

<b>1641 Park Ave. Assoc. v Parker</b>
2021 NY Slip Op 30940(U)
March 24, 2021
Supreme Court, New York County
Docket Number: 159106/2020
Judge: John J. Kelley
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. JOHN J. KELLEY PART IAS MOTION 56EFM**

*Justice*

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1641 PARK AVENUE ASSOCIATES,

Plaintiff,

- v -

JUSTIN PARKER,

Defendant.

-----X

INDEX NO. 159106/2020

MOTION DATE 01/29/2021

MOTION SEQ. NO. 001

**DECISION AND ORDER**

The following e-filed documents, listed by NYSCEF document number 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 17, and 22 (Motion 001)

were read on this motion to/for PRELIMINARY INJUNCTION.

In this action for ejectment, and for declaratory and injunctive relief, the plaintiff landlord moves pursuant to CPLR 6301 and 6311 (SEQ 001) for a preliminary injunction prohibiting the defendant tenant from harassing, threatening, or being abusive to the plaintiff, its agents, employees, and attorneys, from interfering with the plaintiff's business, and from posting any negative commentary regarding the plaintiff or its attorneys. The plaintiff also seek to compel the defendant to remove defamatory and negative statements and photographs posted on the internet about the plaintiff, its employees, and its attorneys.

By order to show cause dated December 15, 2020, the court permitted the defendant to request poor person relief and to move for an extension of time within which to oppose the motion (SEQ 002), but directed that, "pending hearing of this motion, the defendant hereby is restrained from harassing, threatening, or being abusive to the plaintiff, its agents, employees, and attorneys, and interfering with the plaintiff's business." By order dated January 11, 2021, the court granted the defendant's motion under SEQ 002 to proceed as a poor person and to extend the time for service of papers in opposition to the plaintiff's preliminary injunction motion,

but continued the temporary restraining order. The defendant has now timely opposed the pending motion for a preliminary injunction. The motion is granted in part and denied in part, as set forth herein.

In support of its motion, the plaintiff submits the affidavits of its property manager, Natalia Reyes, and its building superintendent, Victor Torres, along with its complaint and copies of various messages that the defendant posted either on Instagram, to internet chat groups, or via email. According to Reyes, the defendant resides in Apartment 4G at 101 East 116th Street in Manhattan, which is owned by the plaintiff. Reyes asserted that, for several months prior to October 2020, the defendant harassed her. As she described it,

“The Plaintiff has received a barrage of emails from Mr. Parker that are Demanding and threatening in tone. Defendant has demanded that we renew his Lease at well below the market rate and when we refused, he has become intolerant to deal with based upon his threatening, demanding and abusive behavior. While the Plaintiff has attempted to deal with the issues in house, the problem has progressively become worse, as Mr. Parker has created an alarmingly high sense of discomfort at the building for the staff members and our attorneys alike.

“Now he has threatened to destroy Plaintiff's business and the reputation of our attorneys, all because he is a deregulated tenant with no continued rights to remain in the unit yet demands an array of daily maintenance that he is not entitled to, together with refusing to tender rent as was due. In the last month, Mr. Parker's menacing has reached new levels. He has posted defamatory statements on the internet together with threats directed to Plaintiff and its affiliates, and I fear he is about to explode.

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“Mr. Parker continuously taunts staff to the level of making it a very uncomfortable and an unproductive work environment.”

In particular, Reyes refers to what appear to be several Instagram postings made by the defendant concerning the repainting of his apartment and alleged rent overcharges, which she attached as exhibits to her affidavit. These exhibits reveal that, on September 16, 2020, and on several days thereafter, the defendant posted the following:

“I requested a meeting to try to work out the issue we have with an overcharge that I calculated out recently in an email to [plaintiff's attorney] #stevensperber's

PARTNERS TO ENSURE THEY ARE AWARE that Steven has knowingly been participating in this criminal activity . . . to the tune of 60K-112K

“Sperber Denenberg & Kahan Partners”

“Did you block my email address? . . . because this didn’t work either

\*\*\*\*\*

“Mail Delivery Subsystem  
Delivery Status Notification (Failure)  
Message blocked. . .”

“soon as I accepts the #zoommeeting invitation . . . she blocked my email so that I have NO CHANNEL to communicate with management or my super (he was instructed to not speak to me - long before I pushed him ONCE because he has been breaking into my apt - and I basically caught him)

“And my tenants rights being denied left and right . . .been here 8 years and been trying to my apt painted for the last 3-4 years . . . still won't do it..because they don't want to incur the exp bc the building lost a lot of value in the law changes. #nataliareyes has been instrumental.

