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252685 ST LLC v. Feifei Gu

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252685 St LLC v Feifei Gu

2024 NY Slip Op 31826(U)

May 10, 2024

Supreme Court, Kings County

Docket Number: Index No. 505280/2024

Judge: Joy F. Campanelli

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: IAS PART 6

-----X
252685 ST LLC, HANG CHEN and EMILY HI
CHEN-LANG,

Index No.: 505280/2024

Plaintiff,

DECISION AND ORDER

-against-

Hon. Joy F. Campanelli, J.S.C.

FEIFEI GU and YU HIN CHAN,
Defendants.

-----X
The following papers were read on this motion pursuant to CPLR 2219(a):

Papers	Numbered
Notice of Motion/Order to Show Cause/Affidavits/Affirmations/Exhibits.....	1-2
Answering Affirmations/Affidavits/Exhibits.....	3-4
Reply Affirmations/Affidavits/Exhibits.....	
Other.....	

In this action for injunctive relief, property damage and defamation, *inter alia*, Plaintiffs move by an Order to Show Cause (OSC Seq. 001) a) enjoining Defendants from destroying Plaintiffs’ property at the premises located at 2526 85th Street, Brooklyn, NY 11214 (hereinafter “the premises”; b) enjoining Defendants from placing any cameras in the public/common area outside of Defendants’ apartment; c) enjoining Defendants from contacting the Housing Preservation Department (“HPD”) asserting frivolous complaints of no heat, no hot water and/or presence of pests; d) enjoining Defendants from calling the police department on Plaintiffs when Plaintiffs are acting legally and within their rights; e) enjoining the Defendants from publicly posting any remarks or reviews about the Plaintiffs, their employer Re/Max, Susana Chen Chong and Plaintiffs’ attorney, Mark Salem, Esq. and Mark Salem Law, P.C.; f) removing any remarks or reviews about Plaintiffs, their employer Re/Max and Plaintiffs’ attorney; g) enjoining the Defendants from contacting Plaintiffs’ employer Re/Max for the purposes of discussing or reporting Plaintiffs’ actions or inactions; h) granting Plaintiffs a Preliminary Injunction and a Temporary Restraining Order (“TRO”) against the Defendants from filing any civil lawsuit against the Plaintiffs in relation to their tenancy at the premises; i) granting Plaintiffs a Preliminary Injunction and a Temporary Restraining Order against the Defendants from interfering with Plaintiffs’ use of their property including making threats to Plaintiffs.

Plaintiffs argue, *inter alia*, that Defendants, who are month-to-month tenants in the premises purchased by Plaintiffs on or about December 19, 2023, have filed multiple complaints with HPD claiming that either there was no heat or no hot water at the premises. However, Plaintiffs allege that Defendants have refused to grant access to Plaintiffs to inspect the issues and remedy them. Plaintiffs further assert that they sent a Notice to Tenant to Make Repairs by certified mail to grant access to the premises, to no avail. Moreover, Plaintiffs contend that they sent a process server to the premises to serve eviction papers to Defendants. However, the process server accidentally hit the Defendants' illegally placed camera with his foot and Defendants began harassing Plaintiffs by sending threatening text messages and called the Police Department. Plaintiffs further claim that they had a professional come to the premises to check the heater and the boiler who determined that they were both working properly. According to Plaintiffs, the harassment continued as Defendant FeiFei destroyed a security camera that was lawfully in the hallway outside the apartment and was placed by Plaintiffs' agents. Plaintiffs state that Defendant FeiFei also left a threatening note for the camera repair professional who was called to fix the camera. Plaintiffs further allege that Defendants left false and harassing negative reviews for Plaintiffs' agents, Susana Chen Chong and Plaintiffs' attorney, Mark Salem Law, P.C. on Google.

In their opposition, Defendants argue that Plaintiffs have failed to file all the papers in support of the TRO simultaneously and the Court should have rejected the OSC for that reason. In addition, Defendants contend that they never received notice of the TRO via text message as their phone plan had expired at the time of the alleged notice. Lastly, Defendants aver that Plaintiffs defrauded the Court with their Affidavit of Service, in which the process server states that he served Jane Doe, a person of suitable age and discretion, and mailed a copy of the OSC. Defendants argue that service was not effectuated as there is no person designated by Defendants to accept service.

The Court finds that Defendants' arguments are meritless. A review of the file indicates that Plaintiffs filed their OSC and the supporting documents on February 23, 2024, and the OSC was signed by the Court on February 28, 2024. In addition, Defendants cannot blame Plaintiffs for their own failure to update their contact information

at the time their phone plan allegedly expired. Nevertheless, Defendants have failed to provide any documentary evidence in admissible form to support their claim about the expiration of the phone plan.

Moreover, it is well settled law that a process server's affidavit of service constitutes prima facie evidence of proper service. (*Scarano v. Scarano*, 63 A.D.3d 716, 716, 880 N.Y.S.2d 682; *see NYCTL 2009-A Trust v. Tsafatinos*, 101 A.D.3d 1092, 1093, 956 N.Y.S.2d 571; *Countrywide Home Loans Servicing, LP v. Albert*, 78 A.D.3d 983, 984, 912 N.Y.S.2d 96). In instances where there is a sworn denial of service by the defendant, the affidavit of service is rebutted, and the plaintiff must establish jurisdiction by a preponderance of the evidence at a hearing *Skyline Agency v. Coppotelli, Inc.*, 117 A.D.2d 135 (2d Dep't., 1986). Here, the affidavit of service of Plaintiffs' process server constitutes prima facie evidence of proper service of the OSC. There is nothing before the Court regarding the denial of service beyond Defendants' argument that there is no one authorized to accept service at the premises. At no point do Defendants swear to specific facts to rebut the statements contained in the process server's affidavit. Therefore, the Court finds Defendants' argument unavailing.

Accordingly, Plaintiffs' Order to Show Cause (Seq. 001) is GRANTED to the extent that, it is hereby

ORDERED that Defendants are enjoined from destroying Plaintiffs' property at the premises, and it is further

ORDERED that Defendants are enjoined from placing any cameras in the public/common area outside of Defendants' apartment, and it is further

ORDERED that Defendants are enjoined from publicly posting any remarks, or reviews about the plaintiffs, their employer Re/Max, Susana Chan Chong and Plaintiff's attorney Mark Salem, Esq. and Mark Salem Law, P.C. and it is further

ORDERED that Defendants must remove any remarks or reviews about the Plaintiffs, their employer Re/Max and Plaintiffs' attorney, Mark Salem, Esq. and Mark Salem Law, P.C.; and it is further

ORDERED that Defendants are enjoined from contacting Re/Max for the purposes of discussing or reporting Plaintiffs' actions or inactions, and it is further

ORDERED that Plaintiffs are granted a Preliminary Injunction and a TRO against the Defendants from interfering with Plaintiffs' use of their property, including making threats to the Plaintiffs.

Any and all other relief is DENIED.

A copy of this order with Notice of Entry shall be served on all sides within thirty (30) days of entry.

This constitutes the decision and order of the Court.

Dated: May 10, 2024
Brooklyn, New York


Hon. Joy F. Campanelli, J.S.C.