

Morningside Assoc. LLC v Batista

2020 NY Slip Op 33613(U)

November 2, 2020

Supreme Court, New York County

Docket Number: 157286/2020

Judge: Paul A. Goetz

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. PAUL A. GOETZ **PART** **IAS MOTION 47EFM**

Justice

-----X

MORNINGSIDE ASSOCIATES LLC,

Plaintiff,

- v -

MAXIMO BATISTA, KAREN ALVAREZ

Defendants.

-----X

INDEX NO. 157286/2020
MOTION DATE N/A
MOTION SEQ. NO. 001

**INTERIM DECISION + ORDER
ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

Plaintiff Morningside Associates LLC is the owner and landlord of premises located at 400 West 113th Street in Manhattan (the building) and moves for a preliminary injunction enjoining defendant Maximo Batista from: entering the building; assaulting, harassing, menacing, intimidating, endangering building workers; or otherwise endangering the health, safety or welfare of the building’s workers, management, tenants and occupants. Before his resignation, Batista was formerly employed by plaintiff as a doorman. Defendant Karen Alvarez is a tenant in the building and Batista now resides in her apartment.

In support of its order to show cause, plaintiff submits, inter alia, the affidavit of Ahmad Williams an employee of the building (NYSCEF Doc No 5). Williams states that in the evening on August 30, 2020, Batista came into the lobby to pick up a food delivery, complained that he was not notified of the delivery and then threw an “unknown object” toward him. According to Williams after he declined Batista’s invitation to fight, Batista left in the direction of Alvarez’s apartment. Williams claims that Batista then returned, pummeled him, pushed him to the floor causing him to hit his head on the radiator cover. He tried to escape but Batista pinned him

against the wall (*id.* ¶ 2). At that time Alvarez arrived and threatened to mace Williams whereupon Batista struck the back of Williams's head with a closed fist and then left with Alvarez. Williams reported the incident to the building's property manager and filed a police report (*id.* ¶¶ 3 – 4).

In opposition defendants submit the affidavits of Batista and Alvarez. Batista admits that he was “a bit upset” on August 30, 2020 when he went down to the lobby of the building and confronted Williams because Williams had not been calling him and Alvarez for food deliveries since the start of the Covid-19 pandemic required all delivers to be left with the doorman on duty in the building (NYSCEF Doc No 15 ¶¶ 8 & 10). Batista states that after Williams indicated he was not going to call him and Alvarez for delivers he took the food back to the apartment and then went back downstairs (*id.* ¶ 10). Batista then admits to having “had a dispute which [he] cannot speak about due to [his] open criminal case but it was not the way Mr. Williams explained in his affidavit” (*id.* 11).

Alvarez states in her affidavit that on August 30, 2020 after Batista brought the food to their apartment and left again, after several minutes, she went downstairs and found Williams and Batista on the floor. Alvarez denies seeing Williams and Batista fighting but does acknowledge having some concern prompting her to reach for her mace and yell at them to let go of each other which they did. Alvarez states that she and Batista then returned to their apartment (NYSCEF Doc No 16 ¶ 9).

A preliminary injunction will only be issued if plaintiff demonstrates, with convincing evidentiary support, a likelihood of success on the merits, irreparable injury absent granting of a preliminary injunction, and that a balancing of equities favors its position. CPLR 6301; *Nobu*

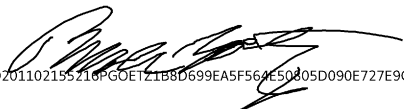
Next Door, LLC v. Fina Arts Housing, Inc., 4 N.Y.3d 839, 840 (2005); *LAIG v. Medanito S.A.*, 130 A.D.3d 466 (1st Dep't 2015).

Plaintiff argues it has shown a cause of action for nuisance and cites *In Re. New York Methodist Hosp.* (25 Misc. 3d 648 [SC Kings Co 2009]) for the proposition that it is entitled to a mandatory preliminary injunction. However, the issue in *New York Methodist* was whether a hospital patient must discharge himself from the hospital to an appropriate skilled nursing facility pursuant to Public Health Law § 2801-c not whether a tenant's actions constituted a nuisance. In the residential landlord-tenant context nuisance is defined as "a condition that threatens the comfort and safety of others in the building" and is evidenced by "a pattern of continuity or recurrence of objectionable conduct" (*Frank v Park Summit Rlty. Corp.*, 175 AD2d 33, 35 [1st Dept], *mod on other grnds* 79 NY2d 789 [1991]). As defendants correctly argue, plaintiff has failed to show a "pattern of continuity or recurrence of objectionable conduct" because it only alleges one incident between Batista and Williams. In its reply plaintiff claims it annexes a videotape of the incident as Exhibit "A", however, in NYSCEF (Doc No 24) under Exhibit "A" there is a notation that the video is "filed separately". The videotape was never provided to the court. But in any event, even if the videotape had been provided, it could not be considered because it was not properly authenticated by someone familiar with the building's video recording security system (*accord People v Costello*, 128 AD3d 848 [2nd Dept 2015]). Further, plaintiff cites several Civil Court cases in its reply for the proposition that one incident if egregious enough may be the basis for a nuisance determination (*160 W 118th St. Corp. v Gray*, 7 Misc 3d 1016 [A] [Civ Ct NY Co 2004]; *772 E 168 St. LLC v Holmes*, 61 Misc 3d 1206 [A] [Civ Ct Bx Co 2018]; *Mid Bx. HDFC v Paulino*, 48 Misc 3d 1223[A] [Civ Ct Bx Co 2015]). That may be but the courts in the cited cases were making that observation in the context of a motions

to dismiss, not in the context of seeking a mandatory injunction barring a resident from entering his building. As the First Department observed in *Jones v Park Front Apts. LLC*, “a mandatory preliminary injunction (one mandating specific conduct), by which the movant would receive some form of the ultimate relief sought as a final judgment, is granted only in ‘unusual’ situations, where the granting of the relief is essential to maintain the status quo pending trial of the action” (73 AD3d 612 [2010]). While plaintiff may ultimately establish its nuisance claim against Batista (and Alvarez) there has been an insufficient showing of extraordinary circumstances to warrant barring Batista from the building. However, the essentially uncontroverted affidavit from Williams is sufficient to warrant continuation of the order imposed against Batista and Alvarez enjoining them from assaulting, harassing, menacing, recklessly endangering, intimidating, threatening or engaging in any criminal offenses against Ahmad Williams or other building staff because of the potential for irreparable harm to and a balancing of equities in favor of plaintiff. The injunction provides “some security to the building personnel. . . while merely restraining defendant[s] from continuing any unlawful or wrongful activities” (*Park S. Assoc. v Blackmer*, 171 AD2d 468, 469 – 470 [1st Dept 1991]).

Accordingly, based on the foregoing it is

ORDERED that the motion is granted solely to the extent that defendants Maximo Batista and Karen Alvarez are enjoined from assaulting, harassing, menacing, recklessly endangering, intimidating, threatening or engaging in any criminal offenses against Ahmad Williams or other building staff and the motion is otherwise denied.



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11/2/2020
DATE

PAUL A. GOETZ, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
		<input checked="" type="checkbox"/>	GRANTED IN PART
		<input type="checkbox"/>	OTHER

APPLICATION:

CHECK IF APPROPRIATE:

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE