

**Land v Forgione**

2017 NY Slip Op 33143(U)

September 28, 2017

Supreme Court, Nassau County

Docket Number: 600747-17

Judge: Timothy S. Driscoll

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This opinion is uncorrected and not selected for official publication.

**ORIGINAL**

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

**Present:**

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

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**COREY LAND,**

**Plaintiff,**

**-against-**

**JOSEPH FORGIONE, DIANE FORGIONE, JEFFREY  
STATE, DUE PAESANI, INC. d/b/a S.T.A.G.'S TAP  
HOUSE, and HUNTINGTON TOBACCO COMPANY,  
INC. d/b/a HUNTINGTON TOBACCO COMPANY, INC.  
MONEY PURCHASE PENSION AND PROFIT SHARING  
TRUST,**

**Defendants.**

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**Papers Read on this Motion: <sup>1</sup>**

- Order to Show Cause, Affirmation in Support and Exhibits.....X**
- Affidavits in Opposition and Exhibits.....X**
- Affirmation in Opposition, Affidavit in Opposition and Exhibit.....X**
- Affirmation in Further Support.....X**

This matter is before the court on the motion by Plaintiff Corey Land (“Land” or “Plaintiff”) on June 8, 2017 and submitted on September 27, 2017. For the reasons set forth below, the Court denies the motion.

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<sup>1</sup> Plaintiff’s motion contains the caption of the initial complaint filed in this case, specifically *Corey Land v. Joseph Forgione, Diane Forgione, Jeffrey State, and Due Paesani Inc. d/b/a S.T.A.G.’s Tap House*. Plaintiff subsequently filed an Amended Verified Complaint dated July 6, 2017 (Ex. A to Novick Aff. in Opp.), and Defendants’ opposition papers, as well as this decision, contain the caption of the amended complaint.

## BACKGROUND

### A. Relief Sought

Plaintiff moves for an Order 1) vacating and nullifying the stipulation of settlement entered into between Huntington Tobacco Company, Inc. d/b/a Huntington Tobacco Company, Inc. Money Purchase Pension and Profit Sharing Trust (“Huntington Trust”) and Due Paesani Inc. d/b/a S.T.A.G.’s Tap House (“STAGs”) in their landlord-tenant action assigned Index Number LT-240-17/HU (“Landlord Tenant Action”); and 2) restraining Huntington Trust and Defendants from transferring, cancelling, surrendering, or assigning the lease for S.T.A.G.’s Tap House at 308 Main Street, Huntington, New York (the “Premises”), and directing Huntington Trust and Defendants to rescind, cancel and/or modify any and all other leases, contracts, or agreements entered into for the Premises.

Defendants Jeffrey States (“States”) and Due Paesani, Inc. (“Stag Defendants”) oppose the motion, as does Defendant Huntington Trust. Counsel for the Stag Defendants affirms that he is also counsel to non-appearing Defendants Joseph Forgione and Diane Forgione, who are currently involved in bankruptcy proceedings in the United States Bankruptcy Court, Eastern District of New York.

### B. The Parties’ History

The initial Verified Complaint (“Initial Complaint”) in the above-captioned action (“Instant Action”), filed January 27, 2017, is based on the following allegations:<sup>2</sup> 1) Plaintiff is the general manager and one-third owner of S.T.A.G.’s Tap House (the “Restaurant”); 2) Defendants Joseph Forgione and Diane Forgione (the “Forgiones”) were 87% owners of the Restaurant; 3) Defendant Jeffrey State (“State”) was a 13% owner of the Restaurant; 4) on or about November 10, 2016, after four and one-half months of operating the Restaurant at a loss, which totaled approximately \$148,000.00, Defendants fired the Restaurant’s employees; 5) on November 11, 2016, Plaintiff met with Defendants and advised them that he was willing to operate the Restaurant as general manager on the condition that Defendants give him a one-third ownership in the Restaurant and a right of first refusal to purchase the Restaurant in the event of

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<sup>2</sup> The Initial Complaint was not included as an exhibit to Plaintiff’s motion but the Court has obtained a copy of it from the court website.

a sale of the Restaurant; 6) Defendants agreed that in exchange for Plaintiff turning the \$9,000 weekly loss around and having the restaurant break even, Plaintiff would be given a one-third ownership interest in the Restaurant, a position as general manager of the Restaurant, and a right of first refusal to purchase in the event of a sale of the Restaurant; 7) as the new one-third owner and general manager of the Restaurant, Plaintiff invested \$47,000 of capital into the restaurant for improvements, marketing and the paying of liabilities, and worked at the Restaurant 16 hours per day, 7 days per week; 8) as part of his duties as general manager, Plaintiff re-hired employees, reduced labor costs and increased revenues; 9) as a result of Plaintiff's contributions, the Restaurant made a profit in December 2016; 10) in December 2016, Defendants advised Plaintiff that they were willing to sell the Restaurant to Plaintiff; 11) on January 7, 2017, Defendants and Plaintiff finalized the terms for an asset purchase agreement for the sale of the entire Restaurant, thereby substantially increasing Plaintiff's one-third ownership interest in the Restaurant; 12) during the meeting on January 7, 2017, Defendants advised Plaintiff of outstanding invoices that needed to be paid, including an invoice for a liquor vendor, which had to be satisfied to ensure that the Restaurant would maintain its liquor license, and Plaintiff paid the \$2,400.00 invoice in full; 13) on January 17, 2017, while Plaintiff was waiting to learn the final closing date and sign the final purchase agreement, Defendants advised Plaintiff that his employment was terminated effective immediately, and that they would not sell the Restaurant to Plaintiff; 14) Defendants never paid Plaintiff for the monies that he contributed to the Restaurant's improvements, marketing and satisfaction of outstanding liabilities; and 15) Defendants never paid any compensation or wages to Plaintiff for the more than 700 hours that he worked at the Restaurant after he assumed the general manager position. The Initial Complaint contained causes of action for promissory estoppel, equitable estoppel, breach of contract, breach of the covenant of good faith and fair dealing, conversion, fraud/deceit/misrepresentation, unjust enrichment, and Labor Law violations.

The Amended Verified Complaint (“Amended Complaint”) contains the following additional allegations: 1) at all relevant times, Huntington Trust was the owner of the Premises; 2) at all relevant times, the Restaurant held a valuable leasehold at the Premises; 3) on January 27, 2017, to protect his ownership interest in the Restaurant, Plaintiff commenced this action, while simultaneously filing an Order to Show Cause for a preliminary injunction and temporary restraining order (“Prior Motion”); 4) following a hearing on the Prior Motion, the Court granted Plaintiff a temporary restraining order (“TRO”), directing the Former Owners to keep the Restaurant open and operational, and restraining the Former Owners from selling or transferring the Restaurant; 5) on or about May 2, 2017, without Plaintiff’s knowledge, the Former Owners violated the TRO by failing to pay rent at the Premises, thereby jeopardizing the Restaurant’s leasehold and, as a result, Huntington Trust filed the Landlord Tenant Action; 6) on or about May 15, 2017, the Former Owners requested that the Court vacate the TRO in the Instant Action because they had a “cash” offer to buy the Restaurant (Am. Comp. at ¶ 29); 7) the Court denied the Former Owners’ application and directed the Former Owners to provide Plaintiff with a right of first refusal to purchase the Restaurant; 8) the representations by the Former Owners were misleading because they suggested that the Landlord Tenant Action would be obviated by the purchase of the Restaurant by the putative third-party buyer or by Plaintiff; 9) the following week, Plaintiff was never advised of the details of the alleged cash offer, and instead was advised that the Premises may have closed on or about May 25, 2017; 10) on May 25, 2017, Plaintiff advised Huntington Trust of the TRO and the Former Owners’ inability to surrender the Premises in light of that TRO; 11) on May 26, 2017, Plaintiff advised the Former Owners of their violation of the TRO by failing to keep the Restaurant open and operational; 12) on June 1, 2017, without notice to Plaintiff, the Former Owners entered into a stipulation of settlement with Huntington Trust (“Stipulation”), pursuant to which the Restaurant would vacate the Premises and surrender the lease; 13) prior to the execution of the Stipulation, Defendants entered into a different agreement pursuant to which the equipment leases and debts of the Restaurant would be paid off; 14) prior to the Restaurant’s lease being surrendered, but after being notified of the TRO and without notifying Plaintiff, Huntington Trust leased the Premises to a third party; and 15) the Stipulation was not agreed to by Plaintiff, and was in violation of the TRO.

