

E.L. 27 Realty LLC v Gordon

2023 NY Slip Op 30981(U)

March 28, 2023

Supreme Court, New York County

Docket Number: Index No. 155512/2022

Judge: Dakota D. Ramseur

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

PRESENT: HON. DAKOTA D. RAMSEUR PART 34M

Justice

-----X

E.L. 27 REALTY LLC, ELIZABETH LOWE,

Plaintiff,

- v -

SEAN GORDON, STEPHANIE ORTIZ, JOHN DOE #1 - #5,
JANE DOE #1 - #5

Defendant.

-----X

INDEX NO. 155512/2022

MOTION DATE 07/05/2022

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 123

were read on this motion to/for STAY

Plaintiffs, E.L. 27 Realty, LLC and Elizabeth Lowe (Lowe) (collectively, plaintiffs), commenced this action for, among other claims, a declaration that defendants, Sean Gordon (Gordon) and Stephanie Ortiz (Ortiz) (collectively, defendants) or any other person acting with defendants, do not have any right to occupancy, possession, use or presence in the premises located at 231 East 62nd Street, New York, New York (premises), an injunction against defendants enjoining them from advertising, listing, marketing, offering, engaging in and/or facilitating the short-term rental or any rental of the premises, or collecting rent from the premises and trespass. Plaintiffs now move by order to show cause pursuant to CPLR 6301 and 6313 for a restraining order granting the aforesaid relief. Defendants cross-move pursuant to CPLR 306-b to dismiss the complaint. In motion sequence 002, plaintiffs move pursuant to CPLR 306-b for an extension of time to serve the summons and complaint upon defendants, and pursuant to CPLR 308-5 to permit service by an alternate means. The motion and cross-motion in motion sequence 001 are opposed, and motion sequence 002 is unopposed. For the following reasons, plaintiffs' motion (mot. seq. 001) is granted in part, the cross-motion is denied, and plaintiffs' motion to extend the time to serve defendants and to serve defendants by alternative service (mot. seq. 002) is granted.

FACTUAL ALLEGATIONS

The premises is a two-unit four story townhouse. The owner of the premises is plaintiff E.L. 27 Realty LLC, and the managing and sole member of this limited liability company is plaintiff Lowe. According to plaintiffs, on May 18, 2022, Lowe's neighbor informed her that someone was on the roof of the premises. Lowe alleges that at the time, she did not authorize

anyone to enter the townhouse, did not grant anyone permission or access to the premises and did not hire anyone to do any repairs, renovations or any work to the townhouse.

Lowe states that she went to the premises immediately thereafter, only to find that the locks to the front of the door had been changed. Lowe thereafter filed a police report with the New York Police Department. Sometime thereafter, Lowe hired a locksmith to change the locks. Approximately thirty minutes after the locks were changed, Gordon arrived at the door, “banging, screaming and shouting obscenities” (NYSCEF doc. no 22, pla aff at ¶ 14). Lowe states that she was terrified for her life, and believed that defendant might kill her. Lowe thereafter called the police, and showed them proof of ownership of the premises when they arrived. Gordon claimed he had a lease for the premises, and further claimed that he rented the premises from Compass Real Estate. The police thereafter advised Lowe to file an action in court. The police also gave Gordon an ultimatum: to leave the premises, otherwise he would be arrested. According to Lowe, Gordon chose to be arrested, and was charged with trespassing and resisting arrest.

According to Lowe, she never authorized, permitted, allowed or granted consent for any party to rent the premises. According to the affidavits of Charlie Attias and Ryan Loucas of Compass Real Estate, the lease is fraudulent and that the signature for Compass on the Lease is a forgery. The lease allegedly bears the signature of Ryan Loucas of Compass Real Estate. Ryan Loucas, one of the two brokers attempting to sell the premises, denies that he executed this lease and states that the signature on the alleged lease is not his signature. In addition, no keys to access the townhouse were ever given to Gordon. Moreover, Lowe states that Gordon never tendered any check or monies for the rental of the townhouse.

Soon after Gordon was arrested, an individual named Brian Collesano arrived at the premises with an infant and a nanny. Lowe states that he knocked on the door and informed her that he rented the premises from Gordon on Airbnb for ten days for \$14,000.00. Lowe states that she did not authorize Gordon to rent the premises on Airbnb.

Lowe alleges that on May 26, 2022, her neighbor called and informed her that a man was sitting on the front steps of the premises. Lowe states that she realized that it was Gordon and immediately reported this to the police. The next day, on May 27, 2022, Lowe states that she was meeting with her neighbors and their handyman, when an individual name “Tiffany” came to the premises to collect a baby’s crib at the premises that was apparently rented to Tiffany. According to Lowe, the following events transpired:

“I arranged a meeting with Tiffany at 2:30pm on May 27, 2022. We entered the [p]remises and the second that I locked the door, I heard heavy banging, and someone was pushing the door and fiddling with the lock. This is the first time in my life that I was so scared and thought that I was going to be killed. A stranger was trying to break into the [p]remises and I feared for my life. I called 911 and the police arrived. The police explained to the [Gordon] again that he needed to go to court.”

(*id.* at ¶ 19).

Lowe states that Gordon thereafter posted videos of his arrest for trespassing and has been posting negative things about Lowe and her neighbors on social media.

Lowe alleges that defendants thereafter commenced several actions in New York City Housing Court. Lowe states that she received an order to show cause filed by Gordon alleging that he was illegally locked out of the premises on May 20, 2022. This order to show cause was filed in the Civil Court of The City of New York, County of New York under Index no. 10074/2022 and was returnable on May 31, 2022. At the in-court hearing, Gordon asked the judge hearing the order to show cause whether he would be permitted to enter the premises, to which the judge stated that a decision would not be rendered until the conclusion of the hearing, and that Gordon was not being restored to possession and could not enter the house.

Lowe further claims that on June 2, 2022, she learned from her neighbor's surveillance cameras that Gordon entered the premises through the rear of the premises by climbing a 10-12' brick wall. During his alleged unauthorized entrance, Gordon "crush[ed]" the French door, entered the premises and changed the front door locks (*id.* at ¶ 25). Lowe alleges that Gordon thereafter posted on the internet suggesting that people rally and protest at the premises.

Lowe next alleges, upon information and belief, that Gordon was arrested at the premises on June 15, 2022, and was charged with the following: burglary in the second degree; grand larceny in the third degree; and criminal possession of a forged instrument in the third degree. Upon information and belief, Gordon was advertising and accepting monies for short-term rental of the premises. As set forth in the Criminal Court Complaint, sworn to by NYPD Officer Christian Andrade on June 15, 2022, on June 14, 2022, an individual advised him that Gordon was paid the sum of \$10,258.12 for a seven day stay at the premises.

On June 16, 2022, Lowe was granted a temporary order of protection, directing Gordon to stay away from Lowe, her place of business, and the premises. This order of protection was in effect until December 17, 2022. On June 17, 2022, Gordon filed an order to show cause in the NYC Housing Court under Index Number: LT-050062/22/NY alleging that he was illegally locked out of the premises and seeks to be restored to possession. On June 24, 2022, a permanent order of protection was issued by the NYC Criminal Court directing Gordon to stay away from Lowe, her home, her place of business and the premises. This order of protection was in effect until December 23, 2022,

On June 17, 2022, Gordon filed a second order to show cause in the NYC Housing Court under Index Number: LT-050062/22/NY alleging that he was illegally locked out of the premises and seeking to be restored to possession. On the return date, the Hon. Norma Jennings dismissed the order to show cause due to the permanent order of protection issued to plaintiffs on June 27, 2022, the Hon. Norma Jennings dismissed the second order to show cause filed by Gordon to be restored to possession of the premises based upon the fact that the Criminal Court order of protection specifically forbid his presence at the premises. Gordon thereafter filed a third order to show cause in the NYC Housing Court under Index Number: LT-10212- 22/NY. On the return date of the order to show cause, which was December 28, 2022, the Hon. Michelle Schreiber dismissed the action because Lowe had an order of protection from the Criminal Court that was in effect until February 11, 2023.

On June 22, 2023, Ortiz filed an order to show cause under Index Number LT-050071-22/NY alleging that she was illegally locked out of the premises and seeking to be restored to possession. Plaintiffs' counsel filed a cross-motion to dismiss the first order to show cause by Ortiz, which was granted by the Hon. Norma Jennings by order dated July 20, 2022, and the case was dismissed without prejudice. On July 22, 2022, Ortiz filed a second order to show cause against the plaintiffs in the NYC Housing Court to be restored to possession of the subject premises and the case was assigned Index Number: LT-050084-22/NY. A hearing was held on November 22, 2022, before the Hon. Norma Jennings and after hearing testimony of the parties, including Ortiz, a decision and order was rendered on December 28, 2022, dismissing the action with prejudice. Ortiz thereafter filed a notice of appeal of the December 28, 2022 decision and order.

DISCUSSION

Plaintiffs argue that they should be granted additional time to serve the summons and complaint upon defendants and to serve defendants' counsel as an alternate means of service, since plaintiffs have been unable to serve defendants despite their best efforts. "It is well established that CPLR 308(5) vests a court with the discretion to direct an alternative method of service of process when it has determined that the methods set forth in CPLR 308 (1), (2) and (4) are 'impracticable' " (*Home Fed. Sav. Bank v Versace*, 252 AD2d 480, 480 [2d Dept 1998]), quoting CPLR 308 [5]; see *Baidoo v Blood-Dzraku*, 48 Misc3d 309, 311 [Sup Ct. New York County, 2015]).

Here, plaintiffs demonstrate their entitlement to additional time to serve defendants and to serve counsel as an alternative means of service. In support of their motion, plaintiffs submit the affidavits of attempted service demonstrating that plaintiffs' process servers attempted to serve defendant at six different addresses on fourteen separate occasions (NYSCEF doc. nos.). Plaintiffs' process server attempted to serve Gordon on August 1, 2022 when he was leaving the New York City Housing Court, but the service could not be done because Gordon abruptly fled in a vehicle. Plaintiffs also submit the affidavits of attempted service upon Ortiz, revealing that process servers tried to serve Ortiz at five addresses on eleven separate occasions. In addition, the process servers tried to serve her when she left the New York City Housing Court on August 1, 2022 and at her place of employment on January 26, 2023, but failed.

Under the circumstances, plaintiffs are permitted to serve the commencement papers in this action upon counsel for defendants, and such service shall be deemed valid. In light of the above, the branch of defendants' cross-motion to dismiss the complaint for failure to timely serve the complaint upon defendants is denied as moot.

It is well-established that a preliminary injunction will only be issued if plaintiff demonstrates, with convincing evidentiary support, a likelihood of success on the merits, irreparable injury absent granting of a preliminary injunction, and that a balancing of equities favors its position (CPLR § 6301; *Nobu Next Door, LLC v Fine Arts Housing, Inc.*, 4 NY3d 839, 840 [2005]; *LAIG v Medanito S.A.*, 130 AD3d 466 [1st Dept 2015]). "A party seeking the drastic remedy of a preliminary injunction must establish a clear right to that relief under the law and the

undisputed facts” (*Omakaze Sushi Rest., Inc. v Ngan Kam Lee*, 57 AD3d 497 [2d Dept 2008]). The purpose of a preliminary injunction is to maintain the status quo, not to determine the ultimate rights of the parties (see *Moody v Filipowski*, 146 AD2d 675, 678 [2d Dept 1989]; *Matter of 35 New York City Police Officers v City of New York*, 34 AD3d 392, 393–394 [1st Dept 2006]).

Plaintiffs have met their burden in part. Plaintiffs submit Lowe’s affidavit, wherein she states that Gordon is listing the premises for illegal short-term rentals on Airbnb and other social media platforms, and continues to seek access, occupancy and possession of the premises, despite the fact that he has no rights to the premises, which he does not own or otherwise have a possessory right to, and continues posting defamatory and derogatory videos on-line against Lowe. Plaintiffs further allege, that Gordon, upon information and belief, broke into the premises on at least two occasions and has been charged with burglary in the second degree in conjunction with the break in that took place on June 2, 2022.

However, plaintiffs’ have not demonstrated their entitlement to a declaration that defendants have no legal or equitable rights to the premises, since this relief is identical to the ultimate relief sought in this action, and plaintiffs have not otherwise demonstrated extraordinary circumstances necessitating such relief (see *Matter of 35 New York City Police Officers*, 34 AD3d at 393–394 [the preliminary injunction, as issued, was improper since it did not maintain the status quo, but had the practical effect of granting the petitioner the ultimate relief it seeks in the underlying proceeding]). Thus, plaintiffs are not entitled to a preliminary injunction seeking the ultimate relief in this action, to wit, a declaration that defendants do not have a right to the premises.

Defendants’ opposition does not dispute or otherwise contest any of the facts submitted by plaintiff. Instead, defendants argue that plaintiffs’ request that defendants be enjoined from “abusing the Court process and filing applications in Landlord-Tenant Court or any other Court demanding access or any other rights or privileges to Lowe’s property” would preclude Ortiz’s appeal of the December 28, 2022 decision and order. The Court notes that plaintiffs fail to cite to any case law or statute entitling them to an injunction concerning defendants’ filing additional court processes and applications and enjoining defendants from posting any “false or fraudulent” statements online, and thus, these branches of plaintiffs’ application is also denied.

Accordingly, it is hereby

ORDERED that plaintiffs’ motion to extend the time to serve defendants and for leave to serve defendants’ counsel, as a means of alternate service is granted, and plaintiffs shall serve the summons and complaint upon counsel for defendants within twenty-one (21) days. Counsel for defendants shall email defendants a copy of the pleadings within one (1) business day thereafter; and it is further

ORDERED that plaintiffs’ motion for a preliminary injunction is granted in part, and pending a final determination in this matter, defendants Sean Gordon and Stephanie Ortiz and/or any entity controlled by Gordon and/or Ortiz are preliminary enjoined from attempting to enter, to enter, or otherwise accessing the premises located at 231 East 62nd Street, New York, New

York 10065, in any manner or by any means from advertising, offering, engaging in and/or facilitating short-term rentals or any rentals of the premises; using or permitting the premises to be used for any trade or business by renting the premises for rentals; renting the premises; collecting any monies, use or occupancy or any consideration from any persons or entities in connection with any rental of the subject premises; and it is further

ORDERED that plaintiffs shall serve a copy of this decision and order upon defendants, with notice of entry, within ten (10) days of entry.

This constitutes the decision and order of the Court.



3/28/2023

DATE

DAKOTA D. RAMSEUR, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE