

Elsayed v Sunset U.S. Corp.

2022 NY Slip Op 30954(U)

March 17, 2022

Supreme Court, New York County

Docket Number: Index No. 158410/2021

Judge: Alexander Tisch

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ALEXANDER TISCH PART 18

Justice

-----X

INDEX NO. 158410/2021

LAMIA SALEM ELSAYED, NOUR MOHAMED ZAHER,
INDJI EL HENAWY, YASSIN EL SAYED

MOTION DATE 10/20/2021

Plaintiff,

MOTION SEQ. NO. 001

- v -

SUNSET U.S. CORPORATION, CARINI GROUP LLC,

DECISION + ORDER ON MOTION

Defendant.

-----X

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, 19, 30, 31

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

Upon the foregoing documents, plaintiffs move for (1) a preliminary injunction restraining and enjoining defendants from evicting them, locking them out, or otherwise denying plaintiffs' access to their apartments; (2) a preliminary injunction restraining and enjoining defendants from harassing plaintiffs as defined by NYC Administrative Code § 27-2004(48)1 and as barred by Real Property Law (RPL) § 235-d; and (3) an order directing defendants to return the sum of \$120,000.00 representing the amount defendants allegedly demanded plaintiffs pay as advanced rent in violation of General Obligations Law (GOL) § 7-108(1-a)(a).

CPLR 6301 provides that a preliminary injunction may be granted:

in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or

1 It appears that the order to show cause contains a typo, as most of the complaint and memorandum of law in support of the application refer to "27-2004(48)" (see NYSCEF Doc Nos. 1, 11); therefore the Court uses the correct and applicable provision.

continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff.

“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” (Nobu Next Door, LLC v Fine Arts Hous., Inc., 4 NY3d 839, 840 [2005]). “The decision to grant or deny provisional relief, which requires the court to weigh a variety of factors, is a matter ordinarily committed to the sound discretion of the [trial court]” (Doe v Axelrod, 73 NY2d 748, 750 [1988]). Additionally, because a preliminary injunction is a “drastic remedy,” the movant “must establish a clear right to that relief under the law and the undisputed facts” (Omakaze Sushi Rest., Inc. v Ngam Kam Lee, 57 AD3d 497, 497 [2d Dept 2008]).

For purposes of this motion, “all that must be shown is the likelihood of success [on the merits]; conclusive proof is not required” (Ying Fung Moy v Hohi Umeki, 10 AD3d 604, 605 [2d Dept 2004]; J. A. Preston Corp. v Fabrication Enters., 68 NY2d 397, 406 [1986] [“a preliminary injunction . . . depends upon probabilities, any or all of which may be disproven when the action is tried on the merits”]). Indeed, this decision is not considered as “the law of the case,” “so as to preclude reconsideration of [the issues] at a trial on the merits” (Icy Splash Food & Beverage, Inc. v Henckel, 14 AD3d 595, 596 [2d Dept 2005], quoting Peterson v Corbin, 275 AD2d 35, 40 [2d Dept 2000], citing J. A. Preston Corp., 68 NY2d 397).

The Court finds that plaintiffs met their burden entitling them to a preliminary injunction. The allegations in the complaint and Zaher’s affidavit demonstrate sufficient allegations of harassment and threat of an illegal eviction. Thus, the Court finds a likelihood of success on the merits, “even where the facts are in dispute and the evidence is inconclusive” (Four Times Sq. Assoc., L.L.C. v Cigna Investments, Inc., 306 AD2d 4, 5 [1st Dept 2003]). The affidavit of Alex Carini (NYSCEF Doc No. 30), refuting the allegations, does not warrant a hearing (see, e.g., 25

CPW City Views, LLC v Cohen, 2020 NY Slip Op 30161[U], 17 [Sup Ct, New York County 2020] [d'Auguste, J.] [“Even if Cohen's affidavit raised a factual issue as to whether Stempler had been making noises that were disturbing Cohen, this factual issue does not subvert plaintiffs' establishment of a clear right to relief”]).

“The movant must show that the injury is threatened and imminent, and what constitutes such injury depends not only on the facts but upon the discretion of the court” (25 CPW City Views, LLC, 2020 NY Slip Op 30161[U], 18 [internal citations omitted]). Here, too, the Court finds that the allegations submitted in the complaint and Zaher’s affidavit demonstrate sufficient irreparable harm to warrant an injunction (see, e.g., NRI Group LLC v Crawford, 50 Misc 3d 1217[A], 2016 NY Slip Op 50129[U] [Sup Ct, NY County 2016]). Further, the balance of equities tip in favor of plaintiffs. The injunction serves to at least provide the parties with assurances against an illegal eviction, or a lock out without due process, and to stop harassment. Whereas the Court finds no harm to the defendants if such injunction were granted, as Mr. Carini’s affidavit fails to articulate any and defendants and their agents are already required by law to not harass tenants and must follow legal process to eject a lawful tenant.

That branch of the motion directing a return of the \$120,000.00, allegedly demanded by defendants to be paid as advanced rent, is denied without prejudice. The parties have different statements of fact on this issue and the request is akin to a summary judgment motion on the third cause of action.

Accordingly, it is hereby ORDERED that the motion is granted to the extent of granting a preliminary injunction as set forth below and is otherwise denied; and it is further

ORDERED that defendants and their agents, employees, contractors, or anyone acting on their behalf, are restrained and enjoined from removing plaintiffs from possession without a

proceeding or action, or otherwise locking plaintiffs' out of and/or denying them access to the demised premises; and it is further

ORDERED that defendants and their agents, employees, contractors, or anyone acting on their behalf, are restrained and enjoined from engaging in any form of harassment as defined by NYC Administrative Code § 27-2004(48), and as barred by RPL § 235-d.

This constitutes the decision and order of the Court.



3/17/2022

DATE

ALEXANDER TISCH, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: