SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. JAMES EDWARD D'AUGUSTE** **PART** **IAS MOTION 55EFM**

Justice

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CITY OF NEW YORK,

Plaintiff,

- v -

PHILIP BALDEO, MIGUEL GUZMAN, 156 WEST 15TH STREET CHELSEA LLC,LAND AND BUILDING KNOWN AS 156 WEST 15TH STREET, BLOCK 790, LOT 63, NEW YORK, NEW YORK

Defendant.

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INDEX NO. 450126/2018

MOTION DATE 01/23/2018

MOTION SEQ. NO. 001

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 45, 46, 49, 50, 51, 52, 53, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69

were read on this motion for PREL INJUNCTION/TEMP REST ORDR.

Upon the foregoing documents, Motion Sequence No. 1 is granted in accordance with the accompanying memorandum decision and order.

3/1/2019
DATE

JAMES EDWARD D'AUGUSTE, J.S.C.

CHECK ONE:		**CASE DISPOSED**			X	**NON-FINAL DISPOSITION**	
	X	**GRANTED**		**DENIED**		**GRANTED IN PART**	**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**	**REFERENCE**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 55

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THE CITY OF NEW YORK,

Plaintiff,

-against-

DR. PHILIP BALDEO; MIGUEL GUZMAN; 156 WEST 15TH STREET CHELSEA LLC; THE LAND AND BUILDING KNOWN AS 156 WEST 15TH STREET, BLOCK 790, LOT 63, NEW YORK, NEW YORK; JOHN AND JANE DOE numbers 1 through 10, fictitiously named parties, true names unknown, the parties intended being the managers or operators of the Business being carried on by Defendants and any person claiming any right, title, or interest in the real property which is the subject of this action,

Defendants.

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DECISION AND ORDER

Index No. 450126/2018

Mot. Seq. Nos. 001-004

Hon. James E. d'Auguste

Motion Sequence Numbers 001, 002, 003, and 004 are hereby consolidated for disposition.

In this action to abate a public nuisance, plaintiff the City of New York ("City") seeks, *inter alia*, to enjoin defendants Dr. Philip Baldeo ("Baldeo"), Miguel Guzman ("Guzman"), and 156 West 15th Street Chelsea LLC ("156 West") (collectively, "defendants") from renting the building located at 156 West 15th Street, New York, New York ("Premises"), or any apartment therein, to tourists or other transient tenants in violation of several New York Administrative Code, Building Code, and Multiple Dwelling Law provisions.

In Motion Sequence Number 001, the City moves, by order to show cause, pursuant to New York State Multiple Dwelling Law ("MDL") Section 306, CPLR 6301 and 6311, and Sections 7-707, 20-703(d), 27-2122, and 28-205.1 of the Administrative Code of the City of New York ("Administrative Code" or "Admin. Code") for a preliminary injunction enjoining defendants from (1) interfering with the City's right to have immediate and unhindered access for

its Fire Department of New York ("FDNY") Fire Protection Inspectors and Department of Buildings ("DOB") Inspectors, including but not limited to those personnel assigned to the Mayor's Office of Special Enforcement ("OSE"), to lawfully enter the Premises, in their normal course of duty, for the purpose of inspecting the Premises and any parts thereof, and any signs or service equipment contained therein or attached thereto, at all reasonable times, pursuant to relevant and applicable regulations and unobstructed by defendants to determine the Premises' compliance with the provisions of the New York City Building Code ("Building Code"), the New York City Fire Code, as well as all other relevant provisions of the Administrative Code, the MDL, and other applicable laws and rules; (2) using or occupying, or permitting the use or occupancy of any residential units in the Premises for transient use and occupancy and/or as transient hotel rooms, hostels, or apartment hotels, except those units currently so occupied, which must be vacated within twenty-four (24) hours of issuance of this Court's order, unless otherwise directed by any subsequently issued DOB order to vacate the Premises sooner, and from further permitting the use or occupancy of such currently occupied units for transient use and/or as transient hotel rooms, hostels, or apartment hotels immediately after the current occupants leave; (3) permitting the use or occupancy of any additional residential units at the Premises or in any other Class "A" dwelling units in all other buildings in the City of New York for transient occupancy or use and/or as transient hotel rooms, hostels, or apartment hotels; (4) registering any new persons at the Premises or in any other Class "A" dwelling unit in all other buildings in the City of New York for transient short-term occupancy of less than a thirty (30) day stay; (5) booking or advertising any units at the Premises or in any other Class "A" dwelling unit in all other buildings in the City of New York for short-term transient use, either on their own internet sites or on other travel-related internet sites not directly operated by the defendants; and (6) disposing of, modifying, or

in any other manner interfering with or altering the digital or paper documents, photographs, and records maintained and used in connection with the management, operation, use, and occupancy of the Premises.[1]

In Motion Sequence Numbers 002, 003 and 004, defendants Baldeo, 156 West, and the *in rem* Premises (collectively, "moving defendants") move to dismiss the complaint as against them (however, moving defendants do not set forth the provision(s) of the CPLR upon which they rely for dismissal).[2]

The complaint sets forth eight causes of action for the abatement of statutory and common law public nuisances premised upon violations of building codes related to the illegal conversion of the Premises from residential to transient use (Admin. Code § 28-210.3), multiple causes of action for illegal occupancy (Admin. Code § 28-118.3.1-4), unlawful change of use or occupancy and work without a permit (Admin. Code § 28-105.1), failure to maintain the Premises in a safe condition in compliance with building codes (Admin. Code § 28-301.1), criminal nuisance (New York State Penal Law § 240.45(1)), violations of MDL § 4.8(a) (prohibiting the use of a Class "A" multiple dwelling for any purpose other than that of a permanent residence), and a single cause of

[1] Motion Sequence No. 001 also seeks a temporary restraining order ("TRO"), pursuant to Section 7-710 of the Administrative Code and CPLR 6313, enjoining the operation of the Premises as an illegal hotel, and the advertisement thereof, pending the determination of the preliminary injunction. The TRO was granted and, at oral argument on May 1, 2018, the TRO was continued until the entry of this decision (Tr. (5/1/18) at 17:4-7).

[2] Notably, while moving defendants are represented by the same counsel, they have each filed separate motions to dismiss. Other than to circumvent page restrictions imposed by court rule, there was no apparent need to file three separate motions to dismiss. While the Court has considered all arguments raised in the motions, if, in the future, moving defendants believe rule-imposed page limitations prevent them from fairly articulating their arguments, they should submit a letter requesting permission to file a memorandum of law that exceeds traditional page limitations.

action for deceptive trade practices (New York City Consumer Protection Law ("NYCCPL"), located at Admin. Code § 20-700).

BACKGROUND

According to the unrefuted facts as alleged in the complaint, the Premises is a four-story walk-up Class "A" multiple dwelling containing nine Class "A" apartments and one Class "B" sleeping room.[3] Defendant Baldeo, through 156 West, owns and manages the Premises, which he initially purchased in 2013. Defendant Guzman is a tenant of the Premises. Guzman has advertised apartments within the Premises for use on the website Airbnb (www.airbnb.com).[4]

The City asserts that the use of a Class "A" apartment for transient stays of less than thirty (30) days is prohibited by the MDL and by the Administrative Code as an illegal conversion, an illegal occupancy, and an unsafe condition due to increased fire safety risks and other public health issues. These risks arise because, *inter alia*, transient occupants of Class "A" apartments are not provided with sufficient fire safety protections—including fire suppression devices, alarms, and emergency lighting—which would be required in transient dwellings (*e.g.*, hotels). According to the City, the lack of adequate fire safety, combined with the transient tenants' unfamiliarity with the Premises, significantly increases the risk of injury to individuals in the event of a fire.

[3] According to the City, the status of the Class "B" unit is unclear as it may have been incorporated into one of the Class "A" units.

[4] Defendant Guzman did not appear in this action until February 5, 2019, almost two weeks after the City filed its motion for a default and permanent injunction against Guzman. Although the City granted Guzman until March 8, 2019 to submit opposition papers to the City's motion for a default and permanent injunction, Guzman remains in default of the Order to Show Cause for the preliminary injunction. Further, even if the arguments offered by the moving defendants were applied to Guzman, the result would be the same and the preliminary injunction would still be granted. Because the preliminary injunction merely enjoins Guzman from violating the law, there is no prejudice to him for his default in this regard.

The complaint also alleges that apartments in the Premises are regularly and deceptively advertised on Airbnb for short term stays—as short as one day—in violation of the MDL and the NYCCPL. The City provides several of these advertisements, which state, for example, that the "entire apartment" is available for "$243 per night," that there is a "1 night minimum stay," and that "[c]heck in is anytime after 3PM [and] check out by 12PM." Pugach Aff., Ex. 17.

The City contends that since at least August 2014, multiple units in the Premises have been rented on a regular basis to tourists and other transient visitors for short-term stays of less than thirty (30) days. Specifically, in 2014, the City received complaints of transient use, loud noise and drug use at the Premises. In response, OSE, an investigation unit that observes, *inter alia*, health, safety and fire code compliance in buildings throughout New York City, inspected the Premises on four separate occasions between 2014 and 2017.[5] These investigations determined that several units in the Premises were repeatedly occupied by transient tenants and that the Premises did not contain sufficient fire safety protection for such use.[6] Specifically, at the time of one investigation, six units in the Premises (Apartments 1A, 1D, 2B, 2C, 3A, and 4A) were found to house transient occupants—namely, tourists. Pugash Aff., ¶¶ 32-36. Based upon its investigations, OSE issued twelve (12) New York City Environmental Control Board ("ECB") notices of violations ("NOVs"), including several NOVs for illegal transient occupancy (*i.e.*, the illegal renting of units on a day-to-day basis) and for the illegal conversion of a residential property

[5] Specifically, OSE inspected the Premises on August 28, 2014, October 15, 2014, March 7, 2017, and September 22, 2017.

[6] Requirements imposed on transient residential occupancies beyond those applicable to non-transient occupancies include, *inter alia*, portable fire extinguishers, automatic sprinkler systems, photoluminescent exit path markings, a detailed fire safety and evacuation plan, escape diagrams in each unit, a fire command center and a certified Fire Safety Director on the premises. Spadafora Aff., ¶¶ 11-12; Sirakis Aff., ¶¶ 4-9.

to, effectively, a commercial property. *Id.*, Ex. 7-10, 12, 14-15. In addition to the twelve (12) NOVs, one summons was issued to Guzman for advertising transient occupancies on Airbnb. *Id.*, Ex. 19. Finally, it is noted that this alleged illegal conduct is taking place in apartments that, within the past decade, were designated as rent stabilized residencies. Now, rather than providing affordable housing, the entire building was emptied of permanent residents and instead used for short-term rentals via websites such as Airbnb.

DISCUSSION

The Preliminary Injunction (Mot. Seq. No. 001)

The City essentially requests two primary injunctions: (1) to enjoin defendants from the illegal use or occupancy of the Premises and (2) to enjoin defendants from advertising what would be an illegal use or occupancy of the Premises. Typically, "[a] party seeking a preliminary injunction must demonstrate, by clear and convincing evidence (1) a likelihood of success on the merits, (2) irreparable injury absent the granting of the preliminary injunction and (3) a balancing of the equities in the movant's favor." *Gilliland v. Acquafredda Enters., LLC*, 92 A.D.3d 19, 24 (1st Dep't 2011). However, recognizing the public's compelling interest in ensuring that building and fire safety codes are followed, where a municipality seeks injunctive relief in nuisance abatement proceedings, such as in this action, "[t]he three-pronged test for injunctive relief does not apply; no special damage or injury to the public need be alleged; and commission of the prohibited act is sufficient to sustain the injunction." *City of New York v. Bilynn Realty Corp.*, 118 A.D.2d 511, 512 (1st Dep't 1986). Here, under either the three-prong test discussed in *Acquafredda Enterprises, LLC* (92 A.D.3d at 24), or the single prong test set forth in *Bilynn* (118 A.D.2d at 512), the City has met its prima facie entitlement to a preliminary injunction.

Pursuant to MDL Section 4.8(a), the units within the Premises, which is a Class "A" multiple dwelling, "shall only be used for permanent residence purposes," which is defined as "occupancy of a dwelling unit by the same natural person or family for thirty consecutive days or more."[7] Pursuant to MDL Section 306, the City may seek to enjoin any violation of the MDL, including the improper use of a Class "A" multiple dwelling. Further, MDL Section 304 establishes that both the violator and "every person who shall . . . assist in the violation of any provision of [the MDL]" are punishable under the statute.

MDL Section 4.8(a) is incorporated into both the Administrative Code and the Building Code.[8] Pursuant to Administrative Code Section 7-703(d), which contains the "Nuisance Abatement Law," a building such as the Premises shall be a public nuisance if it is in violation of, *inter alia*, Administrative Code Sections 28-210.3, 28-118.3.2, 28-105.1, and 28.301.1. Administrative Code Section 28-210.3 governs illegal conversion of buildings from residential use to transient use, such as the Premises. It sets forth, in pertinent part, the following:

> It shall be unlawful for any person or entity who owns or occupies a multiple dwelling or dwelling unit classified for permanent residence purposes to offer or permit the use or occupancy or to convert for use or occupancy such [dwelling or unit] for purposes other than permanent residence purposes. For the purposes of this section a conversion in use . . . may occur irrespective of whether any physical changes have been made to such dwelling unit.

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[7] The MDL allows for houseguests and "lawful boarders, roomers or lodgers," so long as they reside in the dwelling unit with the natural person or family (MDL § 4.8(a)(1)(A)), and for short term house sitters, so long as the house sitters do not pay for the use of the dwelling (MDL § 4.8(a)(1)(B)).

[8] Administrative Code § 27-265 references and incorporates Housing Maintenance Code ("HMC") § 27-2004(8)(a), which is identical to MDL § 4.8(a). Similarly, Building Code § 310.1.2 also references and incorporates HMC § 27-2004(8)(a) and MDL § 4.8(a). Each provision governs "buildings with three or more dwelling units that are occupied for permanent residence purposes," like the Premises at issue herein.

Admin. Code § 28-210.3. Administrative Code Section 28-118.3.2 provides that "[n]o change shall be made to a building . . . inconsistent with the last issued certificate of occupancy." Administrative Code Section 28-105.1 provides that "[i]t shall be unlawful to . . . change the use or occupancy of any building . . . unless and until a written permit therefore shall have been issued by the commissioner in accordance with the requirements of this code." Administrative Code Section 28-301.1 provides, in pertinent part, that a building's owner "shall be responsible at all times to maintain the building and its facilities and all other structures regulated by this code in a safe and code-complaint manner." Pursuant to Administrative Code Section 7-704, the City may seek an injunction enjoining acts, including the foregoing acts, that constitute a public nuisance.

The City alleges that defendants violated and continue to violate MDL Section 4.8(a) and the aforementioned Administrative Code provisions by permitting the use or occupancy of the Premises, or by converting the same for the purpose of use or occupancy, as short-term transient tenancies of less than thirty (30) days. The City argues that these violations create an unsafe condition in the Premises because Class "A" multiple dwellings are not equipped with fire safety devices and other protections that are statutorily required of buildings registered for the purpose of transient occupancy, such as hotels, which, in turn, leads to an increased potential for injury to transient tenants who are unfamiliar with the layout of the building. Hendrix Aff., Ex. 2; Spadafora Aff., ¶¶ 6-10. The City also notes that the existence of transient tenants in a residential neighborhood are often an annoyance to permanent residents due to increases in noise, drunken behavior, and increased instances of drug use.

The City has provided ample evidence that several units within the Premises have been used for transient occupancy in violation of MDL Section 4.8 and Administrative Code Sections 28-118.3.2, 28-105.1, and 28-210.3, in that defendants have, on a continuing and regular basis,

rented units within the Premises, or permitted the same to be rented, to individuals for stays of less than thirty (30) days. *See* Hendrix Aff., Ex. 6 (Airbnb profiles and advertisements); Pugach Aff., ¶¶ 18-38; *id.*, Exs. 11 and 16 (photographs of guest reservation receipts for short term stays), 13 and 17 (Airbnb advertisements containing numerous customer reviews, many of which were made during the same month), 4, 5, 7-10, 12, 15, 18, 19 (NOVs and DOB Complaints referencing the illegal occupancy of the Premises); Sen Aff., Ex. 1 (Airbnb listings for units in the Premises as recent as January 2018, which also include user reviews as recent as December 2017). The City has also made a proper evidentiary showing that the Premises was not maintained in a safe or code-compliant manner in violation of Administrative Code Section 28-301.1. *See generally* Santiago Aff.; Rosato Aff.; Adebo Aff. (each annexing fire safety inspection reports listing fire safety violations related to the improper use of the Premises); Pugach Aff., Exs. 1-20; Spadafora Aff., ¶¶ 11-12; Sirakis Aff., ¶¶ 4-9. In doing so, the City has sufficiently proven that defendants are operating, or permitting the operation of, the Premises for a purpose other than permanent residency in violation of MDL Section 4.8(a) and Administrative Code Sections 28-210.3, 28-118.3.2, 28-105.1, and 28-301.1. The commission of these violations, in and of themselves, is sufficient to sustain the City's request for a preliminary injunction. *Bilynn*, 118 A.D.2d at 512.

The result is no different under the traditional three-prong test. The wealth of evidence provided by the City—and not refuted by defendants—meets the clear and convincing standard of proof to demonstrate the City's likelihood of success in establishing that defendants have violated the above-mentioned statutes by operating, or allowing the Premises to be operated, for transient use, thereby committing a public nuisance. As to irreparable injury, where a municipality seeks to enjoin a public nuisance, "irreparable injury is presumed from the continuing existence of an unremedied public nuisance." *City of New York v. 330 Cont. LLC.*, 60 A.D.3d 226, 230 (1st Dep't

2009). Here, as discussed above, the City has established the existence of a public nuisance, and therefore has sufficiently established irreparable injury. *See Incorporated Vill. of Plandome Manor v. Ioannou*, 54 A.D.3d 364, 364-65 (2d Dep't 2008) (holding that a municipality "need not demonstrate irreparable harm" when seeking injunctive relief to enforce ordinances). Finally, the equities—enforcing regulations and ordinances designed to protect the health, safety, and welfare of the public versus allowing the continued flaunting of said regulations—unquestionably lie in favor of the City. *See, e.g.*, *Fischer v. Deitsch*, 168 A.D.2d 599, 601 (2d Dep't 1990) (holding that the equities will lie in favor of the movant where the harm to it is greater than harm to the opponent).

The City also argues that defendants should be enjoined from advertising the Premises for transient use. Pursuant to MDL Section 121 and Administrative Code Section 27-287.1, advertising short-term transient occupancies in a Class "A" multiple dwelling, such as the Premises, is prohibited. These statutes, which are largely identical, make it "unlawful to advertise occupancy or use of dwelling units in a class A multiple dwelling for occupancy that would violate [MDL § 4.8]." In addition, the NYCCPL prohibits deceptive trade practices, defined as "false . . . or misleading . . . representation[s] of any kind made in connection with the sale, lease, rental or loan or in connection with the offering for sale, lease, rental, or loan of consumer goods or services." Admin. Code § 20-701. The rental of an apartment is considered a consumer good or service. *23 Realty Assoc. v. Tiegman*, 213 A.D.2d 306, 308 (1st Dep't 1995) (stating that a residential lease is "a purchase of services from the landlord (and, by extension, his agent)" and "[a]n apartment dweller is today viewed, functionally, as a consumer of housing services").

The City has submitted evidence that Guzman, whom the owner hired to manage the property on his behalf, has been repeatedly advertising short term rentals via Airbnb in violation

of MDL Section 121 and Administrative Code Section 27-287.1 and that such conduct constitutes deceptive trade practices under the NYCCPL. Guzman's commission of these advertising violations, in and of themselves, is enough to sustain the City's request for a preliminary injunction in this regard. *Bilynn*, 118 A.D.2d at 512.

As noted above, moving defendants do not challenge the facts alleged in the complaint. Instead, they raise several arguments that broadly challenge the validity of the provisions at issue and the City's authority to inspect buildings and enforce punishments for violations of these provisions. The moving defendants' arguments can be summarized in four broad categories: (1) constitutional challenges to the validity of the MDL and Administrative Code provisions and to the validity of the searches of the Premises; (2) moving defendants were not personally at fault; (3) the evidence presented fails to clearly and convincingly establish a violation of any legal provision; and (4) the Premises is not zoned as a transient use building and, therefore, should not be governed by fire safety regulations that apply to hotels and other purpose-built transient use buildings.

Moving defendants first argue that MDL Section 4.8(a) is unconstitutionally vague because, while it defines the lawful use of a Class "A" dwelling, it does not specifically define unlawful use. This argument lacks merit. The specific text of MDL Section 4.8(a) is straightforward: "A class A multiple dwelling shall *only* be used for permanent residence purposes." (Emphasis added). Further, "permanent residence purposes" is defined as continuous occupancy of thirty (30) or more days by the same person or family (allowing for houseguests and legal boarders who reside with the permanent residents, and house sitters who do not pay for their stay). Per the black letter law of Section 4.8(a) of the MDL, any other use is prohibited. Accordingly, MDL Section 4.8 is not unconstitutionally vague. *See Foss v. City of Rochester*, 65

N.Y.2d 247, 253 (1985) (holding that statutes require "only a reasonable degree of certainty so that individuals of ordinary intelligence are not forced to guess at the meaning of statutory terms").

Moving defendants also argue that MDL Section 4.8 is unconstitutionally overbroad because it could be interpreted to prevent non-occupancy related use within the dwelling (such as hosting a book club, hiring a painter to paint the dwelling, and hosting a child's sleep over party). This argument is unpersuasive. MDL Section 4.8 does not govern non-occupancy uses and does not prohibit such non-occupancy activities.

Moving defendants raise other constitutional arguments with respect to vagueness and overbreadth that merely raise hypotheticals unsupported by any facts at issue in the instant litigation and, therefore, need not be addressed further. *People v. Stuart*, 100 N.Y.2d 412, 422 (2003) ("[T]he court will not strain to imagine marginal situations in which the application of the statute is not so clear." (quoting *People v. Nelson*, 69 N.Y.2d 302, 308 (1987)); *Wegman's Food Mkts. v. State of New York*, 76 A.D.2d 95, 101 (4th Dep't 1980) ("[S]tatutes are not automatically invalidated on the ground of vagueness simply because of difficulty in determining whether certain marginal activities fall within the scope of the statutory regulation.").

Moving defendants' additional constitutional arguments that the statutes and several related New York State and City provisions, codes, and ordinances are unconstitutional are equally unsupported. For example, moving defendants attempt to argue that fire safety inspectors are granted unconstitutional search and seizure powers, that the ECB determination regarding defendants' statutory violations should be disregarded because ECB is a "kangaroo court" that is only "slightly more fair than the Spanish inquisition" and that OSE, a governmental task force established to address quality of life issues citywide, was created without proper authority and in violation of the City's Charter. These arguments, based principally on hyperbole, fail to meet the

substantial burden of establishing the unconstitutionality of a statute, provision, code, or ordinance. *See Winkler v. Sherman*, 137 A.D.3d 633, 633 (1st Dep't 2016).

With respect to the illegal search and seizure arguments made by the moving defendants, the City has asserted that the warrantless administrative searches of the units located at the Premises were consented to by the then-current transient residents. *See United States v. Buettner-Janusch*, 646 F.2d 759, 765 (2d Cir. 1981) ("[C]onsent to a search by one with access to the area searched, and either common authority over it, a substantial interest in it or permission to exercise that access, express or implied, alone validates the search."). Moving defendants provide no evidence that the transient tenants could not, or did not, consent to a search. Additionally, the DOB investigators were permitted to enter the Premises and look around without such actions constituting a search of the Premises: New York courts have held that general access to common areas like hallways and lobbies negate expectations of privacy required to give rise to Fourth Amendment concerns. *See People v. Espinal*, 161 A.D.3d 556 (1st Dep't 2018).

Next, moving defendants argue that no injunction could lie against them because there is no evidence that they, personally, rented out the units in violation of any statutes. Therefore, moving defendants claim, any injunction granted against them would be punishment for the conduct of others and a deprivation of their due process rights under the United States Constitution. This argument is also meritless. Where an injunction is sought to abate a public nuisance at a building, "[t]he personal fault of the owner is not a material consideration upon such application." *City of New York v. Castro*, 160 A.D.2d 651, 652 (1st Dep't 1990). Moreover, Administrative Code Section 28-210.3 explicitly establishes that "any person or entity *who owns* or occupies a multiple dwelling or dwelling unit classified for permanent residence purposes" may not "offer or *permit the use* or occupancy . . . of such [dwelling or unit] for purposes other than permanent

residence purposes." (Emphasis added). Here, it is alleged that Baldeo, through 156 West, owned the Premises, that he was aware of the illegal use of the Premises, and that he did nothing to stop (and, therefore, effectively permitted) the illegal use of the Premises in violation of Section 28-210.3 of the Administrative Code.

Defendants offer nothing to refute these contentions. Indeed, it seems inconceivable that at least two-thirds of the units in the Premises were used for transient occupancy without the building owner's knowledge, or at least willful blindness. Moreover, even if a lack of knowledge could be reasonably asserted before the first violations in 2014, the moving defendants certainly had actual or constructive knowledge at the time of the three subsequent inspections that gave rise to further building and fire code violations. This is shown by Baldeo executing an affidavit, dated December 12, 2014, certifying that he corrected the violating condition of illegal transient use taking place at the Premises by permitting only permanent dwelling "throughout the entire building."

Similarly, Administrative Code Section 28-301.1 explicitly sets forth that an owner is "responsible for maintaining the building . . . in a safe and code-compliant manner." The violation of such an obligation exposes an owner to vicarious liability. *Guzman v. Haven Plaza Hous. Dev. Fund Co.*, 69 N.Y.2d 559, 566 (1986) (finding the owner vicariously liable where the owner failed to remedy a condition that violated the Administrative Code). The complaint sufficiently alleges, and the City provides support for the claim, that moving defendants failed to maintain the building in a safe and code compliant manner, in violation of Administrative Code Section 28-301.1.

As for the argument that the City seeks to deprive moving defendants of the use of their property, this assertion is unpersuasive. The Premises may still be used for all legal and code-

compliant occupancies. The only thing moving defendants are being deprived of is the ability to engage in illegal conduct that endangers public safety.

Further, moving defendants, relying on case law interpreting a prior version of MDL Section 4.8(a), argue that the City failed to establish that MDL Section 4.8(a) was violated because the City does not submit evidence to show that most of the Premises was rented for short-term use. However, this argument is specious as the current version of the MDL, which is applicable to the instant case, no longer contains such a requirement. When MDL Section 4.8(a) was amended to its current form (effective May 1, 2011), the language that gave rise to this majority use requirement was removed. Specifically, the prior version of MDL Section 4.8(a), stated: "A 'class A' multiple dwelling is a multiple dwelling which is occupied, *as a rule*, for permanent residence purposes." (Emphasis added). It is upon this phrase that the caselaw cited by moving defendants for the proposition that the City must demonstrate a majority of the building was used illegally is based. However, the 2011 amendment to the MDL deleted the words "as a rule." McKinney's Multiple Dwelling Law § 4, Historical and Statutory Notes, L. 2010, c. 225 Legislation (2019). Therefore, while the pre-2011 MDL Section 4.8(a) and the caselaw related to this outdated requirement still might be applicable matters involving transient occupancies that took place prior to May 1, 2011, it is inapplicable thereafter. Here, all of the alleged illegal occupancies at the Premises occurred after May 1, 2011 (*i.e.*, from 2014 through late 2017) and, therefore, the requirement prior to the 2011 amendment is irrelevant.[9]

Moving defendants also argue, without offering any factual support, that the short-term transient occupants of the Premises were lawful boarders, roomers, or lodgers. Under MDL

[9] Notably, as there is evidence that six of nine apartments in the Premises have been used for illegal transient occupancies, it seems likely that the City would have been able to meet the pre-2011 requirement.

Section 4.8(a)(1)(A), "other natural persons *living within the household of the permanent occupant* such as house guests or lawful boarders, roomers or lodgers" are legal occupants even if they resided in the dwelling for less than thirty (30) days. (Emphasis added). Moving defendants provide no evidence to support that the transient tenants at the Premises were lawful boarders, roomers or lodgers who resided "within the household of the permanent occupant." MDL § 4.8(a)(1)(A); *see also* Pugach Aff., Ex. 17 ("[E]ntire apartment" offered for rent, with tenant "available through email or text throughout your stay.").

Moving defendants also argue that because the Premises is not zoned as a transient use building, they cannot be in violation of any regulation that applies solely to transient use buildings. However, the City does not argue that the Premises was converted, statutorily, into a transient dwelling. Rather, the City argues that defendants are improperly permitting designated Class "A" units within the Premises to be used as a transient dwelling in violation of multiple regulations. Indeed, moving defendants' argument that the Premises is not zoned as a transient use building highlights the illegality of its use for transient occupancy.

Moving defendants appear to further take issue with the various NOVs, DOB complaints (Pugach Aff., Exs. 4, 5, 7-10, 12, 15, 18, 19), and Fire Safety inspection reports (*see generally* Santiago Aff.; Rosato Aff.; Adebo Aff.). However, Baldeo did not challenge the notices at the time of their issuance and he actually filed certificates of correction acknowledging the violations and asserting, apparently erroneously, that the violations had been corrected. Hendrix Aff., Ex. 8 (certificates of correction). Regardless, these arguments fail to establish any grounds to deny the preliminary injunction against defendants.

The Court has reviewed the moving defendants' remaining arguments and find them to be without merit. Additionally, moving defendants have failed to submit any facts or evidence that

persuades this Court that the preliminary injunction should not be issued. Accordingly, the City is entitled to a preliminary injunction enjoining defendants' use of the Premises for any purpose other than permanent residency, as defined in the MDL and Administrative Code, as well as enjoining defendants from offering or advertising the use or occupancy of the Premises for any purpose other than permanent residency.

The Motions to Dismiss (Mot. Seq. Nos. 002, 003, 004)

Moving defendants do not set forth the grounds upon which they seek dismissal, cite any case law regarding dismissal, or address any of the causes of action directly. Rather, their motions to dismiss primarily reiterate the arguments made in their opposition to the City's motion for a preliminary injunction (Mot. Seq. No. 001). Specifically, moving defendants argue that the MDL and Administrative Code provisions at issue herein are vague and overbroad, contrary to this Court's finding that they are neither vague nor overbroad; do not say what they explicitly and unequivocally state; and do not apply to moving defendants even though, by their terms, they explicitly apply. These arguments are unavailing as the complaint more than sufficiently alleges facts supporting the existence of multiple MDL and Administrative Code violations at the Premises by defendants.

The Court has considered all arguments advanced in support of the motions to dismiss and find them to be without merit. Moreover, pursuant to the statutory scheme, the City has sufficiently pleaded their causes of action seeking a preliminary injunction and monetary penalties. Accordingly, moving defendants are not entitled to dismissal of the complaint as against them.

In accordance with the foregoing reasons, it is hereby

ORDERED that the branch of the City of New York's motion for a preliminary injunction (Mot. Seq. No. 001) enjoining defendants from interfering with the City's right to have immediate

and unhindered access for its Fire Department of New York ("FDNY") Fire Protection Inspectors and Department of Buildings Inspectors, including but not limited to those personnel assigned to the Mayor's Office of Special Enforcement, to lawfully enter the Premises, in their normal course of duty, for the purpose of inspecting the Premises and any parts thereof, and any signs or service equipment contained therein or attached thereto, at all reasonable times, pursuant to relevant and applicable regulations and unobstructed by defendants to determine the Premises' compliance with the provisions of the New York City Building Code, the New York City Fire Code, as well as all other relevant provisions of the Administrative Code, the MDL, and other applicable laws and rules is granted; and it is further,

ORDERED that the branch of the City of New York's motion for a preliminary injunction (Mot. Seq. No. 001) enjoining defendants from using or occupying, or permitting the use or occupancy of any residential units in the Premises for transient use and occupancy and/or as transient hotel rooms, hostels, or apartment hotels, and from further permitting the use or occupancy of such currently occupied units for transient use and/or as transient hotel rooms, hostels, or apartment hotels immediately after the current occupants leave is granted; and it is further,

ORDERED that the branch of the City of New York's motion for a preliminary injunction (Mot. Seq. No. 001) enjoining defendants from permitting the use or occupancy of any additional residential units at the Premises or in any other Class "A" dwelling unit in all other buildings in the City of New York for transient occupancy or use and/or as transient hotel rooms, hostels, or apartment hotels is granted; and it is further,

ORDERED that the branch of the City of New York's motion for a preliminary injunction (Mot. Seq. No. 001) enjoining defendants from registering any new persons at the Premises or in

any other Class "A" dwelling unit in all other buildings in the City of New York for transient short-term occupancy of less than a thirty (30) day stay is granted; and it is further,

ORDERED that the branch of the City of New York's motion for a preliminary injunction (Mot. Seq. No. 001) enjoining defendants from booking or advertising any units at the Premises or in any other Class "A" dwelling unit in all other buildings in the City of New York for short-term transient use, either on their own internet sites or on other travel-related internet sites not directly operated by the defendants is granted; and it is further,

ORDERED that the branch of the City of New York's motion for a preliminary injunction (Mot. Seq. No. 001) enjoining defendants from disposing of, modifying, or in any other manner interfering with or altering the digital or paper documents, photographs, and records maintained and used in connection with the management, operation, use, and occupancy of the Premises is granted; and,

Due deliberation having been had, and it appearing to this Court that causes of action exist in favor of the City of New York and against defendants Dr. Philip Baldeo, Miguel Guzman, and 156 West 15th Street Chelsea LLC, and that the City is entitled to a preliminary injunction on the ground that the defendants threaten, or are about to do, or are doing or procuring or suffering to be done, an act in violation of the City's rights respecting the subject of the action (the Premises) and tending to render the judgment ineffectual, as set forth in the aforesaid decision and the City has demanded and would be entitled to a judgment restraining defendants from the commission or continuance of acts, which, if committed or continued during the pendency of this action, would produce injury to the City, as set forth in the aforesaid decision, it is

ORDERED that defendants, their agents, servants, employees and all other persons acting under the jurisdiction, supervision and/or direction of defendants, are enjoined and restrained

during the pendency of this action, from doing or suffering to be done, directly or through any attorney, agent, servant, employee, or other person under the supervision or control of defendants or otherwise, any of the following acts:

(1) Contracting for, permitting and/or assisting others in permitting, the transient occupancy (*i.e.* an occupancy of less than thirty (30) consecutive days) of the Premises, a Class "A" multiple dwelling, or any apartment or unit therein, and

(2) Advertising, permitting and/or assisting others in permitting, the Premises, a Class "A" multiple dwelling, or any apartment or unit therein for transient occupancy (*i.e.* an occupancy of less than thirty (30) consecutive days), and

(3) Disposing of, modifying, or in any other manner interfering with the digital or paper documents, photographs, and records maintained in connection with the management, operation, use, and occupancy of the Premises, a Class "A" multiple dwelling, or any apartment or unit therein, including records maintained and/or used to manage and operate any transient use

until the resolution of this case, or further court order; and it is further

ORDERED that the motions to dismiss by defendants Dr. Philip Baldeo, 156 West 15th Street Chelsea LLC, and the Land and Building Known as 156 West 15th Street, Block 790, Lot 67 County, City and State of New York (the Premises) (Mot. Seq. Nos. 002, 003 and 004) are denied in their entirety; and it is further,

ORDERED that defendants are directed to serve an answer to the complaint within twenty (20) days after service of a copy of this order with notice of entry.

This constitutes the decision and order of this Court.

Dated: March 1, 2019

Hon. James E. d'Auguste, J.S.C.