

400 W. 59th St. Partners LLC v Oyolesi

2020 NY Slip Op 34334(U)

December 31, 2020

Supreme Court, New York County

Docket Number: 157420/2020

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

400 WEST 59TH STREET PARTNERS LLC,

Plaintiff,

- v -

TOBI OYOLESI, TRAVIS LILLEY

Defendant.

-----X

INDEX NO. 157420/2020

MOTION DATE N/A

MOTION SEQ. NO. 001

**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, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25

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

Plaintiff 400 West 59th Street Partners LLC is the owner and landlord of premises located at 1 Columbus Place (the building) in Manhattan and moves for a preliminary injunction: 1) directing Defendant Tobi Oyolesi to grant access to his apartment S30C in the building so that plaintiff can inspect and repair a water leak; 2) enjoining and restraining defendant Travis Lilley from entering the building; 3) enjoining and restraining Lilley from assaulting, harassing, menacing, recklessly endangering, intimidating, or threatening building residents and occupants; and 4) enjoining and restraining Lilley from creating unreasonable health or safety risks to residents and occupants of the building. Oyolesi is a tenant in the building and Lilley is his invitee.

BACKGROUND

In support of its order to show cause, plaintiff submits, inter alia, the affidavit of Gerrie Wright, property manager for the building. According to Wright after receiving reports of a water leak from Oyolesi's apartment in July, 2020, plaintiff attempted to investigate and repair the leak but Oyolesi refused to provide access to his apartment (NYSCEF Doc No 4 ¶¶ 4 - 14).

Attached to Wright's affidavit is a copy Oyolesi's lease and renewal lease (NYSEF Doc No 5). Paragraph 15 of the lease allows plaintiff access to Oyolesi's apartment during reasonable hours with reasonable notice to perform inspections and repairs.

Concerning Lilley, Wright states that an investigation, including interviews with building staff showed that Lilley threatened and/or verbally abused building personnel on multiple occasions in the months of April, May and June 2020. Wright also quotes from an email received by plaintiff from another tenant in the building concerning Lilley's conduct. Wright does not attest that he personally witnessed any of Lilley's conduct detailed in his affidavit (NYSCEF Doc No 4 ¶¶ 15 - 29).

DISCUSSION

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). And "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" (*Jones v Park Front Apts. LLC*, 73 AD3d 612 [1st Dept 2010]).

Access to inspect and repair

Plaintiff has shown a likelihood of success on its claim of breach of its contractual and statutory right of access to Oyolesi's apartment to inspect and repair the water leak through the affidavit of Wright. Oyolesi's affidavit in opposition is insufficient to rebut plaintiff's showing

of a likelihood of success on the merits since he merely states that he discontinued using the air-conditioner that caused the water leak. Merely discontinuing use of the air-conditioner does not resolve the problem and under the terms of the lease, plaintiff has the right to repair the air conditioner to ensure that the leak does not reoccur. Moreover, as plaintiff correctly points out, Housing Maintenance Code § 27-2008 grants plaintiff the right to access Oyolesi's apartment to make repairs. Likewise, plaintiff has established irreparable injury and a balancing of the equities in its favor on its right to access claim, since plaintiff may be found to have breached its obligations to other tenants if the leak and any damage caused by the leak are not repaired.

Accordingly, that portion of plaintiff's motion seeking access to Oyolesi's apartment to inspect and repair the leak must be granted.

Enjoining Lilley's conduct

Plaintiff has not demonstrated with convincing evidence a likelihood of success on its nuisance claim concerning Lilley's conduct. 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]). While plaintiff may ultimately establish its nuisance claim based on Lilley's conduct there has been an insufficient showing of a likelihood of success on the merits because the sole affidavit offered in support of the motion is from Wright, the property manager, who does not state that he personally witnessed any of Lilley's conduct. Instead, Wright bases his allegations against Lilley on interviews with building staff and an email received from another tenant in the building. Such hearsay offered for the truth is insufficient to establish a likelihood of success on a nuisance claim (*cf Water Quality Ins. Syndicate v Safe Harbor Pollution Ins., LLC*, 2014 NY Slip Op

30003(U), 2014 NY Misc LEXIS 33 *12 [SC NY Co 2014] [holding “the court cannot grant the extreme remedy of a preliminary injunction based on such hearsay”]; *Brownstone Agency Inc. v Distinguished Programs Grp.*, 2008 NY Slip Op 32131(U), 2008 NY Misc LEXIS 8992 *1 [NY Co 2008] [holding proof offered in support of a motion for a preliminary injunction “is insufficient because it consists primarily of hearsay, conjecture and/or conclusory allegations”]).

However, plaintiff very well may suffer irreparable injury in the absence of an order enjoining Lilley’s conduct and a balancing of the equities are in plaintiff’s favor. Lilley did not submit an affidavit in opposition and Oyolesi in his affidavit, apologizes on behalf of Lilley. Accordingly, continuation of the order imposed against Lilley enjoining him from assaulting, harassing, menacing, recklessly endangering, intimidating, threatening building staff, tenants and occupants of the building and requiring him to wear a mask in the building is warranted. This injunction provides “some security to the building personnel (and others) . . . while merely restraining (Lilley) from continuing any unlawful or wrongful activities” (*Park S. Assoc. v Blackmer*, 171 AD2d 468, 469 – 470 [1st Dept 1991]).

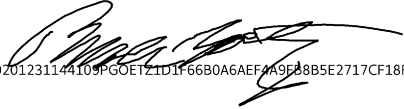
CONCLUSION

Based on the foregoing it is

ORDERED that the motion is granted to the extent that defendant Oyolesi shall grant access to his apartment to plaintiff and its workers to inspect and repair the water leak and until such time as the repairs are complete; and it is further

ORDERED that the motion is granted to the extent that defendant Lilley is enjoined from assaulting, harassing, menacing, recklessly endangering, intimidating, threatening building staff, tenants and occupants of the building and must comply with the building’s rules requiring wearing a mask; and it is further

ORDERED that the motion is otherwise denied.



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12/31/2020

DATE

PAUL A. GOETZ, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE