

**Bilgrei v North Shore Towers Apts., Inc.**

2022 NY Slip Op 35023(U)

September 8, 2022

Supreme Court, Queens County

Docket Number: Index No. 726456/21

Judge: Timothy J. Dufficy

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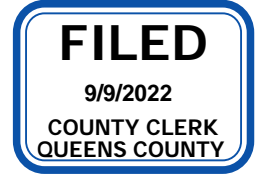
This opinion is uncorrected and not selected for official publication.

**Short Form Order**

**NEW YORK SUPREME COURT - QUEENS COUNTY**

**PRESENT: HON. TIMOTHY J. DUFFICY**  
**Justice**

**PART 35**



-----X  
**MICHAEL BILGREI,**  
**Plaintiff,**  
**-against-**

**Index No. 726456/21**  
**Mot. Date: 5/3/22**  
**Mot. Seq.: 1**

**NORTH SHORE TOWERS APARTMENTS,**  
**INC.,**  
**Defendant.**

-----X  
The following papers were read on this motion by plaintiff for an order, *inter alia*, granting preliminary injunctive relief.

PAPERS  
NUMBERED

Order to Show Cause.....	EF 22
Affidavits-Exhibits.....	EF 5-6; 8-21
Memorandum of Law in Support.....	EF 7
Memorandum of Law in Oppos.....	EF 31
Answering Affidavits-Exhibits.....	EF 32-39
Replying Affidavits-Exhibits.....	EF 45-56

Upon the foregoing papers, the application by plaintiff is granted solely to the following extent:

In the underlying lawsuit, plaintiff Michael Bilgrei alleges that he is the sole shareholder and proprietary lessee of cooperative Apartment 33A, located at 27010 Grand Central Parkway, Floral Park, New York. Defendant North Shore Towers Apartments, Inc. operates the residential apartment complex in which the plaintiff's apartment is situated.

Plaintiff asserts causes of action for, *inter alia*, a preliminary injunction, breach of contract, and breach of warranty of habitability, due to ongoing, continuous noises in the form of vibrations, humming, and rumbling noises.

"The law is well settled that to prevail on an application for preliminary injunctive relief, the moving party must demonstrate "(1) a likelihood of ultimate success on the

merits; (2) irreparable injury absent the granting of the preliminary injunction; and (3) that a balancing of equities favors [the movant's] position" (*Barone v Frie*, 99 AD2d 129, 132 [2d Dept 1984] quoting from *Gambar Enterprises v Kelly Servs.*, 69 AD2d 297, 306, 418 [2d Dept 1979]; *Aetna Ins. Co. v Capasso*, 75 NY2d 860, 552 [1990]; and *W.T. Grant Co. v Srogi*, 52 NY2d 496, 517, [1981]; see also, *Merscorp, Inc. v Romaine*, 295 AD2d 431, 562 [2d Dept 2002]; and *Neos v Lacey*, 291 AD2d 434 [2d Dept 2002]). The existence of factual disputes will not preclude the granting of temporary injunctive relief in order to maintain the *status quo* (*U.S. Reinsurance Corp. v Humphreys*, 205 AD2d 187, 192 [1st Dept 1994]); see also, CPLR 6312[c]; and *Albany Medical College v Lobel*, 296 AD2d 701,702 [3d Dept 2002]). The determination as to whether to issue a preliminary injunction is a matter left to the sound discretion of the Court (see *Doe v Axelrod*, 73 NY2d 748, 750 [1988]). Preliminary injunctive relief is a drastic remedy which will not be granted 'unless a clear right thereto is established under the law and the undisputed facts upon the moving papers, and the burden of showing an undisputed right rests upon the movant (*First Nat. Bank of Downsville v Highland Hardwoods*, 98 AD2d 924, 926, 471 NYS2d 360; accord, *607 Buegler v Walsh*, 111 AD2d 206, *Orange County v Lockey*, 111 AD2d 896, 897 [1985]; *William M. Blake Agency, Inc. v Leon*, 283 AD2d 423, 424 [2d Dept 2001]; and *Peterson v Corbin*, 275 AD2d 35, 36 [2d Dept 2000]). As the court stated in *Tucker v Toia*, 54 AD2d 322, 325-326, however, "it is not for this court to determine finally the merits of an action upon a motion for preliminary injunction; rather, the purpose of the interlocutory relief is to preserve the status quo until a decision is reached on the merits (*Hoppman v Riverview Equities Corp.*, 16 AD2d 631; *Weisner v 791 Park Ave Corp.*, 7 AD2d 75, 78-79; *Peekskill Coal & Fuel Oil Co. v Martin*, 279 App Div 669, 670; *Swarts v Board of Educ.*, 42 Misc 2d (761,) 764, *supra*; cf. *Walker Mem. Baptist Church v Saunders*, 285 NY 462, 474)." The existence of factual disputes will not preclude the granting of temporary injunctive relief in order to maintain the *status quo* (*U.S. Reinsurance Corp. v Humphreys*, 205 AD2d 187, 192, 618 [1st Dept 1994]); see also CPLR 6312[c]; and *Albany Medical College v Lobel*, 296 AD2d 701,702 [3d Dept 2002]).

To prevail on an application for preliminary injunction relief the first prong of the test is a demonstration by plaintiff of a likelihood of success on the merits. This Court finds that the plaintiff has made a sufficient showing of likelihood of success. As to likelihood of success, "(i)t is enough if the moving party makes a prima facie showing of

his right to relief; the actual proving of his case should be left to the full hearing on the merits (citations omitted)" (*Tucker v Toia, supra*, 54 AD2d at 326).

Plaintiff has set forth facts supporting his claims via submission of, *inter alia*, his own affidavit, wherein he avers, *inter alia*, that: "I am forced to bring this action and seek immediate judicial intervention as for more than ten months I have been imploring the Board and its managers to resolve the ongoing and persistent vibrations, machine-like hum, and rumbling noises from Building equipment (the 'Noise') that permeate the Apartment and have made my residence there intolerable. Not only has the Board not stopped the Noise, but it has also refused to make any effort to do so . . ."; and the Expert Accoustical Report of Robert H. Hansen, Associates, Inc. Accordingly, upon the record presented and in the exercise of its discretion, the Court concludes that the plaintiff has demonstrated a reasonable likelihood of success on the merits.

With regard to the second prong of the test, the plaintiff has demonstrated that he will suffer an irreparable injury if the preliminary injunction is not granted. The plaintiff's allegations that there is a continuous lack of quiet enjoyment of property due to noise, constitutes an immediate injury which cannot be adequately compensated by monetary damages, and qualifies as an irreparable injury supporting an award of injunctive relief (*see 61 W. 62 Owners Corp. v CGM EMP LLC*, 77 AD3d 330 [1st Dept 2010]).

With regard to the third prong of the test, the plaintiff has demonstrated that equity is balanced in his favor. Where, as here, the plaintiff seeks to obtain by the issuance of this preliminary injunction the same injunctive relief sought in the complaint, a preliminary injunction will not be granted unless the plaintiff demonstrates, upon clear and undisputed facts, that such relief is imperative and because without it, a trial would be futile (*Xerox Corp. v Neises*, 31 AD2d 195 [1968]).

The Court, having weighed the drastic nature of the relief sought against the plaintiff's allegations of loss of quiet enjoyment of property due to noise, finds that the plaintiff demonstrated the existence of the extraordinary circumstances which would tip the balance of equity in his favor (*Di Marzo v Fast Trak Structures, Inc.*, 298 AD2d 909 [2002]; *Penfield v New York*, 115 AD 502 [1st Dept 1906]).

Moreover, upon review of the plaintiff's factual averments, the Court concludes that the equities balance in favor of maintaining the *status quo* pending resolution of the underlying dispute (*Merscorp, Inc. v Romaine, supra*; *Alside Div. of Associated Materials*

*Inc. v Leclair*, 295 AD2d 873, 875 [3d Dept 2002]; and *State v City of New York*, 275 AD2d 740 [2d Dept 2000]), in that, the harm to be suffered by the plaintiff outweighs the harm to the defendant resulting from the granting of the requested injunctive relief.

Accordingly, it is,

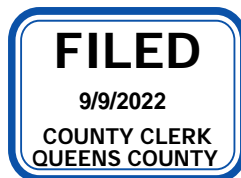
**ORDERED** that the plaintiff's motion for a preliminary injunction is granted to the extent that the defendant is enjoined and restrained from permitting the nuisance caused by excessive noise and vibration in plaintiffs residential apartment, located at 270-10 Grand Central Parkway, Apartment 33A, North Shore Towers Building 2, Floral Park, New York; and it is further

**ORDERED** that the defendant is directed to undertake such measures as are necessary to completely and permanently abate the nuisance from the plaintiff's apartment and shall provide evidence of such abatement, within ninety (90) days of the date that this Order appears in the minutes of the Office of the Queens County Clerk–NYSCEF system; and it is further

**ORDERED** that any and all applications not specifically addressed herein are denied.

The foregoing constitutes the decision and order of the Court.

**Dated: September 8, 2022**



A handwritten signature in black ink, appearing to read "T. Dufficy".

**TIMOTHY J. DUFFICY, J.S.C**