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2022-02-08

### Gariboglu v. 1505 Third Ave. LLC

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| <b>Gariboglu v 1505 Third Ave. LLC</b>   |
| 2022 NY Slip Op 30448(U)   |
| February 8, 2022   |
| Supreme Court, New York County   |
| Docket Number: Index No. 161029/2020   |
| Judge: Margaret Chan   |
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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. MARGARET CHAN PART 33**

*Justice*

-----X

TOLGA GARIBOGLU, IREM GARIBOGLU

Plaintiff,

- v -

1505 THIRD AVENUE LLC, GERMAN NEWS COMPANY,  
INC.,

Defendants.

-----X

INDEX NO. 161029/2020

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29

were read on this motion to/for PRELIM INJUNCTION/TEMP REST ORDER

Plaintiffs move, by order to show cause, for a preliminary injunction enjoining defendants from interfering with plaintiffs' residence at Apartment 1D (the Apartment) located in 200 East 85th Street, New York, NY (the Building). Defendants oppose the motion.

Plaintiffs, as tenants, entered into two one-year leases with defendant landlord German News Company (German News), the first on August 1, 2014, and the second on August 1, 2015 (NYSCEF # 27, Akipek Aff., ¶ 4; NYSCEF # 28<sup>1</sup>). Defendant 1505 Third Avenue LLC (Third Ave LLC) is the owner of the Building and German News was the triple net lessee (NYSCEF # 21, Art. 35, NYSCEF # 22; NYSCEF #18-Goldman Aff, ¶ 4). In December 2018, a fire broke out, which seriously damaged the Building and caused a vacate order (the Vacate Order) to be issued against the entire Building (NYSCEF # 6). As a result of the fire, plaintiffs were relocated to another apartment.

Plaintiffs subsequently sought to be restored to the Apartment. In a letter dated April 23, 2019, Jeffrey Goldberg, an attorney who identified himself as representing both defendants, informed plaintiffs that in light of the damage to the Building, work was expected to take eight months to a year and that as a result "you will not be permitted to return to your apartment under your existing lease which has or will expire" (NYSCEF # 10). The letter advised plaintiffs that they were obligated to remove all their possessions from the Apartment by May 17, 2019, or their property would be removed (*id*). By letter dated May 16, 2019, plaintiffs

<sup>1</sup> The record includes only the August 1, 2015 lease.

indicated their intent to return to the Apartment and that the Apartment was rent regulated (NYSCEF # 11). By email dated May 21, 2019, Mr. Goldberg responded that the Apartment was deregulated (NYSCEF # 12).

Plaintiffs subsequently commenced this action, in which they allege that as rent regulated tenants, they are entitled to re-occupy the Apartment, and assert claims for (i) a declaration that they are entitled to the protections of the rent stabilization law; (ii) an injunction restoring them to their Apartment and staying and enjoining defendants from interfering with their rights to the Apartment; and (iii) illegal lockout pursuant to RPAPL § 853 (NYSCEF # 1-Complaint)

Plaintiffs submitted an order to show cause for a preliminary injunction and sought a temporary restraining order. After oral argument on plaintiffs' request for a temporary restraining order, by interim order dated January 11, 2021, based on a stipulation between plaintiffs and German News, and over the opposition of 1505 Third Avenue, the court enjoined and restrained defendants "from leasing the Apartment or interfering with or disposing of any personal property or fixtures still present in the Apartment belonging to plaintiffs" (NYSCEF # 16).

In support of their motion for a preliminary injunction, plaintiffs submit the affidavit of plaintiff Tolga Gariboglu who states that following the Vacate Order plaintiffs were not permitted to re-occupy the Apartment even though based on registration records from the Division of Housing and Community Renewal (DHCR) show that the Apartment is rent regulated as of 2008 (NYSCEF # 5-Gariboglu Aff. NYSCEF # 7, ¶¶ 16-18). Moreover, while plaintiffs concede that the Vacate Order still existed at the time of the motion, they assert that other tenants were permitted the opportunity to return to their apartments but that such an offer was not made to plaintiffs (NYSCEF #5, ¶18; NYSCEF # 5).

In opposition, 1505 Third Avenue argues there is no basis for injunctive relief against it as plaintiffs' lease is solely with German News which is the net-net-net lessee of the Building and is permitted sublease all portions of the Building without its involvement; that German News is solely responsible for restoring the damaged portion of the Building; and that it did not remove plaintiffs' property from the Apartment. And to the extent counsel for German News indicated in a letter that he was representing both 1505 Third Avenue and German News, counsel has admitted that this was an error (NYSCEF # 18).

German News also opposes the motion, asserting that: plaintiffs have not met the requirements for injunctive relief as they have not shown the likelihood of success on the merits since the Apartment was destabilized in 2008; both leases entered into between plaintiffs and German News were free market leases; plaintiffs has had no lease since 2016; and that following the fire, plaintiffs were provided an alternate apartment which they have surrendered. Under these

circumstances, German News argues that plaintiffs cannot show irreparable harm or that the equities weigh in their favor. In support of its opposition, German News submits the affirmation of its Vice President who states that:

The Apartment was deregulated in 2008 and was so for several tenants before the Plaintiffs. In 2008, the rent exceeded \$1,400 and, following vacancy and improvement increases, it exceeded the luxury rent threshold in effect at that time. German News was unaware that exit registration was required to be filed with the DHCR following vacancy and luxury improvements to the Apartment; any claim of willfulness and fraudulent conduct is meritless. Prior to execution of the 2014 Lease, the tenant of the Apartment was Cindy Collazo. She leased the Apartment pursuant to a free market lease dated April 1, 2011. Upon expiration of the 2015 Lease, and despite being afforded the opportunity to enter into subsequent leases, Plaintiffs never signed a new lease. Thus, beginning on August 1, 2016 Plaintiffs were month-to-month tenants.

(NYSCEF # 27, ¶¶ 5-7).

Alternatively, German News argues that if the court grants injunctive relief such relief should be conditioned on plaintiffs posting a bond for use and occupancy of the Apartment at the rate of \$1,500 per month and plaintiffs' paying the unpaid rent on the alternate apartment for the period from May 2019 to September 2019 in the amount of \$7,500.

A preliminary injunctive relief is a drastic remedy and thus should not be granted unless the movant demonstrates "a clear right" to such relief (*City of New York v 330 Continental, LLC*, 60 AD3d 226, 234 [1st Dept 2009]). Entitlement to a preliminary injunction requires a showing of (1) the likelihood of success on the merits, (2) irreparable injury absent the granting of preliminary injunctive relief, and (3) a balancing of the equities in the movant's favor (CPLR 6301; *Nobu Next Door, LLC v Fine Arts Hous., Inc.*, 4 NY3d 839 [2005]). If one of the three requirements is not satisfied, the motion must be denied (*Faberge Intern., Inc. v Di Pin*, 109 AD2d 235 [1st Dept 1985]).

Under this standard, plaintiffs have not sufficiently demonstrated a right to relief, and thus the motion for a preliminary injunction must be denied. First, a preliminary injunction cannot be granted against 1505 Third Avenue as owner of the Building, since plaintiffs leased the Apartment from German News, the triple net lessee, and have no direct relationship with this defendant. Next, plaintiffs are not entitled to a preliminary injunction against German News because they have not shown that they are likely to succeed in demonstrating that the Apartment is rent regulated. In this connection, evidence in the form of a DCHR registration for

the Apartment showing that it was subject to rent regulation in 2008 (NYSCEF # 7), and the fact that “no exit registration was filed” is insufficient to show a likelihood of success on the merits, especially since plaintiffs first leased the Apartment in August 2014. Moreover, the plaintiffs’ lease from August 2015 with German News was a fair market lease which made no mention of rent regulation (NYSCEF # 28). Under these circumstances, assuming *arguendo* that irreparable harm could be shown even though plaintiffs have not resided in the Apartment since December 2018, the equities cannot be said to weigh in plaintiffs’ favor.

Accordingly, it is

ORDERED that the motion for a preliminary injunction is denied; and it is further

ORDERED that the temporary restraining order is vacated except that with respect to plaintiffs’ personal possessions and/or fixtures, counsel for the parties shall confer and arrange for the retrieval of plaintiffs’ possessions and/or fixtures within 30 days of entry of this Decision and Order.

2/8/2022  
DATE

\_\_\_\_\_  
MARGARET CHAN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE