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Shaffner v. New Start Dev. LLC

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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 360 Adams Street, Brooklyn, New York, On the 20th day of November 2020.

PRESENT:

CARL J. LANDICINO, J.S.C.

-----X
BROOKE SHAFFNER, MARLEY ZENO, PATRICIA BARRET, KATHERINE CRAIG, SUZANNA COLE, KATLIN LEWIS, IHO TAGUCHI, OTHENIEL DENIS, PATRICK HAYS, MICHAEL HICKS, APRIL QI, ROBERT POUNDING, ADA DESMOND, MARIA COBB, ANNA MILLER, KAREN HAYARDENNY, BRANDON PERRY, ABIGAIL PERRY, JOCELYN FLOTTERON, TANIS ROBILLARD, MARTINA MACALDO, SUSANNA BANKS SHOSHANA BAUMINGER, ELIZABETH CARBONELL, XONANA SCRUBB and ELIYAHU WINKLER,

Index No.: 2704/2018

DECISION AND ORDER

Motion Sequence #3

Plaintiffs:

- against -

NEW START DEVELOPMENT, LLC, STERLING PLACE CONDO, LLC, ALFRED THOMPSON, and LAQUISHA THOMAS,

Defendants.

-----X

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

Papers Numbered

Notice of Motion/Cross Motion and Affidavits (Affirmations) Annexed.....	1/2,
Opposing Affidavits (Affirmations).....	3,
Reply Affidavits (Affirmations).....	4,
Memorandum of Law.....	5, 6
Supplemental Affidavits.....	7, 8

Upon the foregoing papers, and after oral argument, the Court finds as follows:

The Plaintiffs, Brooke Shaffner, Marley Zeno, Patricia Barret, Katherine Craig, Suzanna Cole, Katlin Lewis, Iho Taguchi, Othniel Denis, Patrick Hays, Michael Hicks, April Qi, Robert Pounding, Ada Desmond, Maria Cobb, Anna Miller, Karen Hayardenny, Brandon Perry, Abigail Perry, Jocelyn Flotteron,

Tanis Robillard, Martina Macaldo, Susanna Banks, Shoshana Bauminger, Elizabeth Carbonell, Xonana Scrubb and Eliyahu Winkler (hereinafter referred to individually or collectively as the “Plaintiffs”) have initiated this proceeding and raise causes of action for declaratory judgments in relation to the proper regulated rents for each Plaintiff in relation to the property known as 792 Sterling Place, Brooklyn, NY (hereinafter “the Premises”). The Plaintiffs individually allege that they have been over charged by the Defendants, New Start Development, LLC, Sterling Place Condo, LLC, Alfred Thompson and Laquasia Thomas (hereinafter referred to individually or collectively as the “Defendants”), the purported owners/managers of the Premises. The Plaintiffs contend that as a result this Court should determine the lawful rent amounts for each Plaintiff, determine the amount of actual rent over charged and collected by the Defendants; award treble damages to any Plaintiff who has been over charged, declare that future leases must comply with specific statutory provisions, and award attorney’s fees to them.

The Plaintiffs now move by order to show cause (motion sequence #3) for a preliminary injunction enjoining the Defendants from 1) commencing any proceeding to recover possession of, or evict any of the Plaintiffs from, the Premises 2) collecting rent in excess of Plaintiffs’ current leases during the pendency of this action, and 3) communicating with any of the Plaintiffs for the purpose of causing them to vacate, surrender, or abandon their apartments.

The Defendants oppose the motion and contend that the preliminary injunction should be denied. The Defendants contend that the Plaintiffs’ application for an injunction should be denied as it unduly infringes upon the Defendants’ right to collect rent for the individual apartments and will negatively impact the Defendants’ ability to manage and maintain the Premises.

“To 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 AD3d 485, 485–86, 810 N.Y.S.2d 216, 217 [2d Dept

2006]. “The purpose of a preliminary injunction is to maintain the status quo and prevent the dissipation of property that could render a judgment ineffectual.” *Ying Fung Moy v. Hoho Umeki*, 10 AD3d 604, 604, 781 N.Y.S.2d 684, 686 [2d Dept 2004]. However, “[c]onclusive proof is not required, and a court may exercise its discretion in granting a preliminary injunction even where questions of fact exist.” *Vanderbilt Brookland, LLC v. Vanderbilt Myrtle, Inc.*, 147 AD3d 1104, 1106, 48 N.Y.S.3d 251, 254 [2d Dept 2017].

The Court finds that the Plaintiffs have shown a likelihood of success on the merits. In the instant proceeding, the Plaintiffs’ have provided detailed information regarding at least two of the Plaintiffs, namely Patricia Barrett and Anna Miller. The Plaintiffs have shown that these tenants already have established in prior Housing Court proceedings (see for example *Sterling Pl. Condo v. Shaffner L&T* Index No. 077557/2017 (Civ. Ct. Kings County)) that the Defendants have improperly offered Plaintiff Shaffner leases that did not comply with the applicable rent regulations. This is significant given that conclusive evidence is not required to show a likelihood of success on the merits. See *McNeil v. Mohammed*, 32 AD3d 829, 821 N.Y.S.2d 225 [2d Dept 2006]; *Ruiz v. Meloney*, 26 AD3d 485, 810 N.Y.S.2d 216 [2d Dept 2006].

The Plaintiffs’ have also provided evidence of irreparable harm if the *status quo* is not preserved during the pendency of this proceeding. The Plaintiffs point to the existence of a purported “tenant black-list” as showing evidence of irreparable harm that is separate and apart from any monetary damages that they might sustain if the injunction is not granted. The “tenant black-list” is alleged to be a list of persons generated by various reporting agencies that landlords use across the United States in order to deny a prospective tenant a lease application, based upon these persons having been taken to Housing Court by a prior landlord. A person being placed on such a list can occur even if the Housing Court proceeding was decided in the tenant’s favor. See *Bernhardt v. 411 Clinton St. Holdings, LLC*, 51 Misc. 3d 1229(A), 41 N.Y.S.3d 448 [N.Y. Sup. Ct. 2016].

Moreover, Housing Court eviction proceedings have apparently been initiated against the Plaintiffs. The Plaintiffs also correctly contend that eviction from one's home constitutes irreparable harm which is not reducible to monetary damages. *See Cong. Machon Chana v. Machon Chana Women's Inst., Inc.*, 162 AD3d 635, 637, 80 N.Y.S.3d 61, 64 [2d Dept 2018]; see also *Masjid Usman, Inc. v. Beech 140, LLC*, 68 AD3d 942, 943, 892 N.Y.S.2d 430, 431 [2d Dept 2009]; see also *Jiggetts v. Perales*, 202 A.D.2d 341, 609 N.Y.S.2d 222 [1st Dept 1994].

The Court also finds that the Plaintiffs have shown that the equities are in their favor. The Plaintiffs contend that while they would be prejudiced if the injunction is not granted, as detailed above, the Defendants would not be prejudiced given that the Plaintiffs would continue to pay rent, and the Defendants would still be entitled to initiate Housing Court proceedings in the event that the instant matter is not resolved in favor of the Plaintiffs. *See Rosenthal v. Mahler*, 141 AD2d 625, 628, 529 N.Y.S.2d 365, 367 [2d Dept 1988]; see also *Jones v. Park Front Apartments, LLC*, 73 AD3d 612, 612, 901 N.Y.S.2d 46, 47 [1st Dept 2010].

In the instant proceeding, the Plaintiffs have provided sufficient evidence in support of their application for preliminary injunctive relief. The preliminary injunction is granted. The Plaintiffs have shown that they are tenants at the Premises and that any lease agreements offered by the Defendants or Housing Court proceedings initiated against the Plaintiffs, prior to the resolution of this action, could prejudice them. The Plaintiffs in possession are directed to continue to pay the previously agreed to rents during the pendency of this proceeding.

In granting the Plaintiffs' motion for a preliminary injunction, the Court must also address the issue of an undertaking. *See Butt v. Malik*, 106 AD3d 849, 850, 965 N.Y.S.2d 540, 541 [2d Dept 2013]. The Court has previously directed 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 AD2d 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 that the Plaintiffs are rent regulated tenants of limited means and that any damages that would be sustained by the Defendants are speculative. Accordingly, the Plaintiffs assert that a nominal undertaking should be ordered by the Court in satisfaction of CPLR Rule 6312(b). In opposition, the Defendants do not suggest a specific amount for an undertaking. Defendants argue that an undertaking for a preliminary injunction in this matter should be fixed at an amount equal to the lawful increases allowed for each tenant. However, the Court finds that the amount sought by the Defendants is not rationally related to the potential harm that the Defendants may suffer in the event that it is determined that the Plaintiffs were not entitled to the injunction. This is because any injunction that is issued by this Court is without prejudice to claims that the Defendants may have to lawful rent increases in this proceeding. Accordingly, a nominal undertaking of twenty-five dollars (\$25.00) from each of the Plaintiffs in possession will be posted 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:

ORDERED that the motion by the Plaintiffs (motion sequence #3) for a preliminary injunction is granted to all tenants/Plaintiffs in possession pursuant to CPLR 6301, and each such tenant/Plaintiff shall continue to pay the previously agreed to rent, pending further order of the Court; and it is further

ORDERED that each of the Plaintiffs in possession shall post 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 Defendants within 20 days thereafter; and it is further

ORDERED that the Defendants and/or their principals, agents, servants, representatives, employees, associates and/or any party on their behalf (hereinafter collectively referred to as “Agents”), are enjoined

from commencing any proceeding to recover possession of, or evict any of the Plaintiffs from, the Premises; and it is further

ORDERED that the Defendants and/or their Agents, are enjoined from collecting rent in excess of Plaintiffs' current leases during the pendency of this action; and it is further

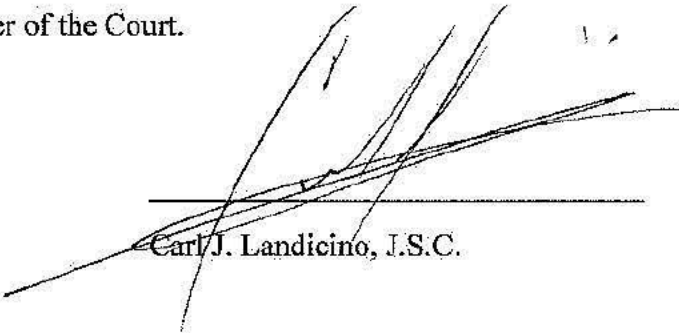
ORDERED that the Defendants and/or their Agents, are enjoined from communicating with any of Plaintiffs for the purpose of causing them to vacate, surrender, or abandon their apartments; and it is further

ORDERED that the Defendants and/or their Agents, are enjoined from communicating in any way with Plaintiffs concerning this action or any allegations raised herein, except by and through counsel; and it is further

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.