

505 W. 37 LLC v Biswas
2021 NY Slip Op 30604(U)
March 2, 2021
Supreme Court, New York County
Docket Number: 151314/2021
Judge: Shawn T. Kelly
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: <u>HON. SHAWN TIMOTHY KELLY</u>	PART	IAS MOTION 57
<i>Justice</i>		
-----X	INDEX NO.	<u>151314/2021</u>
505 WEST 37 LLC	MOTION DATE	<u>N/A</u>
Plaintiff,	MOTION SEQ. NO.	<u>001</u>
- v -		
SHUVRO BISWAS,	DECISION + ORDER ON MOTION	
Defendant.		
-----X		

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 41, 42, 43
were read on this motion to/for INJUNCTION/RESTRAINING ORDER

This is an action for declaratory judgment, ejectment, and for breach of a lease agreement. Defendant is the short term rent stabilized tenant of Apartment 2306 (herein "Apartment") in the building owned by plaintiff and located at 505 West 37th Street, New York, NY. Plaintiff, via emergency application, seeks a preliminary and permanent injunction as well as an order permitting plaintiff to forcibly remove and change the locks to the subject apartment and bar defendant from the building and apartment based upon ongoing escalating threats to building residents and staff.

Plaintiff moves pursuant to CPLR 6301, 6311 and 6313(a), for a preliminary and permanent injunction compelling defendant to appear before this court and ordering defendant to immediately cease all illegal and/or objectionable, nuisance type conduct in the building and Apartment including; (1) Engaging in acts of arson in the building, (2) Intentionally igniting a fire on a mattress, (3) Intentionally leaving stove burners open, (4) Intentionally leaving an open propane tank in the apartment, (5) Brandishing a knife

in the building, (6) Smearing blood in the building elevator, (7) Falsely reporting a fire and intruders in the building, (8) Illegally installing an ADT surveillance camera in the public corridor, (9) Creating a nuisance by installing ADT surveillance cameras in the Apartment and an alarm system triggered to call 911 and ADT each time the apartment door is opened, (10) Scattering ammunition (bullets) in the building, (11) Threatening physical violence against building residents and staff, (12) Threatening to burn down the building, (13) Engaging in dangerous, menacing and erratic behavior, (14) Physically destroying fixtures within the apartment and (15) Throwing a suitcase from the Apartment, (16) Falsely reporting a break-in at the Apartment.

In support of the application, plaintiff submits the affidavits of tenant Brian Del Toro, the Doorperson Flavio Pestano, Building Manager Virgil Ivanus, and Property Manager Barbara Miller. The affidavits detail defendant's conduct which plaintiff alleges poses an immediate threat to the health and safety of residents and staff in the building. Based on the affidavits, photographs and lease, plaintiff contends that the relief sought herein is warranted. Defendant does not submit opposition.

To demonstrate entitlement to a preliminary injunction, the movant must establish (1) a probability of success on the merits, (2) the danger of irreparable harm in the absence of injunctive relief and (3) a balance of the equities in favor of the movant (*see Winzelberg v 1319 50th Realty Corp.*, 52 AD3d 700, 701, 860 NYS2d 185, 186 [2008]; *W. T. Grant Co. v Srogi*, 52 NY2d 496, 517 [1981]; *Chernoff Diamond & Co. v Fitzmaurice, Inc.*, 234 AD2d 200, 201 [1st Dept 1996]; see CPLR 6301). The decision to grant a preliminary injunction lies within the sound discretion of the Court (*see Silver*

Towers Owners, Corp. v Cromwell Silver Towers Grp. Ltd. P'ship, 144 AD3d 783, 784, 40 NYS3d 540, 541 [2016]; *Zoller v HSBC Mtge. Corp. (USA)*, 135 AD3d 932, 933 [2d Dept 2016]).

Upon a review of the application papers, including the affidavits and relevant lease, this Court finds that Plaintiff has established a likelihood of success on the merits as Defendant's conduct is in clear violation of the lease and presents a real threat to the health and safety of the occupants and staff of the building. Additionally, Plaintiff has established that it lacks an adequate remedy at law, is suffering irreparable injury, and a balance of the equities favors enjoining Defendant's dangerous conduct.

That branch of the motion seeking an order allowing Plaintiff's employees and/or agents and/or the New York City Police Department to forcibly remove and change the locks to the Apartment and permanently bar Defendant Shuvro Biswas from the Building and Apartment is denied.

Accordingly, and for the reasons set forth above, it is hereby

ORDERED, that the application is granted to the extent that Defendant Shuvro Biswas is immediately enjoined from engaging in all illegal and/or objectionable, nuisance type conduct in the building and apartment including, without limitation:

- (1) Engaging in acts of arson in the Building;
- (2) Intentionally igniting fires;
- (3) Intentionally leaving stove burners open;
- (4) Intentionally leaving open propane tanks in the apartment;
- (5) Brandishing a knife in the Building;

- (6) Smearing blood in the Building elevator;
- (7) Falsely reporting a fires and intruders in the Building;
- (8) Installing surveillance cameras in the public corridor;
- (9) Scattering ammunition (bullets) in the Building;
- (10) Threatening physical violence against Building residents and staff;
- (11) Threatening to burn down the Building;
- (12) Physically destroying fixtures within the apartment; and
- (13) Throwing suitcases or other items from the Apartment.

3/2/2021

DATE

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

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CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

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DENIED

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NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☐

OTHER

☐

REFERENCE

SHAWN TIMOTHY KELLY, J.S.C.