

**Maujer, LLC v Hampton**

2023 NY Slip Op 32390(U)

July 14, 2023

Supreme Court, Kings County

Docket Number: Index No. 522722/2021

Judge: Ingrid Joseph

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This opinion is uncorrected and not selected for official publication.

At an IAS Part 83 of the Supreme Court of the State of New York held in and for the County of Kings at 360 Adams Street, Brooklyn, New York, on the 14<sup>th</sup> day of July, 2023.

PRESENT: HON. INGRID JOSEPH, J.S.C.  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

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MAUJER, LLC,

Index No: 522722/2021

Plaintiff,

-against-

**DECISION AND ORDER**

MELISSA HAMPTON,

Defendant.

-----X

The following e-filed papers considered herein:

	<u>NYSCEF Doc. Nos.</u>
Order to Show Cause/Memorandum of Law/Exhibits Annexed.....	2-12, 14-18
Affidavit in Opposition.....	27

Plaintiff Maujer, LLC (“Plaintiff”) moves by emergency order to show cause for a preliminary injunction enjoining Defendant Melissa Hampton (“Defendant”) from (1) renting the first-floor apartment at 119 Maujer Street in Brooklyn, New York (the “Premises”) to more than two guests for less than thirty days when Defendant is not present and (2) sleeping in the cellar of the Premises or allowing anyone else to do so (Mot. Seq. 1). Defendant opposes the motion, claiming that the allegations are false.

Plaintiff, the owner of the Premises, and Defendant entered into a lease agreement (the “lease”) for a one-year term beginning on July 1, 2004. The lease has been periodically renewed. The Premises consists of the first floor and part of the cellar. Plaintiff alleges that, without its knowledge or consent, Defendant has illegally utilized the cellar as bedrooms and has converted the entire Premises into an illegal transient hotel via Airbnb by renting to more than two guests for stays less than thirty days when she is not in the Premises in exchange for compensation. As a result, the New York City Department of Buildings (the “DOB”) issued several violations related to the use of the cellar as a sleeping quarter and complaints were filed with the DOB about the

short stays. Plaintiff alleges that Defendant's actions are in violation of New York State Multiple Dwelling Law ("MDL") Section 4 (8) (a) and New York City Housing Maintenance Code ("HMC"). MDL Section 4 (8) (a) provides, in part, that multiple dwellings categorized as "Class A", which Plaintiff contends the Premises fall under, are to be used for permanent resident purposes and the occupancy by others, such as house guests, for less than thirty days where the permanent occupant is absent does not contravene law if there is no monetary compensation paid. HMC Section 27-2078 states, inter alia, that where a tenant rents any part of an apartment in a multiple dwelling to more than two boarders, such rental constitutes an unlawful use as a rooming unit.

In support of injunctive relief, Plaintiff produced reports from its private investigator ("PI #1"). The first report, dated April 9, 2019, summarizes PI #1's review of publicly available records and social media ("Report One"). The second report, dated June 13, 2019, summarizes two occasions in 2019 when PI #1 booked stays at the Premises through Airbnb, which purportedly demonstrate that Defendant is not home when guests are staying there ("Report Two"). Report Two also includes screenshots of Plaintiff's alleged listings on Airbnb, where the entire Premises or individual rooms are available to rent.<sup>1</sup> Plaintiff also hired a second private investigator ("PI #2") to conduct video surveillance of the Premises for thirty days in 2019. The video surveillance, summarized in a report ("Report Three") allegedly showed 13 guests, including children, staying at the Premises 23 out of 30 nights. Plaintiff asserts that Defendant ceased her illegal Airbnb activities due to the COVID-19 pandemic but resumed in May 2021. On or about August 6, 2021, Plaintiff's managing agent (the "agent") messaged Defendant on Airbnb about renting the Premises and Defendant allegedly responded that the Premises were available for a week and proof of vaccination was not required. Plaintiff claims that Defendant does not have any safety protocols in place to keep other residents safe during the pandemic from guests from unknown destinations. Moreover, Plaintiff contends that people can die or be seriously injured in the Premises, which was not built to be a legal hotel.

In opposition, Defendant argues that Plaintiff's allegations that she rented the Premises for less than thirty day is supported only by hearsay. Defendant contends that the agent's affidavit only reflects his alleged conversation with Defendant or someone representing to be her about the

<sup>1</sup> The Court notes that while Reports One and Two reference "listings" or exhibits, these were not included in the record (see NY St Cts Elec Filing [NYSCEF] Doc. Nos. 10-11.

vaccination requirement but there was no rental of the Premises to indicate a violation. Defendant further contends that the photographs included in Plaintiff's motion are of a different address. In her opposition, Defendant claims that Plaintiff produced photographs that allegedly depict both the front door of the Premises and the cellar. Thus, these photographs cannot represent two distinct areas. Defendant also argues that a preliminary injunction on an emergency basis is unwarranted since Plaintiff's allegations of her illegally sharing the Premises are from 2019 and prior. Defendant also denies having converted the cellar into another bedroom.<sup>2</sup>

The purpose of injunctive relief is to preserve the status quo while an action is pending (*Moody v Filipowski*, 146 AD2d 675, 678 [2d Dept 1989] [internal citations omitted]). The burden rests on the movant to show: (1) a likelihood of success on the merits, (2) irreparable harm in the absence on an injunction, and (3) a balance of the equities in favor of granting the injunction (*Stockley v Gorelik*, 24 AD3d 535, 536 [2d Dept 2005]; *Aetna Ins. Co. v Capasso*, 75 NY2d 860, 862 [1990]). CPLR 6312 provides that the movant must establish by "affidavit or such other evidence" that there is a cause of action that meets one of the grounds for a preliminary injunction (CPLR 6312 [a]; 6301).

To be admissible, experts' reports must be signed and sworn to (*see Brandimarte v Liat Holding Corp.*, 158 AD3d 664, 665 [2d Dept 2018]; *Ulm I Holding Corp. v Antell*, 155 AD3d 585, 586 [1st Dept 2017]; *Redd v Juarbe*, 124 AD3d 1274, 1275-76 [4th Dept 2015]). Private investigators do not fall under the exception prescribed in CPLR 2106, which explicitly states the categories of individuals who may execute an affirmation in lieu of an affidavit [CPLR 2106]. In this case, the reports from Plaintiff's private investigators are not admissible for the following reasons: (a) Report One appears to be only electronically signed; (b) Report Two was sworn to under oath, but appeared to be electronically signed and was not notarized; and (c) Report Three contains no signature (*compare Brandimarte*, 158 AD3d at 665 [report that is not signed and notarized is not admissible]; *with 61 W. 62 Owners Corp. v CGM EMP LLC*, 77 AD3d 330, 335 [1st Dept 2010], *affd as modified & remanded*, 16 NY3d 822 [2011] [affidavit of plaintiff's expert helped establish irreparable harm]). Accordingly, the Court finds that Plaintiff has failed to submit evidence in admissible form sufficient to warrant the granting of a preliminary injunction.

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<sup>2</sup> In her affidavit, Defendant makes certain allegations as to another property owned by Plaintiff and neglect of repairs of the Premises. As those allegations are not relevant to the order to show cause, the Court will not address them here.


Plaintiff also submitted its agent's affidavit, the majority of which contains excerpts from its private investigators' reports and are not within the agent's personal knowledge. In addition, the affidavit reflects that the agent purportedly contacted Defendant through Airbnb's website in 2021 and requested information about the availability of the apartment and any proof of vaccination requirements. Even if the Court considers the remaining contents of the affidavit, it still does not meet the criteria for the granting of the relief requested. First, the screenshot does not reflect the date of the communication or the location of the subject apartment to associate the listing with Defendant (*see D.T. v C.T.*, 215 AD3d 1232, 1232–33 [4th Dept 2023] [finding that screenshots of text messages were admissible where identity of individuals in the communications was sufficiently authenticated by its contents]). Second, the affidavit does not demonstrate that the agent followed through with a reservation. If Plaintiff presented proof of a reservation made by its agent and/or attached a certified copy of the alleged violations issued by DOB,<sup>3</sup> this evidence would have been indicative of Defendant engaging in illegal activity.

After finding that Plaintiff has proffered procedurally defective documents, the Court need not address the sufficiency of Defendant's opposition papers.

Accordingly, it is hereby

ORDERED, that Plaintiff's order to show cause seeking a preliminary injunction is DENIED without prejudice.

This constitutes the decision and order of the Court.

  
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HON. INGRID JOSEPH, J.S.C.

**Hon. Ingrid Joseph**  
**Supreme Court Justice**

<sup>3</sup> The violations are referred to as "Exhibit 3" in Plaintiff's papers. Nonetheless, "Exhibit 3" is a copy of the lease agreement (NYSCEF Doc. No. 8).