

RSD857 LLC v Wright
2021 NY Slip Op 30578(U)
March 1, 2021
Supreme Court, New York County
Docket Number: 160679/2020
Judge: Paul A. Goetz
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

-----X

RSD857 LLC,

Plaintiff,

- v -

ALBERT WRIGHT, KIHEIM TILLMAN, JOHN DOE, JANE DOE

Defendants.

-----X

INDEX NO. 160679/2020
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, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 33

were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR

This action involves a building located at 857 Riverside Drive in Manhattan (the property or building). Plaintiff moves by order to show cause for an order granting immediate and continued access to the building; enjoining defendants and their invitees from entering the building; enjoining defendants or their agents or invitees from tampering with the locks on the building; and enjoining defendants or their invitees from moving belongings into the building. Defendant Wright appears by counsel and opposes the order to show cause and also submits an affidavit from defendant Tillman.

In order to establish entitlement to a preliminary injunction plaintiff must show "(1) a likelihood of success on the merits, (2) irreparable injury absent a preliminary injunction, and (3) a balance of equities tipping in its favor" (Harris v Patients Med., P.C., 169 AD3d 433, 434 [1st Dept 2019]). 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]).

In support of its application plaintiff submits the affidavit of plaintiff’s sole member Michael Petrokansky. Annexed to his affidavit is a deed for the property dated October 28, 2019 conveying it from Wright and Doreen Green (Wright’s wife) to plaintiff. Plaintiff also submits a surrender agreement signed by Wright, Green and Green’s sister wherein they agreed to vacate the property on January 28, 2020. Plaintiff agreed to extend the vacate date and in or around April or May 2020 Green and her sister vacated the property but Wright did not. (NYSCEF Doc No 4 ¶¶5– 10)¹. Petrokansky states that Wright called him on November 13, 2020 and told him he had vacated the property. According to Petrokansky, Green then agreed to meet him at the premises and do a walk through on November 19, 2020. At the walk through Green confirmed that her and Wright’s belongings were removed and she signed a surrender acknowledgment agreeing that the property was vacated. On November 21, 2020 Petrokansky states that he changed the locks and that on November 24, 2020 an NYPD officer contacted him claiming an illegal eviction had occurred at the building (*id.* ¶ 17). Petrokansky claims a security camera stopped working at the property on November 30, 2020 and when he went to the building, he found that the padlocks had been cut, the locks were changed and the security camera was destroyed.

Subsequently, Wright and Tillman started occupying the building and the NYPD responded to several disputes about who could have access to and occupy the building (*id.* ¶¶ 22 – 28).

¹ Inexplicably Wright includes Petrokansky as a plaintiff in the caption of his affidavit submitted in opposition. Petrokansky is not a plaintiff in this action and if Wright is of the opinion that Petrokansky should be a party, he needs to move to have him added, not just include Petrokansky’s name in the caption of his papers.

Wright submits an affidavit (misidentified as an affirmation) in opposition claiming that Petrokansky with the help of Green induced him to sell the property without the assistance of an attorney. Wright further claims that the property was never in danger of being foreclosed on and that a loan modification was going to be offered to him when Petrokansky “swept in and lied to me. He told me that he had to buy and sell me the home or else I would lose [it].” In addition, Wright claims the property was sold and taken away from him without his knowledge (NYSCEF Doc No 17 ¶¶ 4 – 7). Finally, Wright purportedly submits an email from his eye doctor in support of his claim that he is blind. Even if an unauthenticated email such as the one submitted could substantiate a doctor’s opinion that his patient is blind, and it cannot support such an opinion, the email merely states that Wright has difficulty reading small print and does not explain why if true corrective eyeglasses are not effective.

Plaintiff’s reply includes a summary of what transpired in the foreclosure action against Wright and Green pertaining to the property (*Deutshce Bank Nat. Trust Co. v Green et al*, NY Co SC Index No 850088/2017). Most importantly, an attorney filed an answer with counter claims on behalf of Wright in the foreclosure action (*id.* NYSCEF Doc No 24). Further in Motion Sequence Number 2 in the foreclosure action, plaintiffs sought to discontinue the action and cancel the notice of pendency (*id.* NYSCEF Doc 54). The reason for the motion was that plaintiffs “accepted the Mortgagors request for a short sale of the mortgage” (*id.* NYSCEF Doc 55 ¶ 6). The motion was not opposed or otherwise contradicted by Wright (*id.* NYSCEF Doc No 61). Indeed, Wright signed a short sale approval application and an affidavit dated October 11, 2019 specifically stating that there is no agreement or understanding between the “buyers and the sellers that the sellers will in remain the property as tenants or later obtain title or ownership of the property” (Exs E and F to the Reply NYSCEF Doc No 33). Further, the short sale was

approved by the court (Index No 850088/2017 NYSCEF Doc No 52) and after the sale of the property was completed, the court granted the motion to discontinue the action and cancel the notice of pendency (*id.* NYSCEF Doc No 61).

Based on the foregoing, plaintiff has established a likelihood of success on the merits of its ejection cause of action by showing it is the owner of the property, with an immediate right to possession and Wright is occupying it (*cf Blake Rising, LLC v Atlantic Collision, Inc.*, 186 AD3d 551, 552 [2nd Dept 2020]). Further, the threat of destruction to plaintiff's property (cutting and changing the padlocks and destroying the security camera) constitutes irreparable injury and a balancing of the equities weighs in favor of granting injunctive relief (*Trimboli v Irwin*, 18 AD3d 866, 867 [2nd Dept 2005]).

Accordingly, based on the foregoing it is

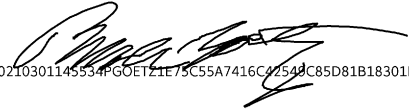
ORDERED that plaintiff's motion for a preliminary injunction is granted to the extent that plaintiff is granted immediate and continuing access to lock and secure that portion of the property not occupied by defendants as of the date that the temporary restraining order was issued; and it is further

ORDERED that defendants are enjoined from damaging or otherwise tampering with that portion of the property secured by plaintiff pursuant to this order; and it is further

ORDERED that plaintiff may install security cameras at the property and defendants are restrained from damaging or otherwise tampering with the security cameras; and it is further

ORDERED that defendants are enjoined from allowing new occupants into the building

and from allowing others to bring any belongings into the building or onto the property.


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3/1/2021
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