

Cadman Plaza N., Inc. v Botkin

2025 NY Slip Op 31869(U)

May 20, 2025

Supreme Court, Kings County

Docket Number: Index No. 500554/2024

Judge: Richard J. Montelione

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At IAS Part 99 of the Supreme Court of the State of New York, Kings County, on the 20th day of May 2025

PRESENT: HON. RICHARD J. MONTELIONE, J.S.C.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 99

**DECISION/ORDER
AFTER HEARING**

-----X
CADMAN PLAZA NORTH, INC.,

Plaintiff,

-against-

ARLENE BOTKIN,

Defendant.
-----X

Index No.: 500554/2024
Hearing Dates: 3/24/25 &
3/25/2025
Mot. Seq. Nos.: 1-3

MONTELIONE, RICHARD J.

This is an action for ejectment and injunctive relief, *inter alia*, commenced on January 5, 2024, by plaintiff, Cadman Plaza North, Inc., a Mitchell-Lama cooperative housing corporation dedicated to providing moderate income housing and subject to Mitchell-Lama Rules. Defendant, Arlene Botkin, is the owner of 210 shares of stock appurtenant to Apartment 15C at 140 Cadman Plaza West¹ and entered into an occupancy agreement with plaintiff on July 1, 1997. She has resided and continues to reside in Apartment 15C. Plaintiff is seeking to have defendant evicted from her apartment, arguing that her behavior constitutes an incurable nuisance.

The procedural history and background are detailed in the court's Interim Decision and Order dated November 15, 2024, and entered on November 19, 2024. (NYSCEF Doc. # 77). On March 24, 2025, the court heard oral argument on defendant's cross-motion to dismiss (Motion Seq. 2) due to the alleged inadequacy of the Notice of Termination served upon defendant as it failed to give defendant a 10-day period to cure the breach which defendant argues is required. The court made an initial determination that the complained of conduct is not curable. Immediately thereafter on March 24, 2025, and continuing March 25, 2025, the court held an evidentiary hearing for a greater development of the facts so as to determine plaintiff's request for preliminary and permanent injunctive relief (Motion Seq. 1), and plaintiff's civil contempt motion (Motion Seq. 3).

This case presents an unfortunate and tortured history for the plaintiff, the neighbors of defendant Arlene Botkin, and the third-party postal worker delivering mail to 140 Cadman Plaza West.

¹ Cadman Plaza North, Inc. is the housing corp. 140 Cadman Plaza West is the subject residential address.

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Plaintiff's Evidence Presented at the Hearing:

No.	ID	EV	Description
1	X	X	Deed
2	X	X	Occupancy Agreement
3	X		NYSCEF #4 Judicial Notice Taken of Apt at Division & HPD Decisions
4	X	X	Map [Floor Plan for 15 th Floor and Photos]
5	X	X	USB
6	X	X	Audio 5/29/2024 [Death Wishes for Neighbor Left on Managing Agent's Answering Machine]
7	X	X	Audio 6/20/2024 [Death Wishes for Neighbor Left on Managing Agent's Answering Machine]
8	X	X	Video 11/2023 [Ms. Botkin Attacking Neighbor in the Elevator at 8:48 a.m.]
9	X		Emails
10	X	X	Audio 11/11/2024 [Death Wishes for Neighbor Left on Managing Agent's Answering Machine]
11	X	X	Audio 11/12/2024 [Death Wishes for Neighbor Left on Managing Agent's Answering Machine]
12	X	X	Audio 11/19/2024 [Death Wishes for Neighbor Left on Managing Agent's Answering Machine]
13	X	X	Picture [Photograph]
14	X	X	Pic of Note [Photograph of Handwritten Note]
15	X	X	Email Letter
16	X	X	Pictures (Building)
17	X		WeWork membership [Agreement]
18	X	X	Audio Recording [Loud Banging on 6/24/2024 at 3:05 a.m. and 3:18 a.m. & 6/25/2024 at 1:41 a.m. , 2:05 a.m. , and 5:47 a.m.]
19	X	X	Audio 5/2/2024 [Loud Banging coming from Ms. Botkin's Apartment at 4:31 a.m. and a Message Left on Managing Agent's Answering Machine]
20	X	X	Very Loud Video [Loud Whistle Blowing Left on Neighbors Answering Machine on 9/07/2024 at 2:21 a.m. and Another Message Left on 9/12/2024 at 7:08 a.m.]
21	X	X	Email [Outline of Botkin Court Order Violations]
22	X		Defendant Affirmation

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Defendant Presented No Physical Evidence at the Hearing.

The Court, Sua Sponte And Without Objection From Either Party, Took Judicial Notice of the Following Four (4) Documents:

1. NYC Dept. of Housing Preservation and Development Administrative Hearing Officer's Decision And/Or Certificate of Eviction, dated June 16, 2009, in the *Matter of the Application of Cadman Plaza North, Inc., Petitioner, For an Order Granting Petitioner Leave to Commence an Eviction -against- Arlene Botkin, Respondent* [NYSCEF Doc. No. 4] ("HPD 6/16/2009 Certificate of Eviction");
2. Appellate Division, 1st Dept., Decision and Order, entered March 15, 2011, *In re Arlene Botkin, Petitioner -against- Cadman Plaza North, et al., Respondents*, App. Div. 1st Dept. Index No. 402175/2009 [NYSCEF Doc. No. 4] ("App Div. 1st Dept. 3/15/2011 Unanimous Confirmation");
3. NYC Dept. of Housing Preservation and Development Decision And/Or Certificate of Eviction, dated August 18, 2014, in the *Matter of the Application of Cadman Plaza North, Inc., Petitioner, For an Order Granting Petitioner Leave to Commence an Eviction -against- Arlene Botkin, Respondent* [NYSCEF Doc. No. 20] ("HPD 8/18/2014 Certificate of Eviction"); and,
4. Stipulation of Settlement and Order discontinuing action filed December 28, 2016, in the *Matter of the Application of Arlene Botkin, Petitioner, For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules -against- Vicki Been, as Commissioner of the New York City Department of Housing Preservation and Development, and Cadman Plaza North, Inc., Respondents*, Sup Ct, NY County Index No. 101502/2014 [NYSCEF Doc. No. 5] ("12/28/2016 Stipulation With Conditions").

Plaintiff's Witnesses At The Hearing:

Jeffrey Koppel, on-site property manager for Cadman Plaza North;

India Richer, Apt. 15B, defendant's next-door neighbor at Cadman Plaza West;

Tyrell Elliot, concierge for the building/security at Cadman Plaza West; and

Justin Luchter, Apt. 15D, defendant's next-door neighbor at Cadman Plaza West.

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Defendant's Witness At The Hearing:

Defendant, **Arlene Botkin**, Apt. 15C at Cadman Plaza West, testified on her own behalf and presented no other witnesses.

The Hearing Testimony:

Jeffrey Koppel on behalf of Plaintiff:

The court heard testimony from plaintiff's witness Jeffrey Koppel. Mr. Koppel has been the on-sight property manager at Cadman Plaza North since July 1, 2021, and responsible for the day-to-day running of the building. (Hearing Transcript² at 23-24). He testified that Cadman Plaza North is the owner of the Mitchell-Lama co-op located at Cadman Plaza West, which is supervised by HPD. (Tr. at 26) There are 250 units and approximately 500-600 shareholders and residents who vary in range from babies to seniors. (Tr. at 73-74). He identified defendant Botkin as the tenant shareholder of apartment 15C. (Tr. at 24).

He testified that there were cameras in the elevators that recorded the inside of the elevators and in the lobby that caught people who exited the elevators, and were monitored by 24-hour on-site door men. (Tr. at 49-50). In November of 2023, there was an incident in the elevator involving Botkin that was brought to his attention by the doorman. (Tr. at 51). He thereafter "went on the security video. I re-wound the tape and watched the incident and recorded it." (Tr. at 52). He described what he saw as Botkin attacking a fellow shareholder Justin Luchter in the elevator. (Tr. at 55). "Ms. Botkin is the person who was attacking Justin Luchter. Justin Luchter is the person who was attacked by Ms. Botkin. ... Ms. Botkin attacked Justin and started hitting him and beating him and mounting him and hitting him. Justin was on the bottom getting hit. ... and Ms. Botkin on top of him." (Tr. at 55-56). The video recording of the incident was admitted into evidence as Exhibit 7.

Botkin also sprayed Mr. Luchter's "Ring camera, putting Vaseline on it, taking it off the door." (Tr. at 39) She "was destroying his doorbell, putting things over it, Vaseline over it, spraying aerosol over it. And multiple times cops were called." (Tr. at 34).

Mr. Koppel also testified that Botkin harassed a postal worker. "Ms. Botkin I witnessed harassing the postal worker multiple times. [Botkin] stood outside the mailroom and just watched her. When asked to leave she wouldn't leave. She wasn't supposed to loiter in the hallways and she would sit downstairs when the postal worker was sorting her mail and just stare at her. I received phone calls multiple times a week from Ms. Botkin complaining about certain things that when we followed up we found it wasn't true. ... she complained about her, the postal

² Reference to the hearing transcript is indicated throughout as "Tr. at [page no.]"

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worker. And just leaving constant voicemails on my machine. And the way, the verbiage she used. Wanted to kill people.” (Tr. at 30-32).

Mr. Koppel “feel[s] that she is a threat to the shareholders of the building. She is a nuisance, and I’m worried that something might escalate.” (Tr. at 67).

India Richer on behalf of Plaintiff:

The court heard testimony from India Richer. Ms. Richer has lived in Apartment 15B at Cadman Plaza West since 2018 and Botkin is her next-door neighbor. (Tr. at 77-78). The entrance to apartments 15B, 15C, and 15D are such that if all three neighbors were to step out of their apartments at the same time, “[w]e will all be standing on top of each other.” (Tr. at 84).

When asked about her relationship with Botkin, she testified that “[f]rom the time that I moved in it was fine, cordial. When I would see her in the hall we would speak. I didn’t have any problems at the beginning.” (Tr. at 79). A change in their relationship occurred after “there was a very aggressive burst of banging on my door. I opened my door and she started yelling to me to go into [my neighbors apartment across the hall as I had keys to their apartment to feed their cats while they were away.] Ms. Botkin started yelling at me to go into their apartment with the keys, that I had to turn off the music that she heard. And I refused to do that because they hadn’t authorized me to go into their apartment at that time while they were away on that vacation. Somebody else was taking care of their cats at that time.” (Tr. at 79).

“Q. Did you [Ms. Richer] hear music?

A. No.

Q. Did that change in any way your relationship that you and Ms. Botkin had as neighbors?

A. Yes. She started to treat me with more, I guess enmity I would say. She would just glare at me in the hall when we would encounter each other and so I stopped greeting her and from there I just kind of stopped interacting with her when I came across her in the hall.” (Tr. at 80).

“She put a note under my door that told me that I had been banging on her wall in the middle of the night. I don’t remember exactly what it said, but it said stop the banging. And from that I understood that she now saw me as somebody who was antagonizing her.” (Tr. at 82).

Ms. Richer resides in her apartment with her daughter who was “ten or eleven at the time of this note.” (Tr. at 83). Ms. Richer testified that “on April 13 of 2024 my daughter was having a sleepover with a friend of hers and early in the morning around 8:00 something there was a very loud burst of banging directed on my daughter’s bedroom wall which is a shared wall with

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Ms. Botkin's apartment. I sleep in the bedroom next to that one. It was loud enough for me to be awakened by this banging on my daughter's wall. She was awakened. Her friend was awakened. They were of course scared by this. I don't know if you, if I can refer to something that happened before this, why she was scared? ... when I received this note under my door and prior there had been incidents throughout the day and night with police coming to our door, right to our door, standing outside, yelling and screaming in the middle of the night. THE COURT: Sorry, who was standing outside your door? THE WITNESS: Police. THE COURT: Thank you. Please continue. Police as well as Ms. Botkin and my neighbors in 15[D] would often be involved in arguments in the hallway with police involvement. So coming and going we would be confronted with police in the hallway often and yelling and screaming. So the banging was frightening because of that backdrop, not just because there was banging on the wall. It was knowing that it was coming from that situation which was frightening to my daughter." (Tr. at 90-91).

When asked about an incident that occurred in the middle of the night on January 16, 2024, Ms. Richer stated that there was whistle blowing coming from Botkin's apartment that she heard, "[f]irst in my bedroom and then walking in my daughter's bedroom which is closer and then throughout my apartment, basically. But as I went closer to my daughter's apartment I could hear it through the wall of her apartment, of her bedroom. ... The wall that is connected to the shared wall between her apartment and Ms. Botkin's apartment." (Tr. at 92-92).

Ms. Richer also recounted a morning incident on October 17, 2024 "where [Ms. Botkin] followed me in the building down two flights of stairs." (Tr. at 85, 86). "As I came out of the elevator to go to my apartment she was coming out of her apartment. So I turned around and went back into the elevator to take it down a couple of flights and wait until she had exited the building before I went back up into my. So I went down to the 14 floor, got out of the elevator and as I was standing waiting she came to the, out of the fire door, the stairwell, and so I turned and I went and walked down to 13 floor and I was waiting there and I turned and she was at the stairwell door on 13. So I went to the door and I held it shut and I yelled at her to leave me alone and she continued down the stairs. Of course I was very shaken as I am now. So I got in the elevator. I went downstairs. I was sitting down to write the email and the board president, I believe she was the board president, came by and she saw that I was distressed. She sat down to talk to me. ... and as we were talking Ms. Botkin came and she sat on the bench directly across from us and just looked at us, looked at me talking. Didn't say anything. So eventually we got up, went outside to continue talking and at that time she exited the building. ... Q. Why did you send this email to Mr. Koppel? A. Because I was very frightened I guess from that experience. I didn't know why she was following me and I just thought it was important that the manager of the building know that one of the tenants was following another tenant." (Tr. at 87-88).

When asked whether any of these incidents alter Ms. Richer or her daughter's behavior, Ms. Richer testified: "We both tried to avoid her as much as possible, Ms. Botkin, as much as possible. And my daughter is not, was not allowed by herself in the hallway. Q. Coming home from school leaving for school in the morning, ever at all? A. Yes, ever at all. Specifically going to school, coming home from school, taking the trash out, going to pick up friends in the lobby.

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Not allowed in the hallway every by herself. ... Both my daughter and I were afraid of her, what I thought to be erratic behavior. Q. If these incidents had not occurred what would you have allowed your daughter to do or not do with respect to entering and leaving the apartment? A. All those things. Take the trash out. Go down to the lobby. As she was getting older she was going to be coming home from school by herself and letting herself into the apartment. I hired a babysitter to pick her up from school and take her home to see her safely into the apartment.” (Tr. at 92-94).

Tyrell Elliott on behalf of the Plaintiff:

The court heard testimony from Tyrell Elliott. He has been employed by 140 Cadman Plaza West for the past nine years as a “concierge for the building/security.” (Tr. at 100). He was working on November 27, 2023 when “the elevators opened and I hear shouting help. Help. With that incident, that was shareholder Justin 15D, he was screaming for help. I left my desk. I left my post and I came around to the elevator [where] Ms. Botkin was on top of Justin hitting him in his face. ... I pulled Ms. Botkin off of Justin, ... another shareholder [Michael Bradley] was there with me and assisted me lifting her off of him.” (Tr. at 102) Mr. Elliott described Ms. Botkin as “[a]n elderly woman, but she is strong for her age. It took two of us to pry her off of him.” *Id.*

Mr. Elliott also testified that “there were two incidents with the mail carrier, between Ms. Botkin and the mail carrier” that he personally observed. (Tr. at 104). There was an “[a]rgument in the lobby of the building between the mail carrier and Ms. Botkin. ... Ms. Botkin, I guess she doesn’t like the mail carrier in the lobby. That was the reason the argument occurred.” *Id.* The mail carrier is at the building delivering mail for “about thirty to forty-five minutes. ... For the first twenty, thirty minutes she is actually in the mailroom putting all the mail in the mailboxes and the outgoing mail she sorted out on the bench before she leaves the building. Only other room she [goes into in the building is] when she wants to use the restroom, our restroom, the bathroom. ... When I say [‘our’] I am talking about the staff. The staff restroom is in the room in the back. ... [No staff] has an issue with that. Q. Does anybody in the building have an issue with that? A. Ms. Botkin. ... On one occasion she tried to close the door, Ms. Botkin, from the mail carrier going into the back room.” (Tr. at 105-106).

Justin Luchter Testimony on behalf of Plaintiff:

The court heard testimony from Justin Luchter. Mr. Luchter resides in Apartment 15D at 140 Cadman Plaza West, has done so for “approximately thirty-three years” - some “approximately seven or eight years” prior to Botkin having moved into Apartment 15C, next door to him. (Tr. at 109, 110, & 111). He described having “extremely good” relations with his other fifteenth-floor neighbors, “with one exception” ... “my next door neighbor, Arlene Botkin.” (Tr. at 111). He recalls his first interactions with Ms. Botkin, “we would speak in the hallway, say hello in the hallway, just cordially like you would say hello to a neighbor.” (Tr. at

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112). He described how in or about 2018 or 2019 Ms. Botkin “began to request help with her computer ... and I told her I would help her.” (Tr. at 113).

Mr. Luchter testified that Ms. Botkin discussed legal proceedings with him that involved Cadman Plaza. When asked about the nature of those proceedings, he stated, “I’m going to say approximately 2019, and at this point I guess she felt comfortable enough with me to ask me a favor, a rather large favor, that I testify on her behalf in an eviction proceeding that the building had, an ongoing one, that the building has against her and I believe still has. Q. What was your response, was it a yes or a no? A. It was a conditional yes. Q. What were your conditions as you expressed them? What were your conditions? A. My conditions were that she behave herself and take responsibility for her actions, that was my conditions. I had a misguided sense, sort of helping a person out or sort of, quote, doing the right thing. But I knew that if I testified for her I would be a pariah in the building. I would be hated in the building. But I was willing to stick my neck out and go out on a limb for her if person to person after we had this conversation she would say she was willing to stop harassing people in the building.” (Tr. at 114-115). He did not testify on her behalf. (Tr. at 117).

However, “[i]n late 2021 I started receiving phone calls from a private caller without a name and banging on my wall. I asked management about it and it had gone on long enough that eventually they put me in touch with the legal team for the building. ... It was banging throughout the night on the wall that is an adjoining wall, a shared wall, between Ms. Botkin’s apartment and mine. ... It became bad enough in early, it was February 2022, I began a log, a spreadsheet ... I began keeping a Google Docs spreadsheets of these incidents and they were such that I was awakened throughout the night. Wasn’t tapping or knocking. This was full-banging, violent banging, that went throughout the night. ... subsequently I got a security camera because the banging was not only on the adjoining wall but Ms. Botkin would come out of her apartment throughout the night and bang on my door with her cane ... She really took exception to the security camera and I thought that might take care of things and have her stop because she was being observed, recorded, but it seemed to egg her on. She took a knife at one point and was stabbing the security camera. She would cover it with Vaseline. I covered it with plastic wrap so the Vaseline couldn’t actually get on the lens, but she took a knife and cut off the plastic wrap at ... THE COURT: Can you give us a timeframe? You indicated late 2021 and then indicated 2022. Can you tell me approximately when these incidents occurred? THE WITNESS: Late 2021 was the nascent stage of the worsening of my relationship. In February of 2022 I began logging in earnest her actions. So I would say this was probably the middle of 2022 towards the end of 2022 that this happened.” (Tr. at 118-120).

He further described security camera photos (entered into evidence as Exhibit 16) that show “the police coming to examine the scene. ... the gray streak is a knife. ... The bottom picture clearly her face and that is really where she is stabbing [at my door] in earnest.” (Tr. at 123). “I have recordings of [her] banging my front door, recordings of her banging on my wall, I have recordings of her giving me death threats through the wall. She has a police whistle.” (Tr. at 129). “[O]ne of the ways that Botkin tries to get to me is through her police whistle and that

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police whistle... is one of her methods of assaulting me. ... I have seen her with [the whistle] yes, one time. ... Yes, there is banging and there is whistling, yes whistling.” (Tr. at 134).

Mr. Luchter testified that he had worked from home “for twenty years.” (Tr. at 127). “[A]t one point the banging was at night. It was only at night and sort of a silver lining thank God she wasn’t banging during the day. But then at one point she started banging during the day as well and it was impossible to concentrate, couldn’t work at home and I decided to get a workspace, a WeWork workspace.” (Tr. at 127).

Mr. Luchter also testified to the November 2023 elevator encounter with Botkin. “We both entered the elevator from our floor. We were both getting into the elevator and she turned and attacked me. ... She began pummeling me with her fists. She backed me into a corner, scratched me with her nails, pushed me to the ground. She scratched my face. Stuck her finger up my nose. Scratched my nose with her fingernail. ... Well the door, the elevator got to the lobby and I was on the floor and I tried to crawl out from under her because at that point she was on top of me. I could not dislodge her. And I called for help and the doorman, seemed like a long time, but he came over and some other passersby came over and pulled her off of me. ... I had scratches to my face and I was taken to NYU Langone Hospital to be checked out. I received a tetanus shot and they cleaned up my face which they were concerned might scar, but fortunately it did not scar. ... I took some pictures myself and the police also took pictures as evidence.” (Tr. at 125-126).

“Basically, since July 21 of 2024 there have been approximately one hundred incidents of either banging on my wall. There is the whistling, I think might have been just the one whistle, banging on the wall, and what I like to call stalking where either my wife or both of us will exit the apartment and Arlene comes out. She peers out of her door. She sort of leers at us until the elevator comes and we get in. Which doesn’t especially sound that bad in the big scheme of things, except there was incident where she actually came out and menaced my wife while she was waiting for the elevator. ... I have had to call the police many times. ... There have been many police reports over the last few years.” (Tr. at 136-138).

On cross-examination Mr. Luchter testified that “Ms. Botkin would tape over the security camera and things would happen. So once I recorded her, once I videotaped her covering my peephole covering the security camera.” (Tr. at 144-145). She would tape a newspaper “to the security camera and banging on my door. This went on for months. In fact, she stole my security camera.” (Tr. at 147).

Arlene Botkin Testifies On Her Own Behalf:

The court heard minimal testimony from Arlene Botkin. She resides in Apt. 15C at 140 Cadman Plaza West. (Tr. at 149). She was born in 1938. She “walk[s] down fifteen floors almost every sabbath.” (Tr. at 153).

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She opens her door when she sees her fifteenth-floor neighbors, “I have to open the door. A little annoyed to keep opening the peephole to see. Sometimes I open the door and I see them there and I don’t go out.” (Tr. at 157).

She acknowledges having had a whistle, “my mother’s whistle ... It’s an heirloom, whatever. I don’t have it any more. It was taken by Justin when he grabbed it out of my hand as I was blowing the whistle and he submitted it to the police.” (Tr. at 159).

Judicial Notice Of Four Documents:

The documents that the court judicial notice of are summarized as follows:

First Document: HPD 6/16/2009 Certificate of Eviction

The HPD 6/16/2009 Certificate of Eviction contains the Decision of the NYC Dept. of Housing Preservation and Development Administrative Hearing Officer (NYSCEF Doc. 4), after a hearing conducted over eleven days, found in part that “[t]he record, including Ms. Botkin’s own testimony and her demeanor at the hearing, indicates that she is easily offended and agitated, finds insults and faults everywhere and is quick to anger and lash out at people. At the same time, Ms. Botkin exhibits a lack of self-awareness regarding her own behavior ... she consistently saw herself as the victim in those interactions. Ms. Botkin not only denied behaviors ascribed to her, she suggested that it was the complaining witnesses who mistreated her and were the aggressors. ... The fact that Ms. Botkin’s version of events was so different from the other witnesses, combined with the credible testimony of the other witnesses regarding Ms. Botkin’s behavior, raises serious questions about Ms. Botkin’s credibility and reliability as a witness regarding her interactions with others. **I do not find Ms. Botkin’s testimony indicating that she was the victim of other people’s assaults or misdeeds to be credible.**” (*id.* at 9) (emphasis added)

Further,

“There is no justification for Ms. Botkin yelling, cursing or using racial epithets when addressing building employees. ...

“Ms. Botkin’s physical interactions with other shareholders at the building and the mail carrier are a particular cause for concern. ...

“Ms. Botkin’s behavior toward certain shareholders at the building was ongoing and inappropriate. It goes without saying that **physical altercations instigated by Ms. Botkin cannot be tolerated and such behavior raises questions regarding the safety of the shareholders, employees and other visitors to the building.** ... (emphasis added)

“Although certain of Ms. Botkin’s actions were one time occurrences, others were not,

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including incidents in the elevator. Furthermore, such incidents spanned a period of several years. ... (*id.* at 10).

"I find that Ms. Botkin instigated physical altercations with other shareholders and the mail carrier at the building. ...

"Clearly, the physical altercations are the most serious incidents at the building. However, Ms. Botkin also demonstrated inappropriate behavior by yelling, screaming and using racial epithets in the public areas of the building.

"I find that Ms. Botkin's behavior constituted a nuisance. Therefore, I am issuing a certificate of eviction against Arlene Botkin. ...

"In light of Ms. Botkin's age and the fact that there was some testimony that indicated that some of Ms. Botkin's behaviors have been mitigated, I am staying enforcement of the certificate of eviction and placing Ms. Botkin on **probation for a period of five (5) years.** (emphasis added)

"During the probationary period Ms. Botkin is to refrain from any physical altercations with anyone at the building. Ms. Botkin is not to curse, use racial epithets, threaten, harass, or yell at the doormen, building employees, shareholders or anyone else in the public areas of the building. ... (*id.* at 11).

"If there is a breach of the terms of the probation, the housing company may restore this matter to HPD for a hearing on ten days written notice to the tenant and to her attorney. The sole issue at such a hearing shall be whether there has been a breach of the probation and whether the stay of the certificate should be vacated. If this matter has not been restored, the certificate of eviction will automatically expire at the end of the five year period." (*id.* at 12).

Second Document: App Div. 1st Dept 3/15/2011 Unanimous Confirmation

Botkin filed an Article 78 petition challenging the HPD 6/16/2009 Certificate of Eviction which was transferred to the Appellate Court by order of Supreme Court, New York County [Carol R. Edmead, J.], entered on January 20, 2010 (NYSCEF Doc. No. 4). The App Div. 1st Dept 3/15/2011 Unanimous Confirmation, in dismissing Botkin's Article 78 petition, stated, **"The determination that petitioner engaged in behavior that constituted a nuisance was supported by substantial evidence**, including the testimony of a mail carrier, a doorman in the building, and other cooperators, who all described instances of petitioner's objectionable conduct. **There exists no basis to disturb the Hearing officer's credibility determinations**, including the finding that it was not credible that every witness who testified that petitioner was the aggressor in their interactions with her was mistaken or lying." (*Id.* at 1-2). (emphasis added)

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Third Document: HPD 8/18/2014 Certificate of Eviction

“On or about August 24, 2010, while Ms. Botkin's Article 78 proceeding was pending, the housing company restored the case to HPD alleging that Ms. Botkin had repeatedly engaged in conduct that violated the terms of her probation as set forth in the June 16, 2009 decision. By stipulation dated December 13, 2010, the parties settled the restored proceeding.” (NYSCEF Doc. No. 20, at 4).

Cadman Plaza North, “[b]y notice dated April 12, 2012, ... restored the matter for a second time. The housing company issued an additional notice of probation violations dated July 11, 2012. In both of these notices, the housing company alleged, among other things, that Arlene Botkin engaged in repeated nuisance and objectionable behavior in violation of the terms of the December 13, 2010 stipulation and/or the terms of the probation set forth in the June 16, 2009 decision.” (*Id.* at 4-5).

After 9 days of testimony at an HPD hearing to determine whether Botkin breached the terms of HPD 6/16/2009 Certificate of Eviction and/or the parties December 13, 2010 stipulation, but before a decision was rendered, the hearing was reopened for a 10th day as a result of Cadman Plaza North's notification “that an incident occurred on August 2, 2013 in which Arlene Botkin assaulted a postal worker at the subject building”. (*Id.* at 2).

Thereafter the NYC Dept. of Housing Preservation and Development Decision And/Or Certificate of Eviction, dated August 18, 2014, was issued upon the following findings:

“During the probationary period Ms. Botkin was to refrain from any physical altercations with anyone at the building. Ms. Botkin was not to curse, use racial epithets, threaten, harass, or yell at the doormen, building employees, shareholders or anyone else in the public areas of the building. Furthermore, Ms. Botkin was not to hover over the doormen while they are doing their jobs and if asked, she was to stop talking to the doormen immediately and without comment. ... (*id.* at 3).

“The sole issues to be determined in this case are whether Arlene Botkin breached the terms of the probation set forth in the June 16, 2009 decision and the December 13, 2010 stipulation and if so whether such breach warrants the vacating of the stay of the certificate of eviction. (*id.* at 5).

“There was extensive testimony and evidence regarding Ms. Botkin's actions and behaviors at the building but this decision will focus on Ms. Botkin's interaction with Yvonne Horton, the mail carrier assigned to the building, and her actions and behaviors toward the doormen at the building. ... (*id.* at 5).

“Yvonne Horton has been a mail carrier for the United States Postal Service for twenty six years and her delivery route for twelve or thirteen of those years has included the subject building. Ms. Horton testified that she was almost finished delivering mail at the

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building on August 2, 2013, with the cart placed at the entrance to the mailroom, when Ms. Botkin came to the mailroom. Ms. Horton testified that when she told Ms. Botkin to give her a minute, Ms. Botkin became irate. According to Ms. Horton, Ms. Botkin pushed her and as Ms. Horton backed into the room Ms. Botkin pushed the cart and threw the cart over and the cart landed on the top of Ms. Horton's foot. Ms. Horton also testified that Ms. Botkin screamed at her that she did not belong in the building. ... (*id.* at 6).

"I find the testimony of Ms. Horton that Ms. Botkin pushed her in the shoulder and then pushed the cart that Ms. Horton was balancing on to be credible and believable. I do not find Ms. Botkin's assertion that it was Ms. Horton who was the aggressor and that it was Ms. Horton who pushed her to be credible. Accusing others of being aggressors in their interactions with her is consistent with Ms. Botkin's prior behaviors. (*id.* at 9).

"I find that Arlene Botkin has breached the most basic and clear cut prohibition of the stay of the certificate of eviction - to avoid physical altercations with others at the building. The fact that Ms. Botkin would instigate a physical altercation with the mail carrier while a decision in this case was pending demonstrates that Ms. Botkin either cannot or will not control her temper, her actions or her behavior. Whatever the reasons, Ms. Botkin's actions and behavior puts others residents, staff and visitors to the building at risk and cannot be tolerated. (emphasis added) (*id.* at 9).

"Ms. Botkin's physical altercation with the mail carrier constitutes a breach of the probation and is sufficiently serious to vacate the stay of the certificate of eviction. (*id.* at 10).

"Additionally, the housing company presented testimony and evidence that Ms. Botkin breached the probation and stipulation by harassing and threatening building staff members. ... (*id.* at 10).

"It is apparent that Ms. Botkin harbors a particular dislike for the doorman Jerome Brown and he features prominently in her complaining emails to building management. In her email to building management dated September 11, 2012 Ms. Botkin wrote about Mr. Brown that it was her 'fondest hope that they come and gouge out his eyes, cut off his hands, and cut out his guts after he has 14 massive heart attacks, 15 massive strokes simultaneously. This way he will not, stare at me again, use his hands on me again, use ethnic slurs or drink from any faucet again, as he wishes for me.' ... (*id.* at 11).

"When he was a relief doorman in the summer of 2010, Mr. Brown testified that Ms. Botkin left the lobby, went upstairs and then called him on the building telephone and told him not to "f***ing look at her and asked why he was working at the building and why he did not have a job in a hotel cleaning toilets. ... (*id.* at 12).

"As a condition of her probation Ms. Botkin was not to harass, threaten, use racial epithets, yell at the doormen or bother them while they did their jobs. (*id.* at 15).

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“I find the testimony of Mr. Brown that Ms. Botkin called him a black b*****d to be credible. ... (*id.* at 15).

“The housing company has presented evidence that Ms. Botkin has hovered and stared at doormen while they were attempting to do their jobs in violation of both the probation and the stipulation and such behavior is a form of harassment and threatening behavior, particularly in light of other behaviors engaged in by Ms. Botkin. (*id.* at 16).

“I do not find Ms. Botkin's assertions that Vincent Maldonado and Jerome Brown each directed anti-Semitic slurs toward her to be credible. Nor do I consider Ms. Botkin's claim to the police that Mr. Brown pushed her to be credible. The making of false allegations against the doormen, particularly allegations of anti-Semitism, by Ms. Botkin is in and of itself a form of harassment. ... (*id.* at 16).

“Ms. Botkin's actions and behaviors, including the physical assault upon Ms. Horton, the staring and belligerent comments to building staff and the false and malicious accusations against doormen, are more than examples of unpleasant or rude behavior. Ms. Botkin's actions constituted harassment and threatening behaviors and in the case of Ms. Horton, resulted in a physical injury to Ms. Horton. ... (*id.* at 17).

“There is no claim, evidence or suggestion that Ms. Botkin can or wishes to change or control her behavior on an ongoing and permanent basis. In fact, there is no acknowledgement or awareness by Ms. Botkin that her behavior is unacceptable. Thus, **there is no purpose to be served in continuing the probation.** ... (*id.* at 17).

“I find that Arlene Botkin has violated the terms of her probation as well as the stipulation and that such violations are substantial and warrant the vacating of the stay of the certificate of eviction. (*id.* at 18).

“**The stay of the certificate of eviction is hereby vacated.**” (*id.* at 18).

Fourth Document: 12/28/2016 Stipulation With Conditions

Next, Botkin commenced an Article 78 proceeding on December 16, 2014, “seeking to amend HPD’s decision and precluding [Cadman Plaza North] from commencing a holdover eviction proceeding.” (NYSCEF Doc. No. 5, at 1) A Stipulation of Settlement and Order discontinuing this action was filed December 28, 2016, in the *Matter of the Application of Arlene Botkin, Petitioner, For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules - against- Vicki Been, as Commissioner of the New York City Department of Housing Preservation and Development, and Cadman Plaza North, Inc., Respondents*, Sup Ct, NY County Index No. 101502/2014. (*Id.*)

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The December 28, 2016 Stipulation With Conditions settled Botkin's Article 78 proceeding, in part, as follows:

1. For a period of four (4) years, petitioner agrees as follows:
 - a. Petitioner will not engage in physical altercations with anyone at the building;
 - b. Petitioner will refrain from cursing or using racial epithets;
 - c. Petitioner will not threaten or harass, as defined by section 250.25, of the Penal Law, the doormen, building employees, shareholders or others in the public areas of the building;
 - d. If asked, petitioner will stop talking to the doormen immediately;
 - e. Petitioner will enter or exit the building through the main lobby whenever possible and not use the garage door unless accompanied by a parking space holder;
 - f. If using the side door to exit the building directly to Cadman Plaza West, Petitioner will securely close the door behind her;
 - g. Petitioner will use the lobby to enter and leave the building, retrieve mail/packages, and wait for transportation; Petitioner may sit or stand in the lobby while waiting for transportation or the elevator or to rest briefly when she is feeling ill, but may not loiter in the lobby, vestibule or mail area. On the Jewish Sabbath (Friday night sunset to Saturday night sundown) and on Jewish holidays, Petitioner shall be permitted a brief rest after walking down the stairs and may remain in the lobby while waiting for a non-Jewish passenger who is using the elevator to go within 5-flights of her floor;
 - h. Petitioner will not leave the stove on in her apartment when leaving the apartment;
 - i. Petitioner will continue her treatment with a psychiatrist and psychologist and continue care coordination services with PRFI North East Brooklyn Care Coordination Service, and will continue to provide HPD and Cadman with the identity of her treatment team by written notification, via email or fax followed by regular mail, to the undersigned respective counsel for the parties of any changes within thirty (30) days of same. Petitioner's current treatment consists of Dr. Irving Friedman, M.D. 565 Kings Highway, Brooklyn, NY 11223, 718 375-9400; Lawrence Lasky, PhD, 26 Court Street, Brooklyn, NY 11242, 718-522.6050; and Dave Pattison, PRFI North East Brooklyn Care Coordination Service, 145 West 15th Street, 65 fl, New York, NY 10011, 212 229-694.

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...

4. In the event that petitioner does not breach this agreement during the above referenced period, the certificate of eviction shall be vacated. (*Id.* at 2-5).

The December 28, 2016 Stipulation With Conditions period expired on or about December 27, 2020.

Some almost-three years after the expiration of the December 28, 2016 Stipulation With Conditions, on December 12, 2023, Cadman Plaza North served Botkin with a Ten (10) Day Notice of Intention to Terminate Lease dated December 11, 2023. (NYSCEF Doc. No. 24.) This Notice was served after HPD's Administrative Hearing Officer Frances Lippa, on November 29, 2023, issued a waiver of the HPD eviction procedures pursuant to 28 RCNY 3-18(e). (NYSCEF Doc. No. 41.) The instant action was thereafter commenced on January 5, 2024, alleging causes of action for "ejectment based upon nuisance," "ejectment based upon breach of the lease," "permanent injunction/violent and threatening behavior," "permanent injunction/access and vacate apartment," "monetary damages for breach of lease," "use and occupancy," and "attorney's fees and costs." (NYSCEF Doc. No. 1).

While much is made about Botkin's age, (born in 1938 – tr. At p. 153), and while her attorneys attempted to raise mental health issues to explain Botkin's behavior, Botkin herself has denied being diagnosed with a psychiatric condition (tr. at 154), and she has not raised the necessity for an Americans With Disabilities Act accommodation herein.

Applicable Law and Discussion

Notice of Termination:

Defendant's preliminary argument before the court, alleged by defendant, is whether the instant action should be dismissed because the Ten (10) Day Notice of Intention To Terminate Lease Effective December 26, 2023 ("Notice of Intention To Terminate Lease"), (NYSCEF Doc. No. 41), is defective. (Mot. Seq. No. 2.) Defendant argues that the Notice of Intention to Terminate Lease is defective as there was no ten-day cure period provided to defendant. In determining this issue, the court has reviewed the Occupancy Agreement between the parties; Title 28: Housing Preservation and Development, Chapter 3: City-Aided Limited Profit Housing Companies, of the Rules of the City of New York N.Y.C. ("Mitchell-Lama Rules"), § 3-18 Lease Termination and Renewals; and the applicable case law.

The Occupancy Agreement between Cadman Plaza North, Inc. and Arlene Botkin sets out in pertinent part as follows:

"Member's Duties and Obligations - FOURTEENTH: The Member covenants and agrees:" (4) Not to permit or suffer anything to be done ... which will obstruct or

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interfere with the rights of other occupants, or annoy them by unreasonable noises or otherwise; not com or permit any nuisance on the premises...”

“Defaults and Consequences Thereof - SIXTEENTH: (a) If the Member shall default in fulfilling any of the covenants or conditions of this Agreement. ... or shall fail or neglect to comply with any clause and any rule or regulation ... or if the Company shall in its judgment deem any conduct on the part of the Member ... or objectionable or improper, the Company may give to the Member ten days notice of intention to end the term of this Agreement, and thereupon, at the expiration of said ten days (if said default continues to exist) the term thereof shall expire as fully and completely as if that were the day herein fixed for the expiration of the term and the Member will then quit and surrender the demised premises to the Company.” (emphasis added)

“Other Provisions – TWENTIETH: The parties mutually agree as follows: ... 6. This Agreement in subject to the powers, rights and privileges, and the restrictions and limitations thereon, of the Company as a Limited-Profit Housing Company under the supervision and control of the Housing and Redevelopment Board of The City of New York pursuant to the Limited-Profit Housing Companies Law, and to the rights and powers of said Housing and Redevelopment Board under said Law or any amendments thereto, by all of which both parties agree to be covered, and to all of which both parties hereto assent.”

“RULES AND REGULATIONS – FIRST. – The public elevators, halls and stairways shall not be obstructed nor used for any other purpose than for ingress to, and egress from the apartments. SECOND.- No Member shall make or permit any disturbing noises in the building by himself ... nor do or permit anything to be done by such persons that will interfere with the rights, comforts or conveniences of other tenants. No Member shall play upon or suffer to be played open any musical instrument, radio or television, in the demised premises between the hours of ten o'clock Tr. atm. and the following eight o'clock a.m. if the same shall disturb or annoy the occupants of the building.”

Mitchell-Lama Rules, § 3-18 Lease Termination and Renewals, states in pertinent part as follows:

(a) Preliminary notice of grounds of eviction, administrative hearing and certificate of eviction. Except as otherwise provided in this subdivision, no eviction proceeding based upon a holdover or a breach of the terms of the lease or occupancy agreement shall be initiated by a housing company against a residential tenant / cooperator without the issuance of a certificate of eviction by HPD following an administrative hearing by an HPD designated hearing officer. The hearing officer's decision shall be final without recourse to an administrative appeal. ... Furthermore, at HPD's sole discretion, such hearing and certificate of eviction may be waived in accordance with subdivision (e) of this section. ...

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(e) *Emergency evictions.* The above procedures may be waived at the sole discretion of HPD in any case in which HPD determines that the health or safety of the tenant / cooperators of a development is jeopardized by another tenant / cooperator ...

As set out in NYSCEF Doc. No. 41, Exhibit C to defendant's cross-motion to dismiss, on November 29, 2023, plaintiff wrote to HPD Administrative Hearing Officer Frances Lippa ("cc: Arlene Botkin via Regular Mail and Email to arlenebotkin2@yahoo.com"), seeking a waiver pursuant to HPD's authority under Mitchell-Lama Rules § 3-18(e), of an administrative hearing and the issuance of a certificate of eviction. Plaintiff presented a detailed factual basis for such a waiver, describing that "Ms. Botkin is engaging in extreme behaviors and objectionable conduct... [She] is frequently heard screaming and yelling at others in the building, following them aggressively, ranting at them, and making threatening, abusive and vulgar comments, brandishing weapons, and vandalizing her own apartment door and that of her neighbors. ... such behavior has become more frequent, aggressive, hostile, and dangerous to others. By way of example, and by no means exhaustive, such incidents include ... 1. On Monday, November 27, 2023 [she] physically assaulted a neighbor ... in the building's elevator. NYPD was called and Ms. Botkin was detained and charged with two counts of assault with intent to cause physical injury, menacing, and harassment/physical contact. 2. On October 16, 2023, neighbors reported that Ms. Botkin had been 'relentless in harassing us' and that Ms. Botkin said she was going to pray for their deaths ... she came to their door seven times banging on it with what appeared to be a large broom handle that had been detached from the broom, banging relentlessly and screaming death threats. ... 3. On or about September 26, 2023 Ms. Botkin's neighbor advised that Ms. Botkin 'has been crowbar-banging incessantly for the past few days and nights and just threatened to 'bash my head in with a hammer.' 4. On or about September 29, 2023, at approximately 12:38 a.m., Ms. Botkin was beating loudly on her own door ... using her own cane, speaking loudly, including stating 'I can bang on my door, you can't bang on my door, I'm gonna bang on your head if you bang on my door.' 5. Beginning on June 7, 2023, at approximately 9:45 Tr. atm. and continuing repeatedly through at least approximately 5:17 a.m. on June 8, 2023, Ms. Botkin was loudly banging on the apartment wall abutting her neighbor's apartment and bathroom pipes, waking the neighbors. 6. On March 21, 2023, the police were called to the building as Ms. Botkin struck and broke her neighbor's door camera. 7. On February 12, 2023, Ms. Botkin assaulted a neighbor, same neighbor who has been the main target of her rage, as a result, Ms. Botkin was arrested charged with numerous counts including assault with intent to cause physical injury and the victim was issued an Order of Protection. 8. On or about December 16, 2022, Ms. Botkin removed a doorbell camera from a neighbor and proceeded to dispose of same. As a result of such action, Ms. Botkin was taken into custody on February 12, 2023, and charged with petit larceny and criminal possession of stolen property." (*Id.*).

Thereafter on November 29, 2023, HPD Administrative Hearing Officer Frances Lippa wrote in her response letter to plaintiff, ("cc: Arlene Botkin (via email and regular mail): "In view of the allegations contained in your November 29, 2023 letter, which describe conditions that could jeopardize the health and safety of tenant/cooperators at the building, HPD, in its sole discretion, is waiving the HPD eviction procedures for the above matter pursuant to 28 RCNY 3-

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18 (e).” (NYSCEF Doc. No. 23). No evidence was presented by either party that an Article 78 judicial review of this HPD’s administrative determination has been filed. The deadline for an administrative challenge is passed. (*See* CPLR 217).

Defendant argues that “[c]ontrary to Plaintiff’s assertion, however, is a wealth of precedent wherein the court found that a notice to cure period required by a lease was not waivable even when statute—in this case, HPD as governed by the Mitchell-Lama rules in 28 RCNY § 3-18—allowed for its waiver.” (Defendant’s Post-Hearing memorandum, p. 5). Defendant argues that greater notice requirements can be contracted by the parties, i.e. a notice to cure.

This argument is without merit because there is no greater notice requirement, i.e. a “notice to cure period”, contracted by the parties in their parties Occupancy Agreement. In this Mitchell-Lama housing case, “a preliminary notice of grounds for eviction” is an HPD requirement for setting eviction hearings. 28 RCNY § 3-18(a). That notice “may be served simultaneously with any notice to cure which may be required by the tenant/cooperator’s lease/occupancy agreement”. *Id.* at 3-18(a)(3). As indicated above, and contrary to defendant’s assertion otherwise, a cure period is not required by the Occupancy Agreement. Moreover, pursuant to 28 RCNY § 3-18(a), a hearing and any resulting certificate of eviction derived therefrom “may be waived in accordance with subdivision (e) of this section.” It is subdivision (e) therein that provides for emergency evictions wherein the procedures set out in subparagraph (a) may be waived at the sole discretion of HPD “in any case in which HPD determines that the health or safety of the tenant/cooperators of a development is jeopardized by another tenant/cooperator.” This is the foundation for HPD Administrative Hearing Officer Frances Lippa’s November 29, 2023 eviction procedures waiver, “the allegations contained in your November 29, 2023 letter, ... describe conditions that could jeopardize the health and safety of tenant/cooperators at the building”. (NYSCEF Doc. No. 41).

Therefore, neither the Occupancy Agreement nor the emergency eviction provisions of the Mitchell-Lama rules have been violated herein.

Elements of An Ejectment Action and Plaintiff’s Burden of Proof:

“To prevail on a cause of action for ejectment, a plaintiff must establish that ‘(1) it is the owner of an estate in tangible real property, (2) with a present or immediate right to possession thereof, and (3) the defendant is in present possession of the estate’ (*Noamex, Inc. v. Domsy Worldwide, Ltd.*, 192 A.D.3d 817, 819, 144 N.Y.S.3d 77; *see City of New York v. Anton*, 169 A.D.3d 999, 1001–1002, 95 N.Y.S.3d 248; *RPAI Pelham Manor, LLC v. Two Twenty Four Enters., LLC*, 144 A.D.3d 1125, 1126, 42 N.Y.S.3d 267).” *City of New York v. Prudenti’s Rest. on the River, Inc.*, 203 A.D.3d 1127 [2d Dept 2022].

In the instant hearing, plaintiff, owner of Cadman Plaza North, Inc., established its entitlement to ejectment relief. It presented its Occupancy Agreement with Member/Shareholder

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Arlene Botkin, the defendant herein. (Exhibit 2.) The Occupancy Agreement states, “WHEREAS [Cadman Plaza North, Inc.] the Company has been formed pursuant to the provisions of the Limited-Profit Housing Companies Law for the purpose of constructing and operating a limited-profit cooperative housing project to be located in the Borough of Brooklyn, City and State of New York, with the intent that its stockholders shall have the right to occupy the dwelling units thereof under the terms and conditions hereinafter set forth; and WHEREAS the Member is within the class sought to be benefited by the law and the owner and holder of 210 shares of common capital stock of the Company and has a bona fide intention to reside in the project; NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein, Company hereby lets to the Member and the Member hereby hires and takes from the Company Apartment No. 15C.” (*Id.*)

Plaintiff is a housing company organized under the Private housing Finance Law, also known as Mitchell-Lama Law, and “is subject to the supervision of the New York City Department of Housing Preservation and Development (hereinafter HPD).” *Bedford Gardens Co., LP v. Jacobowitz*, 29 A.D.3d 501 [2d Dept 2006]. The New York City Rules and Regulations (City Rules) “contain detailed procedures for termination proceedings before HPD.” *Wong v. Gouverneur Gardens Housing CorTr. at*, 308 A.D.2d 301 [1st Dept 2003]. Plaintiff requested and received a waiver of HPD eviction proceedings pursuant to the emergency provisions of subsection (e) of 28 RCNY 3-18 (NYSCEF Doc. No. 9 & 41). Based upon the HPD waiver, plaintiff thereafter served defendant with a Ten (10) Day Notice of Intention To Terminate Lease Effective December 26, 2023 (*id.*). Finally the witness testimony presented by plaintiff, placed defendant in the present possession of apartment 15C.

Elements of Civil Contempt and Plaintiff’s Burden of Proof:

Judiciary Law § 753[A][3.] authorizes a court of record to punish a party for civil contempt if there has been a “disobedience to a lawful mandate of the court.” The elements necessary to support a finding of civil contempt are as follows: “First, ‘it must be determined that a lawful order of the court, clearly expressing an unequivocal mandate, was in effect’. Second, ‘[i]t must appear, with reasonable certainty, that the order has been disobeyed’. Third, ‘the party to be held in contempt must have had knowledge of the court’s order, although it is not necessary that the order actually have been served upon the party’. Fourth, ‘prejudice to the right of a party to the litigation must be demonstrated.’” *El-Dehdan v. El-Dehdan*, 26 N.Y.3d 19, 29 (2015) (internal citations omitted)

Further, in order for plaintiff to establish that defendant is in contempt of this court’s February 7, 2024 and November 15, 2024 orders (NYSCEF Doc. Nos. 34, & 77), plaintiff must do so by clear and convincing evidence. (*El-Dehdan v. El-Dehdan*, 26 N.Y.3d 30.)

The February 7, 2024 Interim Order continues the restraints and directives set out in subparagraphs “a.” – “l” of the court’s January 19, 2024 Order to Show Cause (NYSCEF Doc. No. 31, pp 3-4). The November 15, 2024 Interim Decision and Order modifies the February 7,

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2024 Interim Order “to the extent that defendant shall not engage in objectional conduct, including but not limited to paragraphs ‘g’ through ‘l’ of the court’s Order of January 19, 2024 (NYSCEF Doc. No. 31), and omitting paragraphs ‘a’ through ‘f’, pending the hearing and determination by this Court of the pending motions.” (NYSCEF Doc. No. 77, at p. 3 of 3.)

Initially, the restraining orders that plaintiff is accused of violating were issued by the court and set out specifically what the defendant was prohibited from doing, in particular subparagraphs “g” through “l”, which constitutes a clear mandate and directive. The defendant is:

- g. Directed not to physically threaten, assault or verbally abuse any member of Plaintiff’s staff or occupant of the Building;
- h. Directed not to engage in physical altercations with anyone at 140 Cadman Plaza West, Brooklyn, New York (the “Building”), including, without limitation, other Cadman’s tenant-shareholders, residents, staff or management personnel;
- i. Directed not to engage in any aggressive, hostile, confrontational, accusatory, insulting, retaliatory, or abusive interactions with any other residents of the Building, including without limitation residents of the fifteenth floor of the Building, and/or Cadman’s Board of Directors and/or Cadman’s management personnel and/or Cadman’s staff and/or Cadman’s postal worker, verbal or otherwise, including, without limitation, directing any verbal or written insults to them, verbally or in writing threatening them or ranting, yelling or raving at them;
- j. Directed not to cause damage to the Building, including without limitation, to walls, doors, doorknobs, doorbells, peepholes;
- k. Directed not to tamper with or damage personal property of other residents in the Building, including without limitation, to walls, doors, doorknobs, doorbells, peepholes, cameras; and
- l. Directed not to in any manner obstruct, block or otherwise interfere with the safe usage of the Building elevator(s), hallways and/or other public spaces by Building occupants, staff and management personnel.

Plaintiff presented the testimony of Botkin’s direct neighbors, India Richer and Justin Luchter, (*see* tr 90-91 & 136-138 respectively), and the audio recordings found at Exhibits 6, 7, 18, & 19, that establish the defendant Botkin disobeyed the orders by engaging in prohibited acts, i.e. loud burst of banging on the apartment walls contiguous to Botkin’s apartment and loud whistle blowing at the early hours of the morning, stalking and harassing neighbors, and leaving death wishes for residents on managing agent’s answering machine, during the period of January 23, 2024 through the filing date of the contempt motion sequence 3 on August 27, 2024.

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(Unfortunately, the court heard from the hearing testimony and evidence that this behavior did not stop with the filing of the contempt motion.)

Next, Botkin had knowledge of the court's orders as she was personally served on January 23, 2024 at 2:20 p.m. with the signed January 19, 2024 Order To Show Cause for a Temporary restraining Order and Preliminary and Permanent Injunction (NYSCEF Doc. No. 32). Further, she was represented by counsel upon the court's issuance of its February 7, 2024, Interim Order and the court's November 15, 2024, Interim Decision and Order.

Lastly, that actions of Botkin interfered with the plaintiff's right of quiet enjoyment and plaintiff is prejudiced by Botkin's continued presence.

Plaintiff's Prima Facie Case Established:

Plaintiff presented physical evidence and testimonial evidence establishing by clear and convincing evidence its prima facie entitlement to judgment on the action for ejectment and civil contempt. The burden therefore shifted to defendant to demonstrate that plaintiff has not made out a cause of action for ejectment or civil contempt.

In response to plaintiff's case in chief, defendant presented no physical evidence and no testimonial evidence that demonstrated that plaintiff had not established a cause of action for ejectment and/or civil contempt. Defendant presented no evidence sufficient to raise an issue of fact as to any element of an ejectment cause of action or a civil contempt finding.

Plaintiff seeks preliminary and permanent injunctive relief herein.

Elements required for a Preliminary Injunction:

The Grounds for a preliminary injunction pursuant to CPLR 6301 are follows:

A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff.

In seeking a preliminary injunction herein, plaintiff must "must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of an injunction and a balance of equities in its favor." *Nobu Next Door, LLC v. Fine Arts Hous., Inc.*, 4 N.Y.3d 839, 840 (2005). "The purpose of a preliminary injunction is to preserve the status quo until a decision is reached on the merits." *Icy Splash Food & Beverage, Inc. v. Henckel*, 14 A.D.3d 595 [2d Dept 2005].

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The court has balanced all of the proof, including consideration of the defendant's current age. Plaintiff has demonstrated an entitlement to a preliminary injunction. Plaintiff has established its likelihood of success on the merits by presenting Botkin's nuisance behavior which rose to such a level that HPD granted a waiver of its eviction procedures a hearing on the under its "emergency evictions" exception. Further, plaintiff established irreparable injury by demonstrating that defendant violated the terms of this court's temporary restraining orders issued during the pendency of this action. Even with the temporary restraining orders in effect defendant was not able to control her behavior and cease her ongoing harassment to plaintiff and other members tenant/cooperators at 140 Cadman Plaza West by leaving death wishes in managing agent's voice mail and her loud banging and using a police whistle inside her apartment very late in the evening or the early hours of the morning. This is not at best, "eccentric" behavior as described by defendant's counsel in her Post-Hearing Memorandum. Defendant's ongoing wrongful acts have been established, continued throughout this proceeding, and it is reasonable to conclude from defendant's historical behavior will likely continue to occur absent further injunctive relief. Defendant, in opposing the application for injunctive relief, has to offer substantial proof of defenses tending to negate the plaintiff's claim on the merits. Botkin did not do this.

"In many, even most, instances the entitlement to the preliminary injunction will parallel the plaintiff's right to a permanent injunction." *Margolies v. Encounter, Inc.*, 42 N.Y.2d 475 [1977].

Elements Required for a Permanent Injunction:

"To sufficiently plead a cause of action for a permanent injunction, a plaintiff must allege that there was a violation of a right presently occurring, or threatened and imminent, that he or she has no adequate remedy at law, that serious and irreparable harm will result absent the injunction, and that the equities are balanced in his or her favor. A permanent injunction is a drastic remedy which may be granted only where the plaintiff demonstrates that it will suffer irreparable harm absent the injunction." *Aponte v. Est. of Aponte*, 172 A.D.3d 970, 974 [2d Dept 2019]. (internal quotations and citations omitted)

At the commencement of the hearing on March 24, 2025, the following discussion took place:

THE COURT: I will hear the motion to dismiss first. But there is also another issue. ... The same amount of time and energy will go into this hearing that will go into a trial. Any objections to determining all issues in this case? ...

MS. DOUGHERTY: The objection is that we would be entitled to move for discovery and conduct depositions.

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THE COURT: Let me ask you, what do you think you would learn from discovery that isn't within the knowledge and information of your own client?

MS. DOUGHERTY: We know what our client has told us. I don't know what other people are prepared to testify about, except what is in their affidavits. (Tr. at 6-7).

CONCLUSION:

As indicated above, the plaintiff is entitled to a preliminary injunction herein. Moreover, defendant's continuing nuisance behavior leaves plaintiff without an adequate remedy at law, and serious and irreparable harm continues despite the court's orders temporarily restraining defendant's behavior. The court credits the testimony of each of plaintiff's witnesses determines that the equities are balanced in plaintiff's favor. Defendant has had notice and an opportunity to be heard at the two-day hearing held over the course of March 24, 2025 and March 25, 2025. Each of plaintiff's witnesses were cross-examined and defendant has not articulated the need for any additional discovery on the matters set out herein. As such, the court elects to treat defendant's cross-motion to dismiss as a general denial and determines that the defendant must be permanently enjoined herein from any further violent and harassing behavior. The protection of plaintiff and the shareholder/occupants obligate this court to grant the permanent relief that plaintiff seeks, namely the immediate ejection of defendant from Apartment 15C at 140 Cadman Plaza West.

Based on the foregoing, it is

ORDERED that defendant Arlene Botkin's cross-motion to dismiss herein, motion sequence 2, is denied in all respects and defendant Arlene Botkin may file an answer within twenty (20) days of the entry of this Order; and it is further

ORDERED, ADJUDGED AND DECREED that defendant Arlene Botkin's ongoing residency at 140 Cadman Plaza West, Apartment 15C, Brooklyn, New York, 11201 jeopardizes the health and safety of the tenant/cooperators at 140 Cadman Plaza West; and it is further

ORDERED, ADJUDGED AND DECREED that plaintiff Cadman Plaza North, Inc.'s motion for a preliminary injunction be and hereby is in all respects granted and plaintiff is entitled to the immediate removal of defendant Arlene Botkin, and any guests, roommates, licensees, subtenants, and/or other persons residing with defendant Arlene Botkin, from any further occupancy of Apartment 15C, located at 140 Cadman Plaza West, Brooklyn, New York, 11201, pending a final resolution of this matter; and it is further

ORDERED that the preliminary injunction granted herein is conditioned upon plaintiff Cadman Plaza North, Inc. furnishing an undertaking as required by CPLR 6312(b) in an amount fixed by the court of Fifty Thousand and 00/100 (\$50,000.00) Dollars cash or bond and thereafter filing a copy of this Order with Notice of Entry; and it is further

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ORDERED, ADJUDGED AND DECREED that the preliminary injunction herein is stayed for thirty (30) days from the date of the plaintiff's filing the Notice of Entry upon the CPLR 6312(b) undertaking set forth above unless during this said 30-day period defendant Arlene Botkin is alleged to have violated anew this court's Interim Decision and Order dated November 15, 2024, and entered on November 19, 2024 (NYSCEF Doc. # 77), in which event plaintiff Cadman Plaza North, Inc. may move by emergency order to show cause, on e-mail notice with a follow-up confirmatory phone call to defendant Arlene Botkin's counsel herein, and seek a removal of the 30-day stay; and it is further

ORDERED that upon the service of an Answer by the defendant Arlene Botkin, plaintiff shall file a preliminary conference request within ten (10) days thereof; and it is further

ORDERED, that any other relief requested by either party not specifically addressed herein is **DENIED**.

This constitutes the decision and order of the Court.

ENTER


Hon. Richard J. Montelione, J.S.C.

KINGS COUNTY CLERK
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2025 MAY 23 A 9:42