

Boyd v Assanah

2019 NY Slip Op 30637(U)

February 21, 2019

Supreme Court, Kings County

Docket Number: 500352/2019

Judge: Carl J. Landicino

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 81 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 21st day of February, 2019.

P R E S E N T:

HON. CARL J. LANDICINO,

Justice.

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JONATHAN BOYD, MANUEL BROWN,
FELICIANO MARTINEZ, and ANGEL PADILLA,

Index No.: 500352/2019

Plaintiffs,

- against -

DECISION AND ORDER

ULRIC ASSANAH,

Motion Sequence #1

Defendant.

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Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:

	<u>Papers Numbered</u>
Notice of Motion/Cross Motion and	
Affidavits (Affirmations) Annexed.....	<u>1/2, 3</u>
Opposing Affidavits (Affirmations).....	<u>4,</u>
Supplemental Affidavits (Affirmations).....	<u>5, 6,</u>
Memorandum of Law	<u>7,</u>

After oral argument and a review of the papers, the Court finds as follows:

Plaintiffs, Jonathan Boyd (“Boyd”), Manuel Brown (“Brown”), Feliciano Martinez (“Martinez”), and Angel Padilla (“Padilla”) (collectively “the Plaintiffs”) have initiated this proceeding against the Defendant Ulric Assanah (hereinafter “the Defendant”). In their Complaint, the Plaintiffs state that they reside in residential units in a building located at 2132A Fulton Street, Brooklyn, New York 11233 (hereinafter “the Premises”). The Plaintiffs also allege that the Premises was constructed before 1974 and contains at least six residential units, which are subject to the New York City Rent Stabilization Law.

The Plaintiffs, in their complaint, seek declaratory judgments that 1) the subject premises are subject to rent stabilization, 2) that the Plaintiffs are rent stabilized permanent tenants, 3) that Defendant has engage in an illusory tenancy scheme and the Plaintiffs are the rightful primary

tenants, and 4) that the legal regulated rent for each Plaintiff is \$215.00 per month. Additionally the Plaintiffs seek a permanent injunction prohibiting eviction of any Plaintiff, contrary to application of the rent stabilization law or code.

The Plaintiffs now move (motion sequence #1) by Order to Show Cause against the Defendant and seek a preliminary injunction enjoining the Defendant from generally: 1) commencing any eviction proceeding against any Plaintiff except to the extent that any such eviction proceeding asserts as a ground for eviction the nonpayment of rent or as may be authorized by the Rent Stabilization Code, 2) removing or evicting any Plaintiff without a Court Order, 3) harassing or retaliating against any Plaintiff, 4) removing any of Plaintiffs' property from their dwelling unit at the Premises, unless such Plaintiff has been duly evicted by Court Order, 5) communicating in any way with Plaintiffs concerning this action or any allegations raised herein, outside of the presence of counsel. The Plaintiffs' contend that this relief should be granted as the Plaintiffs' application satisfies the standard set forth in CPLR §6301 in as much as the underlying claims are likely to succeed on the merits, the Plaintiffs would suffer an irreparable injury absent granting the application and that the equities are in the Plaintiffs' favor. The Defendant opposes the motion and contends that it should be denied given that the Plaintiffs can seek to have the Plaintiffs' tenancies recognized as rent stabilized, as a defense or counterclaim in Civil Court/Housing Court.

In general, "[t]o be entitled to a preliminary injunction, the movant must establish (1) a likelihood of success on the merits, (2) irreparable injury absent granting the preliminary injunction, and (3) a balancing of the equities in the movant's favor." *Ruiz v. Meloney*, 26 A.D.3d 485, 485–86, 810 N.Y.S.2d 216, 217 [2nd Dept, 2006]. "The decision to grant or deny a preliminary injunction lies within the sound discretion of the Supreme Court." *XXXX, L.P. v. 363 Prospect Place, LLC*, 153 A.D.3d 588, 591, 60 N.Y.S.3d 84, 87 [2nd Dept, 2017]. CPLR §6301 provides 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.”

The Court finds that, at least for the purpose of this application, the Plaintiffs satisfy the requirement that their application has a likelihood of success on the merits. In the instant proceeding, the Plaintiffs have indicated that the Premises were constructed prior to 1974, contain more than six units and that as a result would be subject to the New York City Rent Stabilization Law. “Once a building contains six or more units, all the units in the building are brought under rent stabilization.” *124 Meserole, LLC v. Recko*, 55 Misc. 3d 146(A), 58 N.Y.S.3d 874 [App Term, 2d Dept, 2017]. “Furthermore, the units need not be legal or in conformity with building code or other requirements.” *Id.* The Defendant’s Affirmation in Opposition provides no statement from the Defendant, and provides no evidence that would undermine the claims made by the Plaintiffs regarding their likelihood of success on the merits.

What is more, the Plaintiffs have made a sufficient showing of irreparable harm by showing that the Defendant has previously instituted two prior Housing Court eviction proceedings and has since served the Plaintiffs with a Notice of Termination in his apparent anticipation of initiating a third. In opposition, the Defendant merely states that there is no warrant of eviction or a judgment of possession. However, the threat of eviction, and also the possibility of having to litigate a matter individually in Housing Court, has been found to satisfy the showing of possible irreparable harm. *See Masjid Usman, Inc. v. Beech 140, LLC*, 68 A.D.3d 942, 943, 892

N.Y.S.2d 430, 431 [2nd Dept, 2009]; see also *Pultz v. Economakis*, 8 Misc. 3d 1022(A), 803 N.Y.S.2d 20 [N.Y. County Sup. Ct. 2005].

Finally, the Court finds that a balancing of the equities does favor granting the Plaintiffs' application. Here, a balancing of the equities likewise favors the granting of preliminary injunctive relief to maintain the *status quo* pending the resolution of the action. *Cong. Machon Chana v. Machon Chana Women's Inst., Inc.*, 162 A.D.3d 635, 637–38, 80 N.Y.S.3d 61, 64 [2nd Dept, 2018].

In granting the plaintiff's motion for a preliminary injunction, the Court must also address the issue of an undertaking. *See Butt v. Malik*, 106 A.D.3d 849, 850, 965 N.Y.S.2d 540, 541 [2nd Dept, 2013]. On January 29, 2019, the Court Ordered the parties to submit supplemental affirmations on the issue of a bond. "The plain language of CPLR 6312(b) directs the court to fix the undertaking in an amount that will compensate the defendant for damages incurred "by reason of the injunction", in the event it is determined that the plaintiff was not entitled to the injunction." *Clover St. Assocs. v. Nilsson*, 244 A.D.2d 312, 313, 665 N.Y.S.2d 537 [2nd Dept, 1997].

In their Supplemental Affirmation in Support of Plaintiffs' Preliminary Injunction, the Plaintiffs contend that a nominal undertaking be ordered by the Court in satisfaction of CPLR Rule 6312(b). In opposition, the Defendant argues that an undertaking for a preliminary injunction in this matter should be fixed at no less than \$115,200.00. However, the Court finds that the amount sought by the Defendant is not rationally related to the potential harm that the Defendant may suffer in the event that it is determined that the Plaintiffs were not entitled to the injunction. What is more, the Court notes that while the Defendant's Supplemental Affirmation refers to a foreclosure proceeding (*HSBC Bank v. Assanah* Index No. 19241/2012) and states that the lack of rental income has resulted in this foreclosure proceeding, there is no affidavit or other factual

support for this position in the Supplemental Affirmation. Additionally, the Defendant can seek use and occupancy from the Plaintiffs as a means of offsetting any potential damages and the Court can award a nominal undertaking. Accordingly, the Court will award a nominal undertaking of twenty five dollars (\$25.00) from each of the Plaintiffs, in satisfaction of CPLR 6312(b). See *Wright v. Lewis*, 21 Misc. 3d 1120(A), 873 N.Y.S.2d 516 [Sup. Ct. 2008].

Based on the foregoing, it is hereby ORDERED as follows:

The motion by the Plaintiffs Jonathan Boyd, Manuel Brown, Feliciano Martinez, and Angel Padilla (motion sequence #1) for a preliminary injunction is granted pursuant to CPLR 6301; and it is further

ORDERED that each of the Plaintiffs shall each file an undertaking of \$25.00 with the Office of the Kings County Clerk within 30 days of service of a copy of this Order with Notice of Entry, and serve documentation evidencing the undertaking upon the Defendant within 20 days thereafter; and it is further

ORDERED that the Defendant Ulric Assanah, and/or his principals, agents, servants, representatives, employees, associates and/or any party on his behalf (hereinafter collectively referred to as "Agents"), are enjoined from commencing any eviction proceeding against any Plaintiff except to the extent that any such eviction proceeding asserts as a ground for eviction the nonpayment of rent or as may be authorized by the Rent Stabilization Code; and it is further

ORDERED that the Defendant Ulric Assanah and/or his Agents, are enjoined from removing or evicting any Plaintiff without a Court Order; and it is further

ORDERED that the Defendant Ulric Assanah and/or his Agents, are enjoined from harassing or retaliating against any Plaintiff; and it is further

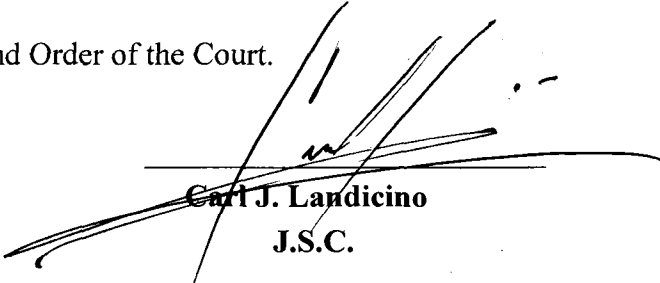
ORDERED that the Defendant Ulric Assanah and/or his Agents, are enjoined from removing any of Plaintiffs' property from their dwelling unit at the Premises unless such Plaintiff has been duly evicted by and pursuant to Court Order; and it is further

ORDERED that the Defendant Ulric Assanah and/or his Agents, are enjoined from communicating in any way with Plaintiffs concerning this action or any allegations raised herein, except by and through counsel.

ORDERED, that this Preliminary Injunction shall continue pending further order of the Court.

The foregoing constitutes the Decision and Order of the Court.

ENTER:


Carl J. Landicino
J.S.C.

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KINGS COUNTY CLERK
FILED