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| Matter of Allison v New York City Landmark Preserv. Commn. |
| 2011 NY Slip Op 32175(U) |
| July 26, 2011 |
| Sup Ct, NY County |
| Docket Number: 107949/2011 |
| Judge: Lucy Billings |
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

LUCY BILLINGS

PRESENT: J.S.C.

PART 46

Justice

Index Number : 107949/2011

ALLISON, ERIC W.

vs.

LANDMARKS PRESERVATION

SEQUENCE NUMBER : 002

DISMISS

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

1-2

3

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that ~~this motion~~ :

The court continues the temporary restraining order as granted 7/12/11 to the extent and on the conditions set forth and grants petitioners cross-motion for limited disclosure, pursuant to the accompanying decision. C.P.L.R. 3540b, 3214(b), 6301, 6313(c).

FILED

AUG 09 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 7/26/11

Lucy Billings

LUCY BILLINGS J.S.C.
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

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In the Matter of the Application of
ERIC W. ALLISON, KEVIN J. FARRELLY,
TED NARDIN, THEODORE GRUNEWALD, and
CITIZENS EMERGENCY COMMITTEE TO
PRESERVE PRESERVATION,

Plaintiffs-Petitioners, Index No. 107949/2011

For a Judgment Pursuant to Article 78
and Sections 3001 and 6301 of the
Civil Practice Law and Rules

- against -

DECISION AND ORDER

NEW YORK CITY LANDMARKS PRESERVATION
COMMISSION, VORNADO REALTY TRUST,
510 FIFTH AVENUE LLC, 510 FIFTH EAT
LLC, VORNADO REALTY, LP, and VNO 510
FIFTH LLC,

Defendants-Respondents

FILED

AUG 09 2011

NEW YORK
COUNTY CLERK'S OFFICE

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LUCY BILLINGS, J.S.C.:

The court continues its temporary restraining order of July 12, 2011, pending the determination of petitioners' motion for a preliminary injunction and respondents' cross-motions to dismiss the petition. C.P.L.R. § 6313(c). This temporary restraint continues to be conditioned on petitioners providing an undertaking or other security of \$370,000 in favor of respondents Vornado Realty Trust, 510 Fifth Avenue LLC, 510 Fifth EAT LLC, Vornado Realty, LP, and VNO 510 Fifth LLC (Vornado respondents). Upon the required undertaking or security, the Vornado respondents shall not undertake demolition, removal, physical alteration, or other work affecting building components of the

first two floors of 510 5th Avenue, New York County, that is irreversible or incapable of restoration to the original condition with replacement materials identical to the original materials. If the materials are not replaceable, these respondents shall preserve the original materials for restoration to their original use or shall maintain them in place. This restraint does not apply to maintenance or repairs that do not alter the building's structure or finishes.

This limited restraint protects against any immediate and irreparable injury to petitioners without imposing undue hardship on respondents. C.P.L.R. §§ 6301, 6312(a). The required undertaking or security is subject to an increase upon the Vornado respondents' showing, by admissible evidence, that the restraint will cause these respondents more than a potential loss of one month's net rental income, the basis for the current \$370,000 requirement.

Because the Vornado respondents and the court rely on these respondents' rental agreement with a tenant to measure their potential damages, balance the hardships to the parties, and set the required undertaking or security, the court grants petitioners' cross-motion for limited disclosure while cross-motions to dismiss this combined special proceeding and action are pending. C.P.L.R. §§ 408, 3214(b). The Vornado respondents shall produce any lease and related documents that show the rental terms between any of these respondents and a prospective tenant of the first two floors at 510 5th Avenue for petitioners'

[* 4]

inspection and copying by August 12, 2011, the last business day before respondents claim the lease term begins. C.P.L.R. §§ 408, 3120(1)(i) and (2), 3124. These documents are necessary for petitioners to assess and respond to respondents' claims regarding their potential damages and hardships from the requested injunctive relief and regarding the required undertaking or security. Roth v. Pakstis, 13 A.D.3d 194 (1st Dep't 2004); People v. Zymurgy, Inc., 233 A.D.2d 178, 179 (1st Dep't 1996); Margolis v. New York City Tr. Auth., 157 A.D.2d 238, 243 (1st Dep't 1990). See Allocca v. Kelly, 44 A.D.3d 308, 309 (1st Dep't 2007); Town of Wallkill v. New York State Bd. of Real Prop. Servs., 274 A.D.2d 856, 859-60 (3d Dep't 2000); Grossman v. McMahon, 261 A.D.2d 54, 57-58 (3d Dep't 1999). The account of the lease's terms by Vornado Realty Trust Senior Vice President James Bry is rank hearsay. People v. Joseph, 86 N.Y.2d 565, 570 (1995); Schozer v. William Penn Life Ins. Co. of N.Y., 84 N.Y.2d 639, 643 (1994); NW Liquidating Corp. v. Helmsley-Spear, Inc., 248 A.D.2d 304, 305 (1st Dep't 1998); Beal Bank v. Melville Magnetic Resonance Imaging, 294 A.D.2d 320, 321 (2d Dep't 2002). See Giordano v. Berisha, 45 A.D.3d 416, 417 (1st Dep't 2007); Muller v. New York State Div. of Hous. & Community Renewal, 263 A.D.2d 296, 308 (1st Dep't 2000).

The Vornado respondents claim this lease is confidential, but provide no explanation or evidentiary support. See C.P.L.R. §§ 3103(a), 3122(a) and (b). If the parties fail to agree regarding any need and terms to protect confidentiality, they may

seek further relief from the court. This decision constitutes the court's order on petitioners' motion for a temporary restraining order and cross-motion for disclosure. A further decision on their motion for a preliminary injunction and on respondents' cross-motions to dismiss the petition will follow.

DATED: July 26, 2011

Lucy Billings

LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C.

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AUG 09 2011

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