

**Brumberg v Board of Mgrs. of the Cast Iron House
Condominium**

2022 NY Slip Op 31281(U)

April 10, 2022

Supreme Court, New York County

Docket Number: Index No. 657019/2021

Judge: Verna L. Saunders

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. VERNA L. SAUNDERS, JSC PART 36

Justice

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INDEX NO. 657019/2021

MATTHEW BRUMBERG, JUNYAO BRUMBERG, GABRIEL LOPEZ, SARAH STEIN-SAPIR, ANDREA FRAZZINI, NIGEL POWELL, GIORGIO DELUCA, JAMES CHUNG, JOSEPH DORAN, DANYA ALSAADY-NAZER, JODI SARFIELD, and ADAM ARON,

MOTION SEQ. NO. 001

Plaintiffs,

- v -

**DECISION + ORDER ON
MOTION**

THE BOARD OF MANAGERS OF THE CAST IRON HOUSE CONDOMINIUM, 361 BROADWAY ASSOCIATES HOLDINGS, LLC, and THE ANDREWS ORGANIZATION, INC.,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26

were read on this motion to/for

PRELIMINARY INJUNCTION/TRO

In December 2021, plaintiffs, owners of ten (10) units within the thirteen-unit residential condominium known as the Cast Iron House, located at 67 Franklin Street, New York, New York 10013 (“the condominium” or “the premises”), commenced this action against defendant THE BOARD OF MANAGERS OF THE CAST IRON HOUSE CONDOMINIUM (“the board”), which is allegedly controlled by defendant 361 BROADWAY ASSOCIATES HOLDINGS, LLC (“the sponsor”). This action was also commenced as against the Condo Board’s managing agent, defendant THE ANDREWS ORGANIZATION, INC. (“managing agent”).

The allegations in the complaint are that, in or about August 2019, plaintiffs became aware of rats within their units and throughout the condominium building, including, but not limited to, the common areas. Plaintiffs complained to defendants verbally and in writing about the rat infestation, as well as, other conditions within the condominium that did not meet the specifications required by the offering plan and supporting documents.

Plaintiffs assert a claim for mandatory preliminary injunction (first cause of action), ordering defendants to engage in immediate measures to remediate the rat infestation and repair the code deficient fire-stopping throughout the condominium. They further assert a claim for “injunctive relief” (second cause of action), for an order compelling defendants to produce all condominium board meeting minutes, all notices of annual meetings of the condominium board and unit owners, the name and title of all members of the board, all as-built drawings for the condominium, and unrestricted access to all common elements within the condominium. (NYSCEF Doc. No. 1, *summons and verified complaint*).

Plaintiffs now move, by order to show cause, for an order directing defendants to immediately: (i) remediate and eradicate the building-wide rat infestation that exists in the residential units and common elements of the condominium; and to rectify the inadequate and/or missing fire-stopping throughout the subject premises in violation of Section 712.3.1.2 of the New York City Building Code, both of which are life-safety issues for residents in the subject premises. They also seek, “an order compelling [d]efendants to provide [p]laintiffs’ expert, FSI Architecture, PC (‘FSI’), access to all common elements and mechanical equipment servicing the [c]ondominium in connection with Phase II of FSI’s inspection and physical conditions report, and to produce the following: (i) all as-built drawings for the condominium, including the mechanical systems; and (ii) all notices of annual meetings of the board, as well as, meeting minutes from the first annual meeting through the present. (NYSCEF Doc. No. 16, *order to show cause*; 4, *Fraser’s affirmation*).

In support of this application, plaintiffs submit photographs and video screenshots showing rats inside the residential condominium units, crawling on furniture, in kitchens, down staircases and in a child’s playroom, as well as, a dead rat on the floor of the fitness center (NYSCEF Doc. No. 5, exhibit 1, *photos*); a summons issued to defendants by the New York City Department of Health and Mental Hygiene (“DOH”) based on rat activity found within the condominium during an inspection in or around November 3, 2021 (NYSCEF Doc. No. 6, exhibit 2, *summons by DOH*); and written acknowledgement from defendants regarding the rodents in the premises (NYSCEF Doc. No. 7); as well as, the affidavit of Julie Georgopoulos (“Georgopoulos”) (NYSCEF Doc. No. 10).

Plaintiffs submit e-mail correspondence from plaintiff SARAH STEIN-SAPIR to Jourdan E. Krauss, the controlling member of the board and managing principal of the sponsor, documenting plaintiffs’ complaints regarding the rodents in the building. There are additional e-mails between plaintiffs and the condominium sponsor and managing agent. Andrews acknowledged a rodent problem in the building, indicating the abandoned building next door, 71-73 Franklin Street, as the ultimate source of the problem. Andrews also acknowledged that there were “several access points” that needed to be sealed but it nevertheless took the position that “[i]f owners [were] interested in sealing their units, that expense would be on the owner to cover as stated in the offering plan.” The biggest issue, according to Andrews, was that there are rats in the walls and ceiling and that, to remove these rodents, it would require that the walls and ceilings be torn down. Thus, Andrews stated that “[e]ven if the building is 100% sealed, there just ha[d] not been an effective solution to remove the remaining rats.” Plaintiff raised concerns about the access points, including, penetrations not properly sealed or fire-stopped; gaping holes behind appliances and within cabinets; and missing insulation. (NYSCEF Doc. No. 7, exhibit 3, *complaints to defendants regarding hazardous conditions*).

Plaintiff also submit a copy of the condominium’s offering plan. (NYSCEF Doc. No. 8).

Julie Georgopoulos, a registered architect licensed in this state, and an associate principal of FSI Architecture, P.C. (“FSI”), an engineering firm, submits an affidavit in support of the instant motion. Georgopoulos affirms that FSI was retained by plaintiff to inspect the subject units and as much of the common elements and mechanical systems as it was provided access to

by defendants. On November 11, 2021, FSI conducted an initial inspection of the condominium, memorializing its findings in physical conditions report that it annexes to her affidavit. She opines that rats have entered the condominium's common elements and residential units through holes in the cast-iron and masonry exterior facades, foundation, and vault; that the rats travel throughout the building through vertical chases and risers, voids, inadequate closure of holes in the demising walls and fire-stopping deficiencies, all of which provide entry of rats to residential units; and that the holes and missing fire-stopping do not comply with the through-penetration firestop system requirements set forth in the New York City Building Code. Georgopoulos further claims that FSI was not able to inspect all of the condominium's mechanical spaces and/or common elements which is necessary to determine the extent of remediation needed to eradicate the rats, and to determine the extent of other construction deficiencies within the condominium that must be addressed. She also claims that FSI needs all of the condominium's as-built drawings, including its mechanical systems, to determine the extent of discrepancies between the as-built conditions and the requirements of the condominium Offering Plan. (NYSCEF Doc. No. 10-11, *Georgopoulos's affidavit and physical conditions report*).

By memorandum of law, plaintiffs argue that they have demonstrated a clear right to mandatory injunctive relief. Specifically, plaintiffs maintain that they have established a likelihood of success on the merits insofar as defendants have an obligation, pursuant to the offering plan and the local law of the City of New York, to make the necessary repairs to eradicate the rats from the condominium. They have also submitted proof of the rat infestation, as well as, an affidavit establishing the source of the problem and the solution. As to the element of irreparable harm, plaintiffs contend that the rat infestation and deficient fire-stopping are hazardous conditions that pose a risk to health and safety. Defendants' failure to remedy these conditions will subject plaintiffs to irreparable harm in the form of disease, infection, and potentially catastrophic fire and smoke induced injuries. They further assert that a balance of the equities tips in favor of granting this application. (NYSCEF Doc. No. 9, *memorandum of law*).

In opposition to the motion, defendants argue that plaintiffs are not entitled to a mandatory preliminary injunction granting them ultimate relief in this case. First, defendants claim that plaintiffs do not competently show that the claimed emergency conditions currently exist, nor do they show that it was defendants' obligation to resolve. They rely predominantly on the affidavit of Krauss (NYSCEF Doc. No. 17, *Krauss's affidavit*), who affirms that, following complaints about rats in the units in the summer of 2021 and the photos submitted in support of the motion, defendants hired an independent third-party extermination company, Assured Environments, to treat and inspect the building for rats; the DOB came to inspect and set rat traps in the adjacent building in or about September 2021; and that plaintiffs have not complained to defendants about rats since that time. Krauss further states that a primary entry point was identified in or about September-October 2021 and that this has been repaired and sealed. Addressing the fire-stopping issue, Krauss affirms that building passed its inspection requirement and is currently compliant and safe for occupancy, and that defendants have met their obligations in this regard. Defendants also argue that plaintiffs have failed to demonstrate irreparable harm insofar as they fail to address the remedial measures that defendants have undertaken; they fail to show that they have a plan to address the issues complained of; and that money damages would not compensate plaintiffs for their purported damages. Defendants also contend that plaintiffs have not demonstrated a balance of the equities in their favor. If, however, the court grants a

preliminary injunction, plaintiff must be required to post an undertaking. (NYSCEF Doc. No. 18, *memorandum of law in opposition*).

