

**City of New York v Land & Bldg. Known as 119 E.
96th St.**

2023 NY Slip Op 32161(U)

June 27, 2023

Supreme Court, New York County

Docket Number: Index No. 450089/2023

Judge: James E. d'Auguste

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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. James E. d'Auguste

PART 55

Justice

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THE CITY OF NEW YORK,

Plaintiff,

- v -

THE LAND AND BUILDING KNOWN AS 119 EAST 96TH STREET, ALSO KNOWN AS 119-121 EAST 96TH STREET, TAX BLOCK # 1624, TAX LOT # 9, COUNTY OF NEW YORK, CITY AND STATE OF NEW YORK, 119 EAST 96TH STREET LLC, JOHN DOE, JANE DOE

Defendants.

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INDEX NO. 450089/2023

MOTION DATE 01/26/2023

MOTION SEQ. NO. 001

DECISION ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 24, 25, 26, 28, 29, 33

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

In an order dated June 22, 2023 and e-filed on NYSCEF on June 23, 2023, this Court granted a preliminary injunction in this nuisance abatement action filed by plaintiff City of New York (the "City") relating to a commercial premises allegedly being unlawfully used for prostitution. This decision explains the Court's reasoning for issuing the order.

The City met its prima facie burden by submitting the affidavits of two undercover police officers. The affidavits submitted by the City attested to individuals working within the establishment agreeing to perform sexual services in exchange for monetary compensation. NYSCEF Doc. Nos. 7, 8. These affidavits are un rebutted by any evidentiary submission by defendants. Indeed, the only submission made in opposition to the preliminary injunction motion is an attorney affirmation. NYSCEF Doc. No. 15. An attorney affirmation that is not based upon personal knowledge lacks any probative value. *U.S. Bank Nat'l Assoc. v. Langer*,

168 A.D.3d 1021, 1023-24 (2d Dep't 2019). Additionally, while this affirmation asserts the City did not file affidavits showing service of process (NYSCEF Doc. No. 15 at ¶4), the City filed an affidavit of service (NYSCEF Doc. No. 14) demonstrating that service occurred in the manner directed by the order to show cause. NYSCEF Doc. No. 13. Based upon the City demonstrating an entitlement to the requested relief of closing the premises during the pendency of this action, the Court issued the preliminary injunction.

After the issuance of the preliminary injunction order, Ning Ye, Esq., counsel for the tenant, submitted a letter renewing tenant's assertion that the action (and therefore preliminary injunction) was moot because it had surrendered the premises. NYSCEF Doc. Nos. 39-40. This claim that a preliminary injunction was unwarranted due to mootness is the same argument previously asserted by the tenant. NYSCEF Doc. Nos. 35-38. However, the City asserted in its application for a preliminary injunction that the operator of the prostitution business previously used the same premises, which was purportedly surrendered in 2021. NYSCEF Doc. No. 4 at ¶¶12-13. After the premises were surrendered, the same unlawful business enterprise allegedly reopened in the commercial space being rented using a new purported tenant. *Id.* Further, the City submitted the affidavit of a Vice Enforcement Division Detective asserting that, in violation of the temporary closing order issued by this Court on January 26, 2023, the tenant had removed the closing order from the establishment's door, re-entered the premises and was at that time operating a business at the premises. NYSCEF Doc. No. 24. Thus, the tenant's purported surrender of the subject premises back to the property owner does not impact the City's entitlement to a preliminary injunction. *City of New York v. Partnership 91, L.P.*, 277 A.D.2d 164, 164-65 (1st Dep't 2000); *City of New York v. Ring*, 34 A.D.3d 218, 218-19 (1st Dep't 2006).

On a final note, the tenant takes issue with the expedited nature of proceedings in this matter and the signing, after oral argument, of the proposed preliminary injunction order submitted by the City. On June 21, 2023, the Court conducted oral argument. During this on-the-record appearance, the Court directed counsel for the City to submit a proposed preliminary injunction order. On June 21, 2023, the City's attorney sent an email copying all counsel stating: "As discussed in court today, we will await Mr. Ye's withdrawal of his cross claims against the City. Tomorrow I will be submitting a proposed order granting the preliminary injunction and closing the premises during the pendency of the action." On June 22, 2023, the City submitted the proposed order via email copying all counsel. On June 22, 2023, the preliminary injunction order—which tracked the language of the order to show cause—was signed by the Court. On June 23, 2023, the order was uploaded to NYSCEF. NYSCEF Doc. No. 33.

The process used by the Court is consistent with the requirements of N.Y.C. Admin. Code § 7-709, which mandate the expedited treatment of nuisance abatement proceedings. *See, e.g.,* Brian Krist, *Sealing the Bawdy House Door Open*, 48 NYRPLJ 27 (2020) (collecting authorities and discussing expedited litigation of nuisance abatement and related proceedings). Once a preliminary injunction was granted, the Court signed a written order as contemplated by CPLR 2219(a) and to provide any aggrieved party with the expeditious ability to seek appellate review. Thus, the Court finds no merit in Ning Ye's bizarre assertion that the City "surprisingly received the Honorable Court's approval stamp ahead of time window by taking Einstein's [sic] quantum physic's [sic] train by traveling through the wormhole (Time Tunnel), say, getting the Court's grant of the petition before filing of the petition, receiving an approved draft order prior to filing the draft order." NYSCEF Doc. No. 39.

Accordingly, the Court signed an order granting the City a preliminary injunction on June 22, 2023, which was then NYSCEF e-filed on June 23, 2023. This constitutes the decision of this Court.



<u>6/27/2023</u> DATE		<u>James d'Auguste, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE