

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: **EMILY JANE GOODMAN**

PART 17

Index Number : 102609/2009
TAYLOR, PAULETTE
vs.
HENDERSON, THEODORE
SEQUENCE NUMBER : # 001
COMPEL

Justice _____

INDEX NO. 102609-09
MOTION DATE _____
MOTION SEQ. NO. #001
MOTION CAL. NO. _____

were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided

per attached

FILED
JUN 22 2009
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 6/15/09

EMILY JANE GOODMAN S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 17

-----X
Paulette Taylor,

Plaintiff,

-against-

Index No. 102609/2009

Theodore Henderson et al

FILED
JUN 22 2009
COUNTY CLERK'S OFFICE
NEW YORK
Defendants

-----X
EMILY JANE GOODMAN, J.S.C.

Plaintiff, a rent stabilized tenant at 382 Central Park West, commenced this action asserting causes of action for negligence, negligence per se, breach of contract, breach of warranty of habitability, intentional infliction of emotional distress and liable, in connection with the barking of her downstairs neighbor's two dogs. Plaintiff now moves to "restrain [Henderson's] two Chihuahua dogs from almost continuous barking between 8am and 8pm, or...Remove the animals from the premises."¹

The neighbor, Defendant Henderson, who is the owner of his condominium unit, opposes the motion and, among other things, denies that his dogs are a nuisance. The managing agent of the condominium, Defendant Maxwell Kates, Inc., opposes the motion based on its argument that it owes no duty to Plaintiff, that even if it had a duty, it took reasonable steps to remedy the problem, that Plaintiff has not shown a violation of a statute to support a claim of negligence per

¹The Verified Complaint does not seek removal of the dogs, and the legal basis for such removal has not been explained in this motion.

sc, that causes of action for breach of contract cannot be asserted against it, that the warranty of habitability under Real Property Law §235-b does not apply to an individual unit within a condominium (although Plaintiff is a tenant residing in a rent stabilized apartment, and not in a condominium unit) and that in any event, the warranty was not breached. Defendants Paula Katz, Park West Village Acquisitions, LLC. i/s/h/a Park West Village Acquisitions , L.L.C., Stella Management, Robert Rosania, Laurence Gluck, The Chetrit Group, Joseph Chetrit and CPW Towers LLC. oppose the motion on the basis that it is premature and that they do not own or control the dogs and have no contract or relationship with the managing agent or Henderson.

Plaintiff is not entitled to a preliminary injunction because she has not established a likelihood of success as there is a clear factual dispute as to whether the dogs constitute a nuisance. Moreover, generally, the court cannot grant the ultimate relief that she seeks under the guise of a preliminary injunction (*see SportsChannel Am. Assocs. v Natl. Hockey League*, 186 AD2d 417, 418 [1st Dept 1992]). “A mandatory injunction should not be granted, absent extraordinary circumstances, where the status quo would be disturbed and the plaintiff would receive the ultimate relief sought, pendente lite” (*St. Paul Fire and Marine Ins. Co. v York Claims Serv.*, 308 AD2d 347, 349 [1st Dept 2003]). As an injunction is not warranted based on the above, the Court need not discuss the issue of irreparable harm or the balance of the equities. Although the Verified Complaint seeks \$500,000 in damages, the action is transferred to Civil Court because it appears to be within the jurisdiction of that court.

Accordingly, it is

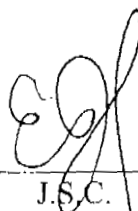
ORDERED that the motion is denied; and it is further

ORDERED that the action is transferred to Civil Court pursuant to a separately signed

325 (d) order (attached).

Dated: June 15, 2009

ENTER:



J.S.C.

EMILY JANE GOODMAN

FILED
JUN 22 2009
COUNTY CLERK'S OFFICE
NEW YORK

Fm. TS-4
w/o consent
325(d) CPLR

At an Individual Assignment Part 17 of the Supreme
Court of the State of New York, held in and for the
County of New York, City and State of New York, on
the 15th day of June, 2009

P R E S E N T:

HON. **EMILY JANE GOODMAN**

Justice

PAULETTE TAYLOR

County Clerk's Index No. 102609/09

vs.

PRE-NOTE OF ISSUE

THEODORE HENDERSON, Et Al.

ORDER OF TRANSFER

It appearing that the Civil Court of the City of New York has jurisdiction of the parties to this action and pursuant to Rule 202.13(a) of the Uniform Civil Rules for the Supreme Court and the County Court, it is

ORDERED, that this cause bearing Index Number 102609/09 be, and it hereby is, removed from this court and transferred to the Civil Court of the City of New York, County of New York, and it is further

ORDERED, that the clerk of the New York County shall transfer to the clerk of the Civil Court of the City of New York, County of New York, all papers in this action now in his possession, upon payment of his proper fees, if any, and the clerk of the Civil Court of the City of New York, County of New York, upon service of a certified copy of this order upon him and upon delivery of the papers of this action to him by the clerk of the County of New York, shall issue to this action a Civil Court Index Number without the payment of any additional fees, and it is further

ORDERED, that the above-entitled cause be, and it is hereby, transferred to said Court, to be heard, tried and determined as if originally brought therein but subject to the provisions of CPLR 325(d).

ENTER:

FILED

JUN 22 2009

COUNTY CLERK'S OFFICE
NEW YORK



EMILY JANE GOODMAN
J.S.C.