

SUPREME COURT - STATE OF NEW YORK

PRESENT: *Honorable Anna R. Anzalone*
Justice of the Supreme Court

FELIPE OMAR VENTEGEAT,

Plaintiff,

- against -

KNOLLS OF GLEN HEAD OWNERS CORP.,

Defendant.

TRIAL/IAS, PART 24
NASSAU COUNTY

Index No. 605223/16
Motion Seq. No.: 1

The following papers read on this motion:

Plaintiff's Order to Show Cause and Attorney Emergency Affirmation	1
Plaintiff's Memorandum of Law in Support	2
Defendant's Affirmation in Opposition	3
Plaintiff's Reply	4

The plaintiff brings this application for an order (1) staying and tolling the expiration of the cure period set forth in the defendant's 30 Day Notice to Cure and Notice of Intention to Terminate a Proprietary Lease; (2) temporarily enjoining and restraining the defendant and its agents from commencing summary proceedings to evict the plaintiff or otherwise interfere with the plaintiff's possession of the premises; and (3) awarding the plaintiff costs, disbursements and attorney's fees. The defendant opposes the order to show cause and the plaintiff submits a reply. The motion is decided as set forth below.

BACKGROUND

It is undisputed that the plaintiff, Felipe Omar Ventegreat, owns the shares of and a proprietary lease to "49 The Circle" in Glen Head, New York. The subject premise is a

townhouse located in a cooperative community known as the Knolls of Glen Head located at Glen Cove-Greenvale Highway, Glen Head, New York. The defendant, Knolls of Glen Head Owner's Corp., is the cooperative corporation of which the plaintiff owns shares in Unit 49. Pursuant to the Proprietary Lease, the defendant is the plaintiff's landlord. The plaintiff resides at the subject townhouse with his fiancée, her two children and the family dog, a 12 year old Shih Tzu named Chloe. The dog has resided with the plaintiff since August 2012.

The defendant claims that the plaintiff is in default of his Proprietary Lease on the grounds that the dog's presence in the townhouse violates the "No Pets" provision of the defendant's House Rules and constitutes a nuisance to the cooperative community. It is alleged that the defendant notified the plaintiff of the violation of the "No Pets" policy (*see* Defendant's Opposition to Plaintiff's Order to Show Cause Exhibits "C" and "D"). Moreover, on June 16, 2016, the defendant issued the plaintiff a 30 Day Notice to Cure (*see* Plaintiff's Order to Show Cause Exhibit "D"). The alleged default has triggered a cure period that was set to expire on August 12, 2016.

By Order to Show Cause dated August 8, 2016, the plaintiff denied being in default and requested the Court stay the deadline to cure the default. The Court granted the plaintiff a Temporary Restraining Order and stayed the expiration of cure period pending the hearing and determination of the Order to Show Cause for a Preliminary and/or Permanent Injunction. The defendant, its agents, servants and representatives acting on its behalf, were also enjoined and restrained from taking any action to evict the plaintiff, or to terminate the plaintiff's Proprietary Lease, or from commencing a summary proceeding, or to otherwise

declare a default or take any action adverse to the plaintiff's rights or otherwise terminate the plaintiff's tenancy, or disturb the plaintiff's possession of the Premises.

On July 12, 2016, the plaintiff commenced an action in this court under Index No. 605223/16 by filing a summons and verified complaint. The verified complaint asserts two causes of action. The first cause of action is for declaratory relief seeking a determination that the defendant waived its "No Pets" policy and the second cause of action seeks a permanent injunction enjoining the defendant from evicting the plaintiff due to the presence of his dog. In his verified complaint, the plaintiff alleges that the defendant is attempting to (1) improperly terminate his Proprietary Lease and (2) forfeit his ownership interest in the defendant corporation.

THE INSTANT APPLICATION

Now before the Court is the plaintiff's application for a preliminary and/or permanent injunction restraining the defendant from proceeding with an action to terminate the lease or commence an eviction proceeding. In support, the plaintiff argues that the proprietary lease does not contain a provision prohibiting pets and even if it did, the plaintiff's dog has resided in his home for approximately four years, therefore, the defendant has waived any right to terminate the lease based on the failure to enforce its rule in a reasonable amount of time. Moreover, the plaintiff submits that the defendant permits other cooperative shareholder/tenants to have dogs and other pets. Finally, the plaintiff submits that he is actively seeking to (1) sell the shares of his townhouse and (2) assign the proprietary lease. Upon the sale, the plaintiff argues that the notice to cure will be moot upon this transfer.

In his Memorandum of Law, the plaintiff's attorney argues that if the stay is not

granted, the plaintiff will suffer irreparable harm. Specifically, the plaintiff asserts that the market value of his townhouse is approximately \$788,000.00 and that an injunction will maintain the status quo and prevent a premature termination of his valuable leasehold interest.

In opposition, the defendant argues that the plaintiff's breach of the "No Pets" policy is an express material breach of the lease and that in addition to receiving notification that he was in violation of the "No Pets" rule, the plaintiff was provided with a copy of the House Rules.

The Proprietary Lease provides, in pertinent part:

"13. The Lessor has adopted House Rules which are appended hereto, and the Directors may alter, amend or repeal such House Rules and adopt new House Rules. **This lease shall be in all respects subject to such House Rules which, when a copy thereof has been furnished to the Lessee, shall be taken to be part hereof, and the Lessee hereby covenants to comply with all such House Rules** and see that they are faithfully observed by the family, guests, employees and subtenants of the Lessee. **Breach of a House Rule shall be a default under this lease.** The Lessor shall not be responsible to the Lessee for the non-observance or violation of House Rules by any other Lessee or person." [emphasis added]

House Rule #8 states:

"8. No bird or animal shall be kept or harbored in the buildings or on any other property owned by the Lessor unless the same in each instance be expressly permitted in writing by the Lessor; such permission shall be revocable by the Lessor. All pets must be leashed and shall not be permitted to run loose."

While the defendant admits that some shareholders have pets, it submits that those pets are excepted from the "No Pets" prohibition because those pets resided in the

cooperative community prior to September 1, 1993.

LEGAL ANALYSIS

A *Yellowstone* injunction is a preliminary injunction which preserves the status quo after a notice of default or notice to cure an alleged lease violation has been served by the landlord, by staying expiration of the applicable cure period to permit the tenant to challenge the landlord's notice to cure, and to allow the lease to remain in effect until the underlying dispute has been resolved (*First National Stores v Yellowstone Shopping Center*, 21 NY2d 630 [1968]; *Jemaltown of 125th East End Corp. Leon Betesh*, 115 AD2d 381 [2d Dept 1985]). The Court of Appeals in *Grubard Mollen Horowitz & Shapiro v 600 Third Ave. Assoc.*, 93 NY2d 508 (1999), stated that a party requesting a *Yellowstone* injunction must demonstrate that:

“(1) it holds a commercial lease; (2) it received from the landlord either a notice of default, a notice to cure, or a threat of termination of the lease; (3) it requested injunctive relief prior to the termination of the lease; and (4) it is prepared and maintains the ability to cure the alleged default by any means short of vacating the premises.”

Courts have issued *Yellowstone* injunctions where the tenant owns shares in a cooperative apartment in order to avoid forfeiture of the tenant's valuable leasehold interest while they challenge the propriety of the landlord's default notice (*see Seligmann v Parcel One Co.*, 170 AD2d 344 [1st Dept 1991]; *Hopp v Raimond*, 51 AD3d 726 [2d Dept 2008]).

The courts have routinely granted *Yellowstone* injunctions to avoid forfeiture of the tenant's interest, and in doing so they have accepted far less than the normal showing required for preliminary injunctive relief (*Garland v Titan West Assocs.*, 147 AD2d 304 [1st Dept 1989]). The mere threat of forfeiture of a lease has been held sufficient to justify a

Yellowstone injunction (*Golub Corp. v Northeastern Industrial Park, Inc.*, 188 AD2d 729 [3d Dept 1992]).

The defendant submits that the plaintiff has not met his burden for an injunction and that he would be able to raise any equitable defense in a landlord/tenant proceeding. Specifically, the defendant asserts that the plaintiff has failed to meet the fourth prong of the requirement for *Yellowstone* injunction relief because the plaintiff has not illustrated a good faith intention to cure the default.

In the instant action, the Court finds that the *prima facie* requirements for a *Yellowstone* injunction have been met. The plaintiff has shown that he holds a proprietary lease and has a clearly identifiable equity interest in a cooperative townhouse. The plaintiff requested injunctive relief prior to the expiration of the cure period. The plaintiff has attested to the fact that he is prepared to cure the alleged default by any means including sell his shares, assigning his proprietary lease and even removing his pet. Therefore, the plaintiff is entitled to a preliminary injunction which includes the continued tolling of the cure period, pending determination of the underlying action seeking declaratory and permanent injunctive relief (*see Golub Corp.*, 188 AD2d 729, *supra*).

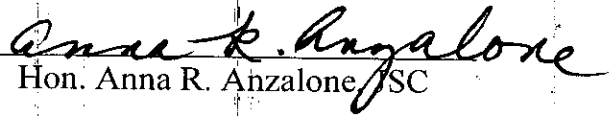
For the foregoing reasons, the application by the plaintiff, pursuant to CPLR §6301, for an order granting a *pendente lite* injunction is granted to the extent that the stay of the defendant's cure date remains in effect. Also, the restraints granted in the Order to Show Cause remain in effect pending the trial of this matter. The plaintiff's request for costs and disbursements and attorney's fees are denied. The Court does not require the plaintiff post a bond at this time.

Counsel for the parties are directed to appear before the Court for a Preliminary Conference in this matter on February 15, 2017 at 9:30 a.m. and report to the Preliminary Conference Desk in the lower level of 100 Supreme Court Drive, Mineola, New York to schedule all discovery proceedings. A copy of this Order shall be served on all parties and on the DCM Case Coordinator. There will be no adjournments, except by formal application pursuant to 22 NYCRR §125.

This constitutes the Decision and Order of the Court.

DATED: December 29, 2016
Mineola, New York

ENTER:


Hon. Anna R. Anzalone, JSC

ENTERED

JAN 17 2017

NASSAU COUNTY
COUNTY CLERK'S OFFICE