

1107 Decatur St. LLC v Horah
2022 NY Slip Op 32158(U)
June 21, 2022
Supreme Court, Kings County
Docket Number: Index No. 520491/2019
Judge: Carl J. Landicino
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At an IAS Term, Part 81 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 21st day of June 2022.

PRESENT:

CARL J. LANDICINO, J.S.C.

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1107 Decatur Street LLC,

Index No.: 520491/2019

Plaintiffs,

DECISION AND ORDER

- against -

SHERIAN HORAH, STEPHANIE O. DOWNING, SIDNEY M. DOWNING, JOHN R. PATTERSON, DEBORAH PHYLLIS DOWNING, TERRY MAURICE PATTERSON, SHAWN TYRONE PATTERSON, STEPHANIE T. PATTERSON, JAMAINE P. PATTERSON and JANE DOE, the last name being fictitious and unknown to plaintiff, the person or party intended being the child of Antoine D. Patterson,

Motion Sequence #6

Defendants.

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Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers Numbered (NYSCEF)

Notice of Motion/Cross Motion and Affidavits (Affirmations) Annexed	172-183, 199,
Opposing Affidavits (Affirmations).....	224-226,
Reply Affirmation or Affidavit	227-235, 237-240, 242-245,
Memorandum of Law	171

Upon the foregoing papers, and after oral argument, the Court finds as follows:

The instant action was commenced by the Plaintiff, 1107 Decatur Street, LLC (hereinafter “the Plaintiff”), in relation to its claim for an accounting and the partition and sale of the premises known as 1107 Decatur Street, Brooklyn, N.Y. (the “Premises” or “Property”). The Plaintiff allegedly owns a percentage of the Premises as a tenant in common with the Defendants, Sherian Horah, Stephanie O. Downing, Sidney M. Downing, John R. Patterson, Deborah Phyllis Downing,

Terry Maurice Patterson, Shawn Tyrone Patterson, Stephanie T. Patterson, Jamaine P. Patterson and Jane Doe, the last name being fictitious and unknown to plaintiff, the person or party intended being the child of Antoine D. Patterson (hereinafter referred to individually or collectively as the "Defendants").

The Defendants now move (motion sequence #6) for an order pursuant to CPLR 6301 for a preliminary injunction enjoining the Plaintiff and/ or its agents from "(a) continuing construction work of any kind On or at the premises located at 1107 Decatur Street (the "Property"), (b) modifying, destroying, or encumbering the Property, (c) removing, discarding, or destroying :any of the Defendants' documents, personal property, or other items stored at the Property, and (d) from entering the Property for any purpose; and/or a declaratory judgment should not be granted, pursuant to CPLR § 3001 and pending the determination of this action, that Defendants have exclusive rights to the property." The Defendants contend that the Plaintiff's agents have had access to the Property and have destroyed the Defendants' personal property and have performed extensive construction work on the Property. The Defendants further contend that they have attempted to communicate with the Plaintiff and its representatives regarding this activity, but that the Plaintiff's agents have refused to acknowledge that this activity has been occurring. The Defendants contend that this behavior has violated in the Property and the possessions contained therein necessitating the relief requested.

The Plaintiff opposes the motion. The Plaintiff contends that the injunctive relief sought by the Defendants should be denied as the Plaintiff is a tenant in common with the Defendants in the Property and was as a result entitled to conduct the renovations at the Property. What is more, the Plaintiff contends that the work was necessary as the Property was not inhabited when it became a part owner of the property and was in disrepair. As it relates to the Defendants'

application for a preliminary injunction, the Plaintiff contends that the Defendants have failed to meet the burden necessary to show an injunction is warranted. The Plaintiff contends that it is merely improving the Property and that stopping the work being conducted at the Property would devalue the Property. What is more, the Plaintiff contends that the Defendants have failed to show a likelihood of success on the merits as it relates to the Defendants adverse possession claim. Notwithstanding the above, the Plaintiff has indicated that the Defendants do have an ownership interest in the property.

“To be entitled to a preliminary injunction, the movant must establish (1) a likelihood of success on the merits, (2) irreparable injury absent granting the preliminary injunction, and (3) a balancing of the equities in the movant's favor.” *Ruiz v. Meloney*, 26 A.D.3d 485, 485–86, 810 N.Y.S.2d 216, 217 [2nd Dept, 2006]. “The purpose of a preliminary injunction is to maintain the status quo and prevent the dissipation of property that could render a judgment ineffectual.” *Ying Fung Moy v. Hohi Umeki*, 10 A.D.3d 604, 604, 781 N.Y.S.2d 684, 686 [2nd Dept, 2004]. However, “[c]onclusive proof is not required, and a court may exercise its discretion in granting a preliminary injunction even where questions of fact exist.” *Vanderbilt Brookland, LLC v. Vanderbilt Myrtle, Inc.*, 147 A.D.3d 1104, 1106, 48 N.Y.S.3d 251, 254 [2nd Dept, 2017].

