

Step One Underground Prods. Ltd. v 150 RFT Varick, Inc.
2016 NY Slip Op 32230(U)
October 25, 2016
Supreme Court, New York County
Docket Number: 161633/2014
Judge: Joan M. Kenney
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK PART 8

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STEP ONE UNDERGROUND PRODUCTIONS
LIMITED and RICARDO REGISFORD,

Plaintiffs,

Index # 161633/2014

-against-

Decision & Order

150 RFT VARICK, INC. and 150 ENTER-
TAINMENT GROUP, LLC, 150 RFT VARICK
BASEMENT,

Defendants.

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KENNEY, JOAN, M., J.S.C.

For Plaintiff:
John Jekielek, Esq.
153 West 27TH Street, Suite 204
New York, NY 10001

For Defendants:
Monte Albers DeLeon LLC
31 West 34th Street, Suite 7093
New York, NY 10001

Papers considered in review of these motion(s) a preliminary
injunction:

Papers

Numbered

Order To Show Cause, Affidavits, Affirmation, Exhibits
and Memorandum of Law
Affirmation and Affidavit in Opposition, Exhibits and
Memorandum of Law

1-8
9-15

Factual Background

Plaintiffs, Step One Underground Productions LTD and Ricardo
Regisford (collectively plaintiff) move by Order To Show Cause¹ for
an Order enjoining defendants from selling, transferring or
disposing of certain audio/sound/light equipment that is allegedly
owned by plaintiff. Defendants, 150 RFT Varick, Inc. and 150
Entertainment Group, LLC, 150 RFT Varick Basement, (collectively
defendants), were allegedly the owners/operators of a now defunct

¹Plaintiff served a bare summons with notice and has not
apparently served an actual complaint.

nightclub called the Greenhouse.

Plaintiff alleges in its' summons with notice: breach of contract, conversion and specific performance, in that defendants are to return the equipment allegedly belonging to plaintiff. Plaintiff states that he is a professional musician, recording artist and disc jockey (DJ) at the Greenhouse and "one of the owners" of its predecessor, Club Shelter. Plaintiff states, in essence, that during the course of his professional affiliation with both clubs he provided the equipment necessary to set himself up as the DJ in the clubs. Plaintiffs' recitation of the facts seems to imply a bailment between the parties, it is unclear from the papers before the Court.

Defendants state that plaintiff's allegations are completely false; but incredulous because when the Greenhouse was shutting down its operation, plaintiff removed not only anything that allegedly belonged to him, but video equipment that clearly did not belong to, nor was it necessary for, plaintiff's DJ operation.

Plaintiff attempts to support the conversion claim with copies of paid invoices and a cancelled check, from a third party who sells and repairs the kind of equipment plaintiff claims was removed from the Greenhouse without his consent.

Defendants contend that plaintiff informed a building employee that six pieces of equipment belonged to plaintiff. According to defendants plaintiff was given ample opportunity to retrieve his equipment from the club prior to defendants's sale of the entire

clubs audi/visual equipment to a third party. The sale price was alleged to be approximately \$73,200.00. In the event plaintiff could prevail on the entire claim, the total amount of damages would be approximately \$26,400.00, in light of the documents submitted in support of the motion.

Discussion

CPLR 6301 sets forth the grounds for preliminary injunction and temporary restraining order:

A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff.

A temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had.

A party moving for a preliminary injunction must demonstrate by clear and convincing evidence a right to the remedy sought (*W.T. Grant Co. v Srogi*, 52 NY2d 496 [1981]). Furthermore, that party must establish, (1) a likelihood of success on the merits of the underlying claim; (2) the prospect of irreparable injury if the

provisional relief is withheld; and (3) a balance of the equities tipping in its favor (see *Nobu Next Door, LLC v Fine Arts Hous., Inc.*, 4 NY3d 839, 840 [2005]; *Olympic Tower Condominium v Coccoziello*, 306 AD2d 159 [1st Dept 2003], citing, *Doe v Axelrod*, 73 NY2d 748, 750 [1988]).

This Court finds that plaintiff has failed to satisfy the three-pronged test for the granting of a preliminary injunction nor has plaintiff met its burden of proof. Notably, plaintiff has been unable to show that the irreparable harm is 'imminent, not remote or speculative' (citations omitted). Moreover, '[e]conomic loss, which is compensable by money damages, does not constitute irreparable harm' (citations omitted). The decision to grant or deny provisional relief is ordinarily committed to the sound discretion of the Supreme Court (*Family-Friendly Media, Inc. v Recorder Television Network*, 74 AD3d 738 [2nd Dept 2010]). However, the function of a provisional remedy is "not to determine the ultimate rights of the parties, but to maintain the status quo until there can be a full hearing on the merits" (*Residential Bd. of Mgrs. of Columbia Condominium v Alden*, 178 AD2d 121, 122 [1991]).

Further, the issuance of a mandatory injunction is appropriate only when such extraordinary relief is essential to maintaining the status quo (*id.*). "[W]here conflicting affidavits raise sharp issues of fact," injunctive relief should not be granted (*id.* at 123). See also, *Lehey v Goldburt*, 90 AD3d 410 (1st Dept 2011). Consequently,

plaintiff's motion is denied.

Accordingly, it is

ORDERED that plaintiffs' motion is denied and the temporary restraining order is vacated, and it is further

ORDERED that plaintiffs serve a complaint within 20 days hereof, and it is further

ORDERED that defendants serve a responsive pleading within 30 days of service of the complaint, and it is further

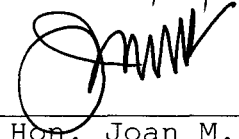
ORDERED that all dispositive motions are referred to the Special Referee to be appointed, and it is further

ORDERED that the issue of determining what, if any amount, of money, is owed to either party is referred to a Special Referee to hear and report with recommendations, except that, in the event of and upon the filing of a stipulation of the parties, as permitted by CPLR 4317, the Special Referee, or another person designated by the parties to serve as referee, shall determine the aforesaid issue; and it is further

ORDERED that a copy of this order with notice of entry shall be served on the Clerk of the Judicial Support Office (Room 311) to arrange a date for the reference to a Special Referee.

Dated: October 25, 2016

E N T E R: 10/31/2016 .



Hon. Joan M. Kenney
JOAN M. KENNEY
J.S.C.