

184-188 Claremont Inv. LLC v Knowles

2014 NY Slip Op 33126(U)

December 3, 2014

Sup Ct, New York County

Docket Number: 160129/14

Judge: Donna M. Mills

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 58

184-188 CLAREMONT INVESTORS LLC,

Plaintiff,

- against -

PAMELA KNOWLES,

Defendant.

INDEX NO.
160129/14

DECISION/ORDER

DONNA M. MILLS, J:

Plaintiff, 184-188 Claremont Investors LLC, seeks a preliminary injunction staying and enjoining the defendant, Pamela Knowles, from permitting, during the pendency of this action, any persons other than Pamela Knowles herself and such persons who have been in occupancy of such premises for more than thirty days prior to the granting of this Order to Show Cause to occupy the premises at 184-188 Claremont Avenue, Apartment 2S, New York, New York. Plaintiff also seeks an order directing the defendant to pay use and occupancy during the pendency of this action. Defendant opposes the motion and cross-moves for an order to dismiss this action on the grounds that the Civil Court of the City of New York is the proper forum for resolving the issues raised by this action.

Plaintiff, the owner of the building in which defendant resides, alleges that defendant is using her apartment as a place to gouge students of Columbia University so that her occupancy of the subject apartment is at a profit. Plaintiff contends that the defendant constantly has a turnover of occupants in her apartment, which endangers other occupants of the building who have no way of keeping track of who is legitimately present in the building and who is not. The plaintiff is therefore asking that the defendant not rent to anyone new during this case and that defendant either pay or deposit her rent to the care of an appropriate fiduciary, also during the pendency of this action.

Defendant in opposition to the plaintiff's request for a preliminary injunction states that she has lived in the subject premises without incident, and contrary to the plaintiff's contention, she does not illegally sublet her apartment, and currently has one roommate. Defendant also states that the legal rent is in dispute. It is undisputed that there is a pending State of New York Division of Housing and Community Renewal's ("DHCR") determination of the legal rent. Defendant contends that this action is in retaliation for having filed the rent overcharge complaint with DHCR.

Defendant maintains that upon receipt of her DHCR rent overcharge complaint, plaintiff commenced a holdover proceeding against her in Housing Court, asserting identical claims as alleged in the within action; namely that she was illegally subletting the subject apartment. The holdover proceeding was abandoned by plaintiff and the proceeding was dismissed by the court.

Plaintiff also commenced a non-payment proceeding against the defendant in Housing Court on July 2, 2014. In that action the plaintiff discontinued the proceeding on October 16, 2014. On October 15, 2014, a day before filing the Stipulation of Discontinuance, the plaintiff commenced the within Supreme Court action. The following day on October 16, 2014 plaintiff filed the instant Order to Show Cause seeking to enjoin the plaintiff from renting the apartment to anyone new during this case and that the defendant either pay or deposit her rent to the care of an appropriate fiduciary.

The purpose of a preliminary injunction is to preserve the status quo until a decision is reached on the merits" (*Icy Splash Food & Beverage, Inc. v Henckel*, 14 AD3d 595, 596 [2005]). To obtain a preliminary injunction pursuant to CPLR 6301, plaintiff must demonstrate a probability of success on the merits, an irreparable injury in the absence of an injunction, and a balance of equities in his favor. See *Post v Killian*, 73 AD3d 507, 508 (1st Dept 2010).

The decision of whether to issue a preliminary injunction rests in the trial court's sound discretion (see *Schweizer v. Town of Smithtown*, 19 A.D.3d 682, 682, 798 N.Y.S.2d 99 [2005]; *Honeywell Intl. v. Freedman & Son*, 307 A.D.2d 518, 519, 761 N.Y.S.2d 745 [2003]).

The Court recognizes that preliminary injunctions in the context of housing matters are normally not favored. It has been held that the Civil Court's Housing Court is the preferred forum for resolving landlord-tenant issues (*Post v. 120 East End Ave. Corp.*, 62 N.Y.2d 19 [1984]). However, the relief that plaintiff seeks in this action, which is to permanently enjoin defendant from renting out space in her apartment to anybody at all is not available in Housing Court. Therefore, defendant's cross-motion to dismiss this action on the basis of improper forum shall be denied.

This Court finds that the plaintiff has not established the need for a preliminary injunction. In light of defendant's clear and unequivocal rights to having roommates pursuant to RPL § 235-f, and to sublet her apartment pursuant to RPL § 226-b, plaintiff bears a heavy burden to be granted an injunction restraining defendant from enjoying these rights. In the case at bar, the plaintiff owner failed to establish the element of probability of success on the merits. By determining that plaintiff is not entitled to a preliminary injunction this Court is not making any finding as to the ultimate success or failure of the action.

Plaintiff also seeks an order directing the defendant to pay use and occupancy during the pendency of this action. Plaintiff annexes a rent ledger which indicates that defendant's current rent is \$3,300 and that she is currently \$56,100 in arrears. Defendant opposes the request for use and occupancy on the grounds that she has pending with DHCR for nearly two years a rent overcharge complaint. In light of the disputed amount of arrears that is claimed, this Court will exercise its discretion and direct the rent payments

for use and occupancy, pendent lite, in the amount of the last renewal lease which terminated on June 30, 2013, so as to maintain the status quo.

Accordingly, it is

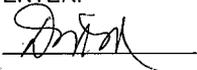
ORDERED that plaintiff's motion for a preliminary injunction is denied and it is further

ORDERED that plaintiff's motion for pendente lite use and occupancy is granted and the defendant is directed to pay \$3,300 to plaintiff commencing in January 2015 when it becomes due, and shall continue to pay use and occupancy at said rate on each rental due date until resolution of the underlying action; and it is further

ORDERED that defendant's cross motion to dismiss the action is denied.

Dated: 12/3/14

ENTER:



J.S.C.
DONNA M. MILLS, J.S.C.