

**Patoary v Das**

2016 NY Slip Op 32912(U)

February 24, 2016

Supreme Court, Queens County

Docket Number: 123/15

Judge: Howard G. Lane

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This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE HOWARD G. LANE IAS PART 6  
Justice

-----	Index No. 123/15
MD. SHOHID H. PATOARY,	Motion
Plaintiff,	Date June 3, 2015
-against-	Motion
DILIP DAS, et al.,	Cal. No. 122
Defendants.	Motion Sequence No. 3

**FILED**

MAR - 2 2016

COUNTY CLERK  
QUEENS COUNTY

Papers  
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In a decision/order dated July 13, 2015, this Court held in relevant part:

Upon the foregoing papers it is ordered that the motion by plaintiff for an order dispensing with the filing of a bond as directed by this Court's order dated March 12, 2015 and cross motion by defendants Majada Inc. and Louis D. Rodriguez to vacate the default order of this Court dated March 12, 2015 and pursuant to CPLR 3211(a)(8) to dismiss the action against the cross-moving defendants are decided as follows:

A traverse hearing shall be held on Tuesday, October 13, 2015, 2:15 P.M., IAS Part 6, courtroom 24, 88-11 Sutphin Blvd., Jamaica, New York, to determine the propriety of service pursuant to CPLR 308 and to determine whether jurisdiction was properly obtained over cross-moving defendants. Counsel are directed to contact the clerk at (718) 298-1113 on Friday,

October 9, 2015 to ascertain the availability of the Court.

The parties' remaining requests shall be determined upon resolution of the traverse hearing.

On the scheduled date of the traverse hearing, October 13, 2015, the cross motion was withdrawn. As such, the traverse hearing was rendered unnecessary.

Plaintiff's motion for an order dispensing with the filing of a bond as directed by this Court's order dated March 12, 2015 is hereby decided as follows:

In a decision/order dated March 12, 2015, this Court held in relevant part:

ORDERED, that the plaintiff's motion for a preliminary injunction is granted; and it is further

ORDERED, that the plaintiff shall post a bond in an amount to be determined upon the serving and filing of a motion by plaintiff to fix the bond amount pursuant to CPLR 6312(b) within fifteen (15) days of entry of this decision. Defendants may submit their position on the amount of the bond in the form of opposition or a cross motion. Alternatively, the parties may stipulate to the waiver of a bond or as to the amount and nature of the bond. If such undertaking is not posted or if such motion to fix the bond amount is not filed within fifteen (15) days of entry of this decision, this motion is denied. Such undertaking shall be in the form of surety, deposited with the Queens County Clerk or in a joint interest bearing escrow account.

The parties have now submitted timely motion papers regarding the fixing of the amount of the bond.

CPLR 6312(b) directs the court to fix the undertaking in an amount that will compensate the defendant for damages incurred "by reason of the injunction", in the event it is determined that the plaintiff was not entitled to the injunction (*see, Margolies v. Encounter, Inc.*, 42 NY2d 475 [1977]; and *Schwartz v. Gruber*, 261 AD2d 526 [2nd Dept 1999]). The fixing of the amount of an undertaking is a matter which rests within the sound discretion of the court (*Clover Street Associates v. Nilsson*, 244 AD2d 312, 313 [2d Dept 1997]). "At the time the amount of the undertaking

[is] fixed, it [must be] rationally related to the amount of potential damages the defendants established that they might suffer" (*Blueberries Gourmet v. Aris Realty Corp.*, 680 NYS2d 557 [2d Dept 1998][internal citations omitted]).

In exercising their discretion, Courts have set nominal undertakings in situations in which the defendant's potential damages, in the event that it is determined that plaintiff was not entitled to the preliminary injunction, are minimal and/or the plaintiff lacked sufficient financial resources and there was no showing by the defendant what actual damages defendant might suffer (*Daytop Village, Inc. v. Consolidated Edison Co. of New York*, 61 AD2d 933 [1st Dept 1978]).

This Court finds that an undertaking in the amount of \$1.00 shall be good and sufficient for purposes of CPLR 6312(b) (see, *Wuertz v. Cowne*, 65 AD2d 528 [1<sup>st</sup> Dept 1978][wherein plaintiff brought a declaratory action against defendant-landlord to prevent the landlord from terminating her lease because she had a dog in the apartment--the Appellate Division, First Department granted plaintiff a *Yellowstone* preliminary injunction provided she post an undertaking of \$100; *Brad H. v. City of New York*, 712 NYS2d 336 [Sup Ct, New York County 2000]; *Valdez v. Northeast Brooklyn Development Corp.*, 801 NYS2s 782 [Sup Ct, Kings County 2005][wherein plaintiff-tenant sought a preliminary injunction to prevent defendant-landlord from violating, inter alia, plaintiff's possessory rights to her apartment. The Court granted the preliminary injunction, holding "[g]iven that plaintiff appears to derive her income primarily from social security benefits and defendant has not demonstrated that it will suffer any undue hardship as a result of the injunctive relief granted by the court, the court finds that an undertaking in the amount of \$100.00 shall be good and sufficient for purposes of CPLR 6312(b)." (*Brad H. v. City of New York*, 712 NYS2d 336 [Sup Ct, New York County 2000][in a case with indigent plaintiffs, the Court granted plaintiffs a preliminary and fixed the undertaking for \$1.00]).

Accordingly, it is

ORDERED, that the plaintiff shall post a bond in the amount of \$1.00 within fifteen (15) days of service of a copy of this order with notice of entry. If such undertaking is not posted within fifteen (15) days of service of a copy of this order with notice of entry, plaintiff's motion for a preliminary injunction is denied. Such undertaking shall be in the form of surety, deposited with the Queens County Clerk or in a joint interest bearing escrow account.

This constitutes the decision and order of the Court.

A courtesy copy of this order is being mailed to counsel for the respective parties.

Dated: February 24, 2016

  
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Howard G. Lane, J.S.C.

**FILED**  
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