Land Use: Injunction Sought Against Airbnb-Enabled Leasing of Central Park Bedrooms

Brookford, LLC v. Penraat, 2014 NY Slip Op 24399 (Sup. Ct. NY Co. Dec. 19, 2014).

In an opinion which typifies the combat playing out in Airbnb wars across the country, a Manhattan judge has denied attempts by an Airbnb-enabled landlord to forestall plaintiff's motion to enjoin her renting out the bedrooms in her Central Park West apartment.

Defendant Noelle Penraat resides in a luxury 43-unit building overlooking the reservoir at Central Park West and West 91st Street. The rent for her four-bedroom rent-controlled dwelling is capped at $4,477 per month. As a senior citizen, she receives a reduction to $4,193 per month and is exempt from future rent increases.

Over the past two years, using Airbnb, she has continuously advertised three of her four bedrooms. She offers: (a) "Lovely Small Bedroom in Huge Apartment" (which includes a full size bed--$75 per night); (b) "Sunny Bedroom, Central Park View" (which includes a queen size bed and two large closets-$100 per night); and (c) "Gorgeous master bed/bath on park" (which includes a king size bed and private *en suite* bath--$150 per night).

Plaintiff Brookford LLC, which owns the building, contends that in 2014 Penraat rented her bedrooms to 110 different guests — complete strangers to herself and the lawful tenants of the Building, generating upwards of $8,000 per month. Brookford moved by order to show cause for a preliminary injunction enjoining Penraat from advertising and renting to tourists and other visitors for stays of less than 30 days, in violation of the City's Rent Control Law; Multiple Dwelling Law "MDL"); Housing Maintenance Code; City Building Code and the building's own certificate of occupancy.

HELD: The Supreme Court of New York County (New York's trial-level tribunal) granted plaintiff's order to show cause; the hearing on the requested injunction is scheduled for February 6, 2015.

DISCUSSION: In support of its request for injunctive relief, Brookford argued that it was likely to succeed on the merits: Penraat substantially violated the terms of her tenancy by using her residential apartment for business and profiteering from an illegal hotel in violation of the City's Rent Control Law. Her conduct constituted an incurable violation of her obligations as a rent-controlled tenant. Her guests were not roommates or sublessees; by renting to transients for stays of less than 30 days, Penraat violated the MDL and other regulations.

Brookford also argued that Penraat materially changed the residential character of the building, compromising the safety and security of its tenants and their children. The

owner's 13 family members, ranging in ages from under 6 years old to over 80 years old, all lived in the building and faced a constant threat to their life and safety from transients. As a Class A dwelling, the apartment was not properly equipped with the proper fire safety protections required of hotels in the City, creating a safety issue for Penraat's guests.

A preliminary injunction was needed to restrain defendant from operating her illegal hotel. The balance of the equities weighed in Brookford's favor. The only purported injury that Penraat might suffer was the suspension of her illegal bed and breakfast, which would be compensated by money damages. If a preliminary injunction were not granted, the building and its occupants would be subjected to unwarranted safety risks and intrusions.

Penraat launched a litany of counter-arguments, summarized by the court:

First, there was no likelihood of success on the merits. The predicate notice of violation was sent to defendant instead of her father, the tenant of record. A notice to cure was not served prior to the 30-day lease termination notice, and plaintiff did not specify which conduct could not be cured in the absence of an injunction.

Second, the alleged conduct was permitted under the MDL, which Penraat claims makes clear that "there is nothing illegal about a tenant or other permanent resident renting out a room in the apartment that the individual occupies for payment." Plaintiff cited no caselaw that permitting a guest to stay overnight made use of the apartment "commercial." And other courts had found that the rental of a room in a tenant's apartment while the tenant also occupied the unit did not violate the law.

Third, plaintiff failed to show the imminent threat of irreparable harm. There was no claim of actual injury where a guest of defendant caused damage or annoyance to any person. The delay in bringing this action showed the absence of any danger.

Finally, the balance of the equities favored defendant. Plaintiff's potential financial gain in evicting defendant and re-renting for higher rent did not outweigh defendant's right to occupy her home of nearly 60 years with friends and guests.

The court disagreed with Penraat, finding a significant likelihood that plaintiff would prevail on the merits and would suffer irreparable injury without the injunction. She had willfully violated a substantial obligation of her tenancy and her obligations as a rent-controlled tenant. The court cited analogous precedent: "placing unsuspecting tourists in illegal, dangerous accommodations constitutes irreparable injury, especially if there is a tragic fire." (citation omitted). And Penraat's repeated rentals to transients for the prior year and a half at more than the legal rent "constitutes an incurable violation of the Rent Control Law."

The court also analyzed 2011 amendments to the MDL, citing language by the bill's sponsor which contradicted Penraat's assertion that the MDL allows short-term, compensated transient stays:

> This bill will fulfill the original intent of the law, as construed by enforcing agencies, including the New York City Department of Buildings, by modifying the specific provisions of the Multiple Dwelling Law and applicable local codes that have been cited by defendants in enforcement proceedings as authority for the use of Class A dwellings as illegal transient hotels. *The only "secondary" transient use of class A dwelling units allowed would be use by the permanent occupants natural persons, not corporate entities — for house guests, boarders, roomers or lodgers living within the household of the permanent occupants or for circumstances such as the occasional pet or apartment "sitter" when the permanent occupants are absent for personal reasons, such as vacation or for medical treatment. (Emphasis added).*

The Order to Show Cause by plaintiff for a preliminary injunction against Penraat's advertising or renting her rooms for fewer than 30 day periods was granted.

http://leagle.com/decision/In%20NYCO%2020141219429.xml/BROOKFORD,%20LLC%20v.%20PENRAAT (last accessed Jan. 28, 2015).