

159-MP Corp. v Redbridge Bedford LLC

2020 NY Slip Op 33453(U)

October 20, 2020

Supreme Court, Kings County

Docket Number: 507108/2020

Judge: Richard Velasquez

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At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 20th day of OCTOBER, 2020

P R E S E N T:
HON. RICHARD VELASQUEZ, Justice.

-----X
159-MP CORP., 240 BEDFORD AVE REALTY
HOLDING CORP.,

Plaintiff,

Index No.: 507108/2020
Decision and Order

-against-

REDBRIDGE BEDFORD LLC,

Defendants.
-----X

The following papers NYSCEF Doc #'s 1 to 45 read on this motion:

<u>Papers</u>	<u>NYSCEF DOC NO.'s</u>
Notice of Motion/Order to Show Cause Affidavits (Affirmations) Annexed_____	1-16
Opposing Affidavits (Affirmations)_____	17-19; 20-26; 29-43
Memorandum of Law_____	45

After having heard Oral Argument on SEPTEMBER 21, 2020 and upon review of the foregoing submissions herein the court finds as follows:

Plaintiff moves by order to show cause for an order and preliminary injunction; (1) Deeming defendant REDBRIDGE to have consented to the proposed work to replace the current one (1) inch gas line feeding, inter alia, the HVAC unit serving the plaintiff's premises with a two (2) inch gas line by virtue of their breach of the lease to plaintiff's and refusal to reasonably consent to the work, or in the alternative (2) granting an injunction to plaintiff's to perform the necessary alterations and enjoining the defendant

to cooperate with plaintiffs and to sign all required building permits and other documents necessary to undertake such installation and proposed alterations, namely swapping the one (1) inch gas link with a two (2) inch gas line to the HVAC unit in the same location as the current gas line. (MS#1) Defendant opposes the same.

The purpose of a **preliminary injunction** is to maintain the status quo and prevent the dissipation of property that could render a judgment ineffectual (*cf. Rattner & Assoc. v. Sears, Roebuck & Co.*, 294 AD2d 346, 741 NYS2d 894). To be entitled to a **preliminary injunction**, the movant must establish (1) the likelihood of success on the merits, (2) irreparable injury absent granting the **preliminary injunction**, and (3) a balancing of the equities in the movant's favor (*see Hightower v. Reid*, 5 AD3d 440, 772 NYS2d 575; *Evans-Freke v. Showcase Contr. Corp.*, 3 AD3d 549, 770 NYS2d 640; CPLR 6301; *Doe v. Axelrod*, 73 NY2d 748, 750, 536 NYS2d 44, 532 NE2d 1272; *W.T. Grant Co. v. Srogi*, 52 NY2d 496, 517, 438 NYS2d 761, 420 NE2d 953). The decision to grant or deny a **preliminary injunction** rests in the sound discretion of the Supreme Court (*see Matter of Merscorp, Inc., v. Romaine*, 295 AD2d 431, 432, 743 NYS2d 562).

The plaintiffs in the present case, fail to allege damages of a noneconomic nature and, thus, failed to demonstrate irreparable harm in the absence of a preliminary injunction (*see Automated Waste Disposal, Inc. v. Mid-Hudson Waste, Inc.*, 50 AD3d 1072, 1073, 857 NYS2d 648; *Dana Distribs. v. Crown Imports, LLC*, 48 AD3d 613, 853 NYS2d 111; *cf. Winzelberg v. 1319 50th Realty Corp.*, 52 AD3d 700, 860 NYS2d 185; *Stockley v. Gorelik*, 24 AD3d 535, 808 NYS2d 282), quoting *DiFabio v. Omnipoint Commc'ns, Inc.*, 66 AD3d 635, 636–37, 887 NYS2d 168, 169–70 (2009). “Irreparable injury, for purposes of equity, has been held to mean any injury for which money

damages are insufficient" (*Matter of Walsh v. Design Concepts*, 221 AD2d 454, 455, 633 NYS2d 579; see *McLaughlin, Piven, Vogel v. Nolan & Co.*, 114 AD2d 165, 174, 498 NYS2d 146). Conversely, "[e]conomic loss, which is compensable by money damages, does not constitute irreparable harm" (*EdCia Corp. v. McCormack*, 44 AD3d 991, 994, 845 NYS2d 104; see *Neos v. Lacey*, 291 AD2d 434, 435, 737 NYS2d 394). In the present case, plaintiff fails to proffer any evidence in admissible form that it will suffer irreparable harm in the form of non-economic damages in the absence of a preliminary injunction.

Additionally, it is well settled that "absent extraordinary circumstances, a preliminary injunction will not issue where to do so would grant the movant the ultimate relief to which he or she would be entitled in a final judgment" (see *St. Paul Fire & Mar. Ins. Co. v York Claims Serv.*, 308 AD2d 347, 348-349 [2003]); quoting, *SHS Baisley, LLC v. Res Land, Inc.*, 18 AD3d 727, 728, 795 NYS2d 690 (2005). In the present case, plaintiff in its complaint, seeks the identical relief sought in the instant motion, to wit: "a mandatory injunction requiring defendant to consent to the proposed alterations, or in the alternative, permitting plaintiff to perform alterations and requiring defendants to sign all necessary building permits." (See plaintiff complaint). Moreover, there has been no showing of extraordinary circumstances that would require the issuance of the preliminary injunction which is the movants ultimate relief contained in the complaint.

Therefore, the plaintiff has failed to adequately demonstrate irreparable injury to the property and a balancing of equities in the movants favor, as such plaintiffs request for an order and preliminary injunction; (1) Deeming defendant REDBRIDGE to have consented to the proposed work to replace the current one (1) inch gas line feeding,

inter alia, the HVAC unit serving the plaintiff's premises with a two (2) inch gas line by virtue of their breach of the lease to plaintiff's and refusal to reasonably consent to the work, or in the alternative (2) granting an injunction to plaintiff's to perform the necessary alterations and enjoining the defendant to cooperate with plaintiffs and to sign all required building permits and other documents necessary to undertake such installation and proposed alterations, namely swapping the one (1) inch gas link with a two (2) inch gas line to the HVAC unit in the same location as the current gas line is hereby denied.

Accordingly, Plaintiff's order to show cause for a preliminary injunction is hereby denied, for the reasons stated above. (MS#1). Any requests not specifically addressed, including requests for costs and fee's are hereby denied.

Dated: Brooklyn, New York
October 20, 2020



HON. RICHARD VELASQUEZ