[*1] SCANNED ON 12/15/2010

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

PRESENT: LOUIS B. YORK J.S.C. PART 2

33 Christopher Corp INDEX NO. 106454-10

MOTION DATE

-v- MOTION SEQ. NO. 1

Mona Friedman MOTION CAL. NO.

The following papers, numbered 1 to _____ 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

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be given pursuant hereto. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION.

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

Dated: 12/14/10

LOUIS B. YORK J.S.C.

Check one: FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 2

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33 CHRISTOPHER CORP.,

Plaintiff,

Index No. 106454/10

-against-

DECISION/ORDER

MONA FRIEDMAN,

Defendant.

Louis B. York, J.S.C.:

This is a motion by the Plaintiff-landlord for a preliminary injunction requiring the Defendant-tenant to grant access to the landlord in order to repair the sagging floors in tenant's apartment. For the reasons discussed, infra, the motion is denied.

Plaintiff, 33 Christopher Corp. is the owner and landlord of a building located at 172 Waverly Place, New York, New York ("the Property"). Defendant, Mona Friedman, is the tenant of Apartment 1B, a one-bedroom apartment located in the Property. She has resided at this apartment for over 30 years.

On April 15, 2010, Defendant received a letter from Plaintiff. The letter was a 24 hours notice requesting access to Defendant's apartment, in order to make repairs to the apartment's floors. The floors were sagging due to the wooden joists underneath that were deteriorating. The letter also required a temporary displacement of the Defendant, because the apartment would be

inhabitable for about 4 to 6 weeks. However, an accord between the two parties was not made at this time.

On May 5, 2010, Plaintiff sent another letter to Defendant seeking access to her apartment. However, this time in efforts to facilitate the move, Plaintiff offered to relocate Defendant to a vacant apartment adjacent to Apartment 1B. Nonetheless, Defendant wanted written assurance securing her tenancy rights to her apartment. Six days later, Plaintiff emailed Defendant an agreement regarding the relocation and repairs. However, Defendant did not sign the agreement, nor did she return it. Defendant believed that the agreement fell short of protecting any of her tenancy rights to Apartment 1B.

The following day Plaintiff sent workers to begin the repairs. Despite Plaintiff's eagerness to remedy the harm, Defendant refused entry into her apartment, because talks regarding the relocation agreement dissipated between the two parties. As a result, the repairs to the damaged floors, along with Defendant's temporary relocation did not occur.

On May 17, 2010, Plaintiff filed a complaint seeking a permanent mandatory injunction requiring Defendant to grant access into Apartment 1B. As a basis for injunctive relief Plaintiff cites to Defendant's 1979 lease, which states in part, "[o]wner or [o]wner's representatives may enter [Apartment 1B] during reasonable hours to inspect...and make such repairs and changes, as [o]wner...deem[s] necessary." Standard Form of Apartment Lease, Real Estate Board of New York Inc. at ¶ 17(A). Additionally, Plaintiff sought the same injunctive relief by moving for a preliminary injunction. Defendant filed a timely opposition requesting a denial of Plaintiff's motion.

Generally, preliminary injunctions are granted in limited circumstances. Coltown Props. LLC v. D&A Equities LLC, 2010 NY Slip Op 30720[U] (Sup Ct, New York County 2010). A mandatory injunction is a device used by courts to compel parties to perform specific actions. Id. Furthermore, pursuant to CPLR § 6301, the party seeking injunctive relief must demonstrate "a likelihood of ultimate success on the merits[,] the prospect of irreparable injury if the provisional relief is withheld[,] and a balance of equities tipping in the moving party's favor." Doe v. Axelrod, 73 N.Y.2d 748, 750 (1988).

Plaintiff adequately demonstrates the "prospect of irreparable injury." Id. The inspection report of Plaintiff's architect indicates that the floor repairs are crucial in preventing further damage to the Property. Plaintiff's property manager, Joe Mohan, also asserts that if nothing is done, "the structural integrity of the building will be jeopardized." Mohan Aff., at ¶ 22.

Irreparable injury to the Property absent immediate repairs is a possibility that may occur. However, Plaintiff fails to satisfy the remaining prongs to receive provisional injunctive relief. For the reasons stated below, Plaintiff does not demonstrate a likelihood of "ultimate[ly] succeed[ing] on the merits." Doe v. Axelrod. At the very least, the court requires an evidentiary hearing in order to make an adequate finding of the facts. Gutman v. Cabrera, 2009 NY Slip Op 30464U, (Sup Ct, New York County 2009) ("it is error to grant the ultimate relief sought, without a trial or an evidentiary hearing").

It is well established, if the facts of a case are sharply in dispute, a preliminary injunction cannot be awarded. Residential Bd. of Managers of Columbia Condominium

v. Alden, 178 A.D.2d 121, 576 N.Y.S.2d 859 (1st Dept 1991). Two disputes of fact exists in this case. The first dispute is regarding the actual cause of the damaged floors. Plaintiff speculates that Defendant caused the damage when she "poured a concrete floor in her apartment"[,] without Plaintiff's permission. Mohan Aff. At ¶ 8. However, Donald Friedman (Friedman), a licensed engineer hired by Defendant states the contrary. Friedman opines that "the main cause for the sagging of the joists" was due to the weight of the "concrete-like material" used in the original construction of the Property. Friedman Aff., at ¶ 13. He further states that immediate cause of harm stems from "the removal of the partition wall in...the commercial space" underneath Defendant's apartment, which "provid[ed] structural support for the joists and for the load from above which they carry." Id. at ¶ 14.

The second dispute of facts concerns the exact manner in which to repair the harm. The inspection report prepared by Plaintiff's architect suggests that the only way to do so is by entering Defendant's apartment and removing the damaged joists. Friedman disagrees. He notes the possibility of repairing the damaged floors "by re-supporting the existing joists with new steel beams running underneath the existing joists[,]...[which] could be done from the ground floor without relocation of the tenant living above the joists." Friedman Aff., at ¶ 18. The court cannot view this dispute lightly, especially when the displacement of an individual from lawfully remaining in their home weighs in the balance. Thus, the court cannot grant the preliminary injunction.

Moreover, the ordinary purpose of a preliminary injunction is not to grant the ultimate relief sought by movant. St. Paul Fire & Marine Ins. Co. v. York Claims Serv.,

308 A.D.2d 347, 765 N.Y.S.2d 573 (1st Dep't 2003). The court "cannot grant the ultimate relief that [a movant] seeks under the guise of a preliminary injunction." Hirschmann v. Hassapoyannes, 2005 NY Slip Op 25521, (Sup Ct, New York County 2005). Hence, it is inappropriate to grant a preliminary injunction when it mirrors the permanent injunction ultimately sought. See Gutman v. Cabera.

Furthermore, a preliminary injunction is used to "maintain the status quo until there can be a full hearing on the merits." Residential Bd of Manugers of the Columbia Condominium; St. Paul Fire & Marine Ins. Co., (preliminary injunction is utilized to "maintain the status quo and to prevent any conduct which might impair the ability of the court to render final judgment"); O'Hara v. Corporate Audit Co., 161 A.D.2d 309, 310, 555 N.Y.S.2d 82, 84 (1st Dep't 1990) (the court will not grant a preliminary injunction that "upsets...the status quo"). Removing the status quo thwarts the purpose behind a preliminary injunctive relief.

Even though the lease grants Plaintiff access to perform necessary repairs, "repairs are not the equivalent of renovation, and reasonable access is quantitatively different from temporarily relinquishing possession." Green Val. Realty LLC v Delgado, 2009 NY Slip Op 52314[U], 3, 906 N.Y.S.2d 772 (Civ Ct, Kings County 2009). Plaintiff seeks to temporarily dispossess Defendant from her apartment for an estimated six weeks. Doing so would upset the current status quo, especially when Defendant has a legal right to be in her home. For this reason, the court cannot grant Plaintiff a preliminary injunction.

It behooves both parties to quickly complete discovery so that the dangerous condition in the apartment can be alleviated.

For the reasons given above, it is therefore

ORDERED and ADJUDGED that Plaintiff's motion seeking a preliminary injunction in this action is denied; and it is further ordered that a preliminary conference is schedule for Jan. 3, 2011

Dated: 12/15/10

ENTER:

Louis B. York, J.S.C.

UNFILED

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LOUIS B. YORK
J.S.C.