

**Board of Mgrs. of the Promenade Condominium v  
Eshaghpour**

2022 NY Slip Op 30731(U)

March 8, 2022

Supreme Court, New York County

Docket Number: Index No. 151028/2022

Judge: William Perry

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. WILLIAM PERRY PART 23

Justice

INDEX NO. 151028/2022

BOARD OF MANAGERS OF THE PROMENADE CONDOMINIUM, ALEXIS KAMINOFF-FRITZ MOTION DATE

Plaintiff, MOTION SEQ. NO. 001

- v -

ROBIN ESHAGHPOUR, DECISION + ORDER ON MOTION

Defendant.

It is well settled that for a preliminary injunction/temporary restraining order to be granted there are three required elements that must be established: (1) likelihood of success on the merits, (2) irreparable injury absent granting of a preliminary injunction, (3) and a balancing of the equities in the movant's favor. Berman v TRG Waterfront Lender, LLC, 181 A.D.3d 783 (2nd Dep't, 2020) (see Keller v. Kay, 170 A.D.3d 978, (2nd Dep't, 2018); Carroll v. Dicker, 162 A.D.3d 741, (2nd Dep't, 2018)). The elements to be satisfied must be demonstrated by clear and convincing evidence. Liotta v Mattone, 71 A.D.3d 741 (2nd Dep't, 2010). The decision to grant or deny a preliminary injunction rests in the sound discretion of the Supreme Court (see Tatum v. Newell Funding, LLC, 63 A.D.3d 911, (2nd Dep't, 2009); Cooper v. Bd. of White Sands Condo., 89 A.D.3d 669, 669, (2nd Dep't, 2011). Whether a party is entitled to a preliminary injunction is a determination entrusted to the sound discretion of the motion court (see Doe v. Axelrod, 73 N.Y.2d 748 (1988); Eastview Mall, LLC v. Grace Holmes, Inc., 182 A.D.3d 1057, (4th Dep't, 2020).

Plaintiff, Board of Managers of the Promenade Condominium, is the entity responsible for the subject building ("Board"). Plaintiff Alexis Kaminoff-Fritz is an employee of AKAM

Living Services, the managing agent of the building. Ms. Kaminoff staffs Akam's office in the subject building ("Ms. Kaminoff").

Defendant is the owner of Units 20E, 20F, and 20G in the subject building ("Defendant"). Defendant's wife owns Unit 21G in the building. They both reside in the building.

According to Ms. Kaminoff, this action stems from defendant's attempt to physically alter certain common area hallways in the building without having Board approval for such work. Ms. Kaminoff testified that on January 20, 2022, she met with defendant and his wife, telling them that their proposed work in the hallway could not begin without having the prior approval of the Board. Ms. Kaminoff states that upon hearing this news, defendant began to scream and threaten her, saying that "if she did not take care of this, he would take care of all of the Board" and that he "had a bodyguard who had a gun." Defendant then left her office.

Sometime later in the day, after receiving a call from defendant's neighbor saying that a work crew had begun work in the hallway outside of defendant's apartment, plaintiff sent Dominick Camilleri, the resident manager, to assess the situation on defendant's floor.

Mr. Camilleri testified that when he arrived on defendant's floor, he saw defendant's workers cutting wood and doing other work in the hallway. He took photos of the workers engaging in work and they were annexed to this motion. Upon hearing Mr. Camilleri requesting that the workers depart, defendant began to scream and hurl insults at Mr. Camilleri. Defendant then left the area where the workers were working.

Ms. Kaminoff testified that defendant then came to her office where he began to scream and threaten her. Her young daughter was now present in the office. During this confrontation, Mr. Camilleri appeared and defendant put his finger in Mr. Camilleri's face and screamed at him.

Upon seeing the fear on Ms. Kaminoff's daughter's face Mr. Camilleri testified that escorted the child out of the office.

As a result of this incident, the Board hired security for Ms. Kaminoff and other building employees to guard their safety and to prevent defendant from performing any unauthorized work.

On January 24, 2022, defendant again attempted to have construction workers perform work in the building. On this date, security intervened to stop the work and the police were called. Defendant then became upset and began acting a confrontational manner. Ms. Kaminoff filed a police report while the police were present, outlining defendant's previous threats and harassment. According to Ms. Kaminoff, after the police departed, defendant's aggressive behavior continued and security escorted him from the building and advised her not to return for a few days Ms. Kaminoff has not returned to the building and has worked from home since January 26, 2022.

Plaintiffs in this matter have demonstrated, through clear and convincing evidence, their entitlement to a preliminary injunction. The testimony of Ms. Kaminoff, who was the direct object of defendant's ire, the testimony of Dominick Camilleri, who was an eyewitness to the first confrontation between Ms. Kaminoff, their affidavits, the photographs of defendant's workers attempting to do "unapproved" work at the premises and Ms. Kaminoff's police report show that defendant engaged in a pattern of threatening, harassing and menacing behavior toward Ms. Kaminoff, which behavior must cease.

Plaintiffs have shown that Defendant's words and actions were of such import that the Board deemed it necessary to hire a security person to be with Ms. Kaminoff during her work-

day. The actions of defendant clearly establish that plaintiffs' success on the merits of this action is more likely than not.

Plaintiffs have also shown that they would suffer irreparable harm should this Order not be granted. If defendant's rages and threats are permitted to continue, they will not only serve to exacerbate Ms. Kaminoff's fears for her safety, but will also interfere with the management of the building's affairs, as Ms. Kaminoff cannot permanently work from home and were she forced to work on site, she would not be able to properly perform her job duties. In addition, plaintiff Board's use and enjoyment of the building would be compromised, because at any time, any building employee could become subject to defendant's threats and building work could suffer.

The balance of the equities favor plaintiffs, as they are the building's stewards and in that role they should be able to enforce the rules and By-Laws of the building without fear of violence and threats. Plaintiffs correctly state that "equity and justice require that defendant be enjoined from continuing to act in an outrageous manner."

Therefore, the plaintiff's motion for a preliminary injunction is granted.

3/8/2022  
DATE

  
WILLIAM PERRY, 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"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE