

106 Spring St. Owner LLC v Workspace, Inc.

2018 NY Slip Op 30119(U)

January 19, 2018

Supreme Court, New York County

Docket Number: 657050/2017

Judge: Eileen Bransten

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. EILEEN BRANSTEN
Justice

PART 3

-----X
106 SPRING STREET OWNER LLC,
Plaintiff,

INDEX NO. 657050/2017

MOTION DATE _____

- v -

MOTION SEQ. NO. 001

WORKSPACE, INC, JEAN MARIE HAESSLE, JUSTIN LUBELL,
PAUL ZIMET, CRIS GIANAKOS, GRANT INNES, BARRY
MALLIN, 60 GUILDERS LLC, THE CARLYLE GROUP,
BASTIEN BRODA, JASON HART, 93 MERCER STREET
OWNER LLC,

DECISION AND ORDER

Defendant.

-----X
The following e-filed documents, listed by NYSCEF document number 22, 23, 24, 25, 26, 27, 28, 29,
30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56,
57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 73, 74, 75, 76, 77, 78, 79, 80

were read on this application to/for Preliminary Injunction

Upon the foregoing documents, it is

ORDERED Plaintiff's motion for a preliminary injunction is DENIED with prejudice pursuant to
the January 8, 2018 record and transcript at Tr. 2:18 – 21:11 (Jacqueline Campbell, SCR); further

As part of the application for the preliminary injunction, the Plaintiff made a request to
hold funds in escrow should the sale of the commercial unit proceed. Despite the general denial
of the Preliminary Injunction, the court permitted the parties an additional opportunity to submit
letter briefing on the issue of holding proceeds in escrow. *See Tr. 21:12 – 24:12 (Jacqueline*

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Campbell, SCR) (January 8, 2012). As a means of clarifying the court's prior ruling, the court now addresses the requested relief of holding money in escrow pending the determination on the merits.

Where the ultimate relief is, itself, a preliminary injunction it is subject to heightened standard of scrutiny. *See Tr. 11:24 – 12:13; see also Jones v. Park Front Apartments, LLC*, 73 A.D.3d 612, 612 (1st Dep't 2010) (holding that the requested relief must be "essential" to maintaining the status quo) *citing Second on Second Café, Inc. v. Hing Sing Trading, Inc.*, 66 A.D.3d 255, 273 (1st Dep't 2009). Thus, Plaintiff must show that denying the proceeds of the sale to the other tenants is essential to maintaining its status quo. It cannot.

While plaintiff has made a *prima facie* showing that it *may have* a right to the proceeds it cannot show that holding the proceeds is *essential* to maintaining its status quo. *See Tr. 8:16 – 9:12, 11:24 – 12:13. (Jacqueline Campbell, SCR) (January 8, 2018)*. With regard to an irreparable harm, the general rule is that money damages do not, alone, constitute the type of harm which would warrant injunctive relief. *See id at 13:10 – 13:16*. An exception to this rule exists where the monetary relief involves identifiable proceeds which are required to be held for the Plaintiff's benefit. *See AQ Asset Mgmt. LLC v. Levine*, 111 A.D.3d 245, 259 (1st Dep't 2013). Given, however, that this court has determined that Plaintiff merely *may have* a right to the proceeds not that it *does have* a right to the proceeds, the Plaintiff has failed to demonstrate that these proceeds would constitute an irreparable harm. Finally, the equities remain in favor of the Defendant for the reasons stated on the January 8, 2018 record and transcript at *Tr. 15:7 – 16:7 (Jacqueline Campbell, SCR)*. Further, given that an issue of fact exists as to whether the Plaintiff waived any right it may have had to proceeds from the sale of Unit #2, Plaintiff has failed to

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demonstrate that collecting on the proceeds of the sale is essential to maintaining its status quo. It is therefore

ORDERED that the Plaintiff's request to hold the proceeds of the sale in escrow pending the ultimate resolution of this matter is DENIED with prejudice;

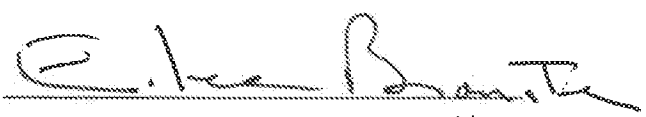
ORDERED that the Plaintiff's request for a Yellowstone Injunction is DENIED pending a hearing. While the Plaintiff has sufficiently demonstrated the first two prerequisites to obtaining a Yellowstone, there remains a question of fact as to whether the Plaintiff has defaulted on the terms of the lease. *Tr. 16:8 – 21:3 (Jacqueline Campbell, SCR) (January 8, 2018)*. Prior to granting a Yellowstone, the hearing will determine whether the Plaintiff has, in fact, defaulted on the proprietary lease. If the Plaintiff has, in fact, defaulted on its obligation by failing to maintain the water cooling tower then it will have jeopardized public health and safety in a manner which is incurable. *See Tr. 16:8 – 17:19 (Jacqueline Campbell, SCR) (January 8, 2018); see also Kyung Sik Kim v. Idylwood, N.Y., LLC, 66 A.D.3d 528, 529 (1st Dep't 2009) (holding that independent violations of the lease were incurable and thus an independent basis for denial of a Yellowstone Injunction)*. Thus, it is further

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ORDERED that until a hearing can take place to determine whether the Plaintiff is, in fact, in default of the proprietary lease, the parties shall not take any action which would alter the present *status quo* pursuant to the January 8, 2018 record and transcript, Jacqueline Campbell, SCR, at *Tr. 16:8 -- 21:3.*

1/19/2018
DATE


HON. EILEEN BRANSTEN
J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>	DO NOT POST	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	