

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Hon. Nancy M. Bannon
Justice

PART 42

NRI GROUP LLC

INDEX NO. 159274/2014

- v -

MOTION DATE 6/10/15

GARY CRAWFORD, et al.

MOTION SEQ. NO. 001

The following papers were read on this motion for preliminary injunctive relief.

Notice of Motion/ Order to Show Cause - Affirmation - Affidavit(s) - Exhibits - Memorandum of Law

No(s). 1

Answering Affirmation(s) - Affidavit(s) - Exhibits

No(s). 2

Replying Affirmation - Affidavit(s) - Exhibits

No(s). 3

The motion for a preliminary injunction is decided in accordance with the attached memorandum decision.

Dated: January 22, 2016

[Signature], JSC

HON. NANCY M. BANNON

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

1. Check one:

2. Check as appropriate: MOTION IS:

- CASE DISPOSED, NON-FINAL DISPOSITION, GRANTED, DENIED, GRANTED IN PART, OTHER

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 42**

-----X

NRI GROUP LLC,

Petitioners,

Index No. 159274/2014

-against-

**GARY CRAWFORD, ERIK GOMEZ, CHRISTOPHER
McCANTS, DANIEL TURBITO, CRAIG LEWIS, JOSE
CAPO, and "JOHN DOE" and "JANE DOE",**

Respondents.

-----X

NANCY M. BANNON, J.:

In this action for ejectment, defendants Crawford, McCants, Lewis, Jerry Stevens (s/h/a "John Doe"), and Joseph Bond (s/h/a "John Doe") (collectively, "the defendants"), all residents of so-called "three-quarter houses" owned by the plaintiff, seek to enjoin the plaintiff from interfering with their use and occupancy of their respective units and interrupting or discontinuing essential services, preventing the defendants' lawful occupancy of their units and attempting to induce them to vacate the premises, and retaliating against or harassing them. For the reasons set forth below, the defendants' motion is granted.

I. Background

This action was commenced by the owner of two residential properties located at 2918 and 2847 Frederick Douglass Boulevard in Manhattan, which are operated as three-quarter houses, a type of transitional housing program. Each unit within the buildings houses four to six residents in shared rooms. Residents are required to attend daily outpatient substance abuse programs and abide by other "house rules" as a condition of their residency. If a resident successfully completes the outpatient treatment program or if the plaintiff alleges that a resident violated a house rule, the resident is "discharged" and must vacate the premises immediately.

The house rules include restrictions on the manner in which residents may leave the premises, when they may be present in their units, the activities permitted within the units, and the length of their residency. In particular, residents may leave the premises only for the purpose of attending treatment programs with an escort or with the permission of the on-duty house manager. Residents are not permitted entry into their units between 10:00 a.m. and 2:00 p.m. Monday through Friday and are not permitted to visit other residents unless they live on the same floor of the building. Computers, TVs, DVD players, and video games are prohibited within the units and radios may only be used until 12:00 a.m. Residents are allowed to live in the buildings for a period of six months and, during that time, they are required to change apartments every 28 days. At the conclusion of six months, residents may apply for an extension to continue living in the buildings.

The defendants each began residing in the buildings between 2012 and 2014. They were not given leases, but were required to execute a "Payment Verification/Agreement Sheet" containing the terms of payment of room and board and an acknowledgment that they agreed to comply with all house rules and regulations.

Prior to the commencement of the instant action, the plaintiff ejected or attempted to eject each of the defendants without first resorting to court process to do so. Defendants Crawford, McCants, and Lewis each sought judicial intervention and were restored to possession by the Housing Court of New York City. See Crawford v National Institute Recovery, Index No. L&T 8566/2013 (Civ Ct, NY County, Hous Part, December 27, 2013); McCants v N.R.I. Group LLC, Index No. L&T 14724 (Civ Ct, NY County, Hous Part, July 11, 2014); Lewis v N.R.I. Group LLC, Index No. L&T 16593/2014 (Civ Ct, NY County, Hous Part, September 17, 2014).

After Crawford, McCants, and Lewis obtained final judgments of possession in their favor, the plaintiff commenced this action for ejectment in September 2014. The defendants each interposed an answer with affirmative defenses and each asserted four counterclaims seeking various forms of injunctive relief and damages for unlawful eviction. Specifically, the defendants assert counterclaims for unlawful eviction and harassment, violations of the Rent Stabilization Code, violations of the Mental Hygiene Law (MHL), and breach of the warranty of habitability. They allege that the plaintiff has engaged in a course of conduct against each of them designed to induce them to vacate the premises, including illegal attempts to evict them, threatening to discharge the defendants from the program, discarding their belongings, and failing to maintain habitable living conditions at the premises. As a result of such conduct, the

defendants seek permanent injunctive relief, enjoining the plaintiff from engaging in conduct which constitutes unlawful eviction or harassment. The defendants also seek a declaration that their units are subject to the Rent Stabilization Code and to enjoin the plaintiff from attempting to evict them without a court order or an allowable basis under the Rent Stabilization Code. They further seek a declaration that the plaintiff's requirement that the defendants attend an outpatient treatment program of the plaintiff's choosing as a condition of their residency is a violation of MHL § 22.07(B) and 14 NYCRR §§ 815.4(g) and 815.5(a)(15).

The plaintiff failed to file a reply to the defendants' counterclaims. Indeed, the only reply e-filed pertains to a different action with a different caption and index number and no reply to the counterclaims was appended to the plaintiff's opposition to the instant motion. The defendants maintain that they were never served with a reply to their counterclaims.

The defendants now seek a preliminary injunction enjoining the plaintiff from interfering with their use and occupancy of their respective units and interrupting or discontinuing essential services, preventing the defendants' lawful occupancy of their units and attempting to induce them to vacate the premises, and retaliating against or harassing them.

In support of the instant motion, the defendants allege that, since the commencement of this action, the plaintiff has engaged in multiple instances of harassment, including making false police or ambulance reports and imposing additional rules on the defendants in retaliation for their challenges to the plaintiff's eviction attempts, which they contend are intended to intimidate the defendants and force them to vacate the premises. They further allege that the plaintiff has permitted inhabitable living conditions to persist on the premises.

In his affidavit, Lewis details several incidents wherein the plaintiff called emergency services seeking to have him removed from the premises, all of which occurred after he obtained a final judgment of possession in his favor from the Housing Court. On November 29, 2014, the plaintiff called an ambulance on the grounds that Lewis was intoxicated. Lewis maintains that he was not intoxicated, but felt intimidated by the police presence and agreed to go to the hospital. When he arrived, he was discharged because hospital staff determined that he was not in need of medical attention. In early January 2015, the plaintiff called the police in an attempt to remove Lewis from the premises, but when police arrived and Lewis informed them that he resided at the premises, the police declined to arrest him or escort him out of the building. Similarly, on January 13, 2015, police entered Lewis' room and handcuffed him, telling him he would be arrested for trespassing. However, when he showed them a copy of the

September 2014 Housing Court order, the police declined to arrest him and told him he could remain. Again, on January 25, 2015, the plaintiff called an ambulance because Lewis was purportedly intoxicated. However, when the ambulance arrived, the paramedics did not transport him to the hospital because he did not smell like alcohol and did not appear to be intoxicated.

Similarly, Bond, in his affidavit, states that in March 2015, the plaintiff called an ambulance on the grounds that he was intoxicated after he did not attend a 10:00 p.m. house meeting. Bond maintains that he did not attend the meeting because he fell asleep after taking his blood pressure and mental health medication, which made him groggy, and that he had not been drinking. After he was taken to the hospital, the doctors told him he was fine and he was discharged with a diagnosis of "weakness."

Lewis and Bond further state in their affidavits that the plaintiff has imposed additional restrictions on the defendants and other individuals who the plaintiff refers to as "squatters," individuals who have successfully challenged the plaintiff's attempts at evicting them without court process. In early March 2015, the plaintiff announced that "squatters" would no longer be permitted to use common areas including TV rooms, the kitchen, or storage lockers. "Squatters" were required to remove all their food from the refrigerators immediately or it would be discarded. The plaintiff announced that any "squatter" disobeying these new rules would be discharged. As a result of being unable to use the kitchen and prohibited from eating in their rooms, the defendants, each of whom are of limited means and some of whom have serious medical conditions, have been unable to store, prepare, or eat any food on the premises and must purchase prepared food and eat outside.

The defendants, in their verified answers with counterclaims and through the affidavits of Lewis and Bond, further state that dangerous and unsanitary conditions persist on the premises. Heat and hot water are frequently interrupted and the buildings lack smoke detectors and are infested by rats and roaches. Despite such conditions being brought to the plaintiff's attention, it has failed to make any necessary repairs or otherwise remedy the situation.

In opposition to the defendants' motion, the plaintiff submits merely an attorney affirmation, wherein counsel for the plaintiff argues only that the plaintiff is the tenant of the premises and that the defendants are licensees and not subject to rent stabilization.

II. Motion for a Preliminary Injunction

The applicable law is well settled. A party is entitled to a preliminary injunction upon a showing of (1) a 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. See CPLR 6301; Nobu Next Door, LLC v Fine Arts Housing, Inc., 4 NY3d 839 (2005); Coinmach Corp. v Alley Pond Owners Corp., 25 AD3d 642 (2nd Dept. 2006). The moving party must make such a showing through clear and convincing evidence. See S.J.J.K. Tennis, Inc. v. Confer Bethpage, LLC, 81 A.D.3d 629 (2nd Dept. 2011). However, the mere existence of an issue of fact will not necessarily lead to a denial of the motion. See Arcamone-Makino v. Britton Property, Inc., 83 A.D.3d 623 (2nd Dept. 2011). Here, the defendants have made the requisite showing for a preliminary injunction.

A. Likelihood of Success on the Merits

The defendants demonstrated their likelihood of success on the merits of the plaintiff's action for ejectment and on their affirmative defense of unlawful eviction and their counterclaims for unlawful eviction and harassment.

The defendants established a likelihood of success in this ejectment action by submitting evidence demonstrating that, contrary to the plaintiff's contention, they were not mere licensees. Real Property Actions and Proceedings Law § 711 (RPAPL) defines a "tenant" as "an occupant of one or more rooms in a rooming house, or a resident, not including a transient occupant, of one or more rooms in a hotel who has been in possession for thirty consecutive days or longer." The evidence submitted by the defendants, including the "Payment Verification/Agreement Sheets" show that the terms of their residency were for at least six months, which may be extended by application. Indeed, each of the defendants have resided on the premises since at least 2014. They pay for use and occupancy of the premises for the fixed term, which entitles them to use their rooms and common areas. Further, the house rules and "Payment Verification/Agreement Sheets" provide that residency could be terminated due to a resident's violation of the house rules or upon completion of the program. These documents show that the defendants' occupancy of the premises is not cancellable at will, without cause. See Matter of Smith v Donovan, 61 AD3d 505 (1st Dept. 2009); American Jewish Theatre v Roundabout Theatre Co., 203 AD2d 155, 156 (1st Dept. 1994).

In nearly identical circumstances, the Appellate Division has held residents of three-quarter houses to not be mere licensees. In Matter of Smith v Donovan, *supra*, the Court held that such residents qualified as “tenants” under the Administrative Code because they “paid rent and were entitled to possess or use rooms in the housing accommodation.” Matter of Smith v Donovan, *supra* at 510. Similarly, the court in Shearin v Back on Track Group, Inc., 46 Misc 3d 910 (Civ Ct, Kings County, October 3, 2014) held that, because residents were required to comply with house rules which would lead to their continued residency of their rooms for a fixed term of six to nine months, such evidence showed that they had exclusive possession of their rooms and their interest in the premises was not terminable at will, such that the residents of the three-quarter house were not merely licensees.

The defendants also demonstrate a likelihood of success on the merits of their affirmative defense of unlawful eviction and on their counterclaims for unlawful eviction and harassment based on the plaintiff’s attempts to dispossess them of their units without resorting to legal process and its violations of the Real Property Actions and Procedure Law and the Administrative Code of the City of New York.

RPAPL § 711 provides that, a tenant “shall not be removed from possession except in a special proceeding.” That is, “[t]he law is clear and well-settled that a landlord may not oust an occupant of an apartment from those premises without resorting to proper legal process and providing legal notice.” Romanello v Hirschfeld, 98 AD2d 657, 658 (1st Dept. 1983) (Fein and Milonas, JJ. dissenting) *aff’d as modified* 63 NY2d 613 (1984) (adopting reasoning of dissent in 98 AD2d 657).

An unlawful eviction occurs under the Administrative Code of the City of New York when, inter alia, force or other means are employed to interfere with an occupant’s use or occupancy of a dwelling unit. See Administrative Code of City of New York § 26-521. The Administrative Code “prohibits the eviction of an occupant who has lawfully occupied a dwelling for more than 30 days by, inter alia, force.” David v #?1 Marketing Service, Inc., 113 AD3d 810, 813 (2nd Dept. 2014); see Administrative Code § 26-521(1). Pursuant to that statute, it is also unlawful for a person to evict an occupant by engaging in a course of conduct which interferes with the occupant’s use or occupancy of the unit or induces the occupant to vacate the unit, including interrupting or discontinuing essential services and engaging or threatening to engage in conduct preventing or intending to prevent lawful occupancy of the unit, including removing the occupant’s possessions. See Administrative Code § 26-521(2), (3). Further, with regard to harassment, Administrative Code § 27–2005(d) provides, “[t]he owner of a dwelling shall not

harass any tenants or persons lawfully entitled to occupy such dwelling.” Administrative Code § 27–2005(d); see David v #?1 Marketing Service, Inc., *supra*. Making express or implied threats that force will be used, interrupting or discontinuing essential services, removing a legal occupants’ possessions from the premises, and other substantial interferences with the lawful occupancy of a dwelling unit each constitute harassment. See Administrative Code § 2004(a)(48).

Here, the defendants have demonstrated that they are likely to succeed on their affirmative defense of unlawful eviction and their counterclaims for unlawful eviction and harassment based on the plaintiff’s attempts to dispossess them of their units without resorting to legal process and its violations of the Administrative Code. Indeed, in each of their Housing Court proceedings, the Housing Court found that Crawford, McCants, and Lewis had been unlawfully evicted from the premises. According to the affidavits submitted by the defendants, following those proceedings, the plaintiff denied the defendants access to common areas, including the kitchen, preventing them from preparing or consuming food in the building, made unfounded calls to emergency services, removed their possessions from the premises, and has repeatedly threatened the defendants with eviction. Such allegations demonstrate a likelihood of success on the defendants’ affirmative defenses and counterclaims that the plaintiff has engaged in a course of conduct which interferes with the defendants’ use and occupancy of their units and induces them to vacate the premises in violation of Administrative Code § 26-521. Express and implied threats that essential services will be discontinued and removal of their possessions from the premises further demonstrate a likelihood of success on the defendants claims that the plaintiff violated Administrative Code § 2004(a)(48).

In opposition, the plaintiff submits the affirmation of its attorney and nothing more. While an attorney’s affirmation may serve as a vehicle to introduce documentary evidence (see Olan v Farrell Lines, Inc., 64 NY2d 1092 [1985]; Lewis v Safety Disposal Sys. of Pa., Inc., 12 AD3d 324 [1st Dept. 2004]), no such evidence was submitted. The affirmation of the plaintiff’s attorney, who claims no personal knowledge of the facts alleged, is without probative value on this motion. See Trawally v East Clarke Realty Corp., 92 AD3d 471 (1st Dept. 2012); Thelen LLP v Omni Contracting Co. Inc., 79 AD3d 605 (1st Dept. 2010) *lv denied* 17 NY3d 713 (2011).

B. Irreparable Harm

Through their affidavits and verified answers and the Housing Court orders restoring them to possession of the premises, the defendants have established that they would suffer irreparable

harm if a preliminary injunction is not granted and they lose possession of their units and use of common areas on the premises. Maintaining one's home is an interest that is unquantifiable. See Broadway 500 W. Monroe Mezz II LLC v Transwestern Mezzanine Realty Partners II, LLC, 80 AD3d 483 (1st Dept. 2011); Jones v Park Front Apartments, LLC, 73 AD3d 612 (1st Dept. 2010); Terrell v Terrell, 279 AD2d 301 (1st Dept. 2001). Indeed, courts "do not look favorably upon the forfeiture of leases." Sharp v Norwood, 223 AD2d 6, 11 (1st Dept. 1996) *lv app granted*, 231 AD2d 974 (1st Dept. 1996) *aff'd* 89 NY2d 1068 (1997), *rearg denied* 90 NY2d 889 (1997); see Village Ctr. for Care v Sligo Realty and Serv. Corp., 95 AD3d 219 (1st Dept. 2012). Courts have recognized that the realistic possibility of homelessness constitutes irreparable injury. See Jiggetts v Perales, 202 AD2d 341 (1st Dept. 1994).

Here, the defendants are indigent individuals who have experienced substance abuse issues. If the plaintiff were permitted to eject them from the premises, the defendants face almost certain homelessness. Indeed, in his affidavit, Bond describes an incident wherein the plaintiff refused to allow him entry into the building and he was forced to resort to sleeping on a park bench and was permitted reentry only when he sought help from the police. The Housing Court orders restoring Crawford, McCants, and Lewis to possession establish the plaintiff's prior attempts to illegally evict the defendants from the premises. According to the defendants' affidavits and verified answers, the plaintiff's attempts to eject them from the premises are ongoing. Such threats of eviction and the realistic possibility of the defendants' homelessness as a result would constitute irreparable injury if a preliminary injunction is not granted. See Jiggetts v Perales, *supra*.

The defendants' allegations of the plaintiff's imposition of additional living restrictions upon the defendants and others who have challenged the plaintiff's unlawful eviction attempts further demonstrate the irreparable harm the defendants will suffer in the absence of preliminary injunctive relief. In particular, the defendants allege that, in addition to the house rules already in place pertaining to when residents must be in their rooms, when they may be in common areas, and where they may eat, the plaintiff has denied them access to common kitchen areas and prohibited them from eating in their rooms, causing them to spend their limited amount of money purchasing prepared food and eating it off the premises, which results in considerable financial hardship. In his affidavit, Bond explained that the expense of eating out has caused him to run out of money and rely on help from family members to make ends meet. The defendants allege that, consequently, if they do not abide by these new restrictions, they are threatened with immediate discharge from the premises and homelessness. This allegedly harassing conduct further demonstrates irreparable harm. See DeCastro v Bhokari, 201 AD2d 382 (1st Dept. 1994).

C. Balancing of the Equities

The defendants have also established that the irreparable harm they would suffer if a preliminary injunction is not granted outweighs any harm that the plaintiff would incur if the preliminary injunction is granted. See McLaughlin, Piven, Vogel, Inc. v W.J. Nolan and Co., 114 AD2d 165 (2nd Dept. 1986). The defendants demonstrated that they are subject to constant threats of eviction and homelessness. Further, by allegedly denying the defendants access to common areas of the premises, including the kitchen, and by failing to make necessary repairs to the building, including fixing the heat, they face the loss of essential services. In contrast, there is no evidence that the plaintiff will suffer any injury if a preliminary injunction is granted. Indeed, there is no allegation that the defendants have failed to pay for use and occupancy of their units or have otherwise violated the house rules. The granting of a preliminary injunction under these circumstances will merely maintain the status quo during the course of the instant action whereby the defendants are required to abide by the house rules they agreed to and must comply with all other rental obligations in a timely manner.

III. Conclusion

Because the defendants have established a likelihood of success on their affirmative defenses for unlawful eviction and their counterclaims for unlawful eviction and harassment, the threat of irreparable harm of ejection from the premises and resulting homelessness in the absence of a preliminary injunction, as well as the balancing of the equities in their favor, the motion for a preliminary injunction is granted.

Accordingly, it is

ORDERED that the defendants' motion for a preliminary injunction is granted and, pending a final determination of this matter, the plaintiff is hereby enjoined and restrained from:

(a) engaging in a course of conduct which interferes with or is intended to interfere with or disturb the comfort, repose, peace or quiet of the defendants in the use or occupancy of their dwelling units or to induce them to vacate the dwelling unit,

(b) engaging or threatening to engage in any other conduct which prevents or is intended to prevent the defendants from the lawful occupancy of such dwelling unit or to induce the defendants to vacate the dwelling unit,

(c) retaliating against or harassing the defendants in any respect,

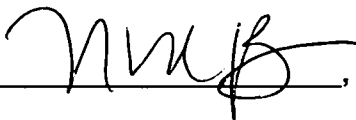
And it is further,

ORDERED that the defendants shall comply with all rules and regulations of the premises and all rental obligations in a timely manner, and it is further,

ORDERED that the parties shall appear for a preliminary conference on February 25, 2016, at 2:30 p.m.

This constitutes the Decision and Order of the court.

Dated: January 22, 2016

 JSC

HON. NANCY M. BANNON