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2022-06-30

Revson v. Osborne Tenants Corp.

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Revson v Osborne Tenants Corp.
2022 NY Slip Op 32042(U)
June 30, 2022
Supreme Court, New York County
Docket Number: Index No. 154902/2022
Judge: Arlene 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 BLUTH PART 14

Justice

-----X

JILL REVSON

Plaintiff,

- v -

OSBORNE TENANTS CORP.,

Defendant.

-----X

INDEX NO. 154902/2022

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

The motion by plaintiff for a preliminary injunction staying expiration of the notice of termination dated June 1, 2022 is denied and all stays imposed in this case are vacated immediately.

Background

Plaintiff seeks injunctive relief relating to her apartment. She contends that on June 1, 2022, she received a notice of termination stating that she failed to cure her default and that her proprietary lease was to expire on June 10, 2022 (NYSCEF Doc. No. 16). The notice observed that defendant previously sent a notice of default dated May 9, 2022 stating that plaintiff owed outstanding maintenance and other charges totaling \$267,360.79 (*id.*).

Plaintiff maintains that defendant previously started non-judicial foreclosure proceedings in June 2021 and defendant eventually vacated the sale and reinstated plaintiff as a shareholder and tenant pursuant to the proprietary lease. She contends that defendant then sent a maintenance statement in December 2021 that demanded payments for charges and late fees that

accrued more than six years ago. Plaintiff also quibbles with other charges, including purported payments she made in 2019. She also complains about legal fees charged to her account and for charges from March 9, 2020 through December 6, 2021 when her proprietary lease was allegedly inactive due to defendant's termination of her lease and shares.

Plaintiff argues that injunctive relief is appropriate because she might lose her entire interest in the shares and proprietary lease for her apartment. She contends she will suffer irreparable harm by losing the apartment and that she has a substantial likelihood of success.

In opposition, defendant claims that plaintiff will not suffer irreparable harm because the dispute is essentially a monetary dispute. It points out that she does not dispute that she breached the terms of the lease by not making monthly maintenance payments or related charges on time. Defendant contends that the case is really about how much plaintiff is due, which does not compel the Court to issue a preliminary injunction.

Similarly, defendant claims that plaintiff cannot show that she is likely to succeed on the merits because she has not made payments. It argues that plaintiff did not specifically identify what provisions of the proprietary lease violated RPL 238-a and that a vague conclusion that the lease violates this provision is not sufficient. Defendant explains that none of the outstanding payments it seeks from plaintiff are time-barred because plaintiff has made sporadic payments over the years and defendant applied those payments to the oldest payments due. It concludes that the oldest outstanding charge is from August 2019, which is well within the statute of limitations.

Defendant claims that plaintiff is responsible for maintenance from March 2020 through December 2021 and notes her inconsistent positions. It observes that she argued in litigation seeking to block defendant's prior non-judicial foreclosure action that the prior termination of

her lease was invalid but now claims that she should not have to pay maintenance for the time period covering that prior action because of the purportedly invalid termination. Defendant insists that plaintiff cannot have it both ways.

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 denies the motion. The fact is that plaintiff does not directly dispute that she has not been paying the maintenance charges. Rather she disputes how much she owes. And defendant successfully explained how it applied some of plaintiff's sporadic payments and that the most recent charge for which it seeks payment is from August 2019, well within the statute of limitations. That method—of applying payments to the oldest outstanding charges—is reasonable. The Court is unable to find that plaintiff can establish a likelihood of success on the merits when she does not dispute that she owes defendant.

This is not a situation where plaintiff claims she has paid all she owes. Instead, plaintiff is attempting to avoid paying monthly charges she is obligated to pay. The Court also rejects her claim that she does not have to pay any maintenance from March 2020 through December 2021. That argument makes little sense. While it is true that defendant unsuccessfully moved to terminate plaintiff's interest in her apartment in 2021, plaintiff cited no binding support for her claim that defendant forfeited its right to recover maintenance for that time period. Plaintiff does


not assert she was not living in the apartment during that time period or that some other person was responsible for making the required payments associated with the subject apartment. Plaintiff, as was her right, defended herself against defendant’s efforts to terminate her proprietary lease. But the fact that she won does not mean she gets those months free.

The Court must be mindful that granting a preliminary injunction is a drastic remedy. And it is certainly aware that plaintiff claims she will lose her apartment. But granting her an indefinite stay also means that all other shareholders in the building will have to share the burden while plaintiff owes some amount of unpaid maintenance (even if it is not the full \$267,360.79 alleged in the June 2022 notice of termination). The other shareholders in the building should not have to continue covering for plaintiff while she undoubtedly owes defendant outstanding maintenance charges.

Accordingly, it is hereby

ORDERED that the motion by plaintiff for a preliminary injunction is denied and all stays incurred in connection with this matter are immediately vacated.

Remote Conference: September 28, 2022 at 10 a.m. Please upload a discovery update to the Court via NYSCEF by September 21, 2022 or the case will be adjourned.

<u>6/30/2022</u> DATE			 ARLENE BLUTH, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED	<input type="checkbox"/> SUBMIT ORDER	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		