SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF KINGS
INDEX NO.: 518435/2020

SUNDEEP SINGH SUCHDEV et. al,

Plaintiff,

-against-

JUDITH GRUNBAUM, et. al,

Defendants.

DEFENDANT'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' ORDER TO SHOW CAUSE

Yours, etc.,

BORAH, GOLDSTEIN, ALTSCHULER,
NAHINS & GOIDEL, P.C.
Attorneys for Defendants
377 Broadway
New York, New York 10013
(212) 431-1300
By: Jonathan B. Schreier, Esq.

David R. Brody, Esq.
Jonathan B. Schreier, Esq.
On the Brief

PRELIMINARY STATEMENT

This is an action commenced by Sundeep Singh Suchdev, Lucas Shapiro, Shruti Parekh, Jessica Turner, Lili Salmeron and Sanjeevan Tharmaratam ("Plaintiffs"), six (6) individuals currently occupying six (6) Single Room Occupancy ("SRO") units at 70 South Elliott Place, Brooklyn, New York ("Building"). The two (2) tenants (Singh and Shapiro) have put the four (4) other Plaintiffs into possession of the other rooms without the owner's consent.

In this action and by their Motion, the Plaintiffs who have acted in an inequitable manner so as to create the problems which are at the center of this action, come to this Court, asking this Court to preclude the Owner of this SRO Building from being in the public areas of the Building as she feels necessary. Likewise, since the two (2) remaining Tenants let other people – i.e., the other Plaintiffs - occupy rooms to which none of them have any right, the Owner installed cameras in the public areas of the Building, both to have some control over the identity of the occupants of these rooms, as well as to provide a record that, when the Owner and its agents are in the Building, there is a record that no harassment is occurring such as is alleged in Plaintiffs' papers. As concerns fear of self-help evictions, the Owner has always proceeded lawfully. There are notices of termination pending and even a possessory judgment and warrant pending against one of the Plaintiffs.

In other words, DHCR determined that there were six (6) SRO units in this Building occupied by two (2) Plaintiffs and other people who have since vacated. The two (2) Plaintiffs have allowed other people into occupancy and are now

claiming that the Owner can have no rights and no remedies. As noted, *infra,* the law requires that there be remedy where there are rights to be protected, and people – i.e., the Plaintiffs - who come into Court with unclean hands cannot avail themselves of equitable remedies that would preclude the exercise of the Defendants' rights.

ARGUMENT

I. PLAINTIFFS HAVE NOT SET FORTH A BASIS FOR A PRELIMINARY INJUNCTION

On September 23, 2020, the Appellate Division, Second Department, restated the elements necessary to obtain a preliminary injunction:

> 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, 833 N.E.2d 191, 800 N.Y.S.2d 48; see CPLR 6301). "The purpose of a preliminary injunction is to preserve the status quo until a decision is reached on the merits" (Icy Splash Food & Beverage, Inc. v Henckel, 14 AD3d 595, 596, 789 N.Y.S.2d 505).

Inc. Vil. of Lindenhurst v One World Recycling, LLC, ___AD3d___, 2020 NY Slip Op 05037, *2 2d Dept. [2020]

Plaintiffs do not meet this burden. They cannot demonstrate a likelihood of success on the merits, as their argument relies on the erroneous premise that they are entitled to exclusive use and control of the common areas of the SRO Building to the exclusion of the Owner, including disallowing the cameras mounted in the public areas. Additionally, they come to this Court with unclean

hands precluding injunctive relief that would sanction their improper behavior. National Distillers v. Seyopp, 17 NY2d 12, 15-16 (1966).

Likewise, the claims of irreparable harm in the absence of injunctive relief is speculative and controverted by the facts of the Plaintiffs' actions to ban the Owner from her property as though the Plaintiffs are Owners and not just occupiers of individual rooms. They fail to acknowledge their bad acts and that the Owner has proceeded to engage with Court for purposes of their removal.

The *status quo* of the Building is the DHCR determination that there are six (6) SRO units at the Building each of which is occupied by particular applicants, four (4) of whom moved, into those four (4) rooms now occupied by Plaintiffs who are illegally in occupancy. Plaintiffs' motion requests an injunction altering that *status quo*. Accordingly, the motion must be denied.

A. THE BUILDING CONSISTS OF SIX (6) SRO UNITS

In March 2014, Plaintiffs Singh and Shapiro, together with Heidi Chua, Jules Skloot, Yasma Padamsee, Jacob Hodes and David Suarez (collectively "Applicants") filed an application with DHCR for a determination that they are the rent-stabilized tenants of the six (6) SRO Units at the Building. In 2017, the DHCR granted the application and ruled that Applicants were the rent stabilized tenants of six (6) SRO units at the Building.

New York City Multiple Dwelling Law ("MDL) §248(4)(9) provides:

> 16. "Single room occupancy" is the occupancy by one or two persons of a single room, or of two or more rooms which are joined together, separated from all other rooms within an

> apartment in a multiple dwelling, so that the occupant or occupants thereof reside separately and independently of the other occupant or occupants of the same apartment. When a class A multiple dwelling is used wholly or in part for single room occupancy, it remains a class A multiple dwelling.
>
> 17. A "public hall" is a hall, corridor or passageway within a building but outside of all apartments and suites of private rooms. A "public vestibule" is a corridor, not within an apartment or suite of private rooms, providing access to a stair or elevator and not wider than seven feet nor longer than twice the width of the stair or elevator shafts opening upon it. A "public room" or "public part" of a dwelling is a space used in common by the occupants of two or more apartments or rooms, or by persons who are not tenants, or exclusively for mechanical equipment of such dwelling or for storage purposes.
>
> 18. A "living room" is a room which is not a public hall, public vestibule, public room or other public part of a dwelling. Every room used for sleeping purposes shall be deemed a living room. Dining bays and dinettes fifty-five square feet or less in floor area, foyers, water-closet compartments, bathrooms, cooking spaces less than eighty square feet in area, and halls, corridors and passageways entirely within an apartment or suite of rooms shall not be deemed living rooms. "Floor space" shall mean the clear area of the floor contained within the partitions or walls enclosing any room, space, foyer, hall or passageways of any dwelling.
>
> 19. A "dining bay," "dining recess" or "dinette" is a recess used for dining purposes off a living room, foyer or kitchen.

Plaintiffs' affidavits and DHCR's determination to make clear that the six (6) rooms in question are standard SRO units as defined by the Multiple Dwelling Law. Plaintiffs' affidavits further concede that the areas in which Defendants appear without Plaintiffs' consent and in which Defendants maintain security cameras are public areas as defined by the Multiple Dwelling Law.

The RSC defines a housing accommodation as "[t]hat part of any building or structure, occupied or intended to be occupied by one or more individuals as a residence, home, dwelling unit or apartment" (RSC [9 NYCRR] § 2520.6 [a]). Under this definition, an individually rented room in a rooming house is a housing accommodation. See Robrish v Watson, 2015 NY Slip Op 51299(U) (App. Term 2d Dept. 2015)

Courts have repeatedly held that limiting use of common areas in rent stabilized buildings does not warrant a rent reduction, thereby implying that the rent stabilized tenants do not have an absolute right in those areas. See Goldman v DHCR, 31 A.D>3d 275 (1st Dept. 2006) (Rent reduction not warranted when landlord discontinued tenants' access to the roof for recreational use) ; Riverside Drive Tenants Assoc. v. DHCR, 2012 NY Slip Op. 32299(U)(Affirming DHCR denial of rent reduction application based upon landlord's restricting roof access and former bicycle storage area)

In Miller v. City of New York, 15 N.Y.2d 34 (1964) the Court of Appeals outlined the difference between a lease and a license:

> A document calling itself a "license" is still a lease if it grants not merely a revocable right to be exercised over the grantor's land without possessing any interest therein but the exclusive right to use and occupy that land (*Greenwood Lake & Port Jervis R. R. Co.* v. *New York & Greenwood Lake R. R. Co*., 134 N. Y. 435, 439, 440).

Plaintiffs' Singh and Shapiro are tenants of their individual SRO units. They have a non-exclusive right to use the common areas of the Building. The other Plaintiffs are unauthorized occupants of other SRO units. The Plaintiffs singularly and collectively have no exclusive rights to any of the common areas

of the Building. Therefore, Plaintiffs' underlying premise that they have exclusive rights to the common areas of the Building, to the exclusion of the Owner, is without merit. Likewise, an Owner has a constitutional right to his property and certainly as to access to its common areas along with a right to protect same. Moreover, as DHCR has already determined the status of these units, Plaintiffs, the two (2) remaining applicants and their privies are precluded from re-litigating these issues.

B. DEFENDANTS ARE ENTITLED TO MAINTAIN SECURITY CAMERAS IN THE COMMON AREAS

As stated *supra*, Plaintiffs' do not have exclusive rights to the common area of the Building. Nevertheless, Plaintiffs argue that Defendants are not permitted to maintain security cameras in the common areas.

In Otero v. Houston Street Owners Corp., 2012 NY Slip Op 30440(U) (Sup. Ct., NY Co.), tenants commenced an action based upon the landlord maintaining a security camera in the hallway outside their apartment. The Court summarily dismissed the complaint, finding, in part, that tenants are not afforded a reasonable expectation of privacy in the hallways of the Building and noting that, if the cameras were recording inside their actual apartment, then the tenants could have a cause of action.

Similarly, in Broome Realty Associates v. Sek Wing Eng, 182 Misc.2d 917 (App. Term 1st Dept. 1999), the Appellate Term affirmed the Civil Court's refusal to order a landlord to remove a surveillance camera from the public hallway, noting that the presence of such a camera is not a violation of housing standards.

With respect to security cameras in common areas, it is clear that a landlord is permitted and may even be required to maintain such cameras. In fact, tenants have been awarded rent reductions based on landlord's failure to maintain security cameras. In 166 E. 61 St. Tenants Assoc. v. DHCR, 21 Misc.3d 1104(A)(Sup. Ct. NY County 2008), an Article 78 proceeding, the Court affirmed DHCR's rent reduction order based on landlord's failure to maintain security cameras in the common areas. See also Douglass Elliman v DHCR, 2009 NY Slip Op. 30008(U)(Sup. Ct. NY County 2009)

Therefore, Defendants are entitled to maintain the security cameras in the common areas in the common areas. Plaintiffs' claims that Defendants' maintenance of security cameras in common areas is a discriminatory act is unfounded. It records all persons walking the halls without regard to gender identity, purpose or relationship to one party to another.

For the reasons stated herein, Plaintiffs' motion must be denied and such relief as is proper and appropriate granting to the Defendants.

C. **THERE IS NO BASIS FOR A CLAIM IRREPARABLE HARM**.

In Elow v. Svenningsen, 15 AD 3d 674, 675 (2d Dept., 2009), the Court held that:

> Injunctive relief is "to be invoked only to give protection" for the future to prevent repeated violations, threatened or probable, of the plaintiff's property rights."

Here, you have two (2) Tenants with rights to their rooms and a right to use the public areas and four (4) Plaintiffs who are essentially claiming squatters'

rights. Their claims are essentially fears, whether real or imagined, from prior acts, a concern about harm from being photographed or being filmed in common areas. They point to no particular claim of future harm and they do not state why the Owner's property rights do not permit its peaceable entry into the public areas of the Building or why it should be curtailed. Neither is there a basis for the claim that the camera poses a threat of irreparable harm. The Owner has always gone through the legal process to vacate rooms, and the claims of harassment as easily focus on the Tenant's behavior and inproper desire to control the Building, as they do no the fact that the Owner is entitled to protect the Building, repair the Building and surveil so as to protect the Building. 8 Jane Stree LLC v. Patrone, 2020 NY Slip Op. 33034 (S. Ct. N.Y. Cty. 2020).

In this context, the Tenant's application is generally deficient of a concern about future harm. As to the one (1) occupant who is looking to re-squat in a room to which he has no rights whatsoever, there is no indication that the Owner intends a further use of self-help notwithstanding that under the circumstances of her being in occupancy less than thirty (30) days, is not required to utilize court process to evict a squatter.

D. **DEFENDANTS HAVE NOT LOCKED SHRUTI PAREKH OUT OF "HER" ROOM**:

RPAPL §768 provides:

> (a) It shall be unlawful for any person to evict or attempt to evict an occupant of a dwelling unit **who has lawfully occupied the dwelling unit for thirty consecutive days or longer** or who has **entered into a lease** with respect to such

> dwelling except to the extent permitted by law pursuant to a warrant of eviction or other order of a court of competent jurisdiction…
> (Emphasis added)

Shruti Parekh acknowledges that she did not occupy the room in question for thirty (30) consecutive days prior to Owner's securing the room. In fact, she does not allege she occupied the room for even one (1) of the thirty days prior to the securing of the room.

