

<b>City of New York v Lacroix</b>
2022 NY Slip Op 30626(U)
February 28, 2022
Supreme Court, New York County
Docket Number: Index No. 452107/2021
Judge: Judy H. Kim
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. JUDY H. KIM PART 05**

*Justice*

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THE CITY OF NEW YORK,  
  
Plaintiff,

- v -

MARTINE JOWELLE LACROIX; THE DINOSAURHAUS LLC; HOLIDAY RENTALS NYC LLC; MJL HOSPITALITY INC.; and "JOHN DOE" and "JANE DOE," numbers 1 through 10, fictitiously named parties, true names unknown, the parties intended being the managers or operators of the business being carried on by defendants MARTINE JOWELLE LACROIX; THE DINOSAURHAUS LLC; HOLIDAY RENTALS NYC LLC; MJL HOSPITALITY INC.,

Defendants.

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INDEX NO. 452107/2021  
MOTION DATE N/A  
MOTION SEQ. NOS. 001 & 002

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2-111, 118-119, 120, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136

were read on this motion for PREL INJUNCTION/TEMP REST ORDR.

In this action, plaintiff the City of New York (the "City") seeks a monetary judgment and, as relevant here, a permanent injunction banning defendants Martine Jowelle Lacroix ("Lacroix"), and the Dinosaurhuas LLC, Holiday Rentals NYC LLC, and MJL Hospitality Group Inc. (collectively, the "Entity Defendants") from operating short-term rentals in New York City. In motion sequence number 001, the City moves for a preliminary injunction against all defendants. Lacroix, the only defendant who has answered the complaint, opposes the motion. In motion sequence number 002, the City moves for a default judgment and permanent relief, including a money judgment, against Entity Defendants. The Court consolidates the motions for disposition and grants both motions to the extent set forth below.

## FACTUAL BACKGROUND

The City alleges that Lacroix commenced a short-term apartment rental business in 2010 through Airbnb (See NYSCEF Doc. No. 1 [Complaint at ¶57]). The City maintains that Lacroix organized 1,087 illegal short-term rentals through Airbnb by creating 38 different listings using 10 different host accounts and 104 illegal short-term rental reservations on Flipkey (Id. at ¶¶13-14, 16). The City asserts that during the period of its investigation, 2016-2020, Lacroix and her LLCs illegally converted residential apartment units into short-term rental apartments in at least eighteen residential multiple dwellings (Id. at ¶6; see also NYSCEF Doc. No. 3 [Hendrix Affirm. in Supp. at ¶10]). In addition to rentals under her own name, Lacroix rented apartments through her LLCs, the Entity Defendants<sup>1</sup>. The City cites to one of Lacroix's Instagram posts alleging that she had grossed around \$5 million from her listings on that site (Id. at ¶58).

The City further alleges that Airbnb removed Lacroix's account in December 2020, but that this account was reactivated "as recently as April 27, 2021 ... [and] remain[ed] active" at least through June 24, 2021, the date of the complaint (NYSCEF Doc. No. 1 [Complaint at ¶20]). The City contends that Lacroix "consistently takes pains to evade detection and thwart enforcement through a variety of tactics" (Id. at ¶79). Among other things, a number of her apartment listings included the incorrect apartment building address or unit number so that it was harder for the City to find the apartments that she illegally rented (Id. at ¶80).

Plaintiff's verified complaint sets forth causes of action for: (1) deceptive trade practices in violation of the Consumer Protection Law (Administrative Code §§20-700, et seq.); (2) illegal occupancy and advertising of illegal occupancies in multiple dwellings in violation of Multiple Dwelling Law ("MDL") §4.8(a); (3) a permanent injunction enjoining defendants and all agents

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<sup>1</sup> According to the City, Lacroix also uses many other aliases (See NYSCEF Doc. No. 13 [Pasternack Aff. at n. 1]).

from continuing to advertise, offer, and maintain the use or occupancy multiple dwellings for other than permanent residence purposes; and (4) an injunction for common law public nuisances premised upon violations of various New York City codes.

The complaint also seeks monetary penalties of \$350.00 for each violation of the Consumer Protection Law (or \$500.00 per violation if that violation was knowing), pursuant to Administrative Code §20-703.

### DISCUSSION

#### Motion Sequence Number 001: Preliminary Injunction

In motion sequence 001, the City moves for a preliminary injunction barring defendants: (1) from advertising, operating, or otherwise permitting illegal transient rentals anywhere in New York City; (2) from disposing of, modifying, or in any other manner interfering with digital or paper records connected to their rental businesses; and (3) from refusing or interfering with the City's Fire Department and Department of Buildings' access to the apartments for inspection purposes. The City asserts that it has issued violation notices and summonses to defendants in order to stop them from renting out apartments illegally but to no avail and that a preliminary injunction is therefore necessary.

