

Quan Hui Wang v Cherry Lane Owners Corp.

2020 NY Slip Op 32259(U)

May 18, 2020

Supreme Court, Queens County

Docket Number: 721213/2019

Judge: Frederick D.R. Sampson

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This opinion is uncorrected and not selected for official publication.

Wang v Cherry Lane Owners Corp., Index No.: 721213/2019 (May 12, 2020)

Short Form Order

FILED

**5/21/2020
11:45 AM**

NEW YORK SUPREME COURT - QUEENS COUNTY

**COUNTY CLERK
QUEENS COUNTY**

Present: HONORABLE FREDERICK D. R. SAMPSON IA Part 31
Justice

QUAN HUI WANG, x

Index
Number 721213 2019

Plaintiff,

Motion
Date January 30, 2020

-against-

CERRY LANE OWNERS CORP.,

Motion Seq. No. 1

Defendant.

x

The following numbered papers read on this motion by plaintiff for a temporary restraining order enjoining defendant herein or any agent or individual from denying, disturbing and/or interfering with plaintiff's parking space no. 8 at the subject premises and an order restraining defendant from continuing to bill plaintiff \$8,500 as so-called attorney fees and costs for the ill-advised attempted 2018 eviction case which defendant brought against plaintiff, and which was dismissed by the Court on June 21, 2019, and to grant plaintiff attorney fees and costs as necessitated by the wrongful actions of defendant.

Papers
Numbered

- Order to Show Cause - Affidavits - Exhibits EF6-EF11
- Answering Affidavits - Exhibits EF12-EF13
- Reply Affidavits - EF14

Upon the foregoing papers it is ordered that the motion is determined as follows:

The facts set forth here are as alleged in the complaint unless otherwise indicated: Defendant is the owner of a cooperative apartment building located at 42-95 Main Street, Flushing, New York. Plaintiff is the owner of shares in the cooperative corporation allocated for apartment 6G and a lessee under a proprietary lease appurtenant to the share. Plaintiff purchased the apartment in 2006 and was assigned parking space no. 8 at the premises for which he pays a monthly fee. Plaintiff has paid every maintenance bill on time including the monthly cost of parking space no. 8.

In 2018, defendant sought to evict plaintiff on grounds that plaintiff had violated the lease by allowing his mother-in-law to live with his family. The eviction action brought against plaintiff was defended in court and was dismissed. Within two months of that dismissal defendant began billing plaintiff \$8,500 for penalty and legal fees for the subject 2018 case. In November of 2019, defendant issued plaintiff a notice of termination of parking space terminating plaintiff's parking privilege for parking space no. 8 effective January 1, 2020, which he has had since purchasing his apartment, and for which he has never been delinquent with a single payment. In that notice of termination, a copy of which was annexed to plaintiff's motion papers, defendant asserts that plaintiff violated the proprietary lease when his parents moved into his apartment.

Plaintiff commenced this action by filing a summons and complaint on December 12, 2019, asserting that termination of his parking privilege has no legal basis and violates section 10 of the proprietary lease which entitles plaintiff quiet enjoyment, and seeking a judgment enjoining and restraining defendant from their threatened action of denying plaintiff the parking privilege to parking space no. 8; to cease and desist continuing to bill plaintiff \$8,500 with each monthly statement for penalty and legal fees for the 2018 action; and to cease and desist from disturbing, threatening and/or interfering in any way with plaintiff's quiet enjoyment of his apartment and parking privilege.

Simultaneous with the filing of the complaint, plaintiff moved in the instant order to show cause for a temporary restraining order prohibiting defendant from denying, disturbing and/or interfering with his parking space no. 8 at the premises; an order restraining defendant from continuing to bill plaintiff \$8,500 as so-called attorney's fees and costs for the ill-advised attempted 2018 eviction case which was dismissed by that court on June 21, 2019; and to grant plaintiff attorney's fees and costs.

On December 23, 2019, this court signed the Order to Show Cause seeking the requested temporary injunction and ordered that pending the hearing and determination of plaintiff's application, defendant and any agent or individual are stayed from commencing termination of parking space no. 8 at the subject premises.

Defendant, in its opposition, asserts that the parking space was properly cancelled by decision of its board which has the right to determine who to rent the parking space to and the power to cancel the parking space; that plaintiff improperly used the space by allowing unauthorized persons to enter the building through the entry located near the parking space; and that the space can be given to another tenant who is a senior citizen and has been waiting for a spot for 15 years and requested the subject space.

A copy of an unsigned and undated proprietary lease was submitted by defendant with its opposition papers and contains a clause that “the Lessor shall determine which Lessees (other than Lessees who are tenant purchasers under the plan who were leasing garage or parking space at the time of the Closing), shall be allocated garage and parking spaces as they become available for leasing.”

“To be entitled to a preliminary injunction, the movant must establish (1) the likelihood of success on the merits, (2) irreparable injury absent granting the preliminary injunction, and (3) a balancing of the equities in the movant’s favor.” (*Ying Fung Moy v Hohi Umeki*, 10 AD3d 604, 604 [2d Dept 2004]; *see also Ruiz v Meloney*, 26 AD3d 485 [2d Dept 2006]; *Hightower v Reid*, 5 AD3d 440 [2d Dept 2004].) The purpose of a preliminary injunction is to maintain the status quo and prevent the dissipation of property that could render a judgment ineffectual. (*See Ying Fung Moy v Hohi Umeki, supra; cf. Rattner & Assoc. v Sears, Roebuck & Co.*, 294 AD2d 346 [2d Dept 2002].) The decision whether to grant or deny a preliminary injunction rests in the sound discretion of the Supreme Court. (*See Doe v Axelrod*, 73 NY2d 748 [1988]; *see also Ruiz v Meloney, supra; Matter of Merscorp, Inc. v Romaine*, 295 AD2d 431 [2d Dept 2002].)

Plaintiff here has made the necessary showing to entitle him to preliminary injunctive relief with regard to parking space no. 8. (*See Masjid Usman, Inc. v Beech 140, LLC*, 68 AD3d 942 [2009]; *see also Ying Fung Moy v Hohi Umeki, supra.*) It is unclear from the parties’ submissions if the proprietary lease submitted by defendant is the same as the one that the parties signed. Moreover, it is undisputed that defendant did assign plaintiff parking space no. 8 at the time he purchased the shares allocated to apartment 6G and that to date, plaintiff has timely made the monthly payments for that parking space. The issue of whether defendant can cancel that parking space is one of the issues to be determined in this action. The mere fact that there may be questions of fact for trial does not preclude the court from exercising its discretion in granting an injunction. (*See Ying Fung Moy v Hohi Umeki, supra.*) The purpose of a preliminary injunction is to maintain the status quo (*see Masjid See Masjid Usman, Inc. v Beech 140, LLC, supra*), and the status quo here would be disturbed if plaintiff’s assigned parking space no. 8 was terminated by defendant.

Accordingly, the branch of plaintiff's motion seeking a preliminary injunction is granted to the extent that the temporary restraining order which was issued in the court's December 23, 2019 order to show cause and which enjoins defendant, any agent or individual from denying, disturbing and/or interfering with plaintiff's parking space no. 8 at the subject premises shall continue until a determination of this action.

The foregoing relief is conditioned upon plaintiff's continuing to timely make the monthly payments for parking space no. 8.

The branch of plaintiff's motion seeking a preliminary injunction restraining defendant from continuing to bill plaintiff \$8,500 for penalty and legal fees from the 2018 eviction case, however, is denied. Plaintiff's submissions are insufficient to make the necessary showing to entitle him to preliminary injunctive relief regarding these fees.

Finally, the branch of plaintiff's motion seeking an award of attorney's fees and costs as sanctions is denied.



Dated: May 18, 2020

J.S.C.

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**COUNTY CLERK
QUEENS COUNTY**