

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

Sylvester Schneider,

Plaintiff,

-- against --

229 East 7th Street Housing Finance Development
Corporation,

Defendant.

DECISION/ORDER

Index No. 103361/06

Seq. 1

Present:

Rolando T. Acosta
Supreme Court Justice

The following documents were considered in reviewing plaintiff's order to show cause for an order enjoining defendant from taking any action to evict or otherwise oust plaintiff of his possessory interest in the premises at the ground floor and cellar of 229 East 7th Street, New York, NY, a/k/a 107 Avenue C, New York, NY, and defendant's motion to dismiss the complaint pursuant to CPLR § 3211:

Papers	Numbered
Order to Show Cause, Affirmation & Memorandum of Law	1 - 2 (Exhibits 1-10)
Notice of Cross-Motion & Affirmation	3
Affirmation in Reply to Order to Show Cause and in Opposition to Cross-Motion & memorandum of Law	4 - 6 (Exhibits 1-5)
Defendant's Affirmation in Reply	7

Plaintiff, who has operated a successful restaurant on the lower east side (Avenue C and 7th Street), executed ten year lease with defendant in 2000, with a five year renewal option to 2015. On or about October 7, 2005, defendant served plaintiff with a ten day Notice to Cure. The Notice listed six alleged lease violations, including unauthorized alteration in installing a sump-pump and piping, excessive noise on six nights, permitting loitering, vermin infestation, blocking a passageway, and operating a sidewalk café after 11:00 am in weekdays and after midnight on weekend. On March 2, 2006, defendant issued a ten day Notice of Termination. Seven days later, plaintiff filed a summons and complaint

alleging, inter alia, a declaration that absent a material breach of the lease, he cannot be evicted from the premises. By Order to Show Cause, he also sought a preliminary injunction or in the alternative, a Yellowstone injunction. Defendant cross-moved to dismiss the complaint.

A preliminary injunction will be granted where the movant shows a probability of success, danger of irreparable injury in the absence of an injunction, and a balance of the equities in its favor. Actna Insurance Co., v. Capasso, 75 N.Y.2d 860 (1990). Here, as noted by the community support it has gotten, see plaintiff's exhibit 4 in its reply, and the location of the restaurant, plaintiff has clearly established danger of irreparable injury. Moreover, given that the bulk of the lease violations are de minimus and plaintiff has sought to correct all of them, and New York State's policy of preventing forfeiture of valuable leaseholds for minor infractions, plaintiff has also established a probability of success on the merits and that the equities are in his favor.

Accordingly, it is hereby

ORDERED that plaintiff's motion for a preliminary injunction prohibiting defendant from taking any action to evict or otherwise oust plaintiff of his possessory interest in the premises at the ground floor and cellar of 229 East 7th Street, New York, NY, a/k/a 107 Avenuc C, New York, NY is GRANTED pending the resolution of his complaint; and it is further

ORDERED that plaintiff is granted leave to amend the caption to include Linda Gogan; and it is further

ORDERED that defendant's Cross-Motion is DENIED.

This Constitutes the Decision and Order of the Court.

Dated: July 25, 2006

ENTER


Rolando T. Acosta, J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

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AUG 04 2006

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