

**KMI Chambers St., LLC v Tribeca Fit Inc.**

2020 NY Slip Op 30263(U)

January 13, 2020

Supreme Court, New York County

Docket Number: 653000/2019

Judge: Paul A. Goetz

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PAUL A. GOETZ PART IAS MOTION 47EFM

Justice

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KMI CHAMBERS STREET, LLC,
Plaintiff,

INDEX NO. 653000/2019

MOTION DATE N/A

MOTION SEQ. NO. 001

- v -

TRIBECA FIT INC., MICHAEL SPERBER, 105
MANAGEMENT CORP.

DECISION + ORDER ON
MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 35, 36, 38, 40

were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR

Plaintiff is a subtenant and defendant, Tribeca Fit Inc., is the landlord, at a portion of premises located at 105-107 Chambers Street. Plaintiff offers exercise classes to its members at the premises. Pursuant to the sublease between plaintiff and Tribeca Fit, Tribeca Fit is required to provide "comprehensive front desk service" including checking plaintiff's members in to allow them access to the premises so that they may participate in the exercise classes offered by plaintiff. The sublease further requires Tribeca Fit to "instruct [defendant] Michael Sperber and his team to refrain from making contact, verbal or otherwise" with plaintiff's employees and invitees. Plaintiff alleges, and Tribeca Fit's opposition does not dispute, that defendant Sperber is violating the no harassment provision of the sublease by verbally abusing, threatening and restricting access to plaintiff's employees and members. Plaintiff responded to defendant Sperber and Tribeca Fit's actions by withholding its rent payment for May, 2019. Tribeca Fit then withheld towel and front desk services and increased restrictions on access to the premises to plaintiff, its employees and invitees. In addition, in June, 2019, Tribeca Fit discontinued

electrical power to the premises which was restored after plaintiff's attorney emailed Tribeca Fit's attorney. Then in July, 2019, defendant Sperber informed plaintiff that plaintiff would soon be locked out of the premises. Plaintiff asserts that Tribeca Fit's actions have "been financially devastating" to plaintiff and that Tribeca Fit's withholding of essential services will cause plaintiff to go out of business.

Plaintiff seeks a preliminary and permanent injunction restraining Tribeca Fit and all persons acting on its behalf from: 1) restricting plaintiff, its employees and invitees from accessing the premises; 2) using self-help to remove or restrict plaintiff, its employees or invitees from accessing the premises; 3) engaging in commercial tenant harassment against plaintiff; 4) otherwise interfering with plaintiff's interests in the premises based upon any alleged default or otherwise. Plaintiff further seeks and order compelling Tribeca Fit to provide front desk and towel services to plaintiff, its employees and invites including checking-in plaintiff's members. Finally, plaintiff seeks civil penalties in the amount of \$10,000 plus attorneys' fees, costs and disbursements.<sup>1</sup>

Plaintiff argues Tribeca Fit engaged in "commercial tenant harassment" as that term is defined by NYC Administrative Code §§ 22-901 & 22-902 and that pursuant to NYC Adm Code § 22-903 it is entitled to injunctive relief, civil penalties and attorneys' fees and costs. In opposition, Tribeca Fit submits its counsel's affirmation arguing that an evidenciary hearing is required before the court grants injunctive relief.

Plaintiff made a prima facie showing of a reasonable probability of success on the merits of its claim for a permanent injunction, irreparable harm absent injunctive relief, and that the

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<sup>1</sup> At oral argument, plaintiff's counsel withdrew his request for an order enjoining and restraining Tribeca Fit from terminating plaintiff's lease for the premises and commencing any legal proceedings against plaintiff, including a summary proceeding.

balancing of the equities weigh in its favor (*Ciment v Spantran, Inc.*, 155 AD3d 494 [1<sup>st</sup> Dept 2017]). However, Tribeca Fit is correct that plaintiff is not entitled to a permanent injunction and a determination that Tribeca Fit engaged in commercial tenant harassment without an evidenciary hearing (*Jamie B. v Hernandez*, 274 AD2d 335, 336 [1<sup>st</sup> Dept 2000]).

Finally, CPLR 6312 (b) requires the court to set an undertaking rationally related to the damages defendants may sustain in the event that that a final determination is made that the injunction is unwarranted (*Spivak v Bertrand*, 147 AD3d 650, 652 [1<sup>st</sup> Dept 2017]). Since the scope of the injunction will be limited to directing defendants to comply with the no harassment provision of the sublease between plaintiff and Tribeca Fit and to not engage in commercial tenant harassment, obligations already imposed upon defendants, there are no potential losses likely to be incurred by defendants in the event that a final determination is made that the injunction is unwarranted (*cf id.*). Therefore, under these circumstances, a modest undertaking is appropriate.

Accordingly, since it appears that a cause of action exists in favor of plaintiff and against defendants and that plaintiff is entitled to a preliminary injunction on the ground that defendants threaten or are about to do, or are doing or procuring or suffering to be done, an act or acts in violation of plaintiff's rights respecting the subject of this action and tending to render the judgment ineffectual, as set forth above plaintiff has demanded and would be entitled to a judgment restraining defendants from the commission or continuance of an act or acts which, if committed or continued during the pendency of this action, would produce injury to plaintiff, it is:

ORDERED that the undertaking is fixed in the sum of \$1,000.00 conditioned that plaintiff, if it is finally determined that it was not entitled to an injunction, will pay to defendants all damages and costs which may be sustained by reason of this injunction; and it is further

ORDERED that defendants, their agents, servants, employees and all other persons acting under the jurisdiction, supervision and/or direction of defendants, are enjoined and restrained, during the pendency of this action, from doing or suffering to be done, directly or through any attorney, agent, servant, employee or other person under the supervision or control of defendants or otherwise, any of the following acts: restricting plaintiff, its employees and invitees from accessing the premises; using self-help to remove or restrict plaintiff, its employees or invitees from accessing the premises; discontinuing essential services, including but not limited to electrical power, front desk check-ins, and towel service; or otherwise engaging in commercial tenant harassment against plaintiff, its employees and invitees as that term is defined by NYC Adm. Code § 22-902; and it is further

ORDERED that plaintiff's application for a permanent injunction and for civil penalties, plus attorneys' fees, costs and disbursements is denied without prejudice to a final determination being made after a hearing or trial in this action.

11/13/20  
DATE

  
PAUL A. GOETZ, J.S.C.

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