“[A] mandatory preliminary injunction (one mandating specific conduct), by which the movant would receive some form of the ultimate relief sought as a final judgment, is granted only in unusual situations, where the granting of the relief is essential to maintain the *status quo* pending trial of the action.” (*Jones v Park Front Apts., LLC*, 73 AD3d 612, 612 [1st Dept 2010] [internal quotation marks and citations omitted]; see *Spectrum Stamford, LLC v 400 Atl. Tit., LLC*, 162 AD3d 615, 617 [1st Dept 2018]; *Second on Second Café, Inc. v Hing Sing Trading, Inc.*, 66 AD3d 255, 264 [1st Dept 2009].) Therefore, “[a] mandatory injunction should not be granted, absent extraordinary circumstances, where the status quo would be disturbed and the plaintiff would receive the ultimate relief sought, *pendente lite*.” (*Spectrum Stamford, LLC v 400 Atl. Tit., LLC*, 162 AD3d at 617 [internal quotation marks and citations omitted].)

To establish entitlement to injunctive relief, the movant must establish: (1) a likelihood of success on the merits; (2) irreparable harm absent injunctive relief; and (3) that a balancing of the equities favors the movant's position. (See CPLR 6301; *Nobu Next Door, LLC v Fine Arts Hous., Inc.*, 4 NY3d 839, 840 [2005]; *Gliklad v Cherney*, 97 AD3d 401, 402 [1st Dept 2012]; *Jones v Park Front Apartments, LLC*, 73 AD3d 612 [1st Dept 2010].) If any of these elements is not met, the motion must be denied (see *Faberge Intl. v Di Pino*, 109 AD2d 235, 240 [1st Dept 1985].) The movant seeking said relief must submit proof establishing these elements by affidavit and other competent proof, with evidentiary detail. (see *Scotto v Mei*, 219 AD2d 181, 182 [1st Dept 1996].) The decision to grant or deny a preliminary injunction rests within the sound discretion of the trial court. (*Gilliland v Acquafredda Enters., LLC*, 92 AD3d 19, 24 [1st Dept 2011].)

Here, this court notes that the mandatory injunctive relief plaintiffs seek is not essential to maintaining the status quo of this case. Quite the contrary, plaintiffs seek to change the status quo by requesting the ultimate relief sought in the complaint.

Moreover, assuming, *arguendo*, this court is persuaded that defendants have an obligation, pursuant to the condominium offering plan and the local law, to correct deficiencies in the common elements and residential units that is causing rat infestation in the building, plaintiffs have nevertheless failed to establish entitlement to the drastic remedy of injunctive relief. The photographs purporting to show rats within the units of the condominium, while certainly appalling, are not sufficient on this record to establish an ongoing condition at the premises. These photographs were annexed to an e-mail exchanged with defendants in August 2021. Addressing this proof, Krauss affirms that in September-October 2021 defendants remedied and sealed pivotal access points in the condominium that were causing the infiltration of rats in the building and that, after said remedial efforts, no additional complaints have been made by plaintiffs. Although Georgopoulos affirms that FSI conducted its investigation of the premises as recent as November 11, 2021, the FSI report states that the inspection took place on March 26, 2021. Therefore, whether the inspection accurately reflects the current condition of the condominium and the work necessary to remedy the issue, is unclear. Notably, there are no affidavits from plaintiffs that rats continue to infiltrate the building after the corrective measures avowed to by Krauss. As such, insofar as this court cannot ascertain, on this limited record,

whether the rat infestation and hazardous condition at the premises is ongoing such that irreparable harm will result absent injunctive relief, the motion is denied. All other requests have been considered and are either without merit or need not be addressed given the findings above. Accordingly, it is hereby

ORDERED that plaintiffs' motion is denied; and it is further

ORDERED that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for defendants shall serve a copy of this decision and order upon plaintiffs.

This constitutes the decision and order of this court.

April 10, 2022

HON. VERNA L. SAUNDERS, JSC

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	