

730 W. 183rd St. LLC v Nouredine

2013 NY Slip Op 32298(U)

September 20, 2013

Supreme Court, New York County

Docket Number: 157514/2013

Judge: Debra A. James

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

PRESENT: DEBRA A. JAMES
Justice

PART 59

730 WEST 183rd STREET LLC,
Plaintiff,

Index No.: 157514/2013

Motion Date: 09/19/13

- v -

Motion Seq. No.: 01

NORMAN KHDAIDI NOUREDDINE a/k/a NOUREDDINE
KHADDIDI and CARL CARSON s/h/a CARL CARLSON,
Defendants.

Motion Cal. No.: OSC

The following papers, numbered 1 to were read on this motion for a preliminary injunction.

Order to Show Cause -Affidavits -Exhibits _____

Notice of Cross Motion/Answering Affidavits - Exhibits _____

Replying Affidavits - Exhibits _____

<u>PAPERS NUMBERED</u>
1

Cross-Motion: Yes No

Upon the foregoing papers, the show cause order of the plaintiff for a preliminary injunction shall be granted, except that defendants need throw away only such clothing, bedding and furniture that are infested by bed bugs and cannot be treated by the licensed pest management professional.

In this action for declaratory judgment concerning a residential lease for Apartment 4H, plaintiff landlord presented this show cause order to the ex parte judge (Shulman, J.), who signed the order on August 19, 2013 but denied plaintiff's application for a temporary restraining order for the ultimate injunctive relief sought in the complaint. Such judge directed that the papers, including the summons

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

and complaint, be served personally upon defendants on or before August 19, 2013, and set August 27, 2013, as the return date of the motion.

On August 27, 2013, plaintiff, by counsel, and both defendants pro se appeared before this court. At that hearing, defendant Carson admitted service of process and the motion papers. Defendant Khdaidi accepted service of the papers in the courtroom and requested time to consult and retain an attorney. The undersigned granted defendant Khdaidi's application for adjournment and adjourned the date of the hearing on plaintiff's application for a preliminary judgment to August 27, 2013. The court encouraged the parties to attempt to settle the matter of the extermination of the bed bugs which have allegedly infested Apartment 4H, where defendants reside. The court also instructed the defendants that they had a right to appear on their own behalf and to serve with a certificate of mailing their response signed before a notary public to plaintiff's order show cause, and to present a copy of such response to the court on the adjourn date.

On the return date, neither defendant had served any response upon plaintiff's counsel and had no papers to submit to the court. Defendant Carson advised the court that he had no position. Defendant Khdaidi asserted that despite his statement to the court that he required an adjournment to consult an attorney, he never consulted an attorney because plaintiff's attorney promised to settle the matter. This court again pointed out that plaintiff's attorney represents the landlord his adversary in this proceeding, and not the defendants,

that the defendant Khdaidi and Carson each have every right to represent himself, and plaintiff's attorney has ethical obligations not to overreach in communicating with an unrepresented party. The court further instructed defendant Khdaidi that his recourse is always to telephone the court and allow the court to arrange a conference call between and among both defendants and plaintiff's counsel for the purpose of defendant Khdaidi advising the court with respect to his decision to neither consult nor retain counsel, which was the purpose of the adjournment, or in the future, to discuss with the court any other matter concerning the case. The court oversaw further mediation between the parties, which did not succeed, and marked the show cause order as submitted without opposition.

The court finds that the supporting papers establish a likelihood of success on the merits of plaintiff's breach of lease claim. Plaintiff has come forward with affidavits to which defendants have submitted no written opposition that show that the defendants have not provided access to uncluttered closets and other areas of their apartment for the purpose of bed bug extermination. In addition, plaintiff has demonstrated that it will suffer irreparable harm if defendants fail to provide such access as the plaintiff landlord's inability to effectively treat and abate the bed bugs infestation threatens the health and safety of others in the building. See 12 Broadway Realty, LLC v Levites, 44 AD3d 372 (1st Dept 2007). Finally, the equities weigh in favor of plaintiff given that defendants will only be temporarily inconvenienced by the task of properly disposing of any household goods, mattresses or furniture

that cannot be treated by the licensed pest management professional, removing clutter from closets and other spaces and moving furniture so that the licensed professional may properly treat Apartment 4H for bed bugs.

With respect to the plaintiff's directive, through its pest management professional that defendants throw away household items, if any, that pest management professional determines cannot be treated, the court must set an undertaking should defendants suffer damages should the preliminary injunction be determined ultimately to be unwarranted. Plaintiff shall file an undertaking in the amount of five thousand dollars (\$5,000.00) pursuant to CPLR 6312.

Accordingly, it is hereby

ORDERED that motion of plaintiff for a preliminary injunction is GRANTED pending the resolution of this action, and conditioned upon the service, within 20 days of the date of entry hereof, upon defendant and filing with the court by plaintiff, of an undertaking in the amount of five thousand dollars and no cents; and it is further

ORDERED that upon service of this order with notice of entry, plaintiff and defendants shall immediately contact the court by telephone (646-386-3352) to arrange a conference call to confirm that all parties have carefully reviewed the following New York City Department of Health and Mental Hygiene publications: "Preventing and Getting Rid of Bed Bugs Safely"
<http://www.nyc.gov/html/doh/downloads/pdf/vector/bed-bug-guide.pdf> and "Proper Disposal of Bed Bug Infested Household Items"

<http://www.nyc.gov/html/doh/bedbugs/downloads/pdf/bed-bugs-disposal.pdf>; and it is further

ORDERED that within ten days of service by overnight courier of a copy of this Order with notice of entry and a copy of the undertaking with notice of filing as aforesaid, defendants shall carry out the steps outlined at the above website links; and it is further;

ORDERED that defendants may take photographs of Apartment 4H and any discarded household or other items, as a record of their having carried out the above steps; and it is further

ORDERED that upon two days written notice hand delivered at Apartment 4H and upon the passage of fifteen days after the above referenced service and filing, plaintiff shall schedule its licensed management professional to treat apartment 4H in accordance with the recommendations set forth in "Preventing and Getting Rid of Bed Bugs Safely"

<http://www.nyc.gov/html/doh/downloads/pdf/vector/bed-bug-guide.pdf>, and it is further

ORDERED that defendants must remain out of the treated areas during such treatment and for approximately four (4) hours after such treatment is completed or until the treatment is dry, but in no event more than twelve (12) hours; and it is further

ORDERED that the defendants, separately or together, shall serve on plaintiff's counsel and file with the court a Verified Answer to the Complaint within thirty days of service and filing of this order with notice of entry, and may visit the "Help Center", at the New York State Supreme Court, 60 Centre Street, Room 116, New York, New York

<http://www.nycourts.gov/courthelp/nolawyer-text.htm> to obtain a "Do It Yourself" form to use to prepare such Answer(s); and it is further

ORDERED that the caption is amended on consent to name party defendant Carl Carson in lieu of and in place of Carl Carlson, effective upon filing of the order with proof of service of notice of entry hereof with the County Clerk and the Trial Support Office; and it is further

ORDERED that the parties are directed to attend a preliminary conference on November 19, 2013 at 9:30 A.M. in Part 59, Room 103, 71 Thomas Street, New York, New York 10013.

This is the decision and order of the court.

Dated: September 20, 2013

ENTER:

~~_____~~
DEBRA A. JAMES J.S.C.