The Amended Complaint contains fifteen (15) causes of action:

- 1) against the Former Owners for promissory estoppel;
- 2) against the Former Owners for equitable estoppel;
- 3) against the Former Owners for breach of contract;
- 4) against the Former Owners for breach of the covenant of good faith and fair dealing;
- 5) against the Former Owners for conversion;
- 6) against Huntington Trust for conversion;
- 7) against the Former Owners for fraud/deceit/misrepresentation;
- 8) against all Defendants for fraud/deceit/misrepresentation;
- 9) against the Former Owners for unjust enrichment;
- 10) against all Defendants for unjust enrichment;
- 11) against the Former Owners for Labor Law violations;
- 12) against all Defendants for tortious interference with contract;
- 13) against all Defendants for tortious interference with prospective advantage;
- 14) against all Defendants for abuse of process; and
- 15) against all Defendants for civil conspiracy.

On the first and second causes of action in the Amended Complaint, Plaintiff seeks declaratory relief, an accounting, and the payment by Former Owners to Plaintiff of a *pro rata* share of accounted income and/or profits realized by the Former Owners. On the third through fifteenth causes of action, Plaintiff seeks money damages.

In support of the motion, counsel for Plaintiff (“Plaintiff’s Counsel”) provides a copy of the TRO (Ex. A to Palmieri Aff. in Supp.) which directs as follows:

IT IS ORDERED THAT PENDING THE HEARING AND DETERMINATION OF THIS APPLICATION THE DEFENDANTS BE STAYED FROM SELLING THE BUSINESS, DUE PAESANI INC. d/b/a STAGS TAP HOUSE

IT IS ORDERED THAT PENDING THE HEARING AND DETERMINATION OF THIS APPLICATION THE DEFENDANTS MAINTAIN THE STATUS QUO OF DUE PAESANI, INC. d/b/a and keep it open and operational and maintain the liquor license.

Plaintiff shall not enter the restaurant.

Neither party shall disparage the other, including on social media.

Plaintiff's Counsel also provides a case detail from the New York State Unified Court System's website regarding the Landlord Tenant Action (Ex. B to Palmieri Aff. in Supp.). Plaintiff's Counsel affirms the truth of the additional allegations in the Amended Complaint, including that Plaintiff was never advised of the terms of the alleged cash offer. Plaintiff's Counsel affirms that, instead, Plaintiff was informed that the Premises may have closed and, upon inspection, Plaintiff confirmed that the Premises were in fact closed, and the closing was later announced via social media.

Plaintiff's Counsel affirms that, upon learning of the closing, he spoke with Donald Novick ("Novick"), the Restaurant's landlord at the Premises, on or about May 25, 2017. Novick advised Plaintiff's Counsel that he had not obtained possession or a warrant of eviction, and requested a copy of the TRO. Plaintiff's Counsel provided him with a copy of the TRO via email, and Novick confirmed receipt of the TRO. Plaintiff's Counsel provides a copy of his May 25, 2017 correspondence with Novick (Ex. C to Palmieri Aff. in Supp.). On May 26, 2017, Plaintiff's Counsel sent a letter to counsel for Defendants which advised Defendants' Counsel of Defendants' violation of the TRO by failing to keep the Restaurant open and operational. Defendants' Counsel disputed that there had been a violation of the TRO, and did not respond to the request of Plaintiff's Counsel to assign the Restaurant's leasehold to Plaintiff to resolve the Landlord Tenant Action. Plaintiff's Counsel provides a copy of his May 26, 2017 letter to Defendants' Counsel (Ex. D to Palmieri Aff. in Supp.).

Plaintiff's Counsel affirms that on June 1, 2017, when the parties were scheduled to appear before the Court in the Instant Action, Defendants entered into the Stipulation (Ex. E to Palmieri Aff. in Supp.), without notice to Plaintiff. The Stipulation, which contains the caption of the Landlord Tenant Action, provides that 1) Respondent/Restaurant consents to the immediate entry [of] a judgment of possession and the issuance of a warrant of eviction; 2) in addition, the parties agree to the immediate issuance of the warrant of eviction; and 3) tenant waives all right to a security deposit.

In opposition, Novick affirms that he is the attorney for Huntington Trust in this action. Novick affirms that although the Initial Complaint did not name Huntington Trust as a defendant, Plaintiff, when it filed the Instant Motion on June 8, 2017, sought a temporary restraining order that would 1) vacate the Stipulation; 2) restrain Huntington Trust, as the landlord, from transferring, cancelling, surrendering or assigning the lease for the Premises; and 3) direct Huntington Trust and Defendants to rescind, cancel or modify any other leases entered into for the Premises. The Court denied Plaintiff's application for that temporary restraining order, and

Plaintiff subsequently filed his Amended Complaint. The Amended Complaint asserts several causes of action against Huntington, all of which seek money damages. Thus, Novick submits, Plaintiff cannot demonstrate irreparable injury because any injury is compensable by money damages.

Novick also contends that there is a third party that would be affected if the Court grants the requested injunctive relief. Novick affirms that Flat Top Long Beach Inc. (“Flat Top”) signed a lease on June 1, 2017, and thereafter renovated the Premises and opened for business. Novick submits that injunctive relief would damage this tenant who is not alleged to have engaged in any improper conduct.

Novick also provides copies of his August 22, 2017 affidavit in support of Huntington Trust’s motion to dismiss the Instant Action, which was submitted on September 11, 2017 and is *sub judice*, as well as the August 21, 2017 affidavit in support of Howard Novick (“Howard”), submitted in support of Huntington Trust’s pending motion to dismiss. In that affidavit, Novick notes that there is a dispute between Plaintiff and the Former Owners regarding whether Plaintiff is a shareholder in the Restaurant, and submits that Plaintiff is relying on a vague, oral agreement in support of his contention that he is a shareholder. Novick contends, further, that because Plaintiff is not an officer of the Restaurant, he had no authority to act on its behalf and, therefore, the landlord had no obligation to Plaintiff.

Novick contends, further, that the TRO did not suspend the payment of rent, or restrain the landlord from doing anything to protect its rights, including filing the Landlord Tenant Action. Moreover, Plaintiff was aware on May 15, 2017 that an eviction proceeding had been commenced, but made no attempt to pay that rent, to intervene in the Landlord Tenant Action, or to stay the Landlord Tenant Action. Novick contends that the causes of action asserted against Huntington Trust rest on the “absurd contention” (Novick Aff. in Supp. at ¶ 9) that Huntington Trust had a legal obligation to Plaintiff which prohibited it from exercising its rights as the landlord, pursuant to its written lease with the Restaurant.

Novick affirms that the eviction proceeding was on the calendar on June 1, 2017. At the time that the Landlord Tenant Action was filed, the rent was in arrears in the amount of \$11,840.00. Thereafter, as of June 1, 2017, the arrears totaled \$35,539.00. Thus, Novick submits, the judgment of eviction would have been granted for non-payment of rent, irrespective of whether the lease was surrendered.

In his affidavit in support of Defendants' pending motion to dismiss, Howard affirms that he is a Trustee of Huntington Trust. Howard affirms that, as the manager of the building in which the Restaurant is located, he is fully familiar with the relevant facts. Howard affirms that the Restaurant became the tenant of the Premises on September 21, 2015 as the result of an assignment from the existing tenant. Howard provides a copy of the original lease and the assignment (Ex. B to Howard Aff. in Supp.). He affirms that since September 2015, the Restaurant was consistently late with its rent payments, resulting in numerous default notices. Joseph Forgione, the President of the Restaurant, explained to Howard that the Restaurant was unable to pay its expenses, including rent, and that the Restaurant had closed for a short time. As a result, Howard instructed counsel for the landlord to commence eviction proceedings for non-payment of rent due for April 2017. Following two (2) adjournments of that proceeding, Howard met with States who agreed to surrender the lease. In addition to providing that surrender, States appeared at the Landlord Tenant Action and consented to the entry of a judgment of eviction, which judgment has been entered (*see* Ex. C to Howard Aff. in Supp.).

Howard affirms that during this three (3) month period, Plaintiff never provided him with documentation reflecting that he had authority to act on behalf of the Restaurant, and Plaintiff never tendered the unpaid rent to terminate the eviction proceeding. Moreover, paragraph 51 of the lease provides that the tenant may not assign the lease or sublet the premises without the landlord's written consent, which consent shall be subject to certain conditions (*see* Howard Aff. in Supp. at ¶ 5), including the condition set forth at paragraph 51(a) that tenant shall not be in default at the time of the request for such consent, and the condition set forth at paragraph 51(h) that "[t]he transfer of more than 50% of the outstanding shares of the stock of the tenant... shall be deemed an assignment unless said transfer is an intra-family transfer." Howard affirms that because the tenant had not eliminated the rent arrears in the amount of \$35,539.00, no assignment to Plaintiff could have been made even if it had been requested, and Howard notes that Plaintiff does not allege that an assignment of the lease was ever requested. As a result, Howard affirms, to fulfill his fiduciary obligations to the landlord, which is a trust, the landlord entered into a new lease agreement with Flat Top which renovated the premises and is open for business.

Howard also disputes the allegation in paragraph 128 of the Amended Complaint that "the cash offer was actually from Huntington Trust and a third-party currently in possession of the Premises." Howard describes this allegation as "blatantly false" (Howard Aff. in Supp. at ¶ 7) and affirms that the only relationship between Huntington Trust and the current tenant is a

landlord/tenant relationship created by the execution of a new lease, which both parties had the right to execute.

In further opposition to the motion, counsel for the Stag Defendants (“Stag Counsel”) affirms that the Stag Defendants attempted to comply with the TRO by keeping the Restaurant open and operational. On May 2, 2017, however, Huntington Trust commenced the Landlord Tenant Action in the Suffolk County District Court, due to the Restaurant’s failure and inability to pay rent in accordance with the parties’ lease. As the Restaurant had no defense to the allegations of default stated in the Landlord Tenant petition, and was unable to cure the default, on June 1, 2017, it entered into the Stipulation. At the time that Huntington Trust commenced the Landlord Tenant Action, it was not a party to the Instant Action and, therefore, was not subject to the TRO. Thus, Stag Counsel submits, Huntington Trust was not precluded from commencing the Landlord Tenant Action.

Stag Counsel notes further that, even assuming *arguendo* the truth of Plaintiff’s allegations regarding his agreement with the Former Owners, Plaintiff never attempted to cure the Restaurant’s default. To the contrary, upon learning of the pendency of the eviction proceedings, Plaintiff’s Counsel, by email correspondence dated May 25, 2017, (Ex. A to Aulivola Aff. in Opp.), advised Huntington Trust “If you are getting possession back or if you can arrange for my client to take the premises via an assignment, he is very interested to do so.” Thus, Stag Counsel submits, Plaintiff not only failed to make an offer to cure the default, but also recognized the right of Huntington Trust to assert its rights to take back possession of the Premises through the eviction proceeding.

Stag Counsel submits that the TRO did not address the issue of how Defendant would keep the Restaurant open and operational when they had been operating at a substantial loss since it opened. Plaintiff himself acknowledges that fact, alleging that as of November 10, 2016, the Restaurant had been operating at a loss for four and one-half months (Am. Comp. at ¶ 14). Stag Counsel affirms that the Former Owners suffered “financial devastation” (Aulivola Aff. in Opp. at ¶ 11) as a result of the Restaurant’s failure as evidenced by the fact that they recently filed for bankruptcy.

In further opposition to the motion, States affirms that, while he has respect for the Court’s Orders, the TRO did not address the issue of how the Restaurant could continue to operate in light of the fact that it had been operating at a substantial loss. He affirms that, as a result of the costs associated with the establishment of the Restaurant and the losses suffered each month thereafter, he and the Former Owners have suffered serious financial hardship, and .

States affirms that he is considering filing for bankruptcy. States affirms that given the Restaurant's inability to meet its financial obligations, including the payment of rent to Huntington Trust, it could not defend itself against the Landlord Tenant Action.

In reply, Plaintiff's Counsel submits that the opposition papers fail to mention that Plaintiff had a right of first refusal to purchase the Restaurant, and Plaintiff offered to purchase the Stag Defendants' remaining shares on numerous occasions. Plaintiff's Counsel affirms that the Stag Defendants sought to vacate the TRO on May 15, 2017 by asserting that they had a cash offer to sell the Restaurant, but the Court denied that application and directed the Stag Defendants to submit the alleged cash offer to Plaintiff so that he could exercise his right of first refusal, which the Stag Defendants failed to do.

C. The Parties' Positions

Plaintiff submits that in light of Huntington Trust and Defendants' violation of the TRO by entering into the Stipulation, injunctive relief is appropriate to prevent irreparable injury to Plaintiff. Plaintiff asks the Court to vacate and nullify the Stipulation, and to direct Huntington Trust and Defendants to rescind, modify and/or cancel any and all other leases entered into for the Premises.

The Stag Defendants and Huntington Trust oppose the motion, submitting that the Court should deny the motion in light of the fact that 1) as the Amended Complaint asserts several causes of action against Huntington, all of which seek money damages, Plaintiff cannot demonstrate irreparable injury because any injury is compensable by money damages; 2) there is a third party, specifically the new tenant Flat Top, who is not alleged to have engaged in improper conduct, that would be adversely affected if the Court grants the requested injunctive relief; 3) in light of the fact that Plaintiff is not an officer of the Restaurant, he had no authority to act on its behalf and, therefore, the landlord had no obligation to Plaintiff; 4) the TRO did not suspend the payment of rent, or restrain the landlord from doing anything to protect its rights, including filing the Landlord Tenant proceeding; 5) Plaintiff was aware on May 15, 2017 that an eviction proceeding had been commenced, but made no attempt to pay that rent, to intervene in the Landlord Tenant Action, or to stay the Landlord Tenant Action; 6) the instant motion rests on the untenable contention that Huntington Trust had a legal obligation to Plaintiff which prohibited it from exercising its rights as the landlord, pursuant to its written lease with the Restaurant; 6) pursuant to specific provisions in the lease, because the Restaurant had not eliminated the rent arrears in the amount of \$35,539.00, no assignment to Plaintiff could have been made even if it had been requested, and Plaintiff does not allege that an assignment of the

lease was ever requested; 7) Howard, who was obligated to fulfill his fiduciary obligations to the landlord, which is a trust, properly entered into a new lease agreement with Flat Top which renovated the premises and is open for business; 8) there is a factual dispute regarding Plaintiff's allegation that the cash offer was actually from Huntington Trust and a third-party currently in possession of the Premises, which Howard denies; 9) the Stag Defendants attempted to comply with the TRO by keeping the Restaurant open and operational but Huntington Trust commenced the Landlord Tenant Action, to which the Restaurant had no defense and, therefore, it was appropriate to enter into the Stipulation; 10) at the time that Huntington Trust commenced the Landlord Tenant Action, it was not a party to the Instant Action and, therefore, was not subject to the TRO, and the TRO did not preclude Huntington Trust from commencing the Landlord Tenant Action; 11) the TRO did not address the issue of how Defendant would keep the Restaurant open and operational when they had been operating at a substantial loss since it opened, as Plaintiff acknowledges; and 11) the Former Owners and States have suffered serious financial losses, prompting the Former Owners to file for bankruptcy.

In reply, Plaintiff submits that 1) Plaintiff has demonstrated a likelihood of success on the merits by demonstrating that Defendants, notwithstanding their knowledge of the TRO and in violation of the TRO, entered into the Stipulation; 2) Plaintiff has established that he will suffer irreparable injury without injunctive relief because, without that relief, no adequate remedy at law exists that would make Plaintiff whole as Plaintiff's injury is not only monetary damages, but also the loss of "an invaluable business...with limitless potential" (Impellizeri Reply Aff. at ¶ 18); and 3) a balancing of the equities favors Plaintiff because the only harm to Huntington Trust is the loss of rental income at the Premises, Defendants do not explain how Flat Top would be damaged, and Defendants knowingly entered into the Stipulation in violation of the TRO.

#### RULING OF THE COURT

##### A. Injunctive Relief

To demonstrate entitlement to a preliminary injunction under CPLR § 6301, the movant must demonstrate a probability of success on the merits, the danger of irreparable harm in the absence of an injunction, and a balance of the equities in favor of granting the injunction. *Matter of Advanced Digital Security Solutions, Inc. v. Samsung Techwin Co., Ltd.*, 53 A.D.3d 612, 613 (2d Dept. 2008) citing *Matter of K.W.F. Realty Corp. v. Kaufman*, 16 A.D.3d 688, 689-90 (2d Dept. 2005); *Olabi v. Mayfield*, 8 A.D.3d 459 (2d Dept. 2004).

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).

Mandatory injunctive relief should not be granted *pendente lite* without a showing of extraordinary circumstances where the status quo would be disturbed and the plaintiff would be granted the ultimate relief in the action. *Village of Westhampton Beach v. Cayea*, 38 A.D.3d 760, 762 (2d Dept. 2007).

B. Application of these Principles to the Instant Action

The Court is constrained to deny the motion. While the Court expects compliance with its directives, the Court concludes that, although Plaintiff has arguably established a likelihood of success on the merits, he has not established irreparable injury, or that a balancing of the equities favors Plaintiff. With respect to the irreparable injury prong, in light of the nature of Plaintiff's allegations in the Amended Complaint and the relief that he seeks, it appears that Plaintiff's injury, if any, is compensable by money damages. The Court also concludes that a balancing of the equities does not favor Plaintiff, given all the circumstances. The Stipulation was entered into in the context of the Landlord Tenant Proceeding, and the Court is reluctant to vacate an agreement entered into a proceeding over which the Court did not preside. The Court also considers the financial difficulties of the Former Owners, who have filed for bankruptcy, and of State, who affirms that he may also file for bankruptcy. In addition, Huntington Trust was not a party to the Instant Action at the time that the TRO was issued and, therefore, was not subject to it, and the TRO did not explicitly prohibit Huntington Trust from filing the Landlord Tenant Action to protect its rights under the lease. In light of the foregoing, the Court denies the motion.

All matters not decided herein are hereby denied.

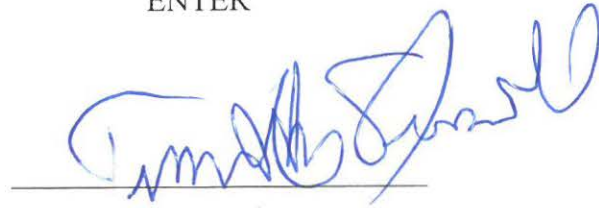
This constitutes the decision and order of the Court.

The Court reminds counsel for the parties of their required appearance before the Court for a Preliminary Conference on October 18, 2017 at 9:30 a.m.

ENTER

DATED: Mineola, NY

September 28, 2017



HON. TIMOTHY S. DRISCOLL

J.S.C.

**ENTERED**

OCT 06 2017

NASSAU COUNTY  
COUNTY CLERK'S OFFICE