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Rosenberg v. Shermiran Co., DE LLC

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Rosenberg v Shermiran Co., DE LLC
2022 NY Slip Op 33886(U)
September 19, 2022
Supreme Court, New York County
Docket Number: Index No. 100397/2022
Judge: William Franc Perry
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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. WILLIAM FRANC PERRY **PART** **23**

Justice

-----X

ROSENBERG, RUDY
Plaintiff,

- v -

SHERMIRAN CO., DE LLC
Defendant

INDEX NO. 100397/2022

MOTION DATE _____

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

-----X

The following papers, numbered 1 _____, were read on this application to/for _____	
Notice of Motion/ Petition/ OSC - Affidavits - Exhibits _____	No(s) _____
Answering Affidavits - Exhibits _____	No(s) _____
Replying _____	No(s) _____

Plaintiff seeks an injunction staying defendant from enforcing the judgment of possession and monetary judgment entered by the New York City Housing Court against plaintiff.

Plaintiff commenced this action in 2019 and this matter has been heard by numerous judges, including a Federal District Court Judge and two (2) Justices of the Supreme Court. In each instance, defendant has prevailed on its claim for possession, breach of lease and unpaid rent.

On April 12, 2022, the Housing Court awarded defendant a judgment of possession and monetary damages for unpaid rent. On April 14, 2022, an order to show cause to vacate the April 12, 2022 judgment was filed by an individual who refused to give a name. However, the affidavit in support of the motion was sworn by Eltha Jordan.

On April 22, 2022, the Housing Court denied the order to show cause finding that the litigant had not presented a meritorious defense to the lease expiration holdover. Plaintiff did not

appeal the decision of the Housing Court. Instead, plaintiff brought this Article 78 proceeding requesting that the Supreme Court vacate the Housing Court's Order.

It is well settled that for a preliminary injunction/temporary restraining order to be granted there are three required elements that must be established: (1) likelihood of success on the merits, (2) irreparable injury absent granting of a preliminary injunction, (3) and a balancing of the equities in the movant's favor. *Berman v TRG Waterfront Lender, LLC*, 181 A.D.3d 783 (2nd Dep't, 2020) (see *Keller v. Kay*, 170 A.D.3d 978, (2nd Dep't, 2018); *Carroll v. Dicker*, 162 A.D.3d 741, (2nd Dep't, 2018)). The elements to be satisfied must be demonstrated by clear and convincing evidence. *Liotta v Mattone*, 71 A.D.3d 741 (2nd Dep't, 2010). The decision to grant or deny a preliminary injunction rests in the sound discretion of the Supreme Court (see *Tatum v. Newell Funding, LLC*, 63 A.D.3d 911, (2nd Dep't, 2009); *Cooper v. Bd. of White Sands Condo.*, 89 A.D.3d 669, 669, (2nd Dep't, 2011). Whether a party is entitled to a preliminary injunction is a determination entrusted to the sound discretion of the motion court (see *Doe v. Axelrod*, 73 N.Y.2d 748 (1988); *Eastview Mall, LLC v. Grace Holmes, Inc.*, 182 A.D.3d 1057, (4th Dep't, 2020).

It is also well settled that Civil Court was specifically created to hear landlord-tenant issues and that the Civil Court is the preferred forum for disputes related to such issues. *Spain, Jr. v. 325 West 83rd Owners Corp.*, 302 AD2d 587 (2nd Dept. 2003). "Just because a party seeks to frame their arguments in terms of declaratory relief does not mean the Supreme Court is the proper forum for their case." *3054 Goodwin Terrace Realty Co., v. Neil Armstrong*, 190 AD2d 617 (1st Dept. 1993).

In the case at bar, defendant correctly argues that plaintiff is not precluded from appealing the April 22, 2022 decision to the Appellate Term or from seeking a stay of the

eviction in the Housing Court. However, nothing raised by plaintiff here warrants this case being heard in Supreme Court.

Plaintiff's motion is denied in its entirety. As noted above, plaintiff has failed to demonstrate why the issues raised herein should be heard in Supreme Court and not Civil Court. Plaintiff has also not articulated why no appeal was taken to the Appellate Term.

Plaintiff has also failed to establish any entitlement to injunctive relief, as there is no showing that plaintiff would likely succeed on the merits of this Order to Show Cause. Plaintiff has not presented any objective, empirical documentary evidence to support his claims that the April 22, 2022 Order was improperly issued. There has been no showing that plaintiff would suffer any irreparable harm if the motion was not granted. In addition, the balance of the equities weigh in defendant's favor, as the granting of this motion would permit plaintiff to remain in the apartment without any obligation to comply with the lease terms or pay rent, leaving defendant to meet all of the financial obligations of the apartment.

Finally, it should be noted that plaintiff has not answered the original petition in this case filed by defendant on September 6, 2019. To date, plaintiff has not raised any defenses or counterclaims to the allegations raised in the petition. As such, the Court and defendant are unaware of plaintiff's defenses upon which he justifies remaining in the apartment at issue for nearly two years after the expiration of the lease.

Based upon the foregoing, the Order to Show Cause is denied.

9/19/2022
DATE


WILLIAM FRANC PERRY, 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