes are followed, where a municipality seeks injunctive relief in nuisance abatement proceedings, such as in this action, "[t]he three-pronged test for injunctive

relief does not apply; no special damage or injury to the public need be alleged; and commission of the prohibited act is sufficient to sustain the injunction." *City of New York v. Bilynn Realty Corp.*, 118 A.D.2d 511, 512 (1st Dep't 1986). Here, under either the three-prong test discussed in *Acquafredda Enterprises, LLC* (92 A.D.3d at 24), or the single prong test set forth in *Bilynn* (118 A.D.2d at 512), the City has met its prima facie entitlement to a preliminary injunction.

Pursuant to MDL Section 4.8(a), the units within the Subject Buildings, which are Class "A" multiple dwellings, "shall only be used for permanent residence purposes," are defined as "occupancy of a dwelling unit by the same natural person or family for thirty consecutive days or more."[3] Pursuant to MDL Section 306, the City may seek to enjoin any violation of the MDL, including the improper use of a Class "A" multiple dwelling. Further, MDL Section 304 establishes that both the violator and "every person who shall . . . assist in the violation of any provision of [the MDL]" are punishable under the statute.

MDL Section 4.8(a) is incorporated into both the Administrative Code and the Building Code.[4] Pursuant to Administrative Code Section 7-703(d), which contains the "Nuisance Abatement Law," a building, such as the Subject Buildings, shall be a public nuisance if it is in violation of, *inter alia*, Administrative Code Sections 28-118.3.1, 28-118.3.2, 28-105.1, 28-118.3.4, and 28-118.3. Administrative Code Section 28-118.3.1 provides that

> [n]o building . . . or portion thereof hereafter altered so as to change from one occupancy group to another, either in whole or in part,

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[3] The MDL allows for houseguests and "lawful boarders, roomers or lodgers," so long as they reside in the dwelling unit with the natural person or family (MDL § 4.8(a)(1)(A)), and for short term house sitters, so long as the house sitters do not pay for the use of the dwelling (MDL § 4.8(a)(1)(B)).

[4] Administrative Code Section 27-265 references and incorporates Housing Maintenance Code ("HMC") Section 27-2004(8)(a), which is identical to MDL Section 4.8(a). Similarly, Building Code Section 310.1.2 also references and incorporates HMC Section 27-2004(8)(a) and MDL Section 4.8(a). Each provision governs "buildings with three or more dwelling units that are occupied for permanent residence purposes," like the Subject Buildings at issue herein.

> shall be occupied or used unless and until the commissioner has issued a certificate of occupancy certifying that the alteration work for which the permit was issued has been completed substantially in accordance with the approved construction documents and the provisions of this code and other applicable laws and rules for the new occupancy or use.

Administrative Code Section 28-118.3.2 provides that "[n]o change shall be made to a building . . . inconsistent with the last issued certificate of occupancy." Administrative Code Section 28-105.1 provides that "[i]t shall be unlawful to . . . change the use or occupancy of any building . . . unless and until a written permit therefore shall have been issued by the commissioner in accordance with the requirements of this code." Administrative Code Section 28-118.3.4 provides that

> [a] building . . . in existence prior to January 1, 1938 and heretofore legally used or occupied without a certificate of occupancy . . . may continue to be used or occupied without a certificate of occupancy . . . provided there is no change in the existing use or occupancy classification of the building . . . or portion thereof.

Administrative Code Section 28-118.3 provides that "[t]he provisions of sections 28-118.3.1 through 28-118.3.4 shall apply to completed buildings." Pursuant to Administrative Code Section 7-704, the City may seek an injunction enjoining acts, including the foregoing acts, that constitute a public nuisance.

The City alleges that defendants violated and continue to violate MDL Section 4.8(a) and the Administrative Code provisions discussed above by permitting the use or occupancy of the Subject Buildings, or by converting the same for the purposes of use or occupancy, as short-term transient tenancies of less than thirty (30) days. The City argues that these violations create unsafe conditions in the Subject Buildings because Class "A" multiple dwellings are not equipped with fire safety devices and other protections that are statutorily required of buildings registered for the purpose of transient occupancy, such as hotels, which, in turn, leads to an increased potential for

injury to transient tenants who are unfamiliar with the layout of the building. *See* NYSCEF Doc. No. 8, ¶¶ 13-15.

The City has provided ample evidence that multiple units within the Subject Buildings have been used for transient occupancy in violation of MDL Section 4.8 and Administrative Code Sections 28-118.3.1, 28-118.3.2, 28-105.1, 28-118.3.4, and 28-118.3, in that defendants have, on a continuing and regular basis, rented units within the Subject Buildings, or permitted the same to be rented, to individuals for stays of less than thirty (30) days. *See* NYSCEF Doc. Nos. 18, 31, 34, 51, 58-62, 72-73 (internet platform profiles and advertisements, including profiles linked to Operator Defendants); 57, ¶¶ 6-16; 53-54 (advertising summonses); 28, 29, 32, 35, 38, 40-42, 50 (photographs of guest electronic confirmations for short term stays); 30, 33, 39, 43 (fake leases); 64-71, 74-76 (internet platform reservations and payouts, including reservations and payouts linked to Operator Defendants); 6, 9-11 (Deeds and Certificates of Occupancy for Subject Buildings); 12-15, 17, 19-20, 22-27, 36-37, 44-49, 52 (DOB Complaints, NOVs, administrative (OATH)[5] decisions, and certificates of corrections referencing the illegal occupancy of the Subject Buildings). In doing so, the City has sufficiently proven that defendants are operating, or permitting the operation of, the Subject Buildings for a purpose other than permanent residency in violation of MDL Section 4.8(a) and Administrative Code Sections 28-118.3.1, 28-118.3.2, 28-105.1, 28-118.3.4, and 28-118.3. The commission of these violations, in and of themselves, is sufficient to sustain the City's request for a preliminary injunction. *Bilynn*, 118 A.D.2d at 512.

The result is no different under the traditional three-prong test. The wealth of evidence provided by the City—and not refuted by Owner Defendants—meets the clear and convincing

[5] OATH stands for the Office of Administrative Trials and Hearings of the City of New York that holds administrative hearings for NOVs and summonses issued by the DOB and renders decisions regarding compliance.

standard of proof to demonstrate the City's likelihood of success in establishing that the Operator Defendants have violated the above-mentioned statutes by operating, or allowing the Subject Buildings to be operated, for transient use, thereby committing a public nuisance. As to irreparable injury, where a municipality seeks to enjoin a public nuisance, "irreparable injury is presumed from the continuing existence of an unremedied public nuisance." *City of New York v. 330 Cont. LLC.*, 60 A.D.3d 226, 230 (1st Dep't 2009). Here, as discussed above, the City has established the existence of a public nuisance, and therefore has sufficiently established irreparable injury. *See Incorporated Vill. of Plandome Manor v. Ioannou*, 54 A.D.3d 364, 364-65 (2d Dep't 2008) (holding that a municipality "need not demonstrate irreparable harm" when seeking injunctive relief to enforce ordinances). Finally, the equities—enforcing regulations and ordinances designed to protect the health, safety, and welfare of the public versus allowing the continued flaunting of said regulations—unquestionably lie in favor of the City. *See, e.g.*, *Fischer v. Deitsch*, 168 A.D.2d 599, 601 (2d Dep't 1990) (holding that the equities will lie in favor of the movant where the harm to it is greater than harm to the opponent).

The City also argues that defendants should be enjoined from advertising the Subject Buildings for transient use. Pursuant to MDL Section 121 and Administrative Code Section 27-287.1, advertising short-term transient occupancies in a Class "A" multiple dwelling, such as the Subject Buildings, is prohibited. These statutes, which are largely identical, make it "unlawful to advertise occupancy or use of dwelling units in a class A multiple dwelling for occupancy that would violate [MDL § 4.8]." In addition, the CPL prohibits deceptive trade practices, defined as "false . . . or misleading . . . representation[s] of any kind made in connection with the sale, lease, rental or loan or in connection with the offering for sale, lease, rental, or loan of consumer goods or services." Admin. Code § 20-701. The rental of an apartment is considered a consumer good or service. *23 Realty Assoc. v. Tiegman*, 213 A.D.2d 306, 308 (1st Dep't 1995) (stating that a

residential lease is "a purchase of services from the landlord (and, by extension, his agent)" and "[a]n apartment dweller is today viewed, functionally, as a consumer of housing services").

The City has submitted evidence that Operator Defendants have been repeatedly advertising short term rentals on different internet platforms in violation of MDL Section 121 and Administrative Code Section 27-287.1 and that such conduct constitutes deceptive trade practices under the CPL. According to the City, while Operator Defendants claim on their own website, www.nyatlease.com, that the minimum stay of their rentals is thirty (30) days, this is not always true. NYSCEF Doc. No. 57, ¶ 20. OSE Policy Analyst Aditi Sen further states in his affidavit in support of the instant motion that defendant "Bedrose's recent job posting for 'property manager/sales manager' specifically provided that the company 'specializes in both short-term vacation and long term furnished rentals,' and '[w]hether a guest is visiting, vacationing or traveling for business, we can accommodate them at one of our furnished apartment[s].'" *Id.* (alterations in original) (quoting http://www.nyatlease.com/about-us.html).[6] Bedrose also offered "vacation home rentals" on its Facebook page. *See id.*, ¶ 21; NYSCEF Doc. No. 63. Additionally, Operator Defendants have used the fictitious host name of "Yohan David," an alias combining both defendant Tordjman's and Atlan's names, and created a fake online profile on www.LinkedIn.com for this fictitious host, using a Bedrose logo. NYSCEF Doc. No. 57, ¶ 22 & nn.10-11. Further, defendant Tordjman provided Airbnb with his cell phone number ending in 9145 when he set up a host account (Airbnb Host ID No. 918508) in August 2011 and subsequently set up three more Airbnb host accounts: Airbnb Host ID No. 20559017 under the name Yohan David on August 26, 2014, Airbnb Host ID No. 65388010 under the name John Smith on April 1, 2016, and Airbnb Host ID No. 129468527 under the name Sally Alfaks on May 8, 2017. *Id.*, ¶ 23;

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[6] This Court cannot independently verify this information because the website at issue has since been taken down at the time this decision and order was drafted and signed.

NYSCEF Doc. No. 72. Operator Defendants deceived guests by using 326 Avenue S, Brooklyn, New York as the business address for defendant Bedrose, which, upon information and belief, is also the residence of defendant Atlan. NYSCEF Doc. No. 162, ¶ 24. Operator Defendants have also allegedly accepted approximately 230 illegal short-term rental reservation in the Subject Buildings and nineteen (19) other buildings between February 2015 and October 2018, deceiving approximately 880 guests and generating an estimated revenue of at least $270,000. NYSCEF Doc. No. 57, ¶¶ 24-27; 74-76. Operator Defendants' commission of these advertising violations, in and of themselves, is enough to sustain the City's request for a preliminary injunction in this regard. *Bilynn*, 118 A.D.2d at 512.

Defendants Tordjman and Atlan, in their cross-motion, claim that the City is not entitled to a preliminary injunction as against the Operator Defendants since there is no irreparable injury. Defendants Tordjman and Atlan claim that the City has failed to prove any harm with respect to them in their individual capacity because they were never tenants at the Subject Buildings and were not listed on the leases, so they were not actually in possession of the Subject Buildings and there is no contrary evidence. Further, they claim there is no potential harm to the City with respect to defendant Bedrose because this defendant is no longer in possession or control of any apartments at the Subject Buildings; defendant Bedrose surrendered all possession of units in the Subject Buildings since at least April 2019. However, these arguments fail to either prevent a preliminary injunction from being issued against them or dismiss the complaint.

With respect to defendant Bedrose, the fact that it surrendered all possession of units in the Subject Buildings, *after* the City filed the instant litigation, does not defeat the City's request for a preliminary injunction. The Appellate Division, First Department has held that in certain circumstances where the tenant has agreed to vacate the premises in the face of a pending nuisance abatement action, without an injunction, "the Operator Defendants could re-enter in their own or

any other name to conduct business there." *City of New York v. Mor*, 261 A.D.2d 185, 187 (1st Dep't 1999). "[W]here the City can prove that such activities took place, issuance of an injunction . . . will accomplish more." *Id.* "In light of the proof of illegal operations at the [Subject Buildings] over an extended period, and the City's 'ongoing right to ensure that the guilty parties do not subsequently recommence their illegal activities in the same location,' the court should [grant] injunctive relief as sought in the application for a preliminary injunction." *City of New York v. Partnership 91, L.P.*, 277 A.D.2d 164, 164 (1st Dep't 2000) (quoting *Mor*, 261 A.D.2d at 187) (holding that the landlord's return to possession "does not alone establish that the previous illegality has abated).

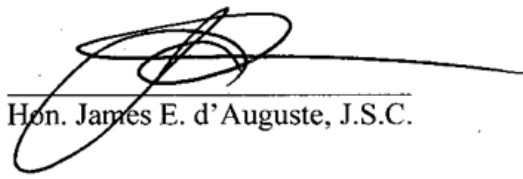
With respect to defendants Tordjman and Atlan, their claim that they are exempt from personal liability fails because both individual defendants are members or officers of the corporate defendant Bedrose. "[A] corporate officer who participates in the commission of a tort may be held individually liable, regardless of whether the officer acted on behalf of the corporation in the course of official duties and regardless of whether the corporate veil is pierced." *Peguero v. 601 Realty Corp.*, 58 A.D.3d 556, 558 (1st Dep't 2009) (emphasis omitted) (quoting *Espinosa v. Rand*, 24 A.D.3d 102, 102 (1st Dep't 2005)). Alternatively, a corporate officer "may be held individually liable or a tort committed by the corporation but only if the corporate officer or owner 'participates in the commission of [the] tort.'" *Doe v. Bloomberg, L.P.*, 178 A.D.3d 44, 50 (1st Dep't 2019) (alteration in original) (quoting *Am. Express Travel Related Servs. Co. v. N. Atl. Resources, Inc.*, 261 A.D.2d 310, 311 (1st Dep't 1999)). Here, the City has presented proof sufficient to show that the Operator Defendants have violated both the Administrative Code, including the Consumer Protection Law, and the Multiple Dwelling Law to mislead guests into booking short term stays of less than thirty (30) days in the Subject Buildings in violation of New York Law. As such, both defendants may be personally liable, either for their own acts or those of defendant Bedrose, and

should remain as parties to this litigation. *See Espinosa*, 24 A.D.3d at 102-103 ("Such a misrepresentation, if proven and shown to have induced detrimental reliance, would provide a basis for imposing liability on [the defendant corporate officer] individually, even though he allegedly spoke on behalf of the corporation.").

Conclusion

The motion (Mot. Seq. No. 001) by plaintiff the City of New York seeking a preliminary injunction is granted as against the Operator Defendants and the cross-motion by defendants Tordjman and Atlan is denied. This constitutes the decision of this Court. Submit order.

Dated: April 27, 2020



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