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Board of Mgrs. of the Beekman E. Condominium v. Schulman

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**Board of Mgrs. of the Beekman E. Condominium v
Schulman**

2023 NY Slip Op 32635(U)

July 27, 2023

Supreme Court, New York County

Docket Number: Index No. 156872/2023

Judge: Louis L. Nock

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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. LOUIS L. NOCK **PART** **38M**

Justice

-----X

THE BOARD OF MANAGERS OF THE BEEKMAN EAST
CONDOMINIUM,

Plaintiff,

- v -

HELENE SCHULMAN,

Defendant.

-----X

INDEX NO. 156872/2023

MOTION DATE 07/07/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 2, 20, 21, and 22 were read on this motion for INJUNCTION/RESTRAINING ORDER.

Upon the foregoing documents, the motion for a preliminary injunction is granted for the reasons set forth in the moving papers (NYSCEF Doc. Nos. 3, 5, 7, 9), and the exhibits attached thereto, in which the court concurs, as summarized herein.

Background

In this action for breach of contract, negligence, and for various equitable reliefs, plaintiff seeks a declaratory judgment that defendant has kept her apartment within the Beekman East Condominium (the "Unit") in a condition that violates the plaintiff's By-Laws, Rules, and Regulations, and that she is required to provide plaintiff with access to the Unit to remedy the condition of the Unit and thereafter submit to quarterly inspections of same. In addition, plaintiff seeks a permanent injunction preventing defendant from refusing plaintiff access to the Unit and continuing to hoard property within the Unit, as well as money damages for breach of contract and negligence. Presently before the court is plaintiff's application for a preliminary injunction directing defendant to provide plaintiff, its agents, contractors, and others in its employ, access to

the Unit “for the purposes of performing all actions necessary to cure the hoarding conditions” in the Unit, provide extermination services, and repair any damages.

On February 25, 2023, a fire broke out in the Unit, seriously damaging the Unit and its contents (Montanez aff., NYSCEF Doc. No. 9, ¶ 3). Following the fire, “a large amount of personal property and debris” remains inside the Unit (*id.*, ¶ 9). This includes “smoke-, water-, and fire-damaged materials” (*id.*, ¶ 10). Conditions inside the Unit have accordingly deteriorated, including noxious odors and a rodent infestation which are affecting other residents of the condominium (*id.*, ¶ 11; Novaj aff., NYSCEF Doc. No. 7, ¶¶ 4-7; pictures, NYSCEF Doc. Nos. 6, 8). Despite several attempts by plaintiff to resolve the situation and several representations from defendant that she would remedy the conditions of her unit, as set forth in the affidavit of plaintiff’s property manager and attached letter exchanges, defendant has not taken any steps to remediate these conditions (Montanez aff., ¶¶ 12-25). Among other things, because defendant has not removed the items of personal property from the apartment, efforts to exterminate the rodent infestation have been unsuccessful (*id.*, ¶ 17). The condition of the Unit is also interfering with the condominium’s efforts to obtain insurance coverage, as plaintiff has been informed that the condition of the Unit constitutes a hazard, and must be remedied entirely before any insurance will be available (Ducrot aff., NYSCEF Doc. No. 5, ¶¶ 6-7).

The complaint quotes detailed provisions of the relevant By-Laws, Rules, and Regulations of plaintiff, providing that plaintiff has the right of access to all units within the building in order to inspect for and remedy emergent and dangerous conditions (complaint, NYSCEF Doc. No. 1, ¶¶ 11-14).¹ Moreover, plaintiff’s Rules and Regulations specifically allow plaintiff to access the units in the building to inspect for and exterminate rodents or other pests,

¹ The plaintiff’s By-Laws, Rules, and Regulations, as summarized in the complaint, are public record, filed with the Office of the City Register of the City of New York, available at: [New York Web Public Inquiry \(nyc.gov\)](https://www.nyc.gov/web/public-inquiry)

and require each unit owner to keep their unit in “a good state of preservation, condition, repair and cleanliness” (*id.*, ¶¶ 16-17). In addition, plaintiff’s Rules and Regulations prohibit unit owners from permitting anything interfering with the rights of other owners, and permit plaintiff to enter offending units “to abate and summarily remove” any conditions violative of the By-Laws (*id.*, ¶¶ 15, 18-19).

Standard of Review

“A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff’s rights respecting the subject of the action, and tending to render the judgment ineffectual” (CPLR 6301). Preliminary injunctions “should be issued cautiously and in accordance with appropriate procedural safeguards” (*Uniformed Firefighters Ass’n of Greater New York v City of New York*, 79 NY2d 236, 241 [1992]). “The party seeking a preliminary injunction must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of an injunction and a balance of equities in its favor” (*Nobu Next Door, LLC v Fine Arts Hous., Inc.*, 4 NY3d 839, 840 [2005]). “Irreparable injury, for purposes of equity, has been held to mean any injury for which money damages are insufficient” (*DiFabio v Omnipoint Communications, Inc.*, 66 AD3d 635, 636-37 [2d Dept 2009] [internal quotation marks and citation omitted]). “The decision to grant or deny provisional relief, which requires the court to weigh a variety of factors, is a matter ordinarily committed to the sound discretion of the lower courts (*Nobu Next Door, LLC*, 4 NY3d at 840).

Discussion

Plaintiff has satisfied its burden as to the issuance of a preliminary injunction. Plaintiff is likely to succeed on its claims against defendant, as defendant is presently in violation of

plaintiff's By-Laws, Rules, and Regulations due to the condition of her Unit. Those same documents also confirm that plaintiff is well within its rights to enter the Unit to remedy the various hoarding, rodent, and other issues discussed. Moreover, despite repeated assurances that she would remedy the condition of her apartment, defendant continues to hoard personal property inside the Unit, including property damaged by the fire. This has led, as set forth above, to noxious odors, a rodent infestation, and unrepaired damage to the Unit. The odors and rodent infestation are, as set forth in the affidavits submitted in support of the motion, impacting other residents of the building. These issues have also prevented plaintiff from obtaining insurance coverage for the building, jeopardizing all residents and not just defendant. Accordingly, plaintiff has also established that irreparable harm will result if it cannot enter defendant's Unit to clean, exterminate, repair, and carry out all other necessary work to restore the Unit to an acceptable condition (*see Knolls Coop. Section No. 1 v Lidakis*, 2021 WL 6777546, *2 [Sup Ct, Bronx County 2021] ["The affidavits submitted by Plaintiff show irreparable harm resulting from the actions of Mr. Lidakis, specifically danger of fire, flood and other threats to the building and its residents"]). Finally, as plaintiff is asking only for defendant to be brought into compliance with the By-Laws and Rules of the condominium, to which she is indisputably subject, the balance of the equities tips in favor of plaintiff.

Accordingly, it appearing to this court that a cause of action exists in favor of the plaintiff and against the defendant and that the plaintiff is entitled to a preliminary injunction on the ground that the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff, as set forth above, it is

ORDERED that defendant, her agents, servants, employees and all other persons acting under the jurisdiction, supervision and/or direction of defendant, are enjoined and restrained, during the pendency of this action, from doing or suffering to be done, directly or through any attorney, agent, servant, employee or other person under the supervision or control of defendant or otherwise, any of the following acts:

1. Cease denying plaintiff access to Apartment #1A (the “Unit”) located at 330 East 49th Street, New York, New York 10017;
2. Provide plaintiff, its agents, servants, employees, contractors, plumbers, or any other person or party acting at its behest or on its behalf, access to the Unit for the purposes of performing all actions necessary to cure the hoarding conditions in the Unit, clean the Unit, conduct extermination operations in the Unit, and inspect and render any necessary repairs to the Unit and the common elements providing services to the Unit;

and it is further

ORDERED that the undertaking is fixed in the sum of \$25,000 conditioned that the plaintiff, if it is finally determined that it was not entitled to an injunction, will pay to the defendant all damages and costs which may be sustained by reason of this injunction; and it is further

ORDERED that plaintiff shall cause a copy of this order, with notice of entry, to be served upon defendant by personal delivery or certified mail, return receipt requested, within ten days of entry hereof; and it is further

ORDERED that plaintiff’s counsel shall serve a copy of this decision and order on defendant within ten days of its filing; and it is further

ORDERED that defendant’s answer to the complaint, if any, shall be served on plaintiff’s counsel – Herrick Feinstein LLP, 2 Park Avenue, New York, New York 10016 – within 30 days of service of a copy of this order, with notice of entry; and it is further

ORDERED that the parties are directed to appear for a preliminary conference in Room 1166, 111 Centre Street, New York, New York on September 13, 2023, at 10:00 AM.

This constitutes the decision and order of the court.

Louis L. Nock

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| <u>7/27/2023</u> | | | <u>LOUIS L. NOCK, J.S.C.</u> |
| DATE | | | |
| CHECK ONE: | <input type="checkbox"/> CASE DISPOSED | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION | |
| | <input checked="" type="checkbox"/> GRANTED | <input type="checkbox"/> DENIED | <input type="checkbox"/> OTHER |
| APPLICATION: | <input type="checkbox"/> SETTLE ORDER | <input type="checkbox"/> SUBMIT ORDER | |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> FIDUCIARY APPOINTMENT | <input type="checkbox"/> REFERENCE |