

<b>Preizler v Willoughby Realty LLC</b>
2020 NY Slip Op 34200(U)
December 10, 2020
Supreme Court, Kings County
Docket Number: 520604/2020
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 10<sup>th</sup> day of DECEMBER, 2020

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

-----X  
HESHY PREIZLER,

Plaintiff,

Index No.: 520604/2020  
Decision and Order

-against-

WILLOUGHBY REALTY LLC,

Defendants,

-----X

The following papers NYSCEF Doc #'s 4 to 20 read on this motion:

<u>Papers</u>	<u>NYSCEF DOC NO.'s</u>
Notice of Motion/Order to Show Cause Affidavits (Affirmations) Annexed_____	4-17
Opposing Affidavits (Affirmations)_____	19
Memorandum of Law_____	20

After having heard Oral Argument on NOVEMBER 30, 2020 and upon review of the foregoing submissions herein the court finds as follows:

Plaintiff moves by Order to Show Cause for a preliminary injunction enjoining the Defendant from, during the pendency of this action, performing any construction, demolition, renovation, erecting, altering or performing similar work at the premises known as 344 Willoughby Ave, Brooklyn NY 11205, Block 1927 and Lot 33, Kings County. (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, and (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).

In the present case the plaintiff fails 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.

Third, a court must balance the equities. “It must be shown that the irreparable injury to be sustained is more burdensome to the plaintiff than the harm caused to the defendant through the imposition of the injunction.” *Klein, Wagner & Morris v. Lawrence A. Klein, P.C.*, 186 AD2d 631, 633, 588 NYS2d 424, 426 (1992). In the present case, upon balancing the equities this court cannot say that the alleged injury is more burdensome to the plaintiff than the harm caused to the defendant through imposition of this injunction. Therefore, the plaintiff has failed to adequately demonstrate irreparable injury to the property and a balancing of equities in the movants favor.

Furthermore, in the present case, defendant does not dispute that the plaintiff tendered \$650,000.00. Notably, defendant states the monies were given “as a good faith deposit to prevent the defendant from marketing the apartment” (See NYSCEF Doc. No. 19, Defendants Opposition, Paragraph 6 pp.2). Defendant also does not dispute that this money has not been returned to the plaintiff, despite also admitting the apartment in question is being marketed. (See defendants opposition NYSCEF Doc No. 19 and Exhibit A to plaintiff moving papers NYSCEF Doc. No 8). Therefore, in the interest of Justice and to maintain the status quo pursuant to CPLR 2701; It is further ORDERED that the defendant deposit with the Court the amount of \$650,000.00 pending the determination of the rights of the parties and outcome of this action within 20 days of the date of this Order. (In lieu of depositing said monies with the Court, the parties may agree under separate stipulation to be so ordered by the court to have said

monies held in one of the attorneys escrow accounts pending the outcome of this matter, said agreement must be submitted to the Court within 5 days of the date of this order, all monies must still be deposited within 20 days of the date of this order).

Accordingly, plaintiffs request for a preliminary injunction is hereby denied, any TRO previously in place enjoining any construction, demolition, renovation, erecting, altering or performing similar work at the premises known as 344 Willoughby Ave, Brooklyn NY 11205, Block 1927 and Lot 33, Kings County, is hereby lifted and vacated. (MS#1).

It is further ORDERED: that the defendant deposit with the Court the amount of \$650,000.00 pending the outcome of this action within 20 days of the date of this Order.

This constitutes the Decision/Order of the court.

Dated: Brooklyn, New York  
December 10, 2020

  
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HON. RICHARD VELASQUEZ