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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

PRESENT: HON. LINDA S. JAMIESON

———————————————————————X

KHRISTINE TAHMIN,

Index No. 57943/2021

Plaintiff,

-against- DECISION AND ORDER

INTERLAKEN OWNERS, INC., and BOARD OF DIRECTORS OF INTERLAKEN OWNERS, INC.,

Defendants.

———————————————————————X

The following papers numbered 1 to 8 were read on this motion:

Papers	Numbered
Order to Show Cause, Affirmations and Exhibits	1
Affirmation and Exhibits in Opposition	2
Affidavits, Affirmation and Exhibits in Opposition	3
Memorandum of Law and Exhibit in Opposition	4
Affidavit, Affirmation and Exhibits in Reply	5
Supplemental Reply Affirmation	6
Affidavits and Exhibit in Sur-Reply[1]	7
Affirmation in Sur-Sur-Reply	8

[1]The Part Rules do not allow for unauthorized sur-replies. These documents, and the response thereto, are inappropriate. Although the Court did review them, it is not relying on them in rendering its Decision and Order.

Plaintiff brings her motion seeking (1) a Yellowstone injunction staying and tolling the cure period in defendants' purported Notice to Cure dated May 4, 2021 (the "Notice") pending a hearing and determination of this Motion; (2) pursuant to CPLR § 6301, preliminarily enjoining and restraining defendants and their officers, directors, employees and agents from taking any of the actions threatened in the Notice during the pendency of this action, regarding plaintiff's right of ownership of certain shares of stock in the defendant corporation (the "shares") and her rights of occupancy in the space located at 12 Field End Road, Apartment 2-L, Eastchester, New York (the "apartment") pursuant to a certain proprietary lease between the parties (the "lease") on or before June 11, 2021, including but not limited to (i) serving notice of termination of plaintiff's tenancy under the lease; (ii) commencing a landlord-tenant action seeking to evict plaintiff from the apartment; (iii) selling the shares; (iv) issuing a new certificate for the shares and new lease; or (v) taking any action that would impair or impede plaintiff's rights in and to the shares or the lease; and (3) compelling defendants and their officers, directors, employees, agents and designated contractors to specifically perform their obligations pursuant to paragraphs 2 and 4(a) and 4(b) among others, of the lease, so as to cause the repair and restoration of the apartment including but not limited to "walls, floors, ceilings, pipes,

wiring and conduits" and windows in the apartment, so as to render the apartment habitable in accordance with the lease and applicable law.

The facts are as follows. Plaintiff has been living in the apartment for approximately 20 years. There is no evidence, despite defendants' many allegations to the contrary, that she has ever had a documented problem with defendants, the Fire Department, the neighbors or, frankly, anyone else. (There is, however, evidence that her neighbor just beneath her has had certain problems with Con Edison and the Fire Department that were in no way caused, or contributed to, by plaintiff.)

Unfortunately, in January 2021, there was a fire in the apartment. Again, despite defendants' allegations, there is no finding by any of the Fire Department investigators or any else that plaintiff was responsible for the fire. Instead, it is clear from a review of the evidence that the cause of the fire was "Undetermined." The multiple pages of the reports and extensive photographic documentation submitted to the Court do not mention vodka or other bottles of alcohol lying around the apartment; they do not indicate that plaintiff left candles unattended near curtains; nor do they in any way indicate that plaintiff did anything to cause the fire. The Fire Department closed the investigation in March 2021. Yet even after this documentation was submitted to the Court, defendants persisted in

making these unsubstantiated and inappropriate accusations before the Court.

The night of the fire, emergency workers brought plaintiff to the hospital for smoke inhalation. Again, defendants distort this evidence as well, making disparaging insinuations about her condition. One of her neighbors also went to the hospital.

There is no dispute that the lease requires that defendants do certain repairs to the apartment. Specifically, after a fire, defendants are required to "at its own cost and expense, with reasonable dispatch after receipt of notice of said damage, repair or replace or cause to be repaired or replaced, with materials of a kind and quality then customary in buildings of the type of the building, the building, the apartment, and the means of access thereto, including the walls, floors, ceilings, pipes, wiring and conduits in the apartment." Defendants have ignored the express language in the lease, and stated that they were not required to make the repairs inside the apartment of the "walls, floors, ceilings, pipes, wiring and conduits."[2] There is

[2]It appears that defendants are now conceding that this work is their responsibility, stating that "We will repair all smoke damage to the apartment and we intend to fix the bathroom as necessary, including a new commode, new sink and cleaning same. Furthermore, in the kitchen, we will do construction grade counter tops and cabinets, a new sink, a new stove and refrigerator. Appliances will be replaced. In fact, assuming our public adjuster has negotiated sufficient funds with the insurance carrier, we will replace the kitchen cabinets which she had no right to remove."

no dispute that at least as of the date of the submission of the last set of papers, this work had yet to be commenced.

In May 2021, defendants served plaintiff with the Notice. It states that defendants will terminate plaintiff's lease and sell her shares if she does not permanently vacate the apartment and list it for sale by June 11, 2021, 30 days later. The Notice states that plaintiff is "violating the provisions in paragraph 18(a) of the lease, page 12, in that the Lessee was to keep the interior of the apartment in good repair and shall be solely responsible for the maintenance, repair and replacement of plumbing, gas and heating fixtures and equipment, and such refrigerators, dishwashers, removable and through the wall air conditioners, washing machines, ranges and other appliances as may be in the apartment." It also cites plaintiff as being "in default of paragraph 18(d) in that you have not complied with the requirements of the Board of Fire Underwriters." It also states that she is "in violation of paragraph 18(b) in that you have unreasonably annoyed the rights of other Lessees in the building." It continues, stating that she is "furthermore in violation of paragraph 20 of the lease in that you have permitted or suffered things to be done which will increase the rate of fire insurance on the building or the contents thereof. Furthermore, you are in violation of paragraph 21(b) in that you

were not to remove any fixtures, appliances, additions or improvements from the apartment in that you have removed the kitchen cabinets which damaged the apartment, which you must repair at your own cost and expense." It concludes this litany of alleged violations by stating that she is "in default of paragraph 31(f) of your lease in that you have become an objectionable shareholder and your objectionable conduct is dangerous to the life, health and safety of the other shareholders." The Notice then goes on, for more than a page, to recount unsubstantiated complaints from neighbors as if they were gospel.

There is no dispute that 30 days' notice and a right to cure, and then a five day notice provision, are part of the lease. There is also no dispute that for some of these purported violations, the lease requires an "affirmative vote of two-thirds of its then Board of Directors, at a meeting duly called for that purpose." There is no dispute that such a vote at such a meeting did not occur prior to defendants sending the Notice. Moreover, as plaintiff point out, without contradiction, some of the complaints set forth in the Notice are nonsensical (such as the "Board of Fire Underwriters" requirement); entirely speculative (such as the insurance rates increasing); or impermissibly vague (annoying the other lessees).

The Court notes that to the extent that defendants complain that plaintiff had no insurance, plaintiff has submitted to the Court evidence that she obtained insurance prior to the issuance of the Notice. The Court observes that the undated document that defendants submit to the Court purporting to list the insurance status of each resident appears to show that plaintiff had insurance until September 2017, at which point she was sent one letter. The indication is that nothing else was sent to her from September 2017 until after the fire, in April 2021. The document also states that in April 2021, plaintiff said that she did have insurance, and would send it along.

When this motion was filed, the Court held a conference via Microsoft Teams to discuss the issues raised. After extensive discussion, the Court granted the temporary relief requested. The Court observed on the Record that the Notice was not a notice to cure, but was more of an "indictment," done in bad faith. The Court also stated, on the Record, that "there are a lot of allegations in here that are not factually correct, and that's a problem. Because now you're sending a notice to cure which is based upon false narratives." The Court thus granted the temporary restraining order. This renders the first request for relief moot.

With respect to the third request for relief, this is granted because defendants represented that they would be doing

the work. However, defendants are reminded that the lease requires that "the building, the **apartment**, and the means of access thereto, including the walls, floors, ceilings, pipes, wiring and conduits in the apartment" must be repaired "**with reasonable dispatch**," using "materials of a kind and quality then customary in buildings of the type of the building." (Emphasis added). The Court finds that it is not "reasonable dispatch" for repairs not to have been completed, let alone even begun, more than seven months after the fire. Defendants are directed to begin the work at once, starting with any work that does not require permits. As for any work that requires permits, such permit applications must be filed immediately, and the followed up by twice-weekly inquiries. The Court cannot countenance any delay, given the clear language of the lease and defendants' admissions of responsibility.

With respect to the Notice, it is well-settled that "The party seeking a preliminary injunction must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of an injunction and a balance of equities in its favor. The purpose of a preliminary injunction is to preserve the status quo until a decision is reached on the merits." *159 Smith, LLC v. Boreum Hill Prop. Holdings, LLC*, 191 A.D.3d 741, 141 N.Y.S.3d 486, 488 (2d Dept. 2021). The Court finds that plaintiff is likely to be successful on the merits; as

stated above, the Notice violates the terms of the lease in multiple respects.

None of the equities favors defendants. Indeed, a review of the evidence does not reflect favorably on defendants' behavior in this matter at all. Finally, the Court finds that having been displaced from her apartment for over seven months, plaintiff is certainly in danger of irreparable injury.

The Court finds that the bond required by CPLR § 6312 should be limited to the amount of rent accruing each month; there are no other damages that defendants are likely to suffer should they ultimately prevail.

Accordingly, the motion is granted in its entirety.

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York
July 30, 2021

HON. LINDA S. JAMIESON
Justice of the Supreme Court

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