

**Monica King Contemporary LLC v Kedzkidz Realty
II, LLC**

2021 NY Slip Op 30222(U)

January 21, 2021

Supreme Court, New York County

Docket Number: 657042/2020

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 14

Justice

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INDEX NO. 657042/2020

MONICA KING CONTEMPORARY LLC AND, MONICA KING

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 001

- v -

KEDZKIDZ REALTY II, LLC,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 26, 28, 29, 30

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

Plaintiff’s motion, brought by order to show cause, for a preliminary injunction is granted.

Background

Plaintiffs, a corporate tenant and individual “good guy” guarantor, seek injunctive relief arising out of a lease entered into with defendant (the landlord). Plaintiff King insists that because of the ongoing pandemic, she invoked a provision of the lease that permitted her to terminate the lease and surrender the premises with six months’ notice. King explains that she has paid all amounts she believes are due under the lease in order to meet her obligations under the good guy guaranty.

King acknowledges, however, that there is a dispute between the plaintiffs and defendant over exactly how much is due. And so plaintiffs seek a stay of plaintiffs’ time to pay any additional amounts they may owe to defendant so that King can still invoke the good guy

guaranty. In other words, plaintiffs seek a determination of the rights of the parties so that she can satisfy the good guy guarantee without racking up additional money owed while the dispute is resolved. She simply wants to stop the bleeding until the Court determines how much, if anything, she owes.

In opposition, defendant does not submit an affidavit from the landlord and does not challenge a single fact asserted by plaintiffs in the moving papers. Although the attorneys point out that they were just retained, they were able to submit an affirmation in opposition and detailed memorandum of law; certainly they could have submitted a short affidavit from the landlord challenging the plaintiff's version of the facts and swearing that he believes that more money is due. Instead, the attorneys argue that this is a dispute about the amount of money owed to defendant and plaintiffs are not entitled to a preliminary injunction. They claim that the complaint only seeks monetary damages and a declaratory judgment about the amounts in dispute.

In reply, plaintiffs emphasize that the case is not only about monetary damages and point to the first cause of action for declaratory judgment. King claims that plaintiffs turned in the keys and surrendered the premises as of January 10, 2021 (NYSCEF Doc. No. 29).

Discussion

“A preliminary injunction substantially limits a defendant's rights and is thus an extraordinary provisional remedy requiring a special showing. Accordingly, a preliminary injunction will only be granted when the party seeking such relief demonstrates a likelihood of ultimate success on the merits, irreparable injury if the preliminary injunction is withheld, and a balance of equities tipping in favor of the moving party” (*1234 Broadway LLC v W. Side SRO Law Project*), 86 AD3d 18, 23, 924 NYS2d 35 [1st Dept 2011] [citation omitted]).

The Court grants the motion. In the moving papers, plaintiff King explains that she has paid all sums due under the lease but because of the ongoing pandemic, she plans on vacating the premises in January 2021 pursuant to a notice to vacate and surrender the premises (NYSCEF Doc. No. 6). Her reply updates the facts that she did, indeed, vacate and surrender. She contends that the issue is that there is a dispute over how much has to be paid in order for her to invoke the terms of the good guy guaranty (and thereby absolve herself of any further obligations under the lease). Of course, King cannot pay all amounts due up to the date of surrender and satisfy the good guy guarantee if the parties cannot agree exactly what is due. Because the parties have not been able to agree, plaintiffs brought this case to stop the clock and avoid a moving target.

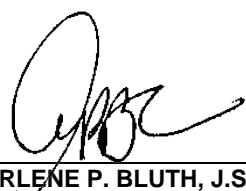
That states a sufficient basis for a preliminary injunction. The financial bleeding should stop as of the date of surrender, and the parties can make their case about how much, if anything, is due. The balancing of the equities also tips in King's favor; she claims she just wants the opportunity to pay what it owed up until the premises are surrendered, and defendant is entitled to every penny of that from the guarantor but no more. To allow defendant to refuse the surrender could potentially increase the guarantor's obligation each month while the dispute dragged on; without this preliminary injunction, she may not be able to utilize the good guy guaranty at all—that is irreparable harm.

While defendant is correct that a preliminary injunction should not be issued where the harm can be compensated by monetary damages (*Chiagkouris v 201 W. 16 Owners Corp.*, 150 AD3d 442, 54 NYS3d 5 [1st Dept 2017]), the fact is that plaintiff's first cause of action seeks declaratory relief and not just money damages.

Accordingly, it is hereby

ORDERED that the motion by plaintiffs for a preliminary injunction to stay the time plaintiffs have to comply with the terms of the Lease and the good guy guaranty until the exact amount owed to defendant is determined is granted. That amount will be calculated as of the date of surrender, attempted surrender (in the event landlord refused to accept the keys) or January 10, 2021, whichever is later.¹

Remote Conference: May 4, 2021.



1/21/2021
DATE

ARLENE P. BLUTH, J.S.C.

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

¹ Although plaintiffs contend that the keys were returned and the premises were surrendered, the Court is not aware whether the landlord has accepted the surrender.