

**Coinmach Corp. v Westside 414 LLC**

2011 NY Slip Op 32417(U)

September 6, 2011

Sup Ct, Nassau County

Docket Number: 010501-11

Judge: Timothy S. Driscoll

Republished from New York State Unified Court System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT-STATE OF NEW YORK  
SHORT FORM ORDER**

**Present:**

**HON. TIMOTHY S. DRISCOLL**  
**Justice Supreme Court**

-----X  
**COINMACH CORPORATION,**

**TRIAL/IAS PART: 20  
NASSAU COUNTY**

**Plaintiff,**

**Index No: 010501-11**

**Motion Seq. No: 1**

**- against -**

**Submission Date: 8/30/11**

**WESTSIDE 414 LLC,**

**Defendant.**

-----X

**The following papers have been read on this Order to Show Cause**

- Order to Show Cause, Emergency Affirmation,**
- Affidavit in Support and Exhibits.....X**
- Affirmation in Support.....X**
- Affidavit in Opposition and Exhibits.....X**
- Memorandum of Law in Opposition.....X**
- Reply Affidavit and Exhibits.....X**
- Reply Memorandum of Law.....X**

This matter is before the Court for decision on the Order to Show Cause filed by Plaintiff Coinmach Corporation ("Plaintiff" or "Coinmach") on July 18, 2011 and submitted on August 30, 2011, following oral argument before the Court. For the reasons set forth below, the Court denies Plaintiff's Order to Show Cause and vacates the temporary restraining order previously issued.

## BACKGROUND

### A. Relief Sought

Plaintiff seeks an Order, pursuant to CPLR §§ 6301, 6311 and 6313, preliminarily enjoining Defendant and its agents, officers, directors, members, principals, servants, employees, attorneys and any and all other persons acting on their behalf or in concert with Defendant (including, without limitation, any other laundry service provider or equipment company), jointly and severally, directly or indirectly, from 1) terminating the lease agreements dated as of May 28, 1997 (“1997 Lease”) and as of January 30, 2011 (“2011 Lease”) (collectively “Leases”) for the laundry room in Defendant’s apartment building located at 414 West 44<sup>th</sup> Street, New York, New York (“Premises”) and/or taking any actions to terminate the Leases or divest Plaintiff of possession of the Premises including, without limitation, sending any termination notice to Plaintiff; 2) evicting or attempting to evict Plaintiff from the Premises; 3) removing and/or disconnecting (or permitting anyone else to remove or disconnect) Plaintiff’s laundry equipment at the Premises or installing (or permitting anyone else to install) any other laundry equipment at the building where the Premises are located; 4) interfering with Plaintiff’s operation and/or maintenance of the laundry equipment at the Premises; and/or 5) otherwise interfering with Plaintiff’s rights under the Leases.

On July 18, 2011, the Court (Brown, J.) issued a temporary restraining order (“TRO”) that directed that, pending the hearing and determination of this motion, and pending further of this Court, Defendant and its agents are restrained and enjoined from engaging in the conduct set forth in the paragraph above.

Defendant Westside 414 LLC (“Westside” or “Defendant”) opposes Plaintiff’s application.

### B. The Parties’ History

The Verified Complaint (“Complaint”), dated July 15, 2011, alleges as follows:

Coinmach’s business includes the operation of laundry facilities in residential apartment buildings. Defendant owns an apartment building (“Building”) located at 414 West 44<sup>th</sup> Street, New York, New York, where the Premises are located. The Building forms all or part of real property that was conveyed to Defendant by deed on or about June 7, 2011.

As of January 30, 2011, the prior owner of the building, Encore Tower Group, LLC (“Encore”), as lessor, and Coinmach, as lessee, entered into the 2011 Lease (Ex. A to Compl.), pursuant to which the prior owner leased the Premises to Coinmach. Pursuant to the 2011 Lease, Coinmach is to install new laundry equipment in the Premises, and make or pay for other improvements to the Premises. Coinmach received an executed copy of the 2011 Lease from the lessor on May 5, 2011, and subsequently ordered the new equipment to be installed. Coinmach has purchased the new equipment, and is ready to install it at the Premises. Coinmach is not in default of the 2011 Lease.

The 1997 Lease (Ex. B to Compl.) was between an earlier owner of the building, Lewis Kaye, and Coinmach. Coinmach installed laundry equipment at the Premises on or about August 18, 1998, pursuant to the 1997 Lease. Continuing to date, the Premises has had Coinmach equipment installed, as well as Coinmach signs (“Signs”) affixed to the Premises and stickers (“Stickers”) on the washers and dryers stating that “This machine is owned, operated and maintained by Coinmach Corp. pursuant to an assumable lease between the owner and Coinmach Corp” (Compl. at ¶ 14).

The 1997 Lease has been automatically renewed several times, and its most recent termination date is August 18, 2013. The “understanding of the parties to the 2011 Lease” (Compl. at ¶ 16) is that its term would commence upon installation of new equipment by Coinmach, and that the 1997 Lease would continue in effect until that time. Pursuant to paragraph 2 of the 2011 Lease, the Lease term is 7 years from the installation of equipment. As Coinmach has not yet installed the new equipment, “the ending of the term under the 2011 Lease can be no earlier than July 14, 2018” (*id.* at ¶ 17). The Leases contain identical language regarding the Lease being binding on future owners, and any sale or conveyance of the Building being subject to the Lease.

The Complaint alleges that Defendant had actual and/or constructive notice that Coinmach was leasing the Premises by virtue of the Signs and Stickers, and Encore’s obligation to inform Defendant of the Leases. Thus, Defendant is bound by the Leases which provide, *inter alia*, that 1) Coinmach is entitled to sole and exclusive occupancy, possession and control of the Premises; and 2) Lessor shall not install or permit any person other than Coinmach to install

laundry equipment at the Premises. Coinmach has complied with its obligations under the Lease, and has never been notified of any default under, or termination of, the Leases. Plaintiff alleges that Defendant is attempting to wrongfully terminate the Leases, and has taken the position that it is not bound by the Leases, and/or that no Lease exists. Defendant intends to evict Coinmach from the Premises by self help, or through a court proceeding.

In the First Cause of Action, Plaintiff alleges that Defendant has breached the Leases by attempting to terminate one or both of the Leases, and threatening to remove Coinmach's equipment from the Premises in violation of the Leases. Plaintiff seeks the same injunctive relief requested in its Order to Show Cause, as well as damages incidental to Defendant's breaches of the Leases. In the Second Cause of Action, Plaintiff seeks declaratory relief that 1) Defendant is bound to the Leases; 2) the 1997 Lease remains in effect until at least August 18, 2013; and 3) the term of the 2011 Lease will commence upon installation of equipment by Coinmach and end 7 years thereafter.

Counsel for Plaintiff affirms that she spoke with an individual who negotiated the sale of the Building on behalf of the prior owners. That individual advised Plaintiff's counsel that, prior to the closing of that transaction, he advised a representative of Bronstein Properties, LLC ("Bronstein), which represented Defendant, of Coinmach's tenancy and provided that representative with a copy of the 2011 Lease. The individual advised Plaintiff's counsel that he had entered into the 2011 Lease with Coinmach before he began his negotiations with Bronstein regarding the sale of the Building. The individual was unwilling to provide Plaintiff's counsel with an affidavit.

Steve Gallagher ("Gallagher"), the Area Vice President of Coinmach, affirms the truth of the allegations in the Complaint regarding the Leases, and submits that Defendant is improperly attempting to disregard the Leases so that it can obtain equipment from a different company, or purchase the equipment itself. Gallagher affirms that Plaintiff has invested "significant resources" in the Premises (Gallagher Aff. at ¶ 19) by installing equipment and dedicating staff to service the laundry rooms. In addition, Coinmach has purchased new equipment, pursuant to the 2011 Lease.

In opposition, Scott Silverman (“Silverman”), a principal of Bronstein, submits that the Court should not enforce the Leases, in light of the fact that they were not recorded and, therefore, are void against Defendant, a good faith purchaser, pursuant to New York Real Property Law §§ 290 and 291. Silverman contends, further, that Coinmach has not established irreparable injury, given its claims, as reflected on its website, that it is the “largest laundry service company in the United States” (Silverman Aff. at ¶ 5 and Ex. 1) and operates laundry equipment in more than 80,000 locations. Thus, any injury is compensable by money damages, and injunctive relief is not appropriate.

Silverman also argues that Coinmach has not established a likelihood of success on the merits, given its failure to allege that it recorded the Leases. Moreover, the sale contract between Encore and Defendant (Ex. 3 to Silverman Aff. in Opp.) does not make reference to the Leases. Defendant reasonably relied on that contract, not the Stickers and Signs, and thus was unaware of the Leases. Silverman also contends that Plaintiff cannot argue that both Leases are in effect, given the merger clauses in the Leases.

In reply, Gallagher submits, *inter alia*, that 1) Defendant’s claim that it is not bound by the Leases is being “architected and funded” (Gallagher Reply Aff. at ¶ 2) by a competitor of Coinmach; 2) in light of Silverman’s failure to deny that he saw the Signs and Stickers, the Court should conclude that Defendant was aware of the Leases; and 3) Defendant has not provided an affidavit of its representative, and the affidavit of Silverman, a principal of Defendant’s managing agent, does not establish Defendant’s knowledge on the relevant issues.

### C. The Parties’ Positions

Coinmach submits that it has demonstrated its right to injunctive relief by 1) establishing a likelihood of success on the merits by producing the Leases, which are binding on Defendant, and demonstrating that Defendant is attempting to prevent Coinmach from installing its equipment, in violation of the Leases; 2) establishing that Coinmach will suffer irreparable harm without the requested injunctive relief, in the form of wrongful interference with its tenancy; and noting that the Leases provide for injunctive relief; and 3) demonstrating that a balancing of the equities favors Plaintiff, in light of Coinmach’s significant investment of resources in the Premises, and Coinmach’s efforts to ensure that any party purchasing the Building after the

Leases were executed would have knowledge of the Leases.

Defendant opposes Plaintiff's application, submitting, *inter alia*, that 1) Coinmach cannot demonstrate that it will suffer irreparable harm without injunctive relief, given that any injury is compensable by money damages; 2) Coinmach has not demonstrated a likelihood of success on the merits in light of its failure to record the Leases, and RPL §§ 290 and 291 which require leases to be recorded to be valid against a subsequent good faith purchaser, as well as the fact that the contract of sale makes no reference to the Leases; 3) the cases cited by Plaintiff are distinguishable from the matter at bar; *e.g.*, *Unique Landry Corp. v. Hudson Park N.Y. LLC*, 55 A.D.3d 382 (1<sup>st</sup> Dept. 2008) involved a laundry service provider that asserted it would become insolvent without the requested injunctive relief; and 4) a balancing of the equities favors Westside, given that Coinmach's alleged "substantial investment" consists of the installation of several machines at the Premises, and in light of the fact that Coinmach has received significant revenue from its operation of laundry machines at the Premises for the past thirteen years.

#### RULING OF THE COURT

##### A. Standards for Preliminary Injunction

A preliminary injunction is a drastic remedy and will only be granted if the movant establishes a clear right to it under the law and upon the relevant facts set forth in the moving papers. *William M. Blake Agency, Inc. v. Leon*, 283 A.D.2d 423, 424 (2d Dept. 2001); *Peterson v. Corbin*, 275 A.D.2d 35, 36 (2d Dept. 2000). Injunctive relief will lie where a movant demonstrates a likelihood of success on the merits, a danger of irreparable harm unless the injunction is granted and a balance of the equities in his or her favor. *Aetna Ins. Co. v. Capasso*, 75 N.Y.2d 860 (1990); *W.T. Grant Co. v. Srogi*, 52 N.Y.2d 496, 517 (1981); *Merscorp, Inc. v. Romaine*, 295 A.D.2d 431 (2d Dept. 2002); *Neos v. Lacey*, 291 A.D.2d 434 (2d Dept. 2002). The decision whether to grant a preliminary injunction rests in the sound discretion of the Supreme Court. *Doe v. Axelrod*, 73 N.Y.2d 748, 750 (1988); *Automated Waste Disposal, Inc. v. Mid-Hudson Waste, Inc.*, 50 A.D.3d 1073 (2d Dept. 2008); *City of Long Beach v. Sterling American Capital, LLC*, 40 A.D.3d 902, 903 (2d Dept. 2007); *Ruiz v. Meloney*, 26 A.D.3d 485 (2d Dept. 2006).

Proof of a likelihood of success on the merits requires the movant to demonstrate a clear right to relief which is plain from the undisputed facts. *Related Properties, Inc. v. Town Bd. of Town/Village of Harrison*, 22 A.D.3d 587 (2d Dept. 2005); *see Abinanti v. Pascale*, 41 A.D.3d 395, 396 (2d Dept. 2007); *Gagnon Bus Co., Inc. v. Vallo Transp. Ltd.*, 13 A.D.3d 334, 335 (2d Dept. 2004). Thus, while the existence of issues of fact alone will not justify denial of a motion for a preliminary injunction, the motion should not be granted where there are issues that subvert the plaintiff's likelihood of success on the merits to such a degree that it cannot be said that the plaintiff established a clear right to relief. *Advanced Digital Sec. Solutions, Inc. v Samsung Techwin Co., Ltd.*, 53 A.D.3d 612 (2d Dept. 2008), quoting *Milbrandt & Co. v. Griffin*, 1 A.D.3d 327, 328 (2d Dept. 2003); *see also* CPLR § 6312(c). The existence of a factual dispute, however, will not bar the imposition of a preliminary injunction if it is necessary to preserve the status quo and the party to be enjoined will suffer no great hardship as a result of its issuance. *Melvin v. Union College*, 195 A.D.2d 447, 448 (2d Dept. 1993).

A plaintiff has not suffered irreparable harm warranting injunctive relief where its alleged injuries are compensable by money damages. *See White Bay Enterprises v. Newsday*, 258 A.D.2d 520 (2d Dept. 1999) (lower court's order granting preliminary injunction reversed where record demonstrated that alleged injuries compensable by money damages); *Schrager v. Klein*, 267 A.D.2d 296 (2d Dept. 1999) (lower court's order granting preliminary injunction reversed where record failed to demonstrate likelihood of success on merits or that injuries were not compensable by money damages).

#### B. Application of these Principles to the Instant Action

The Court denies Plaintiff's Order to Show Cause based on its conclusions that 1) in light of the existing dispute as to whether Defendant is bound by the Leases, Plaintiff has not demonstrated a likelihood of success on the merits; and 2) Plaintiff has not established irreparable harm without injunctive relief in light of the Court's conclusion that Plaintiff's injury, if any, is compensable by money damages. The Court also vacates the TRO.

All matters not decided herein are hereby denied.

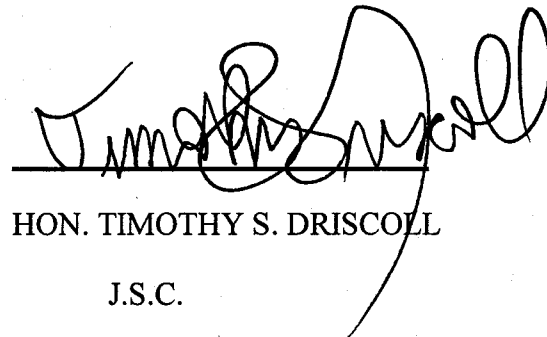
This constitutes the decision and order of the Court.

The Court directs counsel for the parties to appear before the Court for a Preliminary Conference on October 6, 2011 at 9:30 a.m.

ENTER

DATED: Mineola, NY

September 6, 2011



HON. TIMOTHY S. DRISCOLL  
J.S.C.

**ENTERED**  
SEP 13 2011  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE