

Mocal Enters. Inc. v Wall
2021 NY Slip Op 31059(U)
April 5, 2021
Supreme Court, New York County
Docket Number: 152624/2021
Judge: Barbara Jaffe
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. BARBARA JAFFE PART IAS MOTION 12

Justice

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INDEX NO. 152624/2021

MOCAL ENTERPRISES INC.,

MOTION DATE _____

Plaintiff,

MOTION SEQ. NO. 001

- v -

COURTNEY WALL, AGNIESZKA LINELL,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 18-20 were read on this motion for injunctive relief.

By order to show cause and summons and complaint, plaintiff, the registered managing agent of the building located 1182 Broadway in Manhattan, commenced this action against defendants, tenants of one of the units in the building pursuant to a yearly lease which expired at the end of January 2020.

In the complaint, plaintiff alleges that defendants breached a contract with them by failing to pay monthly rent of \$6,300 through January 31, 2020, and for use and occupancy of \$12,600 from February 1, 2020 through today. Plaintiff also contends that defendants engage in unacceptable conduct including hostile and threatening behavior to other building tenants and staff, creating a nuisance by their altercations with each other, and generating noise. It thus sues for private nuisance and a permanent injunction against them. Plaintiff commenced a holdover proceeding in the housing part seeking defendants' eviction. (NYSCEF 1).

Here, plaintiff specifically seeks the following:

- (1) Pursuant to CPLR 6301, 6311 and 6313, granting Plaintiff a preliminary

injunction through the final hearing and determination of this action, enjoining and restraining Defendants, their agents, assigns, employees, independent contractors or any other persons acting on his behalf or at their direction, collectively or individually, from:

i. Causing excessive noise to emanate from apartment 7B (“Apartment”) located in the building located at 1182 Broadway, New York, New York (the “Building”), and/or from any common areas in the Building including, but not limited to, engaging in violent and/or loud altercations with each other and/or third parties; and

ii. Harassing and/or otherwise attempting to intimidate staff, residents, and occupants in the Building as well as Plaintiff, Plaintiff’s employees, principals, agents and/or attorneys; and

(2) Pursuant to Statute including, but not limited to, Real Property Law 220, and applicable case law, directing Defendants to pay unpaid rent in the sum of \$5,350.00 for the period prior to January 31, 2020 and, use and occupancy for the period from February 1, 2020 through March 31, 2021 at the rate of \$6,300.00 per month, in the total amount of \$93,350.00, and continuing thereafter during the pendency of this action, without prejudice to the parties’ rights, claims and remedies in this action and/or within the pending holdover proceeding bearing Index No. L&T 52309/2020.

(NYSCEF 18).

On March 16, 2021, I signed the order to show cause, and directed plaintiff to serve it and the pleadings on defendants by personal in-hand delivery on or before March 24, 2021. I also granted plaintiff a temporary restraining order prohibiting defendants from causing excessive noise to emanate from their apartment and from harassing others in the building. (*Id.*).

On March 23, 2021, plaintiff efiled affidavits demonstrating that they duly served

defendants by personal delivery to defendant Channing. (NYSCEF 19, 20). To date, no opposition to plaintiff's order to show cause has been filed, even though it was due by March 31, 2021, the date on which oral argument on the motion was held. Although notified of that date, defendants did not appear.

Based on the affidavits of plaintiff's employees, in which they detail the complaints received from other building tenants and employees' and their own personal observations about defendants' behavior, and supporting documentation reflecting that defendants are liable for use and occupancy during their holdover tenancy in the sum of \$12,600 per month (NYSCEF 8, 11, 13, 14), plaintiff establishes its entitlement to a preliminary injunction. Accordingly, it is hereby

ORDERED, that plaintiff's motion for a preliminary injunction is granted; it is further ORDERED, that upon service of a copy of this order on defendants with notice of entry, defendants are immediately enjoined and restrained from:

- (1) Causing excessive noise to emanate from apartment 7B located in the building located at 1182 Broadway, New York, New York, and/or from any common areas in the building including, but not limited to, engaging in violent and/or loud altercations with each other and/or third parties; and
- (2) Harassing and/or otherwise attempting to intimidate staff, residents, and occupants in the building as well as plaintiff, plaintiff's employees, principals, agents and/or attorneys;

it is further

ORDERED, that, within 30 days after service on defendants of a copy of this order with notice of entry, defendants are directed to pay plaintiff unpaid rent in the sum of \$5,350.00 for the period prior to January 31, 2020 and, use and occupancy for the period from February 1,

2020 through March 31, 2021 at the rate of \$6,300.00 per month, in the total amount of \$93,350.00; and it is further

ORDERED, that beginning on April 30, 2021 and continuing thereafter every month during the pendency of this action, defendants are directed to pay plaintiff \$12,600 while they remain in possession of the apartment.

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4/5/2021
DATE

BARBARA JAFFE, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE