

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK-----X
SULLIVAN PROPERTIES, L.P.,

Index No.: 153974/2020

Plaintiff,

-against-

AFFIRMATION OF
SHARI S. LASKOWITZ

BARIS DINCER,

Defendant.
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SHARI S. LASKOWITZ, an attorney duly admitted to practice before the Courts of the State of New York, hereby affirms the following to be true, under penalty of perjury, pursuant to CPLR 2106:

1. I am of counsel to Ingram Yuzek Gainen Carroll & Bertolotti LLP, attorneys for Sullivan Properties, L.P. ("Plaintiff"), in the above-captioned action. As such, I am familiar with the facts and circumstances set forth herein.

2. This Affirmation is respectfully submitted in support of Plaintiff's motion, seeking an order, pursuant to New York Judiciary Law, §§ 753 and 773: (i) holding Defendant Baris Dincer ("Defendant") in contempt; (ii) punishing Defendant by fine or imprisonment, or both, because of his willful failure to comply with order of this Court dated June 23, 2020 (the "Order"; a copy of which is annexed as Exhibit 1) - which, among other things, temporarily restrained Defendant from conducting any sort of work in his apartment – construction or otherwise – that could damage the building or any building-wide systems; and (ii) granting Plaintiff such other and further relief as this Court may deem just and proper.

3. In direct contravention of this Court's Order, on June 27, 2020 – just five (5) days after the Court issued the Order - Defendant drilled a hole through the wall of his apartment into

the hallway outside of his apartment, causing foam and other materials to seep out of the hole ruining the rug outside of his apartment.

4. In fact, at approximately 11:30 pm on June 27, 2020, Defendant sent your affirmant an email with the re: line “Disgusting”, informing of ‘gunk’ outside of the Premises and demanding that the porter clean it immediately. A copy of the email is annexed hereto as **Exhibit 2**.

5. By way of background, Plaintiff is the owner and landlord of the building located at 111 Sullivan Street, New York, New York (the “Building”). Defendant resides in apartment 2BR in the Building (the “Premises”).

6. Since the beginning of the COVID-19 pandemic, Defendant has engaged in – and continues to engage in - a course of conduct that is dangerous, hazardous and detrimental to the life, health and safety of all residents in the Building. As more fully set forth in the affidavits of various residents of the Building annexed to Plaintiff’s Order to Show Cause seeking a preliminary injunction (NYSCEF Doc. Nos. 2-34), Defendant has, among other things, drilled into two (2) separate water pipes at different times, both times causing severe flooding to the apartment beneath the Premises; hammers, drills and bangs in the Premises throughout the days and nights which is audible in other residents’ apartments causing them to lose sleep; blasts music in the Premises throughout the days and nights which is audible in other residents’ apartments causing them to lose sleep; pouring noxious liquids on the doors of other residents apartments and smoking in the public hallways and in the Premises in contravention of the express ‘no-smoking’ provision of the lease.

7. As a result of the foregoing, Plaintiff commenced this action seeking a declaratory judgment against Defendant seeking a permanent injunction and a declaratory judgment setting

forth the rights and obligations of the parties including, but not limited to: (a) that Defendant must abide by the rules and regulations set forth in the Lease while residing in the Premises; and (b) Defendant may not engage in objectionable conduct that is detrimental to the health, safety and well-being of other Building residents, which include, but is not limited to: (i) smoking in the Building hallways and leaving cigarette butts in the hallways; (ii) conducting any sort of work in his apartment – construction or otherwise – that could damage the Building or any Building-wide systems; (iii) threatening other residents in any manner, including, but not limited to, screaming at them or throwing liquid substances on their apartment doors and breaking apartment windows; and (iv) otherwise continuing his course of conduct that is endangering the health, safety and well-being of other residents at the Building. A copy of the Verified Complaint is annexed hereto as Exhibit 3.

8. In the time since the Court issued the Order, Defendant has: (a) drilled a hole straight through the wall of the Premises into the hallway, causing foam and other materials to seep out of the wall and ruining the carpet outside the Premises; (b) spit on a Building employee from the window of the Premises – which is inappropriate on a good day but could be deadly due to Covid-19; (c) entered into the office of the superintendent and unplugged all of the electrical equipment contained there; and (d) been arrested and charged with two counts of misdemeanor criminal mischief (CR-013375-20NY) as a result of Defendant physically removing and damaging the video surveillance cameras from the Building.

9. As a result of Defendant's flagrant disregard for this Court's Order, the remaining resident in the Building and the Building staff, Defendant should be held accountable by fine or imprisonment, or both, as permitted by law.

Plaintiff's Motion Should be Granted

10. A party must comply with a court order, “however incorrect the party may consider that order to be, until that order is set aside, either by appeal or otherwise, as long as the court issuing the order had jurisdiction to issue it.”¹ Any interlocutory or final orders which are not enforceable as money judgments or as orders awarding possession of real property or a chattel can be enforced under CPLR § 5104.²

11. Whether contempt sanctions will be applied in a particular case is a matter of judicial discretion.³ According to Judiciary Law §753(A)(2), under certain enumerated circumstances, “[a] court of record has power to punish, by fine and imprisonment, or either, a neglect or violation of duty, or other misconduct, by which a right or remedy of a party to a civil action or special proceeding, pending in the court may be defeated, impaired, impeded, or prejudiced.” The specified circumstances include, among others, where a “party to the action or special proceeding. . . [engages in] any deceit or abuse of a mandate or proceeding of the court.” *Id.*

12. Where a party has sustained an actual loss or injury “by reason of the misconduct proved against the offender,” then “a fine, sufficient to indemnify the aggrieved party, *must* be imposed upon the offender.” Judiciary Law §773 (emphasis added). Even where no “actual loss” has been proven, “a fine may be imposed, not exceeding the amount of the [moving party’s] costs and expenses, and two hundred and fifty dollars in addition thereto.” *Id.* Significantly, the fine may include attorneys’ fees as part of the moving party’s costs and expenses.⁴

¹ *Astrada v. Archer*, 71 A.D.3d 803, 807 (N.Y. App. Div. 2d Dep’t 2010).

² CPLR § 5104. *See also* 2 Carmody-Wait 2d, NY Prac. § 8:124.

³ *Dickson v. Ferullo*, 96 A.D.2d 745, 745 (N.Y. App. Div. 4th Dep’t 1983).

⁴ *Lembo v. Mayendia-Valdes*, 293 A.D.2d 789, 790-91 (N.Y. App. Div. 3d Dep’t 2002).

13. In this matter, the Court issued the Order on June 23, 2020, enjoining Defendant from, among other things, conducting any sort of work in his apartment – construction or otherwise – that could damage the building or any building-wide systems. See, Exhibit 1

14. Notwithstanding the clear conditions set forth in the Order, the recalcitrant Defendant has flouted this Court's Order. Defendant has knowingly violated the Order by drilling through the wall of the Premises, causing damage to the wall and the carpet outside of the Premises. Unfortunately, Plaintiff is unaware of the extent of the damage done within the Premises.

15. In addition to the foregoing, on or about July 3, 2020, Defendant was arrested at the Building and charged with two (2) counts of misdemeanor criminal mischief (CR-013375-20NY) as a result of Defendant physically removing and damaging the video surveillance cameras from the Building.

16. This flagrant disregard of the Order should neither be condoned nor go unpunished - as Defendant will continue to engage in this type of destructive behavior if not punished for his disobedience of the Order.

17. Defendant's conduct was calculated to, and actually did, defeat, impair, impede or prejudice Plaintiff's rights or remedies.

WHEREFORE, Plaintiff requests that this Court enter an order: (i) holding Defendant in contempt; (ii) punishing Defendant by fine or imprisonment, or both, for his failure to comply with the Order; and (iii) granting Plaintiff such other and further relief as this Court deems just and proper.

Dated: New York, New York
July 22, 2020

Shari S. Laskowitz

Shari S. Laskowitz