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19 India Fee Owner LLC v. Miller

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19 India Fee Owner LLC v Miller
2021 NY Slip Op 30816(U)
March 11, 2021
Supreme Court, Kings County
Docket Number: 503704/2021
Judge: Ingrid Joseph
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At an I.A.S. Term, **Part 83** 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 11th day of March, 2021.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS
P R E S E N T : HON. INGRID JOSEPH, J.S.C

-----X
19 INDIA FEE OWNER LLC,

Plaintiff,

-against-

TERRELL MILLER,

Defendant,

-----X
Recitation, as required by CPLR 2219(a), of the papers considered herein:

Index No.: 503704/2021
Motion Seq. 1

NYSCEF No.s

Order to Show Cause/Affirmation/Affidavit/Exhibits Annexed 2 - 11; 13 - 16

Plaintiff, 19 INDIA FEE OWNER LLC (“plaintiff”), commenced this matter by the filing of a Summons and Verified Complaint on February 16, 2021, with the instant emergency Order to Show Cause for injunctive relief and a temporary restraining order pursuant to CPLR §§ 6301, 6311 and 6313(a). Defendant, Terrell Miller (“defendant”), submitted no written opposition and failed to appear for oral argument, held on March 3, 2021, via Microsoft Teams.

Plaintiff is the owner of the building located at 21 India Street, Brooklyn, New York 11222 (“building”), wherein defendant is a tenant pursuant to a one-year lease agreement. Plaintiff seeks injunctive relief and a temporary restraining order against the defendant, based upon its contention that the defendant’s conduct is offensive, objectionable, and a nuisance, which has created health-related and safety risks affecting other occupants of the building. Specifically, plaintiff alleges that the defendant (1) refuses to wear a mask over his nose and mouth or socially distance in common areas and the gym; (2) allows his dog to run “off leash;” and (3) regularly causes marijuana smoke to

emanate from his apartment. Plaintiff asserts that the defendant's actions contravene paragraphs 11(A), 11(B), and 12 of the Lease, Paragraph 9 of the Rules to the Lease, as well as the Gym Rules and Non-Smoking Riders (referred collectively as "lease agreements"). Plaintiff annexed copies of the lease agreements, multiple photos showing COVID-19-related signs posted throughout common areas, and affidavits from staff members and the tenant who resides in the apartment directly beneath the defendant.

Andre Clanagan ("Mr. Clanagan"), the Senior Community Manager of the building since August 2020, states, in his affidavit, that the defendant is consistently observed in common areas, including the gym, without a mask covering his nose and mouth despite signage related to COVID-19 safety precautions that is posted throughout the building. Mr. Clanagan further states that he has received multiple complaints about the defendant's large dog, which the defendant allows to roam about the premises without a leash. According to Mr. Clanagan, other tenants have also complained about the marijuana smoke emanating from the defendant's apartment into the tenth and eleventh floor hallway area. Mr. Clanagan explains that the defendant's conduct is the mainspring for requests from several of the residents for early termination of their leases.

The maintenance manager, Francisco Cedano ("Mr. Cedano"), attests to many of the same issues in his affidavit. Additionally, Mr. Cedano recounts a day in January 2021, when one of the tenants reported a gas smell in the building. Mr. Cedano states that the New York City Fire Department identified no issues but that the defendant later disclosed, to a National Grid representative, that he left his stove burner on for hours while smoking marijuana.

In his affidavit, Michael Ramos ("Mr. Ramos"), who provides Concierge service at the building, confirms receiving complaints about the defendant's conduct from other tenants in the building. Mr. Ramos states that he has also observed such conduct via the surveillance system, specifically, the defendant playing basketball in the gym without a mask.

Melissa Hougland ("Ms. Hougland"), who resides in the apartment directly beneath the defendant, in her affidavit, recounts multiple incidents, between September 2020 and December 2020. Ms. Hougland states that the defendant discharges saliva over his terrace when working out. According to Ms. Hougland, the saliva is carried onto her terrace by the wind. Ms. Hougland also

alleges that the defendant's dog barks incessantly, urinates and defecates on his terrace, Ms. Houghland states that the dog's excrement leaks onto her terrace. Further, Ms. Houghland avers that she has smelled marijuana smoke coming from the defendant's apartment through the vent canals that run through her and the defendant's bathrooms. According to Ms. Houghland, these issues have rendered her terrace unusable and the apartment uninhabitable.

The purpose of a preliminary injunction is to maintain the status quo and not to determine the ultimate rights of the parties (*Matter of Weaton/TMW Fourth Ave., LP v New York City Dept. of Bldgs.*, 65 AD3d 1051, 1052 [2d Dept 2009]). The moving party is required to demonstrate a likelihood of success on the merits, irreparable injury absent a preliminary injunction, and a balancing of the equities in its favor (*see CPLR § 6301; Cong. Mchou Chan v Machon Chana Women's Inst., Inc.*, 162 AD3d 635, 637 [2d Dept 2018]). "The decision to grant a preliminary injunction is a matter ordinarily committed to the sound discretion of the court hearing the motion" (*Nelson v Jannace*, 248 AD2d 448 [2d Dept 1998]).

Here, plaintiff submitted sufficient evidence to demonstrate that it has a likelihood of success on the merits of its claim for a judgment declaring that the defendant has breached provisions of the lease agreements. As summarized above, there are multiple accounts from individuals with personal knowledge of the defendant's refusal to wear a mask in common areas, allowing his dog to roam without a leash, and smoking. The wearing of a mask or face covering is required under Section 66-3.2(a) of Title 10 of the New York City Rules and Regulations law, and, under Section 11(A) of the Lease. The defendant, upon signing the lease documents, agreed to comply with all present and future city, state and federal laws and regulations. Additionally, as provided in the supplemental Rules documents and Riders to the lease, the defendant agreed that he would obey gym usage rules, leash his dog, and not smoke in the building, including in his apartment.

The irreparable injury component is self-explanatory under the circumstances of this case. Plaintiff, as landlord and owner of the building, is contractually and statutorily obligated to provide habitable housing not only to the defendant, but each resident in the building. Moreover, the defendant's conduct, which involves allowing his dog to roam off-leash and his alleged refusal to comply with COVID-19 safety measures, poses an imminent threat to the safety and well being of

individuals in or about the premises.

Furthermore, the court finds that a balancing of the equities militate in favor of enjoining the defendant from violating the lease agreements and Section 66-3.2(A) of Title 10 of the New York City Rules and Regulations law. The risk of irreparable injury to the plaintiff, as landlord and owner of the building, staff, tenants and visitors on the subject property, outweigh the imposition of an injunction and temporary restraining order that merely requires the defendant to comply with his contractual obligations.

Based upon the foregoing, the instant application is granted, on default, to the extent provided herein, that a temporary restraining order is granted in favor of plaintiff, 19 India Fee Owner LLC, and against defendant, Terrell Miller.

Accordingly, it is hereby

ORDERED, that the defendant, Terrell Miller, cease and desist smoking in or about the building located at 19 India Street, Brooklyn, New York 11222, including in his apartment at T-1103, and on the terrace connected thereto, and it is further

ORDERED, that the defendant, Terrell Miller, is enjoined from allowing his dog to attack other animals or roam without a leash in or about the building, located at 19 India Street, Brooklyn, New York 11222, and it is further

ORDERED, that the defendant, Terrell Miller, shall cover his nose and mouth with a mask or face covering, in accordance with Section 66-3.2(A) of Title 10 of the New York City Rules and Regulations, when the defendant is in common areas or the gym, located at 19 India Street, Brooklyn, New York 11222, and it is further

ORDERED, that the parties shall appear for the hearing for a preliminary injunction in Kings Supreme Court, Civil Virtual Part 83, via Microsoft Teams, on Tuesday, April 27, 2021 at 11:00 a.m., and it is further

ORDERED, that the plaintiff, 19 India Street Fee Owner LLC, shall serve a copy of the instant order upon the defendant with Notice of Entry within five (5) days of such entry, together with a Notice of Hearing for Preliminary Injunction, and it is further

ORDERED, that the plaintiff, 19 India Street Fee Owner LLC, shall serve such notices

ORDERED, that the plaintiff, 19 India Street Fee Owner LLC, shall serve such notices personally upon the defendant, via the defendant's email address, and, in the same manner as a summons pursuant to CPLR § 6313(b), and it is further

ORDERED, that the plaintiff, 19 India Street Fee Owner LLC, shall file all proofs of service in the New York State Courts Electronic Filing (NYSCEF) System within five (5) days of completing the service requirements herein.

This constitutes the decision and order of the court.

ENTER



HON. INGRID JOSEPH, J.S.C.