

Krisnajinda v 312 W. 49th St. Hous. Dev. Fund Corp.
2022 NY Slip Op 31080(U)
March 31, 2022
Supreme Court, New York County
Docket Number: Index No. 656715/2021
Judge: Laurence Love
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE LOVE PART 63M

Justice

-----X

PANJIT KRISNAJINDA, PAIRAT SIDDHIVARN

Plaintiff,

- v -

312 WEST 49TH STREET HOUSING DEVELOPMENT
FUND CORPORATION,

Defendant.

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INDEX NO. 656715/2021

MOTION DATE 01/21/2022,
01/21/2022

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 12, 13, 19, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52 were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 14, 15, 16, 17, 18, 53 were read on this motion to/for MODIFY ORDER/JUDGMENT.

Upon the foregoing documents, the decision on plaintiffs' motion seeking a preliminary injunction is as follows:

Plaintiff commenced the instant action by filing a summons and complaint on November 29, 2021, seeking a declaratory judgment that plaintiffs are not in default under their proprietary leases. Said complaint alleges as follows: Plaintiff, Panjit Krisnajinda, is the owner of the shares assigned to Apartment 4FW and the proprietary lessee of said apartment and plaintiff, Pairat Siddhivarn, is the owner of the shares assigned to Apartment 3FE and the proprietary lessee of said apartment, both located in the building located at 312 West 49th Street, New York, New York, owned by defendant, 312 West 49th Street Housing Development Fund Corporation. In letters dated, October 29, 2021, plaintiffs were each informed that they were in default of their respective proprietary leases based upon their alleged failure to occupy said apartments for a minimum of

183 days in the years 2019 and 2020. Said letters demand that the alleged defaults be cured by December 2, 2021.

Concurrent with the filing of this action, plaintiffs moved by Order to Show Cause, under motion sequence 001, seeking an Order pursuant to CPLR 6301 preliminarily enjoining and restraining the Corporation, during the pendency of this action, from taking any action to terminate the proprietary lease of either plaintiff on the grounds set forth in the Corporation's notices to plaintiffs dated October 19, 2021 (the "Notices") and tolling plaintiffs' time to cure any default identified in the Notices. At that time, this Court did not grant the portion of said Order to Show Cause seeking that "pending the hearing and determination of plaintiffs' motion, defendant Corporation is enjoined and restrained from taking any action to terminate plaintiffs' proprietary leases on the grounds set forth in the Notices and plaintiffs' time to cure any default identified in the Notices is tolled." On December 1, 2021, plaintiffs moved by Order to Show Cause, under motion sequence 002 for similar relief, which this Court declined to sign.

On January 21, 2021, this Court held oral argument on the instant motion and issued an Interim Order that Defendant – 312 West 49th Street Housing Development Fund Corporation is ENJOINED and RESTRAINED from taking any action to terminate plaintiffs' proprietary leases on the grounds set forth in the Notices and Plaintiffs' Time to Cure and default identified in the Notices is tolled.

Defendant acknowledges that the portion of Plaintiffs' application seeking an injunction enjoining the termination of the proprietary lease appurtenant to Plaintiff Pairat Siddhivarn's apartment 3FE is moot because the Co-op acknowledges that she has cured her default.

In order to obtain a Yellowstone Injunction, the tenant must demonstrate that: (1) it holds a lease, (2) the landlord served a notice to cure, (3) the tenant sought the Yellowstone Injunction

prior to the expiration of the cure period, and (4) the tenant has the ability and desire to cure the alleged default. *First Nat. Stores v. Yellowstone Shopping Center*, 21 NY2d 630 (1968).

Defendant contends that the portion of plaintiffs' motion seeking an injunction as to Panjit Krisnajinda must be denied as where a plaintiff fails to obtain a temporary restraining order, the cure period cannot be extended, the lease will terminate, and a court may not revive the expired lease, *See, Graubard Mollen Horowitz Pomeranz & Shapiro v. 600 Third Ave. Assocs.*, 93 N.Y.2d 508, 513, 715 N.E.2d 117, 119–20 (1999). The Court notes that plaintiffs' action and Order to Show Cause were both filed within the cure period. While the Court initially did not grant plaintiff a tolling of the relevant period when the Order to Show Cause was signed, where a tenant has commenced an action seeking a Yellowstone injunction prior to the expiration of the cure period in its lease but is denied that relief, the courts retain the power to toll the cure period and enjoin the termination of the lease nunc pro tunc if it concludes that it was error to deny the tenant that relief. *Fratto v. Red Barn Farmers Market Corp.*, 144 A.D.2d 635-37, 535 N.Y.S.2d 53 (2d Dep't 1988), *Physicians Planning Services Corp. v. 292 Estates, Inc.*, 88 A.D.2d 852, 451 N.Y.S.2d 425, 426 (1st Dep't 1982). Here, this Court did so in its Interim Order of January 21, 2021.

Defendant also alleges that the instant motion must be denied as plaintiffs' default is incurable in that the Proprietary lease requires that the apartment be plaintiffs' primary residence and as it has not been during years 2019 and 2020 that plaintiffs' default is incurable, *See, Bliss World LLC v. 10 W. 57th St. Realty LLC*, 170 A.D.3d 401, 401, 95 N.Y.S.3d 183, 184 (1st Dep't 2019). As discussed in *626 East 9 Street Housing Development Fund Corp. v. Collins*, 185 Misc.2d 628, 712 N.Y.S.2d 262 (Civ.Ct. N.Y. Cty. 2000), plaintiff is entitled to avail herself the cure period provided in paragraph 31 (e) of the proprietary lease.

As such, plaintiff, Panjit Krisnajinda has established the existence of a lease, notice to cure, the timeliness of the instant application and at least a colorable desire to cure the alleged default.

ORDERED that motion sequence 002 is DENIED in its entirety as described in the Court’s non-signing statement; and it is further

ORDERED that the portion of motion sequence 001 relating to plaintiff, Pairat Siddhivarn is DENIED as moot; and it is further

ORDERED that the portion of motion sequence 001 relating to plaintiff, Panjit Krisnajinda, is GRANTED and pursuant to CPLR 6301, defendant is restrained, during the pendency of this action, from taking any action to terminate the proprietary lease of Panjit Krisnajinda on the grounds set forth in the Corporation’s notices to plaintiffs dated October 19, 2021 and plaintiff’s time to cure any default identified in the Notices is tolled.

3/31/2022
DATE


LAURENCE LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: