

**S NYC LLC v 46 E. 65th St. LLC**

2024 NY Slip Op 30041(U)

January 4, 2024

Supreme Court, New York County

Docket Number: Index No. 650078/2023

Judge: Louis L. Nock

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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. LOUIS L. NOCK PART 38M**

*Justice*

-----X INDEX NO. 650078/2023

S NYC LLC,

Plaintiff,

MOTION DATE 03/31/2023,  
10/16/2023

- v -

MOTION SEQ. NO. 001 002

46 EAST 65TH STREET LLC, AB PLUS R  
CONSTRUCTION INC., and ISLAND INTERIORS DESIGN  
HOME LLC,

**DECISION + ORDER ON  
MOTION**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, and 55

were read on this motion for A PRELIMINARY INJUNCTION.

The following e-filed documents, listed by NYSCEF document numbers (Motion 002) 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, and 91

were read on this motion for A PRELIMINARY INJUNCTION.

Plaintiff and defendant 46 East 65<sup>th</sup> Street LLC (the “Owner Defendant”) are owners of adjoining buildings in Manhattan. Pursuant to license agreements between the two, the Owner Defendant was granted licenses to install equipment on the plaintiff’s building, conditioned on adequate protections to plaintiff’s building, to enable the Owner Defendant to conduct construction activities on its adjoining building. Pursuant to the license dated June 12, 2020 (NYSCEF Doc. No. 19): “Developer [i.e., the Owner Defendant] agrees to repair, as commercially reasonable, and restore the Premises [i.e., plaintiff’s building] and any property located therein, or any portion thereof, damaged or destroyed to the condition which existed . . . .” (*Id.*, § 5 [tilted “Damage to Premises”].)

The complaint alleges that the Owner Defendant's construction activities have caused significant damage to plaintiff's building and have implemented substandard protections. The complaint seeks money damages to compensate for the damage, as well as a permanent injunction requiring the Owner Defendant to remove its present protections and to repair the damage. Plaintiff now moves for a preliminary injunction reflecting said request for permanent injunctive relief (motion seq. no. 001).

Notably, the Owner Defendant does not resist plaintiff's entreaties for corrective measures. Rather, the Owner Defendant has submitted an engineering "Site Safety Plan" intended to replace the faulty protections currently in place (*see*, NYSCEF Doc. Nos. 83, 90), referring to this replacement plan as the "new protections." Consistent therewith, the Owner Defendant has filed its own motion for a preliminary injunction allowing it to implement the "new protections" (motion seq. no. 002).

A preliminary injunction requires the moving party to demonstrate: (1) a likelihood of success on the merits, (2) irreparable injury absent the injunctive relief, and (3) a balancing of the equities in the movant's favor (*Aetna Ins. Co. v Capasso*, 75 NY2d 860 [1990]; *W.T. Grant Co. v Srogi*, 52 NY2d 496 [1981]).

In the present circumstances, the Owner Defendant stands prepared to provide the plaintiff with new protections, rendering the plaintiff's motion for removal of the current protections moot, by virtue of compliance. Indeed, plaintiff cannot ask for more than what its own license agreement provides it. As indicated above, in the event of "Damage to Premises" (NYSCEF Doc. No. 19 § 5), the plaintiff does not have the right to force a cessation of license. Rather, in such event, the Owner Defendant retains the right to remedy the situation and proceed to complete its construction project under license. In addition, said license agreement binds both

plaintiff and the Owner Defendant to “cooperate with each other so that the measures anticipated by this Agreement can be implemented and maintained in a safe and secure manner” (*id.*, § 6 [titled “No Interference”]).

Consequently, plaintiff suffers no irreparable harm, or any harm at all, given the Owner Defendant’s willingness to implement the new protections. By the same token, said willingness manifests an equitable state of affairs, whereby the Owner Defendant stands ready to remediate the problem complained of in plaintiff’s motion. Likelihood of success can be said to have been achieved, insofar as the Owner Defendant itself acknowledges the need for new protections and pledges further efforts to realize them.

Thus, the court sees fit to grant the plaintiff’s motion to the extent of granting the Owner Defendant’s motion to implement the new protections described in its submissions. The court is also mindful of the Owner Defendant’s license-based obligation to “restore the Premises [i.e., the plaintiff’s building] . . . to the condition which existed” (NYSCEF Doc. No. 19 § 5).

Accordingly, the disposition herein will require the Owner Defendant, not only to implement the new protections, but also to bear the cost of an immediate repair of plaintiff’s building to the immediate extent necessary to support the effectiveness of the new protections.

Accordingly, it is

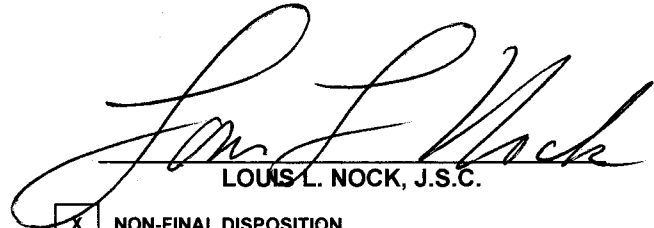
ORDERED that the plaintiff’s motion (seq. no. 001) is granted to the extent that defendant 46 East 65<sup>th</sup> Street LLC shall be obligated to replace the present protections with the “new protections” described in said defendant’s submissions, and to commence such action forthwith; and it is further

ORDERED that said defendant implement any repairs to plaintiff's building, at said defendant's cost, to the immediate extent necessary to support the effectiveness of said new protections; and it is further

ORDERED that the temporary restraining order found in this court's order to show cause filed April 4, 2023 (NYSCEF Doc. No. 25), is hereby vacated; and it is further

ORDERED that said defendant's motion (seq. no. 002) is granted in its entirety, with the proviso that said defendant shall implement any repairs to plaintiff's building, at said defendant's cost, to the immediate extent necessary to support the effectiveness of the new protections described in said defendant's submissions.

1/4/2024  
DATE

  
LOUIS L. NOCK, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>			
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN						