

Waterside Plaza Ground Lessee LLC v Handy

2020 NY Slip Op 32912(U)

September 3, 2020

Supreme Court, New York County

Docket Number: 156105/2020

Judge: David Benjamin Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

WATERSIDE PLAZA GROUND LESSEE LLC,

Plaintiff,

-against-

PRESTON HANDY,

Defendant.

Index No. 156105/2020

DECISION/ORDER

(Motion Sequence #1)

WHEREAS, Plaintiff, by their counsel Belkin Burden Goldman LLP, commenced this action by filing of a Summons and Verified Complaint with Notice dated August 5, 2020 (NYSCEF Doc. #1) seeking monetary and declaratory relief arising from Defendant's breach of a Lease Agreement dated November 1, 2001 and a Settlement Agreement dated July 26, 2001 for the apartment located at 40 Waterside Plaza, Apartment 19G, New York, New York 10010 (the "Apartment"); and

WHEREAS, on August 5, 2020 Plaintiff filed an emergency Order to Show Cause (NYSCEF Doc. #2), affidavit in support of Vehbi Hajdari dated August 5, 2020 (NYSCEF Doc. #3) and affirmation in support of Brian Y. Epstein dated August 5, 2020 (NYSCEF Doc. #4), seeking an order compelling Defendant to: (a) immediately clean and remove the Collyer conditions depicted in Exhibit A annexed to the emergency application, (b) grant immediate, unimpeded access to all rooms of the Apartment for Plaintiff, their employees and/or agents to inspect the Apartment, respond to all emergency Collyer conditions therein including extermination and respond to the emergency arising out of the illegal, door-jamming locks installed by Defendant and (c) be temporarily removed from the Apartment and in the absence of Defendant's

compliance while Plaintiff undertakes the removal of Collyer hazards described above, to be removed at Plaintiff's and/or Plaintiff's agents' sole discretion and at Defendant's sole cost, without liability to Plaintiff and/or Plaintiff's Agents; and

WHEREAS, on August 26, 2020 at 11:00am, Plaintiff appeared on a SKYPE virtual conference before the Court (Hon. David B. Cohen, J.S.C.) for oral argument on the Order to Show Cause; and

WHEREAS, on August 26, 2020, Defendant failed to appear in this action and failed to submit any papers opposing the relief demanded by Plaintiff on the SKYPE virtual conference date scheduled for August 26, 2020 at 11:00am; and

WHEREAS, on August 26, 2020, upon Defendant's failure to appear for the SKYPE virtual conference or otherwise submit any opposition papers, this Court reviewed the affidavits of service of the Order to Show Cause and determined each to be in compliance with this service directives detailed in this Court's Order dated August 14, 2020 (NYSCEF Doc. #10); and

WHEREAS, this Court has determined that personal service is proper in this action and consistent with the Order to Show Cause and this Court has jurisdiction over Defendant; and

WHEREAS, this Court has determined that the Order to Show Cause be granted in accordance with this Order; and

NOW, upon the Order and all of the papers and proceedings heretofore had herein, it is hereby:

ORDERED, that Plaintiff's Order to Show Cause is granted as follows:

ORDERED, that Plaintiff, Plaintiff's contractors and/or Plaintiff's agents shall have unimpeded access to replace the Apartment door and illegal door-jamming locks on September 8, 2020 at 9:30am until completed; and it is further

ORDERED, that Plaintiff shall provide Defendant with written notice of Plaintiff's intent to replace the Apartment door and illegal door-jamming locks by placing a letter with a copy of this Order under Defendant's Apartment door on or before September 4, 2020 and by sending a copy of the letter with a copy of this Order by overnight mail or Federal Express to Defendant at the Apartment for delivery on September 5, 2020; and it is further

ORDERED, that in the event of Defendant's denial or refusal of access to Plaintiff, Plaintiff's contractors and/or Plaintiff's agents for the purpose of replacing the Apartment door and illegal door-jamming locks on September 8, 2020 at 9:30am, Plaintiff is authorized to contact the NYPD, FDNY or such other emergency services agency to enforce this Order; and it is further

ORDERED, that Defendant shall and must clean and remove the Collyer conditions depicted in Exhibit A annexed to the emergency application no later than September 29, 2020; and it is further

ORDERED, that Defendant shall and must provide access to Plaintiff and Plaintiff's agents to inspect the progress of Defendant's cleaning and removal of the Collyer conditions depicted in Exhibit A annexed to the emergency application on September 30, 2020 at 10:00am; and it is further

ORDERED, that if Defendant shall fail to clean and remove the Collyer conditions depicted in Exhibit A annexed to the emergency application by September 29, 2020 and/or fail to provide access to the Apartment to inspect same on September 30, 2020 at 10:00am, Plaintiff, Plaintiff's contractors and/or Plaintiff's agents shall have unimpeded access to the Apartment commencing on October 7, 2020 and continuing daily on consecutive weekdays between the hours of 9:00am and 5:00pm until completed, for the purpose of removing the Collyer hazards described above, to be removed at Plaintiff's and/or Plaintiff's agents' sole discretion and at Defendant's sole cost, without liability to Plaintiff and/or Plaintiff's Agents; and it is further

ORDERED, that Plaintiff is free to retain an outside contractor for the purpose of removing the Collyer hazards in the Apartment described above, to be removed at Plaintiff's and/or Plaintiff's agents' sole discretion and at Defendant's sole cost and liability, without liability to Plaintiff and/or Plaintiff's Agents; and it is further

ORDERED, that Plaintiff is authorized to contact the NYPD, FDNY or such other emergency services agency to enforce the access provisions of this Order; and

ORDERED, that in the event of noncompliance with this Order, either party may restore this action and seek all appropriate relief under this Order from this Court; and it is further

ORDERED, that Defendant is hereby permanently precluded and restrained from ~~creating or recreating the Collyer hazards and/or~~ installing or reinstalling the illegal door-jamming Apartment lock at any time; and

ORDERED, that nothing herein shall preclude Plaintiff from serving predicate notices under the Lease or applicable law and/or pursuing a separate future proceeding against Defendant in the Civil Court of the City of New York, Housing Part.

This constitutes the decision and order of the Court.

Dated: New York, New York
September 3, 2020

ENTER:



HON. DAVID B. COHEN, J.S.C.