In general, to establish its entitlement to a preliminary injunction, a movant must establish: (1) a likelihood of success on the merits; (2) irreparable injury absent the granting of a preliminary injunction; and (3) that a balancing of the equities that favors the movant (See City of New York v Smart Apartments LLC, 39 Misc 3d 221, 233 [Sup Ct, NY County 2013]). "However ... where a municipality seeks injunctive relief in nuisance abatement proceedings, such as in this action, '[t]he three-pronged test for injunctive relief does not apply; no special damage or injury to the public need be alleged; and commission of the prohibited act is sufficient to sustain the injunction'"

(The City of New York v Pavlenok, 2019 NY Slip Op. 31938[U], 8 [Sup Ct, New York County 2019] quoting City of New York v. Bilynn Realty Corp., 118 AD2d 511, 512 [1st Dept 1986]; see also City of New York v Smart Apartments LLC, 39 Misc 3d 221, 233 [Sup Ct, NY County 2013]).

Ultimately, the City has met its burden under either standard.

The City has established a high likelihood that it will succeed in establishing Lacroix's violation of MDL §4.8 and the Consumer Protection Law.

Multiple Dwelling Law §4(8)(a) provides that:

A "class A" multiple dwelling is a multiple dwelling that is occupied for permanent residence purposes. This class shall include tenements, flat houses, maisonette apartments, apartment houses, apartment hotels, bachelor apartments, studio apartments, duplex apartments, kitchenette apartments, garden-type maisonette dwelling projects, and all other multiple dwellings except class B multiple dwellings. A class A multiple dwelling shall only be used for permanent residence purposes.

Administrative Code §28-210.3 provides that "[i]t shall be unlawful for any person or entity who owns or occupies a multiple dwelling or dwelling unit classified for permanent residence purposes to use or occupy, offer or permit the use or occupancy or to convert for use or occupancy such multiple dwelling or dwelling unit for other than permanent residence purposes" (Administrative Code §28-210.3) and Administrative Code §20-700 states that "[n]o person shall engage in any deceptive or unconscionable trade practice in the sale, lease, rental or loan or in the offering for sale, lease, rental, or loan of any consumer goods or services, or in the collection of consumer debts" (Administrative Code §20-700).

Administrative Code §20-701(a) defines unfair trade practices to include

Any false ... or misleading oral or written statement, visual description or other representation ... made in connection with the sale, lease, rental or loan or in connection with the offering for sale, lease, rental, or loan of consumer goods or services ... which has the capacity, tendency or effect of deceiving or misleading consumers...

(Administrative Code §20-701[a]). Both the MDL and Consumer Protection Law prohibit advertising the apartments in Class A multiple dwellings for non-permanent rentals (MDL §121[1]; see also Administrative Code §27.287.1).

Finally, a public nuisance is defined at common law as “conduct or omissions which offend, interfere with or cause damage to the public in the exercise of rights common to all, in a manner such as to offend public morals, interfere with the use by the public of a public place or endanger or injure the property, health, safety or comfort of a considerable number of persons” (City of New York v Smokes-Spirits.Com, 12 NY3d 616, 626 [2009] quoting Copart Industries v Consolidated Edison, Co., 41 NY2d 564, 568 [1977]).

In connection with its motion, the City submits the affidavit of Department of Buildings (“DOB”) investigator Michael R. Pasternack attesting to Lacroix’s control of the subject apartments and ownership of Airbnb host accounts (NYSCEF Doc. No. 13 [Pasternack Aff. at ¶¶7-8, 10, 11, 36-39]). The City also submits Certificates of Occupancy demonstrating that these rentals were Class A units (See NYSCEF Doc. Nos. 76, 86, 91, 102). Finally, the City also submits affidavits from DOB inspectors who collectively made seven inspections at the five Subject Buildings in which short-term guests were discovered and interviewed and took photographs of the apartments and of images of the renters’ reservations (See NYSCEF Doc. No. 70 [Botticelli Aff. at ¶¶36-39, 43-44, 49]; see also NYSCEF Doc. No. 108 [Pugach Aff. at ¶¶6-7]; NYSCEF Doc. No. 109 [Cautela Aff. at ¶¶24-25]; NYSCEF Doc. No. 110 [Henlon Aff. at ¶¶24-25]). During these inspections, the DOB’s inspectors found immediately hazardous (class 1) building violations and, as a result, issued a total of 30 Notices of Violation or summonses related to short-term rentals (NYSCEF Doc. Nos. 94, 98, 105 [Notices of Violation]). The foregoing establishes a high likelihood of success that plaintiff will substantiate the allegations of its complaint (City of New

York v Big Apple Mgt., LLC, 2019 NY Slip Op 31046 [U], at \*5 [Sup Ct, NY County 2019]). In opposition, Lacroix denies the validity of these documentary exhibits but does so in an entirely conclusory manner (See NYSCEF Doc. No. 123 [Lacroix Aff. at ¶¶31-33, 35, 42]).

The equities also weigh in the City’s favor. “The only purported injury that defendant may suffer is the suspension of operation of her illegal [rental business]” (Brookford, LLC v Penraat, 47 Misc 3d 723, 728-29 [Sup Ct, NY County 2014]) but, to the extent such injury is even cognizable, Lacroix asserts that she does not currently rent out apartments in New York City and does not intend to do so in the future. By contrast, “[i]f a preliminary injunction is not granted, plaintiff, the building and its occupants will be subjected to life and safety risks created by defendant’s continued use of the building and apartment as a transient hotel” (Brookford, LLC v Penraat, 47 Misc 3d 723, 728 [Sup Ct, NY County 2014]). Specifically, residential units like those at issue here do not comply with the applicable fire and safety standards required of hotels and therefore create safety issues for “transients who are likely unaware that they are staying in rooms offered in violation of the law” as well as for the buildings’ permanent tenant, due to the continuous stream of strangers into the building (Id.).

While not necessary to do so, plaintiff has also established that the possibility of irreparable injury militates for the grant of a preliminary injunction. Where, as here, a municipality seeks to enjoin a public nuisance, “irreparable injury is presumed from the continuing existence of an unremedied public nuisance” (City of New York v 330 Cont. LLC, 60 AD3d 226, 230 [1st Dept 2009]). Lacroix argues there is no unremedied public nuisance because she is not currently running the business at issue in this action (See NYSCEF Doc. No. 123 [Lacroix Aff. at ¶¶31-33, 35, 42]) but, even taking this assertion as true, Lacroix’s cessation of operation does not defeat the City’s right to an injunction. The City has submitted evidence documenting that this was an ongoing

problem, that Lacroix continued her business after she was subject to fines and investigations, and that certain of Lacroix's businesses have not been dissolved. "In light of the proof of illegal operations . . . over an extended period, and the City's ongoing right to ensure that the guilty parties do not subsequently recommence their illegal activities," injunctive relief is appropriate (City of New York v Partnership 91, 277 AD2d 164, 164 [1st Dept 2000] [internal quotation marks and citation omitted]; see City of New York v Hassan, 128 AD3d 419, 420 [1st Dept 2015] [City had ongoing right to ensure that defendants did not recommence illegal sale of alcohol despite apparent abatement of nuisance with defendants' surrender of liquor license in light of proof of prior illegal sales as premises over an extended period]).

In light of the foregoing, the City's motion for a preliminary injunction as to Lacroix is granted. The motion is denied as moot to the extent that it seeks a preliminary injunction against the Entity Defendants, as these defendants are enjoined on a permanent basis pursuant to the Court's determination of motion sequence 002, discussed below.

#### Motion Sequence Number 002: Default Judgment

The City's motion for a default judgment against the Entity Defendants is granted in part. The Entity Defendants have not answered or opposed this motion and therefore have admitted "all traversable allegations contained in the complaint, and thus concede[d] liability" (Petty v Law Off. of Robert P. Santoriella, P.C., 200 AD3d 621, 621 [1st Dept 2021]). In support of its motion, plaintiff is required to submit some proof of liability to "satisfy the court as to the prima facie validity of the uncontested cause[s] of action," though "the standard of proof is 'minimal'" (Petty v Law Off. of Robert P. Santoriella, P.C., 200 AD3d 621 [1st Dept 2021] quoting Joosten v Gale, 129 AD2d 531, 535 [1st Dept 1987]). The City has met this burden through the sworn affidavits submitted by plaintiff of parties with personal knowledge of the illegal rentals, discussed above.

Accordingly, plaintiff's motion for a default judgment against the Entity Defendants is granted as to the Entity Defendants' liability and the Entity Defendants are permanently enjoined from continuing to advertise, offer, and maintain the use or occupancy multiple dwellings for other than permanent residence purposes.

