

**700 Broadway 1891 LLC v Project for Pub. Spaces,  
Inc.**

2010 NY Slip Op 33380(U)

December 1, 2010

Supreme Court, New York County

Docket Number: 603345/09

Judge: Louis B. York

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY  
PRESENT: Hon. LOUIS B. YORK PART 2  
Justice

-----X  
700 BROADWAY 1891 LLC and WEITZ &  
LUXENBERG, PC,

Plaintiffs,

-against-

PROJECT FOR PUBLIC SPACES, INC.,  
Defendant,

Index No. 603345/09

Motion Date \_\_\_\_\_

Motion Seq. No. 001

Motion Cal. No. \_\_\_\_\_

-----X  
PROJECT FOR PUBLIC SPACES, INC.,  
Third-Party Plaintiff,

Index No. 591158/09

-against-

WEITZ & LUXENBERG, PC,  
Third-Party Defendant.

**FILED**

**DEC 09 2010**

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The following papers, numbered 1 to \_\_\_\_\_ were read on this motion for Preliminary Injunction

NUMBERED  
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

| PAPERS  
| \_\_\_\_\_  
| \_\_\_\_\_  
| \_\_\_\_\_

Cross-Motion: [ ] Yes [X] No

In this action for ejectment, the defendant-tenant has been withholding the rent because it claims that it has been deprived of the use of a substantial portion of the premises - a conference room and the signage in the main lobby evidencing its presence in the building. The tenant moves for a preliminary injunction requiring the landlord to allow it to

use the conference room and to restore the lobby's signage. For the reasons discussed *infra*, the preliminary injunction is denied as to the conference room, but is granted as to the restoration of the signage.

### **Background Facts**

At the time that the landlord bought the building, the defendant and another tenant occupied the premises. The plaintiff, intending the building to be entirely occupied by the prestigious law firm of Weitz & Luxenberg, substantially renovated the building. When the renovation was completed, the defendant was the only tenant left and continued to occupy the premises on the 9<sup>th</sup> floor. The large conference room on the 4th floor, which could previously accommodate about 40 individuals, was transformed into two much smaller conference rooms, each of which could now accommodate only about 10 individuals. In addition, plaintiff refused to restore the signage identifying the defendant as an occupant of the building. Much of defendant's activities consisted of using the conference room to train people locally and worldwide in organizing and creating public spaces, such as parks and other public areas for the use of the public. During the period of renovation, and afterwards, the defendant was forced to seek outside sources at additional expense to hold its training sessions. On some occasions, it was unable to find space to accommodate all of the individuals who had reserved places in their session, forcing defendant to cancel their reservations.

Pointing to a provision in the lease granting the defendant use of the conference room so long as it was up-to-date in the rent and was abiding by the rules of the building, the defendant demanded that the 4<sup>th</sup> floor conference room be restored to its original condition. Because of the changes made by plaintiff, averred defendant, it was forced to spend thousands of dollars for which it was holding the plaintiff responsible. Also, it claimed the loss of business and goodwill because of the potential customers who were not able to find its presence in the building. The plaintiff counters that the conference rooms were not a part of the demise, arguing that the defendants were given a mere license to the conference room that they could invoke at any time. They also claimed that the cost of restoring the conference rooms to their original shape would be a prohibitive cost. Regarding the signage, plaintiff pointed to the security officer who was there to direct customers to defendant; and, anyway, nothing in the lease gave the tenants the right to have their name inscribed on a sign in the lobby.

### **The Current Dispute**

By the time the parties argued the motion before the Court and in their written submissions, much of their argument had been modified. Defendant now argues that it does not seek the restoration of the conference room to its original condition, but, now, only seeks to use it as it had before. The response of the plaintiff is that the use of the conference rooms in the building are available to them.

Given this turn of events, the Court wonders whether there is any longer any dispute over the use of the conference rooms. However, the Court suspects that the conference room is not as available as readily as one might suppose. The defendant is withholding its rent on the ground that it has been partially evicted from a part of the premises. The rules state that the conference room is available so long as the rent is up-to-date and the rest of the rules are being followed. Thus, there is still a potential dispute here which could still deprive plaintiff of its access to the conference rooms.

### **Decision**

In the context of a preliminary injunction regarding the conference room, relief must be denied to the defendant. Such equitable relief is not available where the defendant is able to calculate in monetary terms its damages (*Ora Sure Technologies v Prestige Brands Holdings*, 4 AD3d 348, 839 NYS2d 298 [1995]). Defendant has demonstrated the availability of this calculation by stating the additional cost to it of renting other space. This is an easily calculable damage avoiding the need for injunctive relief.

This is not so with regard to the signage issue. First, the rules state that tenants have the right to have a sign in the lobby advertising their presence in the building. There is no way to really know what business has been lost by its absence, since there is no way to determine who may have given

up trying to find defendant and what business they might have given it. Even though the right to have the sign restored is not a part of the lease (although it is in the rules), it is such a usual situation that it is implied in a commercial lease as an appurtenance part of it.

When premises are leased for an expressed purpose, everything necessary on the use and enjoyment of the demised premises for such expressed purpose must be implied where it is not expressed in the lease (*Gans v Hughes*, 4 NYS 930 [Brooklyn, City Court 1891] citing *Kelsee v Durkee*, 33 Barb 410 [Sup Ct NY County 1861])

*Second on Second Café v Hing Sing Trading Co.*, 66 AD3d 255, 256, 884 NYS2d 3353(?), 355).

The sign evidencing defendant's presence in the building is a necessary and logical part of this lease. Accordingly, it is an appurtenant part of the lease and it is very likely that the landlord will be ultimately required to replace it. In addition to there being no adequate remedy at law and there is a likelihood of success on the merits, defendant must also show irreparable harm and that the balance of equities tips in its favor, *id* at 66 AD3d 264, 884 NYS2d 361.

Defendant has shown that it suffers from the loss of business which it can't calculate and the real possibility of the loss of goodwill because of the inability of potential clients to find it. The equities clearly tip in its favor resulting from this right to the signage being invalidly withheld, together with the loss it suffers. Plaintiff's loss is negligible, if it exists at all. Putting up the sign will not injure it.

**Order**

Accordingly, it is

**ORDERED** that pending a final decision of this Court, the plaintiff is directed to place a sign in the lobby of the building at 700 Broadway, New York, NY, forthwith and in a manner equivalent to, and in accordance with the way in which defendant's signage was displayed in the lobby before the plaintiff's removal, which signage cannot be removed without the defendant's consent.

Dated: 12/1/10

Enter:

**FILED**

**DEC 09 2010**

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Louis B. York, J.S.C.

**LOUIS B. YORK  
J.S.C.**

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