Plainitffs Singh and Shapiro state that they allowed a foreign visitor to sleep in that room without Owner's permission from March 2020 through September 1, 2020, after Parekh vacate, part of their practice of pretending to be owners.

Parekh claims that she took occupancy of the room in 2016 pursuant to a sublet from Heidi Chua, the tenant of record of the room which sublet request was denied by Owner. Assuming, *arguendo*, that the sublet request had been proper, and was consented to by Owner, which it was not, by law the sublet could not have been for more than two (2) years. See Rent Stabilization Code §2520.6(c). Therefore, any rights Parekh had to the room expired in 2018 and certainly when she vacated prior to March 2020, such that two (2) of the Plaintiffs' illegally permitted someone else to occupy that room. When Chua surrendered possession in September, 2020, there was nothing to which Parekh could return.

In 1234 Broadway v Chen, 2011 NY Slip Op 51657(U) (App. Term 1st Dept. 2011) the Appellate Term held that a person who took possession of an

SRO unit from the lawful tenant of record, without the Owner's consent does not become a "permanent tenant" of that room".

As Parekh was neither a person who occupied the room for thirty (30) consecutive days after attempting to resume occupancy, nor a lawful occupant pursuant to the Lease on the day that Defendant secured the room, there was no illegal lockout.

As to Plaintiffs' further allegations regarding a second lockout, these allegations all acknowledge that Defendants did not secure possession at that time. For the reasons outlined above, Defendants' actions do not constitute an unlawful eviction.

E. THERE IS NO BALANCE OF THE EQUITIES THE PERMITS THE PLAINTIFF'S TO ROUGH SHOD OVER THE OWNER'S PROPERTY.

As noted in the introduction to this Memorandum these, Plaintiffs who come into Court with unclean hands cannot find a manner to balance the equities to enable the granting of equitable relief (in addition to their being no particular likelihood of success on the merits or irreparable harm). The Court is presented with two (2) Plaintiff-Tenants who have acted inequitably and four (4) Plaintiffs who have had the benefit of being put into occupancy of vacant rooms by the two (2) Tenant-Plaintiffs.

As Defendants' papers note, with the exception of the one (1) incident with a plaintiff-attempted squatter discussed hereinabove, all

proceedings against the other occupants have been in courts of appropriate jurisdiction. There is not articulated threat to do otherwise.

Likewise, the Owners cameras are for a permitted purpose, and the cameras are aimed appropriately.

Finally, the Owner has a continuing right and obligation to inspect and maintain the Premises and the Tenants have not articulated a legal basis for precluding the Owner or requiring the Owner to obtain permission to do so.

Recently, in Rebirth of Bergen Street v. City of New York, 2017 NY Slip Op. 50361 (S. Ct., Kings Cty.), the Court discussed the purpose of balancing the equities in requests for injunctive relief:

> The balancing of the equities further requires the Court to determine the relative prejudice to each party which would result from a grant or denial of the requested relief. *Barbes Rest. Inc. v ASRR Suzer* 218, LLC, 140 AD3d 430, 432 (1st Dept. 2016). In this regard, a court must consider whether the preliminary injunction would upset or maintain the status quo. . . (citation omitted)

Here, the status quo is that the Owner maintains her right to enter the Building as she perceives necessary, including to perform repair work and to maintain the cameras. The cameras stay, and such notices of termination as the Defendants have served continue through process. The Tenant who agreed to vacate in August, vacates, and the occupant that has no right to the room into which just trespassed after having disappeared from this illegally occupied room for eight (8) months and after the named Tenant surrendered is not in that allowed in that room.

There is no merit to the cause of actions and there is no irreparable harm. There are Plaintiffs' unclean hands, and therefore, disturbing the present status quo is not permitted.

CONCLUSION

For the reasons stated herein, Plaintiffs' motion should be denied.

Dated: New York, New York
October 22, 2020

Respectfully Submitted,

Jonathan B. Schreier

JONATHAN B. SCHREIER
Attorney for Plaintiff
Borah, Goldstein, Altschuler, Nahins
& Goidel, P.C.
377 Broadway
New York, New York 10013
(212) 431-1300, Ext. 779