Trinity NYC Hotel, LLC v Metropolitan Transp. Auth.
2020 NY Slip Op 31785(U)
June 10, 2020
Supreme Court, New York County
Docket Number: 150665/2020
Judge: Suzanne J. Adams

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. 002

(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.

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(Action #2)

HON. SUZANNE J. ADAMS:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 106, 107, 108, 109, 110

were read on this motion to/for PREL INJUNCTION / RENEW and/or REARGUE.

This matter arises out of a hotel construction project located at 50 Trinity Place, New York, New York (the "50 Trinity Project"), of which Trinity NYC Hotel, LLC ("Trinity"), is the developer, as well as the fee owner of the underlying property at 50 Trinity Place. The parties herein were recently before this court, Trinity and MTA having each filed motions by order to show cause seeking certain preliminary injunctive relief in their respective actions, as styled

above (which were ordered consolidated), as well as having cross-moved to dismiss the other's petition. This court's Decision and Order dated March 25, 2020 (the "March Decision"), granted Trinity's motion by Order to Show Cause in Action No. 1 and issued 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 of January 13, 2020, pending resolution of Trinity's petition pursuant to CPLR Article 78 for permanent relief and for declaratory judgment pursuant to CPLR § 3001. The March Decision also denied MTA's cross-motion to dismiss Action No. 1, granted Trinity's cross-motion to dismiss MTA's petition (Action No. 2) and dismissed MTA's motion for preliminary injunctive relief as moot. Reference is made to the March Decision for a recitation of the facts underlying the consolidated actions and the meaning of any defined terms used herein.

In the motions now before the court, Trinity moves by Order to Show Cause for a preliminary injunction enjoining and restraining MTA and NYCTA from (1) maintaining MTA's October 21, 2019, letter to the NYC Department of Transportation ("DOT") on the basis of New York Public Authorities Law § 1266(12) (the "PAL Letter"); and (2) interfering with Trinity's project and site permits, including the release thereof. MTA and NYCTA oppose the motion and cross-move for leave to reargue and renew their prior motions decided by the March Decision, and upon reargument and/or renewal, seek reversal of the March Decision, including a vacatur of the preliminary injunction granted to Trinity and denial of Trinity's cross-motion to dismiss Action No. 2. Trinity and Anthony T. Rinaldi, LLC, and The Rinaldi Group, LLC (together, "Rinaldi"), oppose the cross-motion. For the reasons discussed below, Trinity's motion is granted in its entirety and MTA and NYCTA's cross-motion is denied in its entirety.

Cross-Motion to Reargue and/or Renew

Because the relief granted to Trinity necessarily is contingent upon the determination of MTA and NYCTA's cross-motion, the latter is addressed first. Pursuant to CPLR 2221(d)(2), a motion for leave to reargue a prior motion "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion . . .." MTA and NYCTA contend that the court overlooked the memorandum of law it submitted in support of its previous motion for a preliminary injunction in Action No. 2 and cross-motion to dismiss Action No. 1, because the March Decision does not list the memorandum, identified on NYSCEF as Document No. 44, as having been read. The court assures the parties that Document No. 44 was indeed read and considered in its March Decision. The listing of documents read on a motion in Supreme Court is usually generated by a word processing program that automatically produces a caption template with the documents filed in the motion sequence. Because the court wrote its decision as expeditiously as possible after the court system suspended all non-essential proceedings and effectively closed due to the New York State governor's PAUSE order in response to the global pandemic, the template of the March Decision was created by the court itself, with any omissions or typos being purely administrative error.

Apart from that, what MTA and NYCTA believe is the court's misapprehension of the applicable law appears to be no more than their disagreement with the reasoning of the March Decision. MTA and NYCTA maintain that the court's interpretation of Public Authorities Law § 1266(12) is narrow, whereas the March Decision determined that a plain reading of the statute, not a narrow one, does not allow MTA and NYCTA to occupy portions of the sidewalk on Trinity Place to facilitate the construction of the elevator and a new entrance to the southbound Rector Street subway platform. As noted therein, the construction of an elevator from Trinity

