

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D33480  
O/kmb

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - October 25, 2011

REINALDO E. RIVERA, J.P.  
DANIEL D. ANGIOLILLO  
ARIEL E. BELEN  
SHERI S. ROMAN, JJ.

---

2010-10155

DECISION & ORDER

306 Rutledge, LLC, respondent, v City of New York,  
et al., appellants.

(Index No. 23292/09)

---

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Stephen J. McGrath  
and Victoria Scalzo of counsel), for appellants.

Goldberg & Cohn, LLP, Brooklyn, N.Y. (Elliott S. Martin of counsel), for respondent.

In an action, inter alia, for injunctive relief and to recover damages for breach of contract, the defendants appeal from an order of the Supreme Court, Kings County (Velasquez, J.), dated August 30, 2010, which granted those branches of the plaintiff's motion which were to direct them to disclose the complete records concerning their use of, and activities at, the subject premises, relating to the creation and remediation of pollution at the premises, and any tangible records concerning any actions or plans to remediate the polluted condition, and for a preliminary injunction directing them to pay the plaintiff the amount of all rental payments due since September 15, 2009, together with all payments due for real estate taxes, water and sewer rental, and any other payments required under the 2006 lease between the parties until the defendants abate the environmental hazard existing on the subject premises or the outcome of any trial in this matter.

ORDERED that the order is modified, on the law and in the exercise of discretion, by deleting the provision thereof granting that branch of the plaintiff's motion which was for a preliminary injunction directing the defendants to pay the "plaintiff the amount of all rental payments due since September 15, 2009, together with all payments due for real estate taxes, water and sewer rental, and any other payments required under the 2006 lease between the parties" until the defendants abate the environmental hazard existing on the subject premises or the outcome of any trial in this matter, and substituting therefor a provision denying that branch of the plaintiff's motion;

December 27, 2011

Page 1.

as so modified, the order is affirmed, without costs or disbursements.

The plaintiff is the owner of premises which were, at one time, occupied by the defendant Sanitation Department of the City of New York (hereinafter the City) pursuant to a month-to-month tenancy under a renewal lease. On January 30, 2009, the City terminated the tenancy, surrendered the premises, and discontinued paying rent and other charges under the lease. Approximately eight months later, the plaintiff commenced this action, alleging that the City had failed to complete environmental remediation on the premises pursuant to a 1994 consent order issued by the New York State Department of Environmental Conservation. The plaintiff moved, inter alia, to direct disclosure of the City's complete records concerning its use of, and activities at, the premises relating to the creation and remediation of pollution at the premises, and any tangible records concerning any actions or plans to remediate the polluted condition, and for a preliminary injunction directing the defendants to pay the plaintiff the amount of all rental payments due since September 15, 2009, together with all payments due for real estate taxes, water and sewer rental, and any other payments required under the 2006 lease between the parties until the defendants abate the environmental hazard existing on the subject premises or the outcome of any trial in this matter. The Supreme Court granted those branches of the motion.

CPLR 3101(a) provides for full disclosure of "all matter material and necessary in the prosecution . . . of an action" (*see Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406). "The Supreme Court has broad discretion in the supervision of discovery, and its determinations should not be disturbed on appeal unless improvidently made" (*Foster v Herbert Slepoy Corp.*, 74 AD3d 1139, 1140 [internal quotation marks omitted]; *see JRP Old Riverhead Ltd. v Town of Southampton*, 73 AD3d 1130, 1132-1133; *Kaplan v Herbstein*, 175 AD2d 200). Under the circumstances of this case, the Supreme Court providently granted that branch of the plaintiff's motion which was to direct the defendants to disclose its complete records concerning its use of, and activities at, the premises, relating to the creation and remediation of pollution at the premises, and any tangible records concerning any actions or plans to remediate the polluted condition, as these records are material and necessary to the issues in this case.

"The purpose of a preliminary injunction is to preserve the status quo until a decision is reached on the merits" (*Icy Splash Food & Beverage, Inc. v Henckel*, 14 AD3d 595, 596; *see S.J.J.K. Tennis, Inc. v Confer Bethpage, LLC*, 81 AD3d 629, 630; *Ruiz v Meloney*, 26 AD3d 485, 486). "To be entitled to a preliminary injunction, a movant must establish (1) a likelihood or probability of success on the merits, (2) irreparable injury absent granting the preliminary injunction, and (3) a balancing of the equities in the movant's favor" (*Rowland v Dushin*, 82 AD3d 738, 739; *see Board of Mgrs. of Wharfside Condominium v Nehrich*, 73 AD3d 822, 824; *Yemini v Goldberg*, 60 AD3d 935, 936). "Where the plaintiffs can be fully compensated by a monetary award, an injunction will not issue because no irreparable harm will be sustained in the absence of such relief" (*Mar v Liquid Mgt. Partners, LLC*, 62 AD3d 762, 763).

Here, the City has not yet remediated the contamination on the premises. Although the plaintiff may ultimately be successful in this action, the order of the Supreme Court effectively altered the status quo and granted the monetary relief the plaintiff seeks in the complaint (*see SHS Baisley, LLC v Res Land, Inc.*, 18 AD3d 727, 728; *Village of Westhampton Beach v Cayea*, 38 AD3d

760, 762). Accordingly, that branch of the plaintiff's motion which was for a preliminary injunction directing the defendants to pay the plaintiff the amount of all rental payments due since September 15, 2009, together with all payments due for real estate taxes, water and sewer rental, and any other payments required under the 2006 lease between the parties until the defendants abate the environmental hazard existing on the subject premises or the outcome of any trial in this matter, should have been denied.

RIVERA, J.P., ANGIOLILLO, BELEN and ROMAN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino  
Clerk of the Court