The Court finds that the Defendants have shown a likelihood of success on the merits. In support of their position, the Defendants rely primarily on the affidavit of Kevin Diggs, Defendant Jamaine P. Paterson, Defendant Stephanie P. Paterson, and other related documents. The Defendants contend that they have not been afforded access to the Premises. However, “[a] tenant in common ‘has the right to take and occupy the whole of the premises and preserve them from waste or injury, so long as he or she does not interfere with the right of [the other tenant] to also occupy the premises.’” *McIntosh v. McIntosh*, 58 AD3d 814, 814, 872 N.Y.S.2d 490, 490 [2d Dept

2009], quoting *Jemzura v. Jemzura*, 36 N.Y.2d 496, 330 N.E.2d 414 [1975]. In the instant matter, the Defendants contend that they have not been provided with such access. What is more, the Defendants raise the issue of the ongoing costs associated with this construction and the extent to which the Defendants may be liable for such costs as tenants in common. See *Kiernan v. Martin*, 48 AD3d 641, 642, 852 N.Y.S.2d 351, 352 [2d Dept 2008]; see also *Wawrzusin v. Wawrzusin*, 212 A.D.2d 779, 780 [2d Dept 1995].

The Plaintiffs' have also provided evidence of irreparable harm if the *status quo* is not preserved during the pendency of the proceeding given that there are allegedly personal affects located in the property. The Court agrees that the construction occurring at the Premises at this time threatens the Defendants continuing access to the Premises and their rights therein. See *Merling v. Ash Dev., LLC*, 198 A.D.3d 743, 746 [2d Dept 2021]. What is more, after a review of the affidavits in support of the motion that details the history these Defendants have with the Premises, the Court also finds that the Plaintiffs have shown that the equities are in their favor. See *Winzelberg v. 1319 50th Realty Corp.*, 52 A.D.3d 700, 701, 860 N.Y.S.2d 185, 186 [2d Dept 2008]. As a result, the Defendants have provided sufficient evidence in support of their application for a preliminary injunction. The Preliminary Injunction is granted to the extent provided below. The Court also notes that the Plaintiff has indicated that construction has ceased pending communication of the parties.

In granting the plaintiff's motion for a preliminary injunction, the Court must also address the issue of an undertaking. See *Butt v. Malik*, 106 A.D.3d 849, 850, 965 N.Y.S.2d 540, 541 [2nd Dept, 2013]. "The plain language of CPLR 6312(b) directs the court to fix the undertaking in an amount that will compensate the defendant for damages incurred "by reason of the injunction", in the event it is determined that the plaintiff was not entitled to the injunction." *Clover St. Assocs. v.*

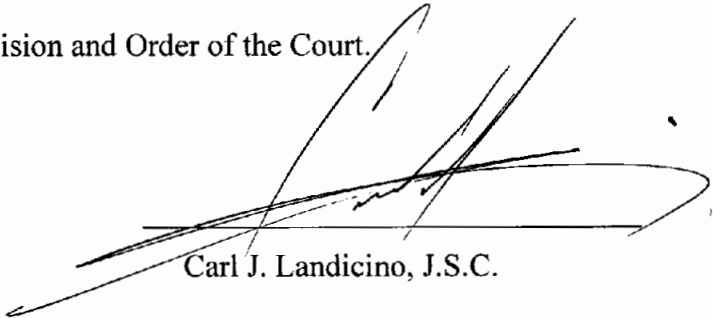
Nilsson, 244 A.D.2d 312, 313, 665 N.Y.S.2d 537 [2nd Dept, 1997]. Within twenty days of entry of this Decision and Order, the Defendants are to submit a supplemental affirmation regarding this issue. The Plaintiff shall have twenty days thereafter to submit the same, at which time the issue will be fully submitted for a determination.

Based on the foregoing, it is hereby ORDERED as follows:

The Defendants' motion (motion sequence #6) is granted to the following extent: The Plaintiffs and/or its agents are enjoined from (a) continuing construction work of any kind on or at the premises located at 1107 Decatur Street, Brooklyn, N.Y., except in the event of an emergency or consent of all parties, (b) modifying, destroying, or encumbering the Property, (c) removing, discarding, or destroying any of the Defendants' documents, personal property, or other items stored at 1107 Decatur Street and (d) interfering with the Defendants' right of access to the property pending further order of this Court.

The foregoing constitutes the Decision and Order of the Court.

ENTER:


Carl J. Landicino, J.S.C.

KINGS COUNTY CLERK
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