

<b>Trinity NYC Hotel, LLC v Metropolitan Transp. Auth.</b>
2020 NY Slip Op 30855(U)
March 25, 2020
Supreme Court, New York County
Docket Number: 150665/2020
Judge: Suzanne J. Adams
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART IAS MOTION 21

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TRINITY NYC HOTEL, LLC,

Petitioner,

- v -

METROPOLITAN TRANSPORTATION AUTHORITY and  
NEW YORK CITY TRANSIT AUTHORITY

Respondents.

INDEX NO. 150665/2020

MOTION DATE N/A

MOTION SEQ. NO. 001

(Action #1)

**DECISION + ORDER ON  
MOTIONS**

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METROPOLITAN TRANSPORTATION AUTHORITY

Petitioner-Plaintiff,

-against-

ANTHONY T. RINALDI, LLC, THE RINALDI GROUP, LLC, and  
TRINITY NYC HOTEL, LLC,

Respondents-Defendants.

(Action #2)

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HON. SUZANNE J. ADAMS:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57 and all papers filed in hard copy in Action No.2, were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR/DISMISSAL.

These consolidated matters arise out of a hotel construction project located at 50 Trinity Place, New York, New York (the “50 Trinity Project”). Petitioner (Action No. 1)/Respondent-Defendant (Action No. 2) Trinity NYC Hotel, LLC (“Trinity”) is the developer of the 50 Trinity Project, as well as the fee owner of the underlying property at 50 Trinity Place. Pursuant to the Easement Agreement dated May 6, 2015, between Trinity and Respondent (Action No. 1) New

York City Transit Authority (“NYCTA”), Trinity agreed, *inter alia*, to construct a new elevator from the sidewalk on Trinity Place adjacent to 50 Trinity Project to the southbound platform of the R subway train at the Rector Street Station, and an elevator machine room. Two years later, NYCTA entered into the Transit Improvement Agreement dated April 5, 2017, with non-party TPH Greenwich Owner LLC (“42 Trinity Developer”), the owner and developer of the neighboring property at 42 Trinity Place, in which the latter agreed, *inter alia*, to construct a new entrance for the Rector Street Station on the Trinity Place sidewalk, which was to include an elevator and elevator machine room. Consequently, Trinity and NYCTA entered into a First Amendment to Easement Agreement dated November 29, 2017, which relieved Trinity of the obligation to construct the new elevator and elevator machine room, but instead obliged it to construct a below ground space without any elevator equipment (the “MTA Room”). The First Amendment further recited that (1) both Trinity and 42 Trinity Developer each considered constructing elevators to the subway within the boundaries of their respective properties, but that the existence of underground cables running north-south made such construction impractical; (2) 42 Trinity Developer agreed in the Transit Improvement Agreement to construct a new elevator in the sidewalk adjacent to 50 Trinity Place; (3) the “preferable location” of the elevator machine room for the new elevator is approximately located in what was now to be the MTA Room; (4) the MTA Room would be for the NYCTA’s exclusive use for any station-related use including, but not limited to, a mechanical room for an elevator that NYCTA or authorized third parties, including 42 Trinity Developer, will construct “now or in the future;” and (5) “once the MTA Room is constructed,” NYCTA will permit 42 Trinity Developer to construct the elevator machine room for the new elevator “within the MTA Room or the elevator machine room may

be constructed elsewhere and/or the MTA Room will be built out as an elevator machine room at a later date.”

After obtaining the necessary permits and approvals, Trinity began construction of the 50 Trinity Project in late 2018. By letter dated October 21, 2019, Respondent (Action No. 1)/Petitioner-Plaintiff (Action No. 2) Metropolitan Transportation Authority (“MTA”) advised the Manhattan Borough Commissioner of the New York City Department of Transportation (“DOT”) that upon the expiration on November 9, 2019, of Trinity’s permits allowing it to occupy the sidewalk at 50 Trinity Place, MTA would exercise its authority pursuant to Public Authorities Law § 1266(12) to occupy a portion of the sidewalk on Trinity Place to oversee the installation of the new elevator. MTA indicated that it expected the DOT to refrain from renewing Trinity’s permits pertaining to the sidewalk. After numerous discussions and correspondence between Trinity and MTA, Trinity was allowed to continue to occupy the sidewalk of 50 Trinity Place through December 31, 2019, which occupation included the retention of a construction fence on the sidewalk adjacent to the 50 Trinity Project. After December 31, 2019, however, the DOT permits allowing Trinity’s occupation of the disputed area of the sidewalk had not been renewed, and Trinity’s construction fence remained in place. On January 13, 2020, MTA issued a Stop Work Order directing Trinity’s contractor to “stop work for the following reasons: Drawings not approved by the NYC Transit; Interference with Transit Facilities; Other: Denial of NYCT access to sidewalk for ADA station improvement to enable disabled persons entry into the subway.”

In Action No. 1, Trinity moves by Order to Show Cause for a preliminary injunction enjoining and restraining MTA and NYCTA from (1) moving or interfering with Trinity’s construction fence and (2) enforcing the Stop Work Order, pending resolution of the underlying

action, *i.e.*, Trinity's petition pursuant to CPLR Article 78 for permanent relief and for declaratory judgment pursuant to CPLR § 3001. MTA and NYCTA oppose the motion and cross-move for partial dismissal of the petition. In Action No. 2, MTA moves by Order to Show Cause against Trinity together with Anthony T. Rinaldi, LLC, and The Rinaldi Group, LLC (together, "Rinaldi"), for a preliminary injunction enjoining them (1) to remove all fences, fixtures and property from the sidewalk area of 50 Trinity Place and (2) from any and all further trespass or occupation of that same portion of the sidewalk, pending resolution of MTA's underlying petition and complaint for permanent relief pursuant to CPLR Article 78 and CPLR §§ 6301 and 6311. Trinity opposes the motion and cross-moves to dismiss the petition. These actions were consolidated pursuant to the stipulation so-ordered by this court and dated February 5, 2020.

For the reasons discussed below, Trinity's motion in Action No. 1 is granted in its entirety and MTA and NYCTA's cross-motion is denied in its entirety. In Action No. 2, Trinity's cross-motion to dismiss is granted in its entirety, and MTA's motion for preliminary injunctive relief is therefore dismissed as moot.

#### Motion for Preliminary Injunction (Action No. 1)

##### *Standards for Preliminary Injunctive Relief*

New York CPLR § 6301 provides that preliminary injunctive relief may be granted

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.

Entitlement to a preliminary injunction under the statute is established by a showing of: “(1) a likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the provisional relief is withheld; and (3) a balance of equities tipping in the moving party’s favor.” *Doe v. Axelrod*, 73 N.Y.2d 748, 750 (1988). The purpose of a preliminary injunction is to maintain the *status quo* pending a trial. See *Terrell v. Terrell*, 279 A.D.2d 301, 304 (1<sup>st</sup> Dep’t 2001); *Sau Thi Ma v. Xuan T. Lien*, 198 A.D.2d 186, 187 (1<sup>st</sup> Dep’t 1993).

#### *Likelihood of Success on the Merits*

In order to demonstrate a likelihood of success on the merits of its claims, the moving party’s “*prima facie* showing of a right to relief is sufficient; actual proof of the case should be left to further court proceedings . . . .” *McLaughlin, Piven, Vogel, Inc. v. W.J. Nolan & Co.*, 114 A.D.2d 165, 172-73 (2d Dep’t 1986); see also *Terrell*, 279 A.D.2d at 303 (“[w]hile not conclusive, plaintiff’s proof was sufficient for the purpose of obtaining provisional relief”). Trinity has demonstrated sufficient proof of a likelihood of success on the merits of its claims.

The evidence presented indicates that construction work on the 50 Trinity Project was proceeding, with Trinity’s construction fence in place, until on or about October 21, 2019. By letter of that date, MTA advised the DOT that it intended to occupy the disputed sidewalk area adjacent to the 50 Trinity Project in order to oversee the installation of an elevator from the sidewalk to the Rector Street subway platform, and that it “of course” would expect the DOT not to renew the permits currently issued to “a contractor working on a building at 50 Trinity Place” after such permits expired on November 9, 2019. Significantly, up until this point in time, MTA and/or NYCTA had approved all relevant plans, permits and applications submitted by Trinity to the DOT. MTA’s letter initiated a series of communications between Trinity and MTA which did not resolve the issues between them, and culminated in MTA’s issuing to Trinity’s contractor

the January 13, 2020, Stop Work Order. As described above, the Stop Work Order indicates it was issued because Trinity's contractor's drawings were not approved by NYCTA and its work interfered with transit facilities and denied NYCT access to the sidewalk for ADA station improvement.

MTA cites Public Authorities Law § 1266(12) as the basis for its right to occupy the sidewalk at issue. It argues that this statute allows it and its contractors to occupy the sidewalk area for the purpose of facilitating the construction of the elevator and a new entrance to the southbound Rector Street subway platform. MTA relies solely on *MacArthur Properties, LLC, v. Metropolitan Transportation Authority*, 61 Misc. 3d 1204(A) (Supreme Ct., N.Y. County 2017), for this interpretation of the statute. However, both the plain reading of the statute and the facts of *MacArthur* do not support MTA's position.

Section 1266(12) provides in its entirety:

The authority may, upon suitable notice to and an offer to consult with an officer designated by the city of New York, occupy the streets of the city of New York for the purpose of doing any work over or under the same in connection with the improvement, construction, reconstruction or rehabilitation of a transportation facility without the consent of or payment to such city.

The language of the statute presumes that MTA is itself undertaking a development project, and provides that in such instance it may occupy city streets for this purpose without having to obtain the city's consent or pay the city any kind of remuneration. The statute on its face does not convey a broad, unqualified right of MTA to occupy city streets and sidewalks for any reason whatsoever on an *ad hoc* basis. Further, the holding of *MacArthur* is consistent with this interpretation.

*MacArthur* arose out of the construction of the Second Avenue subway, a development project undertaken by MTA and its operating affiliate, MTA Capital Construction Company,

together with certain privately owned contractors. *MacArthur*, 61 Misc. 3d 1204(A) at 1-2. The plaintiff, the owner of several street level commercial condominiums located on Second Avenue, sought damages from the defendants, MTA and the contractors, for economic losses comprised of lost rents and diminished market value allegedly caused by the subway construction, and moved for partial summary judgment on the legal issue of whether as an abutting landowner it was entitled to such damages. *Id.* at 2. The plaintiff alleged that MTA and the other defendants took possession of the public street “without any authority whatsoever” and began constructing the project pursuant to the plans and specifications of the applicable contract between MTA and the private contractors. *Id.* at 3. In addressing the plaintiff’s first cause of action, the *MacArthur* court stated that PAL § 1266(12) “conclusively negates” the plaintiff’s contentions that MTA lacked authority to undertake the subway construction project and that such project was not an authorized use of the public street. *Id.*

The applicability of the statute to the factual circumstances of *MacArthur* is self-evident in light of the nature of the Second Avenue subway construction project, a public works project in which MTA actively participated, together with private entities with whom it contracted. It is for this reason that the statute is inapplicable to the circumstances herein. Contrary to MTA’s contention, neither PAL § 1266(12) nor any other part of § 1266 can be read to allow MTA *carte blanche* to occupy any sidewalk abutting any subway station anywhere in the five boroughs for any purpose deemed to affect a transportation facility. The statute contemplates MTA as an active participant, either on its own or through an operating affiliate or through an arrangement with another entity, in the implementation of a defined transportation improvement project. *See, generally*, PAL § 1266(2) (“the authority may . . . *itself* plan, design, etc.” (emphasis added)). Indeed, PAL § 1264(1) provides that the purposes of the authority shall be to “develop and

implement a unified mass transportation policy . . . in an *efficient and cost-effective manner* . . .” (emphasis added). If the statute enabled MTA to, on an *ad hoc* basis, occupy a city sidewalk currently occupied by an ongoing construction project, and contract with a third party to undertake new construction on that same sidewalk so as to improve an adjacent subway station in piecemeal fashion, chaos in the construction industry would ensue. It would hardly be an “efficient and cost-effective” way to improve the mass transit system, let alone sound public policy.

In this action, the contemplated construction of the elevator to the Rector Street subway platform was not the result of MTA’s embarking on a city-wide capital program to install elevators in existing subway stations and hiring contractors to aid in building them. Instead, the contemplated construction was occasioned solely by the private development of 50 Trinity Place. The Easement Agreement dated May 6, 2015, between Trinity and NYCTA recites that the elevator in question is to be constructed pursuant to §§ 91-43 and 37-40 and of the Zoning Resolution of the City of New York, as modified pursuant to § 37-40. The later obligation of 42 Trinity Developer to construct the elevator instead also arose out of those same Zoning Resolutions, as set forth in the Transit Improvement Agreement dated April 5, 2017. MTA did not engage either Trinity or 42 Trinity Developer to undertake a project to improve the Rector Street subway station. Rather, any improvements were being made because of the mandates of the relevant Zoning Resolutions. There is no similarity between the facts of this matter and those in *MacArthur*. As such, MTA is not empowered by PAL § 1266(12) to seek to occupy that disputed portion of the sidewalk adjacent to 50 Trinity Place.

### *Irreparable Injury*

The second element required to establish entitlement to preliminary injunctive relief is irreparable injury, which “has been held to mean any injury for which money damages are insufficient.” *McLaughlin*, 114 A.D.2d at 174; *see also Sterling Fifth Assoc. v. Carpentille Corp., Inc.*, 5 A.D.3d 328, 330 (1<sup>st</sup> Dep’t 2004). The injury alleged must be imminent and nonspeculative absent the requested relief, and not compensable by money damages. *Rowland v. Dushin*, 82 A.D.3d 738, 739 (2d Dep’t 2011).

Trinity has sufficiently demonstrated future irreparable injury, citing a halt to the 50 Trinity Project and the damages resulting from delayed construction: the potential loss of its hotel franchise agreement, a breach of its construction financing, and the loss of the project’s concrete contractor. MTA’s contention that Trinity’s alleged prospective harm will be self-inflicted is unpersuasive.

### *Balance of the Equities*

Finally, “the ‘balancing of the equities’ usually simply requires the court to look to the relative prejudice to each party accruing from a grant or a denial of the requested relief.” *Sau Thi Ma*, 198 A.D.2d at 187. Here, the equities favor Trinity. Without an injunction, the removal of the construction fence and enforcement of the Stop Work Order will halt construction of the 50 Trinity Project, with the likelihood of the injuries to Trinity as noted above. However, MTA has not presented evidence of any harm to itself that would result from the granting of the injunctive relief sought by Trinity. MTA claims no prospective monetary injury, only harm to the “general public” resulting from the lack of access to the Rector Street subway station in the absence of an elevator. However, there is no quantification of this harm, especially in light of

the fact that this subway station has never operated with an elevator, and that there is no planned elevator for its uptown counterpart.

Thus, Trinity's motion for a preliminary injunction is granted. Trinity has established a likelihood of success on the merits of its claims and irreparable harm in the absence of injunctive relief, and the balance of the equities lies in its favor.

#### Cross-Motion to Dismiss (Action No. 1)

MTA cross-moves for partial dismissal of Action No. 1 on the grounds that Trinity cannot seek declaratory judgment as a remedy where judicial review in an Article 78 proceeding is available. MTA argues that Trinity's seeking judicial review of the Stop Work Order is available under Article 78, therefore obviating the need for a declaratory judgment. However, MTA does not address the fact that Trinity seeks relief beyond what is available under Article 78, namely a declaratory judgment that the Stop Work Order is also unconstitutional and unlawful. *See* CPLR § 7803. Nor does MTA dispute that an Article 78 proceeding may also seek declaratory relief. *See, generally, In the Matter of Leading Age New York, Inc., v. Shah*, 32 N.Y.3d 249 (2018). Therefore, MTA's cross-motion to dismiss is denied.

#### Motion for Preliminary Injunction and Cross-Motion to Dismiss (Action No. 2)

MTA's petition and complaint in Action No. 2 states two causes of action: first, for a writ of mandamus pursuant to Article 78 compelling Trinity and Rinaldi to remove the construction fence and other property from the disputed area of the sidewalk adjacent to 50 Trinity Place; and second, sounding in trespass against Trinity and Rinaldi. MTA moves for preliminary injunctive relief, and Trinity and Rinaldi oppose the motion and cross-move to dismiss the underlying petition.

A private corporation may be subject to an Article 78 proceeding under certain limited circumstances, and “can be compelled . . . to fulfill . . . obligations imposed upon them by State or municipal statutes . . . .” *Matter of Gray v. Canisius College*, 76 A.D.2d 30, 33 (4<sup>th</sup> Dep’t 1980); CPLR § 7803(1) (questions raised in Article 78 proceeding include “whether the body or officer failed to perform a duty enjoined upon it by law”). Nevertheless, “relief in the nature of mandamus is appropriate only where the right to relief is ‘clear’ and the duty sought to be enjoined is performance of an act commanded to be performed by law and involving no exercise of discretion.” *Matter of Kupersmith v. Public Health Council of the State of New York*, 101 A.D.2d 918, 919 (3d Dep’t 1984) (citing *Matter of Hamptons Hospital & Medical Center, Inc., v. Moore*, 52 N.Y.2d 88, 96 (1981)).

MTA has premised its first cause of action for a writ of mandamus on its claim that Trinity and Rinaldi are occupying the sidewalk in question without valid DOT permits, and thus have a duty to vacate the sidewalk but have failed to do so. However, the evidence presented does not establish that MTA’s right to relief is “clear” or that Trinity and Rinaldi have a “duty” to vacate. The evidence instead indicates that Trinity and Rinaldi’s purportedly unlawful occupation of the sidewalk without applicable DOT permits was occasioned by the MTA’s directive to the DOT, in its letter dated October 21, 2019, not to reissue the permits. In other words, the MTA has created the circumstances in which it claims Trinity and Rinaldi are acting unlawfully. This is not a valid basis for relief under CPLR § 7803(1) as a matter of law.

Furthermore, MTA’s second cause of action for trespass is also invalid as a matter of law. MTA asserts that Trinity and Rinaldi are trespassing on the disputed sidewalk because MTA has the right to occupy that area by virtue of PAL § 1266(12). As discussed at length hereinabove, however, this statute is inapplicable to the circumstances of this matter.

Therefore, Trinity's cross-motion is granted, and MTA's petition and complaint are dismissed as a matter of law. In light of this dismissal, MTA's motion for preliminary injunctive relief is dismissed as moot.

Accordingly, it appearing to this Court that a cause of action exists in favor of Trinity and against MTA and NYCTA, and that Trinity is entitled to a preliminary injunction on the ground that MTA and NYCTA threaten or are about to do, or are doing or procuring or suffering to be done, an act in violation of Trinity's rights respecting the subject of the action and tending to render the judgment ineffectual, as set forth in the aforesaid decision, it is

ORDERED that the undertaking is fixed in the sum of \$75,000.00 conditioned that Trinity, if it is finally determined that it was not entitled to an injunction, will pay to MTA and NYCTA all damages and costs which may be sustained by reason of this injunction; and it is further

ORDERED that MTA and NYCTA, their affiliates, subsidiaries, parents, representatives, agents, servants, employees, successors, assignees and all other persons acting under their jurisdiction, supervision and/or direction, are enjoined and restrained, during the pendency of this action, from doing or suffering to be done, directly or through any attorney, agent, servant, employee or other person under their supervision or control or otherwise, any of the following acts:

1. moving or interfering with Trinity's project site fence; and
2. enforcing the Stop Work Order of January 13, 2020, against Trinity or any of its agents.

This constitutes the Decision and Order of the Court.

3/25/2020

DATE



SUZANNE J. ADAMS, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE