

Kim v 16 Park Ave. Owners Corp.

2025 NY Slip Op 33439(U)

September 12, 2025

Supreme Court, New York County

Docket Number: Index No. 157612/2025

Judge: Phaedra F. Perry-Bond

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

-----X		INDEX NO.	<u>157612/2025</u>
SARA KIM	Plaintiff,	MOTION DATE	<u>06/13/2025</u>
	- v -	MOTION SEQ. NO.	<u>001</u>
16 PARK AVENUE OWNERS CORP.,	Defendant.		

**DECISION + ORDER ON
MOTION**

-----X

HON. PHAEDRA F. PERRY-BOND:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35 were read on this motion to/for POSSESSION.

Plaintiff, Sara Kim (“Plaintiff”), moves for a preliminary injunction enjoining defendant, 16 Park Avenue Owners Corp. (“Defendant”), from proceeding with the termination of the shares of stock and proprietary lease for a cooperative apartment and staying a New York Civil Housing Court action, *16 Park Avenue Owners Corp. v Thomas Gillooly et al*, NY County Index No. LT 301065-24/NY (“Ongoing Nonpayment Proceeding”), pending the resolution of this action. Defendant opposes the motion.

This declaratory judgment action concerns a dispute over alleged unpaid fees for a cooperative apartment, unit 5A (“the Apartment”) at 16 Park Avenue in Manhattan (“the Building”). The Building is owned by Defendant, a cooperative housing corporation. Plaintiff resides in the Apartment with her children. Nonparty Thomas Gillooly (“Gillooly”), Plaintiff’s estranged husband, is the owner of the Apartment’s cooperative shares and its proprietary lessor (NYSCEF Doc No. 6, Stock Certificate; NYSCEF Doc No. 7, Proprietary Lease). Gillooly does not reside in the Apartment. Plaintiff

contends Gillooly transferred the Apartment's shares to her and assigned her the Proprietary Lease in June 2025 (NYSCEF Doc. No. 9).

According to Defendant, Gillooly has been in arrears since June 2018 (NYSCEF Doc. No. 21, ¶6; NYSCEF Doc. No. 27, Ledger). In August 2019, Defendant commenced a nonpayment proceeding against Gillooly in Housing Court, *16 Park Avenue Owner Corp. v Thomas Gillooly et al*, New York County Index No. LT-065562-19/NY ("Prior Nonpayment Proceeding"), and named Plaintiff and the minor children as undertenants. Defendant, thereafter, obtained a default judgment against Gillooly, and settled with Plaintiff. The stipulation of settlement required Plaintiff to pay \$173,967.61 in unpaid base maintenance and preserved Defendant's rights and claims for additional charges against Gillooly, which included late fees, legal fees, and assessments (NYSCEF Doc No. 24). Plaintiff made the required payments and moved to vacate the stipulation, which the court granted in a decision and order dated November 27, 2023 (NYSCEF Doc No. 25 [China, J.]). That decision also vacated the default judgment against Gillooly based on Plaintiff's satisfaction of the debt, and stated Defendant reserved its claims against Gillooly for the additional charges (*id.*).

Gillooly accrued further arrears following the dismissal of the Prior Nonpayment Proceeding, which led Defendant to commence the Ongoing Nonpayment Proceeding in January 2024 seeking a money judgment for unpaid maintenance and additional fees, a final judgment of possession, and issuance of a warrant of eviction. Gillooly again defaulted while Plaintiff appeared to defend the action. In a Decision and Order dated March 24, 2025, the Housing Court dismissed Defendant's claim for the additional charges for legal fees, late fees, and assessments, finding that the stipulation of settlement in the Prior Nonpayment Proceeding required Defendant to initiate a plenary action to those charges (NYSCEF Doc No. 12 [Rubel, J.]). The court subsequently ordered that the Ongoing Nonpayment Proceeding be transferred to the Housing Part Expediter for trial assignment.

On May 23, 2025, Defendant served Gillooly with a Notice of Default Under Proprietary Lease based on his failure to pay maintenance and the additional charges. The Notice demanded he cure his default by June 9, 2025, and stated that failure to do so would result in termination of his tenancy (NYSCEF Doc No. 23). Gillooly did not make the demanded payments and, on June 23, 2025, Defendant served him with a Notice of Expiration of Proprietary Lease that purported to terminate his tenancy (NYSCEF Doc No. 22). Defendant submits a ledger that shows Gillooly owing \$153,629.38 through June 2025, including \$69,504.86 in maintenance, \$30,250 in assessments, a \$3,500 late charge, and \$64,607.57 in legal fees (NYSCEF Doc No. 29). Plaintiff maintains she has attempted to pay the maintenance fees, but claims Defendant has “consistently” refused to accept her payments (NYSCEF Doc No. 4, Plaintiff aff ¶¶ 6). In support of this contention, she submits copies of uncashed money orders for a portion of the unpaid maintenance and a letter dated December 13, 2023, from Defendant’s managing agent rejecting them on the grounds that it was “only able to accept payment from the shareholder of record” (NYSCEF Doc No. 14).

Plaintiff claims Gillooly transferred his cooperative shares to her and submits a document signed by Gillooly dated June 4, 2025, that purports to authorize such a transfer (NYSCEF Doc No. 9). Defendant states it did not consent to the transfer, and its managing agent attests Plaintiff did not submit an application for a transfer of shares as required by the cooperative’s by-laws, the Stock Certificate, and the Proprietary Lease (NYSCEF Doc No. 21, Landman aff ¶¶ 3-4).

Plaintiff commenced this action on June 13, 2025, seeking a permanent injunction against Defendant enjoining it from terminating the Apartment shares and Proprietary Lease and staying the Ongoing Nonpayment Proceeding. She further seeks a declaration that the Apartment shares and Proprietary Lease may be “transferred in her name solely,” and that the amounts claimed due in the Notice of Default were “exaggerated and not due” and improperly “inflated with late and/or legal fees . . .” (NYSCEF Doc No. 1, Complaint ¶¶ 25-26, 28-30). She now moves for a preliminary injunction

staying the Ongoing Nonpayment Proceeding and preventing Defendant from terminating the shares and Proprietary Lease during the pendency of this action.

A preliminary injunction may be granted when the movant “demonstrates: (1) a likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the provisional relief is withheld; and (3) a balance of equities tipping in the moving party's favor” (*Doe v Axelrod*, 73 NY2d 748, 750 [1988]). “To establish a likelihood of success on the merits, ‘[a] prima facie showing of a reasonable probability of success is sufficient; actual proof of the [movant’s] claims should be left to a full hearing on the merits’” (*Barbes Rest. Inc. v ASRR Suzer 218, LLC*, 140 AD3d 430, 431 [1st Dept 2016], quoting *Weissman v Kubasek*, 112 AD2d 1086, 1086 [2d Dept 1985]). “A likelihood of success on the merits may be sufficiently established even where the facts are in dispute and the evidence need not be conclusive” (*id.*). A preliminary injunction should be denied where the movant does not satisfy the requirement of demonstrating likelihood of success on the merits (*Doe*, 73 NY2d at 751).

Plaintiff contends she is likely to prevail on the merits because she demonstrates Gillooly validly transferred the Apartment’s shares to her, submits documentary evidence that the amounts sought by Defendant in the Ongoing Nonpayment Proceeding are either exaggerated or not due, and shows that the purported termination of the Proprietary Lease was invalid because the Notice of Default was defective because it was based on an improper demand for fees not due.

In opposition, Defendant argues Plaintiff cannot seek transfer of the Proprietary Lease and shares because they have already been terminated and any challenge is, therefore, untimely, she lacks standing to challenge the termination as she did not own the shares and was not a party to the lease, and her challenge to its refusal to the assignment and transfer is premature as neither she nor Gillooly followed the required procedures.

The Court finds that Plaintiff does not demonstrate her likelihood of success on the merits of her claims. With respect to the validity of the alleged transfer and assignment, Plaintiff fails to make a prima facie showing she and Gillooly followed the procedures required by the condominium by-laws, Proprietary Lease, and Stock Certificate. The plain language of the condominium's by-laws stipulates:

No assignment of any lease or transfer of the shares of the Corporation shall take effect as against the Corporation for any purpose until a proper assignment has been delivered to the Corporation; the assignee has assumed and agreed to perform and comply with all the covenants and conditions of the assigned lease or has entered into a new lease for the remainder of the term; all shares of the Corporation appurtenant to the lease have been transferred to the assignee; all sums due have been paid to the Corporation; and all necessary consents have been properly obtained. The action of the Board of Directors with respect to the written application for the consent of a proposed assignment . . . must be made within thirty (30) days after receipt of said written application.”

(NYSCEF Doc No. 26, By-Laws, Art. V § 4[a]). The Proprietary Lease provides that it cannot be assigned, and shares cannot be transferred, until, *inter alia*, “An instrument of assignment in form approved by Lessor executed and acknowledged by the assignor shall be delivered to the Lessor” (Proprietary Lease, Art. 16[a][i]). The Stock Certificate specifies that shares “are transferrable . . . only to an *approved assignee* of such proprietary lease” (emphasis added). Defendant’s managing agent attests that a shareholder must obtain Defendant’s consent to transfer their apartment by completing and submitting a form transfer application, and that no such application for the Apartment was made by Gillooly, Plaintiff, or anyone else (Landman aff ¶¶ 3-4). Plaintiff does not make any showing that these steps were followed, which militates against finding that she is likely to prevail on the merits of this portion of her declaratory judgment claim (*cf. Rivera v 98-100 Ave. C Hous. Dev. Fund Corp.*, 209 AD3d 616, 617 [1st Dept 2022]).

Plaintiff further fails to make a prima facie showing that she is likely to succeed on the portion of her declaratory relief regarding Defendant’s alleged exaggeration of the amounts claimed

in the Notice of Default or they were improperly inflated with the additional charges. With respect to the additional charges of legal fees, late fee, and assessments claimed in the Notice of Default, Plaintiff relies on the Housing Court’s Decision and Order dated March 24, 2025, dismissing Defendant’s claim for additional charge. This argument is unavailing as the Housing Court did not make a finding on the validity of the additional charges or Gillooly’s responsibility for them; rather, it merely found Defendant must seek their recovery in a plenary action (NYSCEF Doc No. 12 [Rubel, J.]). Lastly, Plaintiff does not provide any support for this claim in relation to the unpaid maintenance fees for which Defendant seeks recovery in the Ongoing Nonpayment Proceeding, and which are documented in Defendant’s ledger (NYSCEF Doc No. 29). As Plaintiff does not make her requisite showing of likelihood of success on the merits, her motion for a preliminary injunction must be denied (*Doe*, 73 NY2d at 751).

Accordingly, it is hereby:

ORDERED that the motion is denied, and the temporary restraining order signed on June 30, 2025, is lifted.

9/12/2025
DATE


PHAEDRA F. PERRY-BOND, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	