“Just for transparency: I recorded the convo of course . . . first excerpt . . . #jessica #carnegiehillproperties . . . #nataliareyes #propertymanager . . . I highly doubt I was told the true about no lawyer in the room . . . just doesn't make logical sense . . . I fidget when I'm nervous . . . and lied2, well discriminated against by the management co and super . . .”

On September 24, 2020, Reyes sent an email to a person named “Sean,” informing him that the painting of the defendant’s apartment was not approved.

The defendant continued to post Instagram messages, including the following one, to which he annexed a photograph of the plaintiff’s attorneys captured from their firm’s web site:

“Don't worry got the whole Shper-bang right here . . . so my unit was #deregulated #deregulation illegally (my building is a #rentstabilized #rent #stabilized #building in #NYC) [I had a housing lawyer look over the paperwork last year and It was confirmed.] see attached paperwork . . .

”systemic #tenant #Harassment of #carnegiehillproperties (who got a #COVID gov loan.see above) is now in consort with their retained counsel (#sperber #sdkpc-pictured) to misuse of their legal knowledge and ability to legitimate criminal acts.”

With respect to the meeting that the defendant wished to have with the plaintiff or its managing agent concerning his claim of a rent overcharge, the plaintiff further posted that

"[y]esterday I had a zoom meet (they would not do a video call . . . per my request in the meeting) but the '#landlord' #jessica (I am fairly certain she is NOT the actual landlord (LIED) – I have lived here 8 years and I've always been told that he was a Latino gentleman."

In an email message to the law partners of the plaintiff's attorney, Steven Sperber, dated October 5, 2020, the defendant wrote:

"Your partner is bad stuff. Denying me (for year) two rightful paintings of the apt . . . there was a "plan" to wait til "fall" when my lease expired and creating this whole "holdover" scenario. . . but that stenography is going ruin Sperber and you (your firm) will be indemnified to his bad behavior . . . I tried to help . . . I'm sure you have heard the video of Jessica on twitter already. . . .

"I don't know what else to say.

"I'm trying to be a good guy and not destroy anyone but Sperber. But that's getting increasingly difficult.

In a follow-up email message dated October 8, 2020, the defendant wrote the following to Sperber's law partners:

"Gentleman,  
This and today was the last straw. . .  
I'm done.  
No deals.  
No Nothing.  
No more communication.  
Just social media and lawsuits . . . you can sort it out.  
Just destruction of careers and reputations.  
Feel free to call the NYPD . . . ask for Det. "Mo". . . .  
#holes. Thank Sperber and his hubris. I'm sorry for the PR (Public Relations) nightmare coming to your firm"

In his affidavit, building superintendent Torres, referring to the defendant, stated that:

"He is a very difficult person to deal with and has been aggressive over the last several months. Over the summer, on or about August 24, 2020 he had physically assaulted me. I am not sure why he felt the need to cause harm to me, however the police were called and now he makes it very uncomfortable for me to do my job without fear of another incident."

In opposition to the plaintiff's motion, the defendant submitted his own affidavit, in which asserts that he has paid all of his rent and challenges Sperber's characterization of his rent-overcharge claim as "bogus." The defendant spills much ink in arguing about the alleged rent overcharge, whether the overcharge was part of a fraudulent scheme to evade rent regulation

laws such that any claim to recover for the overcharge would not be limited to a four-year look-back period, whether work at the premises for which a permit was issued by the Department of Buildings referred to the complete rehabilitation of the defendant's apartment so as to permit a rent increase, whether the apartment has been deregulated, and whether the plaintiff failed to perform necessary repairs. He thus claims that he is entitled to the reimbursement from the plaintiff of \$570,920.75 and demands that his legal rent be fixed at \$566.57 per month.

Although these arguments go to the issue of whether the plaintiff has shown a likelihood of success on its cause of action for ejectment, it does not address whether it has shown a likelihood of success on its cause of action for a judgment declaring that the defendant is engaging in unlawful threatening and abusive behavior or committing defamation, and he does not deny, let alone address, the allegations that he actually engaged in the very conduct that forms the basis for the plaintiff's request for preliminary injunctive relief. In fact, there is no dispute that the defendant posted and emailed the communications that Reyes identified and, in those communications, he admits having assaulted Torres by pushing him.

To obtain a preliminary injunction, a movant must demonstrate, by clear and convincing evidence, (1) a likelihood of success on the merits, (2) irreparable injury if a preliminary injunction is not granted, and (3) a balance of equities in his or her favor (see CPLR 6301; *Nobu Next Door, LLC v Fine Arts Hous., Inc.*, 4 NY3d 839, 840 [2005]; *Doe v Axelrod*, 73 NY2d 748, 750 [1988]; *Gliklad v Cherney*, 97 AD3d 401, 402 [1st Dept 2012]; *Gilliland v Acquafredda Enters., LLC*, 92 AD3d 19, 24 [1st Dept 2011]; *Spinale v 10 W. 66th St. Corp.*, 193 AD2d 431, 431 [1st Dept 1993]).

Although valid complaints about a landlord's failure to provide required services and overcharging for rent constitute examples of protected free speech under the First Amendment and New York Constitution, article I, § 8 (see *Whitby Operating Corp. v Schleissner*, 117 Misc 2d 794, 805-807 [Sup Ct, N.Y. County 1982]), certain speech is not protected, such as published threats to "ruin" someone's reputation or career (see *People ex rel. Stearns v Marr*,

181 NY 463, 468 [1905]), defamation (see *Rinaldi v Holt, Rinehart & Winston, Inc.*, 42 NY2d 369, 382 [1977]), and conduct calculated solely to injure someone else's business (see *Kurland Cadillac-Oldsmobile, Inc. v Cable*, 83 AD2d 902, 903 [2d Dept 1981]).

Constitutional free speech protections are intended to encourage "debate on public issues [that is] uninhibited, robust, and wide-open" (*New York Times Co. v Sullivan*, 376 US 254, 270 [1964]). Since most of the behavior sought to be enjoined constitutes communicative activity, and an injunction here would prevent the defendant from engaging in that activity, any relief granted by this court in connection with the defendant's writings would constitute a prior restraint on such speech (see *Segal v Wood*, 42 AD2d 548, 548-549 [1st Dept 1978]). "[One] seeking such relief bears a 'heavy burden of showing justification for the imposition of such a restraint'" (*Reliance Ins. Co. v Barron's*, 428 F Supp 200, 204 [SD NY 1977], citing *Organization For Better Austin v Keefe*, 402 US 415, 419 [1971]). Prior restraint thus should be avoided whenever possible, and then employed only upon a showing of truly irreparable and uncompensable injury (see *Reliance Ins. Co. v Barron's*, 428 F Supp at 205).

However, "[d]istinctions are drawn where, as here," threats and "defamatory speech do [ ] not advance such societal interests" (*Bingham v Struve*, 184 AD2d 85, 89 [1st Dept 1992]), even where the subject matter of the speech may involve issues of public concern (see *Huntingdon Life Sciences, Inc. v Stop Huntingdon Animal Cruelty*, 27 AD3d 420, 420-421 [2d Dept 2006]). In any event, these First Amendment protections "are not absolute" (*Bingham v Struve*, 184 AD2d at 89; see *Nebraska Press Assn. v Stuart*, 427 US 539, 570 [1976]). "[T]he freedom of speech . . . secured by the Constitution, does not confer an absolute right to speak or publish, without responsibility, whatever one may choose" (*Gitlow v New York*, 268 US 652, 666 [1925], see *Bingham v Struve*, 184 AD2d at 89). Thus, "[a]ccusations of criminal or illegal activity, even in the form of an opinion, are not constitutionally protected" (*Angel v Levittown Union Free School Dist. No. 5*, 171 AD2d 770, 772 [2d Dept 1991]; see *Rinaldi v Holt, Rinehart & Winston, Inc.*, 42 NY2d 369, 382 [1977]).

The plaintiff has demonstrated a likelihood of success on its first cause of action, which is for a permanent injunction prohibiting the defendant from making defamatory statements about the plaintiff and its attorneys and physically harassing or assaulting its employees. It is undisputed that the defendant has accused the plaintiff and its attorney, Steven Sperber, of conspiring to engage in criminal activity, when the only contested issues with respect to the defendant's tenancy constitute a civil dispute as to whether the defendant is current in his rent obligations, whether the plaintiff has provided all necessary services, whether the leasehold was improperly deregulated, and whether the plaintiff overcharged the defendant for rent. It is undisputed that the defendant threatened to ruin Sperber's reputation and career, not by prevailing in an administrative rent-reduction proceeding before the New York State Division of Housing and Community Renewal or in a judicial proceeding, but by accusing him on social media of having committed a crime. It is also undisputed that the defendant physically attacked Torres. In light of its showing in connection with the first cause of action, which forms the basis for the request for a preliminary injunction, the court need not address the issue of whether the plaintiff has shown a likelihood of success on the merits of the second cause of action, which is for ejection.

The potential harm caused by the defendant's continued threatening and defamatory communications is irreparable, as it is capable of injuring the plaintiff's and its attorney's reputation. Such harm is not readily compensable in damages (*see Bingham v Struve*, 184 AD2d at 89; *see also Gloria Vanderbilt Home Furnishings v Cooper*, 215 AD2d 162, 163 [1st Dept 1995]). Similarly, verbal harassment serves no useful purpose, and while a prior statute criminalizing such behavior has been declared unconstitutionally vague (*see People v Golb*, 23 NY3d 455 [2014]), the amended statute makes it a misdemeanor to

"communicate[ ] . . . by . . . electronic means, . . . a threat to cause unlawful harm to the property of [a] person . . . , and the actor knows or reasonably should know that such communication will cause such person to reasonably fear harm to such person's . . . property, or to the physical safety or property of a member of such person's same family or household"

(Penal Law § 240.30[1][a]). The court comes to no conclusion as to whether the defendant's emails here run afoul of this statute, but notes that, whether the conduct is criminal or not, it may certainly be enjoined.

The balance of equities here favors granting a limited preliminary injunction, as the defendant would not be harmed if he is enjoined from making defamatory or threatening communications or verbally and physically harassing the plaintiff's employees, while the plaintiff will suffer from continued harm in the absence of the injunction. The court stresses that, with respect to the issue of communicative acts, the injunction does not restrain the defendant from publicly criticizing the landlord for failing to repair or paint his apartment, overcharging him for rent, or refusing to meet with him, or from publicly criticizing the plaintiff's attorneys for the manner in which they represent the plaintiff (*see Whitby Operating Corp. v Schleissner*, 117 Misc 2d at 805-809), but only from publicly stating that the plaintiff or its attorneys, employees, or agents are engaged in criminal conduct, from verbally or physically threatening the plaintiff and its attorneys, employees, or agents with harm to their reputations or businesses, from interfering with the plaintiff's business by, among other things, deluging it and its attorneys with unsolicited emails, and from physically assaulting the plaintiff's employees.

The party seeking a preliminary injunction must post an undertaking in an amount that will pay the damages and costs to the person who is enjoined if it is ultimately determined that the preliminary injunction was erroneously issued (*see Margolies v Encounter, Inc.*, 42 NY2d 475 [1977]; CPLR 6312[b]). Here, the granting of a preliminary injunction will not prevent the defendant from engaging in any legal or constitutionally protected activities. Hence, an undertaking of \$1,000.00 is appropriate.

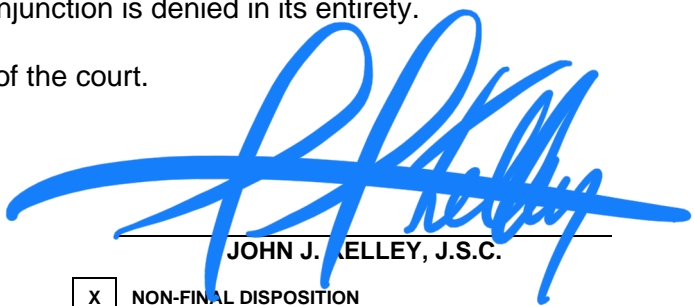
Accordingly, it is

ORDERED that the plaintiff's motion for a preliminary injunction is granted to the extent that, pending disposition of this action, the defendant be, and hereby is, (1) enjoined from

harassing, threatening, or being abusive to the plaintiff, its agents, employees, and attorneys, from physically accosting or assaulting the plaintiff's employees, or threatening to accost or assault them, from interfering with the plaintiff's business by, among other things, deluging it and its attorney with unsolicited emails and communications, and, with respect to other communicative acts, from threatening the plaintiff and its attorneys, employees, or agents with harm to their reputations or businesses and from publicly stating that the plaintiff or its attorneys, employees, or agents are engaged in criminal or fraudulent conduct, except to the extent that such statements are made directly to law enforcement officers for the purposes of investigation or law enforcement, or in the course of a legal proceeding commenced before a duly constituted administrative tribunal or court, and (2) directed, to the extent feasible, to delete or remove from Instagram and all social media any postings that characterize the conduct of the plaintiff, its agents, employees, and attorney as criminal or fraudulent and any threats to harm the reputation of the plaintiff or its attorneys; and the motion is otherwise denied; and it is further,

ORDERED that the preliminary injunction is conditioned upon the plaintiff's posting of an undertaking in the sum of \$1,000.00 within 20 days of the date of entry of this Order; such undertaking may be in the form of a surety bond or a deposit of cash, money order, or bank check with the County Clerk of the County of New York; such undertaking shall remain in effect until further order of this court; in the event the undertaking is not posted in accordance herewith, the plaintiff's motion for a preliminary injunction is denied in its entirety.

This constitutes the Decision and Order of the court.



JOHN J. KELLEY, J.S.C.

3/24/2021  
DATE

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