

235 W. 107th St., LLC v Martinez

2023 NY Slip Op 30552(U)

February 23, 2023

Supreme Court, New York County

Docket Number: Index No. 150984/2023

Judge: Arlene P. Bluth

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. ARLENE P. BLUTH **PART** **14**

Justice

-----X

235 WEST 107TH STREET, LLC, 235 WEST 107TH STREET HOUSING DEVELOPMENT FUND CORPORATION,

Plaintiffs,

- v -

ANGELIC MARTINEZ,

Defendant.

-----X

INDEX NO. 150984/2023

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45

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

Plaintiffs’ motion for a preliminary injunction is denied.

Background

Plaintiffs bring this case for an order directing defendant, a tenant in building owned by plaintiffs, to sign a temporary relocation agreement. They observe that they purchased the building with the intent to rehabilitate it and convert it to affordable and supportive housing. Defendant is purportedly one of 8 tenants who remain in the building (which has 84 single room occupancy (“SRO”) units).

In this motion, plaintiffs seek a temporary and preliminary injunction directing defendant to execute a temporary relocation agreement. They claim that they need this agreement in order to secure funding as part of the rehabilitation process. The goal is to renovate one side of the building at a time, so defendant would temporarily live in another SRO unit while her unit is

renovated and then move back into her current (and rehabilitated) unit. Plaintiffs also want the Court to expedite the resolution of a pending HP action (brought by defendant) and to consolidate that HP action in this Court.

In opposition, defendant explains the reasons for why she doesn't want to sign the temporary relocation agreement. She points out that her unit, after it is renovated, will be significantly smaller due to the installation of a bathroom (defendant currently shares a bathroom). Defendant complains that she would lose a window as part of the renovation and the number of units sharing the kitchen space would increase from four to twelve units. She insists she should not be forced to sign a settlement agreement.

Discussion

“A preliminary injunction substantially limits a defendant's rights and is thus an extraordinary provisional remedy requiring a special showing. Accordingly, a preliminary injunction will only be granted when the party seeking such relief demonstrates a likelihood of ultimate success on the merits, irreparable injury if the preliminary injunction is withheld, and a balance of equities tipping in favor of the moving party” (*1234 Broadway LLC v W. Side SRO Law Project*), 86 AD3d 18, 23, 924 NYS2d 35 [1st Dept 2011] [citation omitted]).

The Court denies the motion. As an initial matter, the Court observes that “It is well settled that the ordinary function of a preliminary injunction is not to determine the ultimate rights of the parties, but to maintain the status quo until there can be a full hearing on the merits” (*Spectrum Stamford, LLC v 400 Atl. Tit., LLC*, 162 AD3d 615, 616, 81 NYS3d 5 [1st Dept 2018]). The relief sought by plaintiffs here would not maintain the status quo; rather, it would compel defendant to take an action she does not want to take.

Moreover, an “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” (*id.* at 617). That is exactly what plaintiffs ask for here. The complaint seeks the exact same relief demanded in the instant motion (*see* NYSCEF Doc. No. 1 at 13). Plaintiffs are not entitled to receive the ultimate relief demanded in their pleading as part of this motion.

Even if the Court could look past these issues, plaintiffs failed to cite any binding case law or any basis whatsoever for their contention that this Court could force defendant to sign a relocation agreement. Without any statutory basis for that relief, plaintiffs’ request is tantamount to a claim for specific performance. Specific performance is not typically awarded under these circumstances (*Van Wagner Adv. Corp. v S & M Enterprises*, 67 NY2d 186, 192, 501 NYS2d 628 [1986] [noting that specific performance is not ordinarily available in the context of real property leases]). That yields the conclusion that plaintiffs failed to demonstrate both a likelihood of success on the merits and a balancing of the equities in their favor.


The Court also denies the request to consolidate this action with a pending HP action commenced by defendant. Housing Court possess the requisite subject matter expertise to handle those issues and, according to defendant, there is only one unresolved issue in that proceeding. Therefore, there is no reason for consolidation.

The Court recognizes that, at least on the papers, converting the subject building to supportive housing is a noble goal. But that does not mean the Court can force a current tenant to sign an agreement or settle the case. It is up to the parties to reach a mutually agreeable settlement or plaintiffs to cite a sufficient basis for the relief requested in this litigation.

Accordingly, it is hereby

ORDERED that plaintiffs' motion is denied.

The parties shall appear for an in-person conference on March 31, 2023 at 11:30 a.m. As discussed at the oral argument on this motion, the parties may seek to adjourn or advance this conference if they wish (or if they are able to agree on a discovery schedule, no appearance will be necessary) or they may request a settlement conference. Please upload a letter/correspondence to Court via NYSCEF any time but no later than a week prior to the scheduled conference (by March 24, 2023) so that the Court can accommodate any requests.

| | | | | | | | | | | | | | | |
|---|--|--|---|----------------------------------|--|---------------------------------------|---------------------------------------|---|--|--|--|--------------------------------|--|------------------------------------|
| <p><u>2/23/2023</u></p> <hr style="width: 100%;"/> <p>DATE</p> |  <hr style="width: 100%;"/> <p>ARLENE P. BLUTH, J.S.C.</p> | | | | | | | | | | | | | |
| <p>CHECK ONE:</p> <p>APPLICATION:</p> <p>CHECK IF APPROPRIATE:</p> | <table border="0" style="width: 100%;"> <tr> <td style="width: 50%;"><input type="checkbox"/> CASE DISPOSED</td> <td style="width: 50%;"><input checked="" type="checkbox"/> NON-FINAL DISPOSITION</td> </tr> <tr> <td><input type="checkbox"/> GRANTED</td> <td><input type="checkbox"/> GRANTED IN PART</td> </tr> <tr> <td><input type="checkbox"/> SETTLE ORDER</td> <td><input type="checkbox"/> SUBMIT ORDER</td> </tr> <tr> <td><input type="checkbox"/> INCLUDES TRANSFER/REASSIGN</td> <td><input type="checkbox"/> FIDUCIARY APPOINTMENT</td> </tr> </table> | <input type="checkbox"/> CASE DISPOSED | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION | <input type="checkbox"/> GRANTED | <input type="checkbox"/> GRANTED IN PART | <input type="checkbox"/> SETTLE ORDER | <input type="checkbox"/> SUBMIT ORDER | <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> FIDUCIARY APPOINTMENT | <table border="0" style="width: 100%;"> <tr> <td style="width: 50%;"><input checked="" type="checkbox"/> DENIED</td> <td style="width: 50%;"><input type="checkbox"/> OTHER</td> </tr> <tr> <td></td> <td><input type="checkbox"/> REFERENCE</td> </tr> </table> | <input checked="" type="checkbox"/> DENIED | <input type="checkbox"/> OTHER | | <input type="checkbox"/> REFERENCE |
| <input type="checkbox"/> CASE DISPOSED | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION | | | | | | | | | | | | | |
| <input type="checkbox"/> GRANTED | <input type="checkbox"/> GRANTED IN PART | | | | | | | | | | | | | |
| <input type="checkbox"/> SETTLE ORDER | <input type="checkbox"/> SUBMIT ORDER | | | | | | | | | | | | | |
| <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> FIDUCIARY APPOINTMENT | | | | | | | | | | | | | |
| <input checked="" type="checkbox"/> DENIED | <input type="checkbox"/> OTHER | | | | | | | | | | | | | |
| | <input type="checkbox"/> REFERENCE | | | | | | | | | | | | | |