

100 4th St., LLC v Gemingnani
2020 NY Slip Op 32799(U)
August 24, 2020
Supreme Court, Kings County
Docket Number: 511830/2020
Judge: Richard Velasquez
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At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 24th day of AUGUST 2020.

P R E S E N T:
HON. RICHARD VELASQUEZ
Justice.

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100 S 4TH ST., LLC,

Plaintiff(s),

Index No.: 511830/2020

-against-

Decision and Order

MATTEO MATTIA GEMINGNANI,

Defendant(s).

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After having heard oral argument on AUGUST 24, 2020 and a review of the foregoing submissions herein, the Court finds as follows:

Plaintiff moves this court by Order to Show Cause requesting preliminary injunction restraining and enjoining the defendant from temporarily and preliminarily enjoining and restraining the Defendant from (i) having, permitting and/or facilitating non-essential guests from entering the Building located at 100 South 4 Streets Brooklyn, New York (the "Building") and/or Apt. No. 7f at the Building (the "Apartment") in violation of the Governor of the State of New York's Order No. 202 (the "Order"); by not adhering to social distancing and face mask protocols and headcount limitations as contained in the Order during the pendency of the COVID-19 Pandemic and while the Order is operative; (ii) having, permitting and/or facilitating non-essential gatherings of individuals of sizes above what is allowed in the Order at the Building and/or the Apartment during the pendency of

the COVID- 19 pandemic and while the Order is operative; (iii) exposing his private parts in common areas of the Building, including in the presence of other tenants and/or staff at the Building; (iv) acting violently and/or threateningly towards other tenants and/or staff in the Building including wielding weapons in a violent and/or threatening manner, and (v). playing music, including the piano, that can be heard from outside his apartment. (MS#1). Defendant opposes the same.

ANALYSIS

The purpose of a **preliminary injunction** is to maintain the status quo and prevent the dissipation of property that could render a judgment ineffectual (*cf. Rattner & Assoc. v. Sears, Roebuck & Co.*, 294 AD2d 346, 741 NYS2d 894). 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 (*see Hightower v. Reid*, 5 AD3d 440, 772 NYS2d 575; *Evans-Freke v. Showcase Contr. Corp.*, 3 AD3d 549, 770 NYS2d 640; CPLR 6301; *Doe v. Axelrod*, 73 NY2d 748, 750, 536 NYS2d 44, 532 NE2d 1272; *W.T. Grant Co. v. Srogi*, 52 NY2d 496, 517, 438 NYS2d 761, 420 NE2d 953). The decision to grant or deny a **preliminary injunction** rests in the sound discretion of the Supreme Court (*see Matter of Merscorp, Inc., v. Romaine*, 295 AD2d 431, 432, 743 NYS2d 562).

The court will now address the order to show cause filed by the Plaintiffs. Contrary to the plaintiffs, contentions, they fail to make the requisite showing of a likelihood of success on the merits. In the present case, it unclear, which tenant, if any is actually causing any disturbance. Contrary to plaintiff's contention there is no proofs submitted in admissible forms demonstrating that it was in fact this tenant that the police were called

on. Therefore, the plaintiffs are unable to demonstrate a likelihood of success on the merits.

Second, the plaintiffs fail to allege damages of a noneconomic nature and, thus, failed to demonstrate irreparable harm in the absence of a preliminary injunction (see *Automated Waste Disposal, Inc. v. Mid-Hudson Waste, Inc.*, 50 AD3d 1072, 1073, 857 NYS2d 648; *Dana Distribs. v. Crown Imports, LLC*, 48 AD3d 613, 853 NYS2d 111; cf. *Winzelberg v. 1319 50th Realty Corp.*, 52 AD3d 700, 860 NYS2d 185; *Stockley v. Gorelik*, 24 AD3d 535, 808 NYS2d 282), quoting *DiFabio v. Omnipoint Commc'ns, Inc.*, 66 AD3d 635, 636–37, 887 NYS2d 168, 169–70 (2009). “Irreparable injury, for purposes of equity, has been held to mean any injury for which money damages are insufficient” (*Matter of Walsh v. Design Concepts*, 221 AD2d 454, 455, 633 NYS2d 579; see *McLaughlin, Piven, Vogel v. Nolan & Co.*, 114 AD2d 165, 174, 498 NYS2d 146). Conversely, “[e]conomic loss, which is compensable by money damages, does not constitute irreparable harm” (*EdCia Corp. v. McCormack*, 44 AD3d 991, 994, 845 NYS2d 104; see *Neos v. Lacey*, 291 AD2d 434, 435, 737 NYS2d 394). In the present case, plaintiff fails to proffer any evidence in admissible form that it will suffer irreparable harm in the form of non-economic damages in the absence of a preliminary injunction.

Third, a court must balance the equities. “It must be shown that the irreparable injury to be sustained is more burdensome to the plaintiff than the harm caused to the defendant through the imposition of the injunction.” *Klein, Wagner & Morris v. Lawrence A. Klein, P.C.*, 186 AD2d 631, 633, 588 NYS2d 424, 426 (1992). In the present case, upon balancing the equities this court cannot say that the alleged injury is more burdensome to the plaintiff than the harm caused to the defendant through imposition of

this injunction. As such the plaintiff has failed to meet the required elements for a preliminary injunction.

The court does note that all people in New York City should be following and abiding by social distancing guidelines and the current orders issued by the Governor for the safety of all people of New York. The court also urges that all parties continue to follow said guidelines.

Accordingly, Plaintiff's order to show cause for a preliminary injunction is hereby denied. (MS#1)

This constitutes the Decision/Order of the Court.

Date: AUGUST 24, 2020


RICHARD VELASQUEZ, J.S.C.

So Ordered
Hon. Richard Velasquez

AUG 24 2020

KINGS COUNTY CLERK
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