

OceanhouseNYC, LLC v 140 W. St. (NY), LLC

2021 NY Slip Op 31425(U)

April 16, 2021

Supreme Court, New York County

Docket Number: 656345/2020

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART IAS MOTION 14

Justice

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INDEX NO. 656345/2020

OCEANHOUSENYC, LLC, PRASHANT LAL,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 001

- v -

140 WEST STREET (NY), LLC, BENJAMIN SHAOUL,
VERIZON NEW YORK INC.

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122

were read on this motion to/for PROVISIONAL REMEDY.

The motion by plaintiffs for a preliminary injunction barring defendants from running certain elevators and a machine room is denied.

Background

Plaintiffs live in a mixed used condo building (a building with both commercial and residential units). The building used to be exclusively occupied by defendant Verizon New York Inc. ("Verizon") but now houses both Verizon and residential apartments. Plaintiffs claim that the noise from a certain bank of elevators (the "C" bank) makes it unbearable to live in their apartment. Plaintiffs also complain about the machine room, which they allege is excessively noisy and is located directly under their apartment. They insist there is substantial interference with the quiet use and enjoyment of their apartment. Plaintiffs contend that the noise and vibrations violate all relevant building and noise codes. They allege that the family's two

daughters cannot use their bedrooms because of the noise. Plaintiffs seek injunctive relief that the “C” bank of elevators should be shut down along with the machine room.

In opposition, Verizon observes that it occupies the first ten floors of the building and that shutting down the C bank of elevators would limit their ability to access these floors and completely prevent them from accessing floors nine and ten. Verizon maintains it has no relationship with plaintiffs and had nothing to do with the declaration or offering plan related to the residential apartments in the condominium.

It insists that this elevator bank has been in operation for nearly 100 years and services the commercial spaces operated by Verizon. According to Verizon, telecommunications for much of Manhattan below 42nd Street are located in the building, including communications operations for fire departments, police stations, hospitals, and the financial sector. Verizon insists that it never made any representations to the residents of the condominiums about limiting its operations. This defendant points out that the developer agreed to move the machine room to a lower floor in the declaration (at some point).

Defendants 140 West Street (NY) LLC and Shaoul make similar arguments in their opposition. They insist that plaintiffs have not met their burden to establish the elements for a preliminary injunction. These defendants argue that plaintiffs sat on their rights for well over two years—they point out that plaintiffs purchased the unit in 2017 and moved into the apartment in 2019 but did not seek this relief until 2021.

Discussion

“A preliminary injunction substantially limits a defendant's rights and is thus an extraordinary provisional remedy requiring a special showing. Accordingly, a preliminary injunction will only be granted when the party seeking such relief demonstrates a likelihood of

ultimate success on the merits, irreparable injury if the preliminary injunction is withheld, and a balance of equities tipping in favor of the moving party” (*1234 Broadway LLC v W. Side SRO Law Project*), 86 AD3d 18, 23, 924 NYS2d 35 [1st Dept 2011] [citation omitted]).

The Court denies the motion. Plaintiffs did not meet their burden to show that an extraordinary provisional remedy is appropriate under these circumstances. Specifically, the Court finds that a balancing of the equities does not tip in favor of the movants. While it may be that the elevators and the machine room are extremely loud, that does not justify hampering telecommunications for much of Lower Manhattan.

As Verizon explained, its “technicians must access the 9th floor every hour of every day” and “Any reduction in elevator access would place Verizon’s daily and emergency-use access at risk” (NYSCEF Doc. No. 116, ¶¶ 12, 13 [affidavit of Operations Supervisor of Verizon Real Estate]). This Court is unable to conclude that the purported harm to plaintiffs is anywhere close to the potential harm to Verizon. The fact is that Verizon claims that it has critical communications hardware housed on the ninth and tenth floors and that access to these floors is only available via the C bank of elevators. Under these circumstances, there is no basis to grant plaintiffs the provisional relief they seek.

That the ninth and tenth floors might be accessible via a service elevator or through stairs from the eighth floor, as plaintiffs argued, is of no moment. This Court has no interest in limiting access to first responder communications, especially given that these floors are crucial in the event of an emergency or natural disaster. Verizon is entitled to normal access of its floors in the building.

The Court observes that plaintiffs obviously feel that the noise is excessive—they attach numerous emails demonstrating that they complained about the noise right after they moved in

(e.g. NYSCEF Doc. Nos. 23, 24). But that does not mean that the Court should shut down the elevators used by Verizon to access a significant portion of the telecommunications infrastructure for Lower Manhattan.

Summary

To be clear, the Court makes no findings about plaintiffs’ underlying claims and particularly about the level of noise from the elevators and the machine room. This decision is strictly limited to whether plaintiffs are entitled to a preliminary injunction shutting down the “C” bank of elevators and the machine room under their apartment. The Court finds only that this extraordinary relief is not appropriate because the shutdown of the elevators would inhibit Verizon’s ability to provide critical communications services, including support for first responders. This Court has no interest in hindering Verizon’s ability to perform those functions.

Accordingly, it is hereby

ORDERED that the motion by plaintiffs for a preliminary injunction is denied.

Remote Conference: July 7, 2021.

4/16/2021

DATE



ARLENE P. BLUTH, 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