

2153 5th Ave., LLC v City of New York

2020 NY Slip Op 33676(U)

November 4, 2020

Supreme Court, New York County

Docket Number: 652240/2020

Judge: Debra A. James

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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. DEBRA A. JAMES

PART

IAS MOTION 59EFM

Justice

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2153 5TH AVENUE, LLC, 494 EAST 138TH STREET, LLC, 27 EAST 131 ST. LLC, 77-79 E. 125TH LLC, 79 EAST 125TH STREET LLC, 148 WEST 124TH ST. LLC, 2093 MADISON LLC, 819 EAST 178TH STREET, LLC, 492 EAST 138TH STREET, LLC, 492 EAST 138TH STREET ORLIMARK, LLC, 475 WEST 145TH ST LLC, 108-110 E. 116TH ST LLC, 917 EAGLE AVE. LLC, and 416 E. 138TH ST. LLC,

INDEX NO. 652240/2020

MOTION DATE 10/27/2020

MOTION SEQ. NO. 003

Plaintiffs,

**DECISION + ORDER ON
MOTION**

- v -

THE CITY OF NEW YORK and ACACIA NETWORK HOUSING, INC.,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 62, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 78, 79, 80, 81, 82, 83, 84

were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR

ORDER

Upon the foregoing documents, it is

ORDERED that the show cause order of plaintiffs for a preliminary injunction enjoining and restraining defendant City of New York from paying defendant Acacia Network Housing, Inc. the rent, maintenance and reimbursable violation remediation expenses due and owing to plaintiffs, which amount totals \$2,561,243.47 in the aggregate, is DENIED.

DECISION

By their seventh, eighth, ninth and tenth causes of action for breach of agreement, plaintiffs seek a monetary judgment in an amount that totals \$2,561,243.47 against defendants. In causes of action first through fourth, plaintiffs seek a judgment declaring that they are entitled to recover from defendants a total \$2,561,243.47. In their fifth and sixth causes of action, plaintiffs seek a mandatory injunction restraining defendant City of New York from paying defendant Acacia Network Housing, Inc. and compelling the City to pay plaintiffs \$2,561,243.47.

Plaintiffs now seek a preliminary injunction, asserting that they are likely to ultimately succeed on the merits in this action and that the equities for the issuance of a preliminary injunction weigh in their favor.

Plaintiffs argue that they will be irreparably harmed if no provisional remedy is issued, as the defendants will dissipate \$2,561,243.47 in funds that plaintiffs are owed for rent, maintenance and reimbursable violation remediation expenses under agreement(s) among and between the parties.

As the Court of Appeals stated in Credit Agricole Indosuez v Rossiyskiy Kredit Bank, 94 NY2d 541, at 548-549 (2000):

“Although the inclusion of a money demand will not necessarily preclude an injunction if other relief, which would satisfy this provision of CPLR 6301, is

also sought, the court will refuse the injunction if convinced that a money judgment is the true object of the action and that all else is incidental. (In a money judgment action P often fears that D will secrete property during the action's pendency and thus make a money judgment uncollectible. P's remedy there, if P can establish such conduct by D convincingly, is an order of attachment under CPLR 6201[3], not an injunction under Article 63.)'

". . . a general creditor has no legally recognized interest in or right to interfere with the use of unencumbered property of a debtor prior to obtaining judgment." (Citations omitted.)

This court disagrees with plaintiffs that the \$2,561,243.47, which they characterize as a specific fund within a fund of \$68 million dollars that defendant New York City by way of the Comptroller will pay defendant Acacia under a registered contract for services to homeless persons, is akin to the prize money, provisional restraints against the disposition of which were upheld in Ma v Lien, 198 AD2d 186 (1st Dept. 1993) and Pando v Fernandez, 125 AD2d 495 (1st Dept. 1986). In contrast to the discrete and specific dollar amounts of lottery ticket

proceeds/payments at issue in such cases, New York City Charter § 328, "Registration of contracts by the comptroller", governs any contract that is "to be paid for **out of the city treasury or out of moneys under the control of the city.**" (Emphasis added.)

11/4/2020
DATE

Debra A. James
DEBRA A. JAMES, J.S.C.

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| 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"/> | |
| | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> | | <input type="checkbox"/> | FIDUCIARY APPOINTMENT | <input type="checkbox"/> | REFERENCE |