

Benavides v 322 W. 47 St. Hous. Dev. Fund Corp.

2021 NY Slip Op 32385(U)

November 1, 2021

Supreme Court, New York County

Docket Number: Index No. 655385/2021

Judge: Laurence L. Love

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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. LAURENCE LOVE PART 63M

Justice

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BETTY BENAVIDES,

Plaintiff,

- v -

322 WEST 47 STREET HOUSING DEVELOPMENT FUND
CORPORATION, MARTHA HAUZE

Defendant.

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INDEX NO. 655385/2021

MOTION DATE Oct. 14, 2021

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, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 35, 36, 37, 38, 39, 40, 41

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

Upon the foregoing documents, it is

The following read on plaintiff's order to show cause I) to enjoin and restrain the defendants 322 West 47 Street Housing Development Corporation and Martha Hauze, their agents, servants and employees, and all persons acting on said Defendants' behalf, from terminating or canceling plaintiff's shares and proprietary lease for the subject apartment at 322 West 47th Street, Apartment 3R, New York, New York based upon the five (5) day notice of termination dated December 22, 2020; II) to enjoin and restrain the defendants from interfering with plaintiff's right of possession of the subject apartment based upon said notice of termination or the purported violations or defaults alleged; III) to enjoin and restrain the defendants from interfering with or preventing the plaintiff from exercising her shareholders rights, including but not limited to her right to attend shareholders meetings and cast her shareholder vote, based upon said notice of termination or the purported violations or defaults alleged; IV) to enjoin and restrain the defendants from commencing a summary proceeding or other action or proceeding to

recover possession of the subject apartment based upon said notice of termination or the purported defaults alleged; and V) to enjoin and restrain the defendants from commencing any action or proceeding to declare plaintiff's leasehold interests in the subject apartment canceled or terminated based upon said notice of termination or the purported defaults alleged; and VI) to enjoin and restrain the defendants from harassing the plaintiff and unnecessarily contacting the plaintiff.

Defendants cross moved on or about October 6, 2021 to I) enjoin plaintiff from using and/or operating her unauthorized washer and dryer pending the outcome of this action; II) awarding defendants attorney's fees in the sum of \$10,000; and III) assessing costs and imposing sanctions against plaintiff and her attorneys for frivolous motion practice.

A virtual Microsoft Teams appearance was held on October 14, 2021 at 10:00 AM. The proprietary lease (see NYSCEF Doc. No. 7), the notice to cure (see NYSCEF Doc. No. 8), and the notice of termination (see NYSCEF Doc. No. 12) have been submitted.

The affirmation of plaintiff highlights that the Ten (10) – Day Notice to Cure is improper as it does not comply with Paragraph 7.01(e) of the Proprietary Lease. “The defendants served out an improper Ten (10) Day Notice to Cure Violations dated November 25, 2020. Said Notice to Cure claimed that I was violating a substantial obligation of my tenancy as follows:

In violation of Para. 5.04 of your Proprietary Lease you have improperly installed and are operating or caused to be installed, affixed or operated, a washing machine in your apartment without the permission or consent of the Landlord; or in accordance with Department of Buildings regulations of laws.

Said Notice to Cure is vague, unclear, and failed to comply with Paragraph 7.01(e) of the Proprietary Lease which states:

If the shareholder shall be in default in the performance of any covenant or provision thereof, other than the covenant to pay maintenance charges, and such default shall continue for thirty (30) days after written notice from the Corporation.” (see NYSCEF Doc. No. 5 Pars. 4 – 5).

The affidavit in support of defendants, Martha Hauze – President of the Board of Directors affirms, “Plaintiff has for many years (and is presently in breach of other obligations) violated the express terms and conditions of the parties proprietary lease. Some of her wrongful conduct included failure to pay assessments, harboring a pet in violation of the buildings’ pet policy and in the instant matter, installing a washer/dryer without following basic notice requirements and/or complying with Department of Building regulations. Herein, Plaintiff installed a modern washer/dryer without a) first notifying defendant; b) without obtaining defendant’s prior written consent; c) without submitted a proper alteration agreement; d) without obtaining a required Department of Building permit; e) without submitting plans or architectural drawings or schematics; f) and by operating the washer/dryer at the expense of the Cooperation and; g) without investigating whether the use negatively impacts the building’s plumbing system. Currently, the building is often times receiving hot water from the cold water valve while Plaintiff is operating her washer/dryer” (see NYSCEF Doc. No. 30 Pars. 4 – 6).

It is abundantly clear to the Court that the petitioner and respondent have a long standing acrimonious relationship with the latest dispute centering on washing machines and alleged illegal pets. Cooperative apartments by their very nature require the ongoing cooperation between shareholders and the board – when that fails we are often left with unhappy neighbors and too much litigation over what may often seem to be trivial matters wasting everyone’s time, money and resources.

In this specific litigation it is clear that defendant has failed to comply with their own five day and thirty day notice requirements and for said reason this court must grant plaintiff motion at this time. However, the court also takes note that the parties are essential fighting over a washing machine. Plaintiff's papers claim it's an old machine that simply was the subject of a repair. Defendant counters claiming it's a new machine, was not properly inspected and is causing major issues for the building. The court notes plaintiff has provided some level of documentation related to their version of events while defendants provides nothing beyond the board presidents undocumented opinions. The absurdity that both parties currently have such a high level of distrust that, even with attorneys representing their interests, they are incapable of working out an agreement to inspect the washing machine and resolve the issue speaks volumes as to how this story will end. Clearly, if the parties do not start to behave as adults and resolve these petty matters the future will bring more litigation, wasting untold sums of monies, possible eviction and or frivolous actions on either side resulting in sanctionable behavior.

ORDERED that plaintiff's Order to Show Cause is GRANTED as the five (5) day notice of termination dated December 22, 2020 does not comply with the proprietary lease; and it is further

ORDERED that defendant's cross-motion is DENIED.

11/1/2021
DATE


LAURENCE LOVE, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
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"/> REFERENCE