However, the Court denies that branch of the City's motion that seeks the immediate entry of a monetary judgment against the Entity Defendants under Consumer Protection Law [CPL] §20-703(b). Pursuant to CPLR §3215(d), "when there are multiple defendants and one of the defendants has defaulted, 'the court may enter an ex parte order directing that proceedings for . . . the making of an assessment . . . be conducted at the time of or following the trial or other disposition of the action against the defendant who has answered'" (Revankar v Tzabar, 16 Misc 3d 1127(A) [Sup Ct, Kings County 2007] quoting CPLR §3215[d]). However, as Lacroix notes, an award of damages against the Entity Defendants implicates her liability and has a bearing upon the amount of damages that could be assessed against her. Accordingly, granting this branch of plaintiff's motion at this juncture would be prejudicial to Lacroix (Id. citing Grossman Steel Stair Corp. v Steinberg, 54 NYS2d 275, 276 [1944]). By contrast, there is no substantial prejudice to the City if damages are not determined at this juncture because, as the City acknowledges, it can and will pursue these damages at trial. Accordingly, that branch of the City's motion which seeks "an assessment of damages and an entry of a judgment on damages" as against the Entity Defendants is denied without prejudice to its renewal at trial (Id.; see also Ramirez v Islandia Exec. Plaza, LLC, 92 AD3d 747, 748 [2d Dept 2012]).

In light of the foregoing, it is

**ORDERED** that the City of New York's motion for a preliminary injunction, motion sequence number 001, is granted as against defendant Lacroix; and it is further

**ORDERED** that motion sequence number 001 is denied as moot to the extent that it seeks a preliminary injunction against the Corporate Entities, as these defendants are enjoined on a permanent basis pursuant to this order; and it is further

**ORDERED** that Lacroix and all other persons acting under her jurisdiction, supervision, and/or direction, are enjoined and restrained during the pendency of this action, from doing or suffering to be done, directly or through any attorney, agent, servant, employee, or other person under Lacroix's supervision or control, from further advertising, operating, and/or permitting illegal transient hotels and/or hostels anywhere within the City, pending the Court's determination of the City's request for permanent injunctive relief; and it is further

**ORDERED** that plaintiff the City of New York's motion for a default judgment, motion sequence 002, is granted on the issue of liability as against the Entity Defendants; and it is further

**ORDERED** that THE DINOSAURHAUS LLC, its agents, employees, representatives, and all persons acting in concert with it, is permanently and perpetually enjoined pursuant to Multiple Dwelling Law §306, CPLR §6311, Admin. Code §§20-703(d), 27-2122, and 28-205.1, New York General City Law §20(22), and the common law doctrine of public nuisance from:

- a. Using or occupying, or permitting the use or occupancy of, any of the dwelling units in the Subject Buildings, and in any other Class A dwelling unit in all other buildings in the City of New York or in any private dwelling in the City of New York for less than thirty consecutive days; and
- b. Booking, offering, or advertising any dwelling units in the Subject Buildings, and in any other Class A dwelling unit in all other buildings in the City of New York or in any private dwelling in the City of New York for less than thirty consecutive days; and it is further

**ORDERED** that HOLIDAY RENTALS NYC LLC, its agents, employees, representatives, and all persons acting in concert with it, is permanently and perpetually enjoined pursuant to Multiple Dwelling Law §306, CPLR §6311, Admin. Code §§20-703(d), 27-2122, and 28-205.1, New York General City Law §20(22), and the common law doctrine of public nuisance from:

- a. Using or occupying, or permitting the use or occupancy of, any of the dwelling units in the Subject Buildings, and in any other Class A dwelling unit in all other buildings in the City of New York or in any private dwelling in the City of New York for less than thirty consecutive days; and
- b. Booking, offering, or advertising any dwelling units in the Subject Buildings, and in any other Class A dwelling unit in all other buildings in the City of New York or in any private dwelling in the City of New York for less than thirty consecutive days; and it is further

**ORDERED** that MJL HOSPITALITY INC, its agents, employees, representatives, and all persons acting in concert with it, is permanently and perpetually enjoined pursuant to Multiple Dwelling Law §306, CPLR §6311, Admin. Code §§20-703(d), 27-2122, and 28-205.1, New York General City Law §20(22), and the common law doctrine of public nuisance from:

- a. Using or occupying, or permitting the use or occupancy of, any of the dwelling units in the Subject Buildings, and in any other Class A dwelling unit in all other buildings in the City of New York or in any private dwelling in the City of New York for less than thirty consecutive days; and
- b. Booking, offering, or advertising any dwelling units in the Subject Buildings, and in any other Class A dwelling unit in all other buildings in the City of New York or

in any private dwelling in the City of New York for less than thirty consecutive days; and it is further

ORDERED that the remainder of motion sequence number 002, which seeks the immediate imposition of damages, is denied.

This constitutes the decision and order of the Court.

*Judy H. Kim*  
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2/28/2022  
DATE

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JUDY H. KIM, 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		
		<input type="checkbox"/>	DENIED	<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