Place to the Rector Street subway platform was not part of any specific MTA program to install elevators in existing subway stations but rather was the direct result of the private development of parcels of land abutting Trinity Place. Both Trinity and 42 Trinity Developer are required by §§ 91-43 and 37-40 of the Zoning Resolution of the City of New York to undertake certain improvements to subway entrances adjacent to their property. Under such circumstances, neither MTA nor NYCTA can be considered an "active participant . . . in the implementation of a defined transportation improvement project" as noted in the March Decision, resulting in their alleged right to occupy a portion of the sidewalk on Trinity Place that is now occupied by Trinity's construction fence, solely because MTA and/or NYCTA approve all relevant plans, permits and applications submitted by Trinity to the DOT. The contrast of the instant scenario to the one in *MacArthur Properties, LLC, v. Metropolitan Transportation Authority*, 61 Misc. 3d 1204(A) (Supreme Ct., N.Y. County 2017), the sole case cited by MTA and NYCTA in support of their position, which interpreted PAL 1266(12) in the context of the Second Avenue Subway project, is stark. Therefore, the motion for leave to reargue is denied.

The motion for leave to renew is also denied. A renewal motion must be "based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination." CPLR 2221(e)(2). MTA and NYCTA argue that the newly available evidence warranting renewal is Trinity's alleged representations to the Empire State Development Corporation in its application to continue construction of the 50 Trinity Project during the state-wide, pandemic-incurred halt to "non-essential" construction. This purported new fact could not have been offered on the prior motion because the halt to non-essential construction and Trinity's application for exemption therefrom did not exist at the time the prior motions were briefed and

argued. Thus, there is no basis for leave to renew MTA and Trinity's prior motion. Moreover, with the recent return to non-essential construction activity in New York City, the argument is moot.

Motion for Preliminary Injunction

The March Decision granted Trinity a preliminary injunction pursuant to CPLR § 6301, ordering 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 court found that Trinity was entitled to such preliminary injunctive relief because it showed "(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 [its] favor." *Doe v. Axelrod*, 73 N.Y.2d 748, 750 (1988).

Trinity now seeks a further preliminary injunction enjoining and restraining MTA and NYCTA from maintaining the PAL Letter to the DOT and interfering with Trinity's project and site permits, including the release thereof. Trinity contends that MTA and NYCTA have failed to obey the preliminary injunction by wrongfully maintaining the PAL, which originally advised the DOT that MTA planned to exercise its authority pursuant to PAL § 1266(12) to occupy a portion of the sidewalk on Trinity Place and expected the DOT to refrain from renewing Trinity's permits pertaining to the sidewalk. Trinity further contends that MTA, in advising the DOT of its appeal of the March Decision, has instructed the DOT not to issue or renew any

permits to Trinity and/or its contractors. In support of these contentions, Trinity cites an email exchange with the DOT, in which the DOT advised that MTA's appeal of the March Decision invokes a stay of this court's injunction pursuant to CPLR 5519(a) and that in order to issue permits, MTA would have to formally withdraw its notice to occupy the sidewalk in question. (Affirmation of William R. Fried, ¶ 9, Exhibit 4) Additionally, Trinity states that its expeditor was advised that every DOT permit application by Trinity was denied, with the instruction to resubmit the applications "after decision on MTA appeal." (Fried Aff., ¶ 11, Exhibit 5)

In opposition to Trinity's instant motion, MTA and NYCTA argue that the March Decision does not prohibit MTA from "maintaining" that MTA has the authority to occupy the sidewalk at issue pursuant to PAL § 1266(12), nor does it require it to withdraw the PAL Letter. (Affirmation of John G. Nicolich, ¶¶ 46, 47) MTA and NYCTA further argue that they have not moved or interfered with Trinity's project site fence nor enforced the Stop Work Order, in compliance with the March Decision's injunction, and that if the injunction extends to requiring MTA to withdraw the PAL Letter, the injunction is stayed by CPLR 5519(a). MTA and NYCTA also deny that they took actions directing the DOT to withhold issuing any permits to Trinity. (Nicolich Aff., ¶¶ 49-51, Exhibit P)

The preliminary injunctive relief Trinity seeks in the instant motion is identical to the relief sought in its prior motion, which was granted by the March Decision: the enjoining of MTA and NYCTA's interference with Trinity's ability to proceed with construction of the 50 Trinity Project. The March Decision enjoins MTA and NYCTA, and its affiliates, etc., from interfering with Trinity's project site fence and enforcing the Stop Work Order of January 13, 2020. The March Decision noted that the basis of the Stop Work Order was the lack of NYCTA approval of Trinity's contractor, Rinaldi's, drawings, and the evidence before the court indicated

that Trinity and Rinaldi's purportedly unlawful occupation of the sidewalk without applicable DOT permits was occasioned by MTA's directive to the DOT, in the PAL Letter, not to reissue the permits. As such, MTA created the circumstances in which it claimed Trinity and Rinaldi were unlawfully occupying the subject sidewalk. Now, in contravention of the March Decision's preliminary injunction, MTA and NYCTA have continued to act in such a way as to prevent the 50 Trinity Project from proceeding. Regardless of the exact language of any communications between MTA and/or NYCTA, and DOT that occurred subsequent to the March Decision, the undisputed effect has been DOT's withholding of permits to Trinity and Rinaldi specifically because of MTA and NYCTA's pending appeal of the March Decision. MTA and NYCTA have taken the legally unsupported position that the PAL Letter was not affected by the March Decision, and that even if it were, their appeal stays the injunction.

CPLR 5519 (a)(1) provides in pertinent part that "[s]ervice upon the adverse party of a notice of appeal or an affidavit of intention to move for permission to appeal stays all proceedings to enforce the judgment or order appealed from pending the appeal or determination on the motion for permission to appeal where: 1. the appellant or moving party is the state or any political subdivision of the state or any officer or agency of the state or of any political subdivision of the state . . . ." The statute is applicable to MTA. *Grant v. MTA*, 96 Misc.2d 683 (Sup. Ct. N.Y. County 1978) (finding the Metropolitan Commuter Transportation Act supports the proposition that MTA may be considered a "state agency and "political subdivision of the state" for purposes of applying CPLR 5519 (a)(1)). However, the statute "by its express terms, only provides a stay of proceedings to *enforce* the judgment or order appealed from. Thus, when a stay is obtained pursuant to this subdivision it has the effect of temporarily depriving the prevailing party of the ability to use the methods specified by law *(see, e.g.,* CPLR art 51,

entitled "Enforcement of Judgments and Orders Generally") to enforce the executory provisions of the judgment or order appealed from [cite omitted]." *Matter of Pokoik v. Department of Health Services of County of Suffolk*, 220 A.D.2d 13, 14-15 (2d Dep't 1996). The scope of the automatic stay only applies "to the executory directions of the judgment or order appealed from which command a person to do an act, and . . . does not extend to matters which are not commanded but which are the sequelae of granting or denying relief." *Matter of Pokoik*, 220 A.D.2d at 15. As further noted in *State of New York v. Town of Haverstraw*, 219 A.D.2d 64, 65 (2d Dep't 1996), citing to *Matter of Pokoik*, "[e]xecutory directives are those which direct the performance of a future act. The rule with respect to orders or judgments which *prohibit* future acts is different. Prohibitory injunctions are self-executing and need no enforcement procedure to compel inaction on the part of the person or entity restrained."

In this matter, the preliminary injunction issued by the March Decision was clearly a prohibitory injunction: MTA and NYCTA were prohibited from acting, *i.e.*, interfering with Trinity's construction fence and enforcing the Stop Work Order, not directed to act. Moreover, any automatic stay pursuant to CPLR 5519(a) does not apply to matters that "which are not commanded but which are the sequelae of granting . . . relief." *Matter of Pokoik*, 220 A.D.2d at 15. The prohibition of future acts included MTA's making certain representations to the DOT so as to cause the DOT to continue to deny Trinity's construction permits pending resolution of the appeal of the March Decision, including, but not limited to, continuing to invoke PAL § 1266(12) as the basis for asserting its right to occupy the disputed sidewalk, whether through the PAL Letter or any other representation.

Thus, for these reasons, and those set forth in the March Decision, Trinity's motion for a preliminary injunction is granted. On its prior motion, Trinity 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, and the facts and circumstances underlying the prior motion remain unchanged. The court accepts Trinity's representation that it will post a bond as soon as it is able to do so, having until now been unable to do so in light of certain closures due to the global pandemic.

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 required by the March Decision, with the same conditions, shall also serve as the undertaking for the within relief; 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. maintaining MTA's October 21, 2019, letter to the NYC Department of Transportation on the basis of New York Public Authorities Law § 1266(12); and

2. interfering with Trinity's project and site permits, including the release thereof.

This constitutes the Decision and Order of the Court.

6/10/2020
DATE

SUZANNE J. ADAMS, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE