

Faith in Action Deliverance Ministires v 3231 Assoc., LLC
2018 NY Slip Op 33501(U)
April 25, 2018
Supreme Court, Bronx County
Docket Number: 21066/2018E
Judge: Donald A. Miles
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX
IAS PART 8**

Index No. 21066/2018E
Motion Calendar No.: 4
Motion Date: 02/14/18

FAITH IN ACTION DELIVERANCE MINISTRIES,

Plaintiff(s),

-against-

3231 ASSOCIATES, LLC

Defendant(s).

DECISION/ ORDER

Present:
Hon. Donald A. Miles
Justice Supreme Court,

Recitation, as required by Rule 2219(a) of the C.P.L.R., of the papers considered in the review of this motion for preliminary injunction.

<u>Papers</u>	<u>Numbered</u>
Order to Show Cause, Affirmation in Support, Verified	
Complaint and Exhibits Thereto.....	1
Defendant's Affidavit in Opposition and Exhibits.....	2
Defendant's Memorandum of Law.....	3

Upon the foregoing papers and after due deliberation, following oral argument, the Decision/Order on this motion is as follows:

This is an action for a declaratory judgment with respect to a church, Faith In Action Deliverance Ministries,' ("Plaintiff") use and enjoyment of the subject commercial premises located at 3231 Steuben Avenue, in the county of Bronx in the building owned by defendant 3231 Associates ("Defendant"). The parties entered into a triple net lease agreement with an initial term effective March 1, 2016 through February 28, 2017 at a monthly rent of \$10,000.00. It is undisputed that the lease granted Plaintiff the option to extend the term of the subject lease for three (3) months, provided (a) tenant has a mortgage commitment from a qualified lender with a closing date no greater than ninety (90) days from the expiration of the initial term; (b) tenant pays monthly rental during the option period of \$20,000.00 and any additional rent which includes water, real estate taxes and insurance.

Presently before the court is Plaintiff's motion for a preliminary injunction, staying Defendant from prosecuting a holdover proceeding against Plaintiff in the Commercial part of the Civil Court of the City of New York (3231 Associates, LLC v Faith in Action Deliverance Ministries, Inc, Index No.: L & T 900451/2017.) ("holdover proceeding"). Defendant opposes the motion in its entirety.

As of this writing, a temporary restraining order, granted in an order signed by this Court on January 30, 2018, is in place pending the decision of this motion.

With respect to the plaintiff's request for a preliminary injunction, CPLR § 6301 states that: "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 order for a preliminary injunction to be issued, the plaintiff must demonstrate (1) a likelihood of success on the merits; (2) irreparable injury absent the granting of the preliminary injunction; and (3) a balancing of the equities which favors the issuance of injunctive relief (*St. Paul Fire and Marine Ins. Co. v. York Claims Serv., Inc.*, 308 A.D.2d 347, 765 N.Y.S.2d 573 [1st Dept. 2003]; *New York City Off-Track Betting Corp. v. New York Racing Assn., Inc.*, 250 A.D.2d 437, 673 N.Y.S.2d 387 [1st Dept. 1998]). Preliminary injunctive relief is a drastic remedy, which will only be granted if it is established that there is a clear right to the relief under the law and facts (*Koultukis v. Phillips*, 285 A.D.2d 433, 728 N.Y.S.2d 440 [1st Dept. 2001]). The granting or denial of a preliminary injunction is a matter which is ordinarily committed to the sound discretion of the court, and the appellate court's power to review such decisions is limited to determining whether the lower court abused or exceeded, its discretion. (*Doe v. Axelrod* 73 N.Y.2d 748 [1988]).

Generally, the injunction will be issued only upon a showing that the "defendant's wrongful acts are occurring or are threatened and reasonably likely to occur." Siegel, N.Y. Prac § 328, at 499 (3d ed).

[An] injunction should be granted if the activity complained of will cause irreparable injury to the party seeking such relief before a trial can be held to resolve the underlying controversy. In this context, irreparable injury means a continuing harm resulting in substantial prejudice caused by the acts sought to be restrained if permitted to continue pendente lite. *Chrysler Corp. v Fedders Corp.*, 63 AD2d 567, 569 (1st Dept 1978).

Plaintiff, in its complaint verified by its President, Violet Wallace, alleges four causes of action for declaratory judgment, breach of contract, imposition of a vendee's lien and specific performance. Therein plaintiff alleges that in or about February 2016, plaintiff was temporarily located and interested in finding a permanent home for its ministry; plaintiff responded to a for sale sign on the subject premises, met with the realtor and representatives of defendant, who provided plaintiff access for a site inspection which revealed a delapidated Jewish temple that needed extensive renovation before it would be suitable as a place of worship.

The parties entered into a one-year lease agreement with an option to purchase the premises for one million five hundred thousand dollars (\$1,500,000.00). At the time of execution of the lease, defendant tendered a contract of sale to plaintiff which plaintiff signed and began extensive renovation and restoration, in contemplation of renting and eventually purchasing the premises. Over a period of about two months plaintiff completed the renovation, including a brand new roof, installation of new electrical wiring and water lines and a brand new floor, incurring a cost of about \$250,000.00. In addition to volunteer hours by its members, financial contributions of approximately \$150,000.00 were made towards the restoration. All this time, plaintiff continued to inquire of defendant about the status of the contract of sale. Defendant's representative eventually informed plaintiff that defendant was not inclined to execute the contract and wanted to take back the premises. Plaintiff was later advised that defendant now wanted two million two hundred thousand dollars (\$2,200,000.00) after plaintiff had completed the renovation and restoration of the sanctuary. To date, defendant has refused to execute the contract of sale. Plaintiff maintains that it has refused to capitulate to defendant's unreasonable demands by agreeing to the significant purchase price increase and as such plaintiff has been unable to secure financing.

In its opposition to the motion, Defendant notes that the holdover proceeding was

commenced in March 2017 and after several adjournments was settled by a “so-ordered” stipulation on July 12, 2017, wherein plaintiff agreed to pay \$20,000.00 per month, as use and occupancy beginning August 31, 2017 and ending on December 31, 2017. Plaintiff only paid the \$20,000.00 per month until October 31, 2017, when it stopped paying anything despite defendant’s demand for payment. Since plaintiff has been in possession of the premises, they have paid less than half of the scheduled base rent and have not paid the real estate taxes for which plaintiff is responsible under the lease. Defendant argues that the lease with plaintiff clearly expired by its terms on February 28, 2017 and plaintiff’s tenancy was allowed to continue only as a month to month tenancy, pursuant to the stipulation between the parties. Defendant has since served plaintiff with a thirty (30) day termination notice to expire on January 31, 2018. Defendant contends that plaintiff, not having obtained a mortgage commitment during the term of the lease, having no lease to preserve and with the month to month tenancy having been terminated, has no right to continue in possession of the subject premises.

Applying the aforementioned principles, the court holds that Plaintiff has not shown, that it is likely to succeed on the merits of the case. The claims asserted by the plaintiff in this action are essentially founded upon the assertion that the Defendant wrongly refused to execute the contract of sale, and that plaintiff was thereby unable to secure the mortgage financing during the term of the lease. These contentions may be interposed as defenses in the context of the holdover proceeding, and therefore Civil Court is the preferred forum for this dispute (see *Spain v 325 West 83rd Owners Corp.*, 302 AD2d 587 [2nd Dept 2003]).

Absent a clear showing that the relief sought is unavailable in the summary proceeding, a preliminary injunction should not be granted. The Commercial Part of the Civil Court was designed for resolution of the type of disputes involved in this litigation and is the preferable forum. The arguments made in opposition are correct. As the plaintiff has failed to demonstrate the likelihood of success on the merits, the preliminary injunction is denied.

It is hereby

ORDERED that the motion for preliminary injunction is denied; and it is further

ORDERED that the temporary restraining order is vacated and the stay lifted; and it is further

ORDERED that a preliminary conference is scheduled for May 30, 2018 at 2:00 p.m in Room 706. Only counsel who are fully familiar with the matter and authorized to make decisions, including settlement should appear; and it is further

ORDERED that plaintiff shall serve a copy of this order with notice of entry upon the defendant within 30 days of entry.

This constitutes the decision and order of this court.

APR 25 2018

DATE



HON. DONALD A. MILES

Justice Supreme Court.