McKenzie v McKenzie
2024 NY Slip Op 35570(U)
February 5, 2024
Supreme Court, Bronx County
Docket Number: Index No. 814486/2023E
Judge: Fidel E. Gomez
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX
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PATRICK MCKENZIE and SHELLY ANN CAVEEN EDMONSON a/k/a SHELLY ANN MCKENZIE,

Plaintiff,

-against-

DECISION AND ORDER
Index No. 814486/2023E

DAVID N. MCKENZIE, Individually and in his Official Capacity as Officer/Co-Owner of TIA GRAPHICS and as Owner of TIA GRAPHICS ENTERPRISES and as Manager of JUS JERK, TIA GRAPHICS and TIA GRAPHICS ENTERPRISES,

Defendants.
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In this action for declaratory judgment, *inter alia,* plaintiffs move by Order to Show Cause (OSC) seeking an order pursuant to CPLR §§ 6301 and 6311, granting them a preliminary injunction, enjoining defendant David N. McKenzie (David) from, *inter alia,* transferring the property located at 3732 Paulding Avenue, Bronx, New York 10469 (the Bronx Property) and certain real property located in Scarsdale, New York (the Scarsdale Property). Plaintiffs also seek an order, pursuant to CPLR §§ 6301 and 6311, staying McKenzie's eviction/holdover proceeding against plaintiffs pending in Bronx County Civil Court until a determination as to the rights of the parties is made in the instant action.

Plaintiffs aver that (1) they are likely to succeed on the merits because they have demonstrated their ownership interest in the Bronx Property; (2) absent a preliminary injunction, they will be irreparably harmed because they may be evicted from their home; and (3) a balancing of the equities tips in their favor. Defendants oppose the instant OSC asserting, *inter alia,* that plaintiffs have no documentary proof of their claims and are using this action as a "last ditch effort" to save themselves from being evicted from a home in which they have no ownership interest.

For the reasons which follow hereinafter, plaintiffs' motion is denied.

The complaint, verified by plaintiff Patrick McKenzie (Patrick) and his wife, plaintiff Shelly Ann McKenzie (Shelly Ann), alleges causes of action for fraud, breach of contract, tortious interference with contract, unjust enrichment, breach of implied duty of good faith and fair dealing, declaratory judgment and punitive damages. Specifically, the complaint alleges the following: Patrick and David are brothers who grew up in Jamaica. In 1982 or 1983, Claudette (their mother), their sister, and David moved to the United States. In 1997, David and his sister opened defendant TIA[1] – a printing company in Mount Vernon, NY. From the opening of TIA, Claudette, David and their sister, relied upon the advice and skill of Patrick, who was working in their father's printing business in Jamaica. In or about 2001, Claudette, David, Patrick and their sister expressly agreed to pool their finances together and use monies from TIA and Jus Jerk[2] to purchase the Bronx Property. They would all live at, and have an equitable interest in, the Bronx Property. The monies from TIA and Jus Jerk would be used to help pay the mortgage and other expenses of the Bronx Property. At some point, Claudette, David and their sister agreed that Patrick would move to the United States to assume management and control over the business due to his experience operating a printing business. In 2005, Patrick moved to the United States and immediately assumed the management and control of TIA. On May 11, 2005, the parties filed an Amended Business Certificate of TIA adding Patrick and David as partners. Without Patrick's knowledge or consent, David purchased the Scarsdale Property with money he misappropriated from TIA and Jus Jerk. David also used money from TIA to purchase a separate printing company called TIA Graphics Enterprises in New York. Monies from TIA, Jus Jerk and TIA Graphics Enterprises were used to pay the mortgage and other expenses of the Bronx Property. Patrick performed all the terms of the parties' agreement and relied on the agreement and false representations of David to his detriment. From 2010 to present, Claudette has been demonstrating a lack of orientation as to person, place and time and has exhibited difficulty in understanding, appreciating and comprehending things, people, events, and in

[1]It appears that the TIA entity referenced in the complaint is TIA Graphics.

[2]Notably, the complaint also alleges that Patrick opened Jus Jerk "[o]n or about October 23, 2012."

recalling significant events. Claudette would not knowingly, voluntarily and/or intelligently transfer legal title to the Bronx Property to David as alleged in a purported deed transfer on April 27, 2017. David has exercised and continues to exercise undue and unlawful influence over Claudette. Patrick only became aware of the unlawful deed transfer when David commenced an eviction action against Patrick and his wife. Patrick's wife, plaintiff Shelly Ann, was and is an intended beneficiary of Patrick's interest in the Bronx property.

The complaint seeks money damages for all causes of action except the declaratory judgment cause of action. As such, only plaintiffs' declaratory judgment cause of action may warrant a preliminary injunction.[3]

Plaintiffs' motion for a preliminary injunction enjoining David from, *inter alia,* transferring either the Bronx Property or the Scarsdale property, and from operating and/or accessing funds from TIA Graphics, TIA Graphics Enterprises or Jus Jerk, is denied. Significantly, the record fails to establish plaintiffs' likelihood of success on the merits of their cause of action for a declaratory judgment declaring: (1) the deed transfer of April 27, 2017 void or voidable, (2) that Patrick has an ownership interest in the Bronx Property, the Scarsdale Property and TIA Graphics Enterprises, and (3) divesting David of any ownership interest in the Bronx Property, the Scarsdale Property and TIA Graphics Enterprises.

CPLR § 6301 describes the grounds upon which the court can grant a preliminary injunction and reads, in pertinent part, as follows:

> A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff.

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[3]The irreparable harm element cannot be met if the claim seeks only money damages (*U.S. Re Companies, Inc. v Scheerer,* 41 AD3d 152, 155 [1st Dept 2007]; *Rick J. Jarvis, Associates Inc. v Stotler,* 216 AD2d 649, 651 [3d Dept 1995]).

Thus, a preliminary injunction "provide[s] a provisional remedy by maintaining the status quo pending a full hearing on the merits, rather than to determine the ultimate rights of the parties and mandate corrective action" (*Jamie B. v Hernandez,* 274 AD2d 335, 336 [1st Dept 2000]). Accordingly, the court should not, on a motion for a preliminary injunction, grant the ultimate relief sought in the underlying action (*id.* at 336).

Because a preliminary injunction substantially limits a defendant's rights and is, therefore, an extraordinary provisional remedy, it requires a special showing (*Margolies v Encounter, Inc.,* 42 NY2d 475, 479 [1971]). Hence, a preliminary injunction will only be granted when the party seeking such relief demonstrates a likelihood of ultimate success on the merits, irreparable injury if the preliminary injunction is withheld, and a balance of equities tips them in favor of the moving party (*Nobu Next Door, LLC v Fine Arts Hous., Inc.,*4 NY3d 822 [2005]; *Doe v Axelrod,* 73 NY2d 748, 750 [1988]; *61 West 62 Owners Corp. v CGM EMP LLC,* 77 AD3d 330, 334 [2010], *mod* 16 NY3d 822 [2011]; *Second on Second Café, Inc. v Hing Sing Trading, Inc.,* 66 AD3d 255, 264 [1st Dept 2009]; *Stockey v Gorelik,* 24 AD3d 535, 536 [2005]).

With respect to likelihood of success on the merits, the threshold inquiry is whether the proponent has tendered sufficient evidence demonstrating ultimate success in the underlying action (*Doe* at 750-751). While the proponent of a preliminary injunction need not tender conclusive proof beyond any factual dispute establishing ultimate success on the merits in the under lying action (*Sau Thi Ma v Xuan T. Lien,* 198 AD2d 186, 187 [1993], *lv dismissed* 83 NY2d 847 [1994]; *Ying Fung Moy v Hohi Umeki,* 10 AD3d 604, 605 [2004]), "[a] party seeking the drastic remedy of a preliminary injunction must [nevertheless] establish a clear right to that relief under the law and the undisputed facts upon the moving papers" (*Gagnon Bus Co., Inc. v Vallo Transp., Ltd.,*13 AD3d 334, 335 [2004]). This, of course, does not mean that plaintiff must conclusively establish guaranteed success on the merits, and thus, issues of fact raised by the defendant cannot serve as a basis for denial of any motion seeking a preliminary injunction (*Ma* at 187; *Moy* at 605; *Stockley* at 536; *Demartini v Chatham Green, Inc. v* 169 AD2d 689, 689 [1st Dept 1991]). In *Doe,* plaintiffs, a coalition of various members of the medical and pharmaceutical companies, sued seeking a declaration that 100 NYCRR 80.67 - which imposed strict control on certain tranquilizing medications - be declared unconstitutional (*id.* at 749).

Plaintiffs also sought a preliminary injunction enjoining defendant, the State, from enforcing the challenged regulation (*id.*). The court denied plaintiffs' request for a preliminary injunction, holding that because plaintiffs failed to establish the defendant "acted outside of the authority constitutionally delegated to him under the Public Health Law or that the regulation was so lacking in reason for its promulgation that it [was] essentially arbitrary" (*id.* at 750 [internal citations and quotation marks omitted]), they failed to establish a likelihood of success on the merits (*id.*). Conversely, in *Stockley*, the court granted plaintiffs' - owners of a condominium - from building a structure, which plaintiffs established would "encroach upon portions of the common elements of the condominium, which may require an easement the defendants did not seek, and would deprive the plaintiffs of the use and enjoyment of certain common elements, as well as portions of their own units" (*id.* at 536). The court held that plaintiffs established a likelihood of success on the merits insofar as they demonstrated that they had initially authorized defendants' proposed construction without being fully apprised of its extent, which did not become known until plans were drawn (*id.*).

With regard to irreparable harm, generally, the inquiry is whether in the absence of a preliminary injunction, usually to preserve the status quo, any judgment in the underlying action would be rendered ineffectual (*Ma* at 186; *Moy* at 604). When this is the case, the proponent of a preliminary injunction has demonstrated irreparable harm. In *Ma* , plaintiff sued to recover payments from a winning lottery ticket, such winnings held by the defendant (*id.* at 186). Finding that a preliminary injunction was warranted, the court held that since it was clear that defendant intended to spend the proceeds at issue - intending to share the funds with his family - it was clear that absent a preliminary injunction, plaintiff would be irreparably harmed inasmuch as any judgment would be rendered ineffectual (*id.* at 186). The court in *Moy* similarly held that plaintiff had demonstrated irreparable harm but for the grant of preliminary injunction. In that case, plaintiff sued to void a transfer of her ownership interest in real property on grounds that such transfer was obtained by fraud (*id.* at 604). In holding that plaintiff established entitlement to a preliminary injunction, the court noted that "[t]he purpose of a preliminary injunction is to maintain the status quo and prevent the dissipation of property that could render a judgment ineffectual" (*id.*), and thus, that absent the preliminary injunction, defendant could transfer the property, thereby irreparably harming plaintiff (*id.*).

With regard to the balancing of equities, the same requires that the court look at the prejudice which may accrue to the parties in the event the application for an injunction is granted or denied (*Ma* at 186-187), and usually the equities tip in favor of the party who would be irreparably harmed absent the grant of a preliminary injunction (*id.* at 187). Thus, should the court determine that plaintiff would be irreparably harmed by denial of the preliminary injunction while defendant would suffer little or no harm if said injunction is granted, then a preliminary injunction should be granted (*id.*).

Pursuant to CPLR § 6312(b),

> prior to the granting of a preliminary injunction, the plaintiff shall give an undertaking in an amount to be fixed by the court, that the plaintiff, if it is finally determined that he or she was not entitled to an injunction, will pay to the defendant all damages and costs which may be sustained by reason of the injunction.

Thus, an undertaking is a condition precedent to the grant of a preliminary injunction and such requirement cannot be waived by the court (*Rourke Develop*ers *Inc. v Cottrell-Hajeck Inc.,* 285 AD2d 805, 805 [3d Dept 2001]; *Smith v Boxer,* 45 AD2d 1054, 1054 [2d Dept 1974]). The amount of such undertaking is solely within the court's discretion and should be as much as rationally necessary to compensate defendant for any potential damages should it later by determined that a preliminary injunction was unwarranted (*Clover St. Assoc. v Nilsson,* 244 AD2d 312, 313 [2d Dept 1997]; *Kazdin v Putter,* 177 AD2d 456, 457 [1st Dept 1991]). The undertaking represents the amount and indeed the limit of damages to which defendant will be entitled if it is determined that no preliminary injunction ought not to have been granted (*Bonded Concrete, Inc. v Town of Saugerties,* 42 AD3d 852, 855 [3d Dept 2007]).

Pursuant to CPLR § 2501(1) and (2), an undertaking is

> [a]ny obligation, whether or not the principal is a party thereto, which contains a covenant by a surety to pay the required amount, as specified therein, if any required condition, as specified therein or as provided in subdivision © section 2502, is not fulfilled; and . . . any deposit, made subject to the required condition, of the

> required amount in legal tender of the United States or in face value of unregistered bonds of the United States or of the state.

CPLR § 2502(a)(1) and (2) defines a surety as an insurance company or a natural person, except an attorney.

In support of the instant application, plaintiffs submit an amended business certificate for the entity TIA Graphics in Mt. Vernon, NY. The certificate, filed on May 11, 2005, indicates that David and Patrick were added as partners in the business, and bears the signatures of Claudette, David and Patrick above the notary's signature. Plaintiffs also submitted a Westchester County Department of Health Permit for Jus Jerk, "validated" on October 23, 2012, which lists Patrick as the "operator" of the business.

In opposition, David submitted two affidavits by him. In his affidavit dated October 30, 2023, David states as follows: He purchased the Bronx Property in 1999 with funds he earned while working at Gannett Newspaper, well before Patrick came to reside in the United States in 2005. Over the years, he has had other employment in the printing field in addition to managing Jus Jerk. Claudette was co-signer for the purchase of the Bronx Property. David included Claudette in this transaction because he was single at the time. In 2017, Claudette signed a new deed transferring her interest in the property to David because the property belonged to him. The Bronx Property is a three-family home. His mother, Claudette, lives on the first floor. Claudette is 83-years-old but she is quite alert and shows no signs of dementia or any ailments which would affect her ability to make decisions. David's sister lives on the second floor, and plaintiffs reside, as month-to-month tenants, on the third floor. Plaintiffs and David have never made any verbal or written agreements regarding either the Bronx Property or the Scarsdale Property. David has never provided plaintiffs with a lease. Plaintiffs have never paid for the purchase of his properties and have never paid any of the expenses of the properties. Patrick married Shelly Ann on February 13, 2020. She came from Jamaica – Patrick sponsored her to enable her to come to the United States. Since she has been here, she has created chaos in all of their lives. David has been arguing with Patrick "for a while about his refusal to pay the rent even as little as $500.00 per month." He has allowed Patrick and Shelly Ann to occupy the third floor even though they have been inconsistent in paying rent. There have been several verbal altercations between Shelly Ann, Claudette and his sister. Shelly Ann has threatened to shoot Claudette and his sister. David wants his brother and Shelly Ann to move out for the safety of his family, which is the reason he commenced the holdover proceeding in Housing Court.

David further states that he purchased both TIA Graphics and Jus Jerk. While Patrick worked at TIA Graphics, he has never had any involvement in Jus Jerk. On November 26, 2019, David incorporated a new entity "Just Jerk LLC"and he became the sole owner of that entity. Patrick and he discussed and agreed to this. On June 9, 2022, TIA Graphics was incorporated and is now "TIA Graphics and Printing LLC." Patrick became the sole owner of that entity. David has no current interest in TIA Graphics. He is familiar with an entity named "TIA Graphics Enterprises," but he does not own it. He believes that his accountant mistakenly used that name on the 2019 income tax return. Both David and Patrick were paid for the work they performed at TIA Graphics.[4] TIA Graphics and Jus Jerk are small businesses that are "not even profitable."

In his affidavit dated December 4, 2023, David states: Neither plaintiff was a resident in this country in 1999, when the Bronx property was purchased. David has never made any form of agreement, verbal or otherwise, to give Patrick an equitable share in his property. David's sister started the TIA Graphics business and allowed Patrick to run the business after he came to reside in the United States because he needed a source of income. David added Patrick's name to the Jus Jerk bank account when David was going through a divorce but Patrick has never worked at Jus Jerk. David has never opened a business in the name of TIA Graphics Enterprise. David allowed Patrick to live in the Bronx Property even though he often did not pay any rent. While David overlooked this in the past, now Patrick has a wife and a child living in the home and he is still not paying any rent. David now wants to evict them from his home.

In reply, plaintiffs submitted the respective affidavits of Patrick and Shelly Ann. In his affidavit, Patrick reiterates the allegations in the complaint and, in addition, states, in pertinent

[4]Throughout his affidavit, David references various exhibits that he states are attached to his affidavit (i.e., deed, proof of tax payments, checks, share certificate, mortgage letter), however, none of those documents were uploaded to NYSCEF, nor were any submitted to the Court as courtesy copies.

part: The only reason Patrick is not named on the deed to the Bronx Property is because he did not have a green card or social security card at the time the property was purchased. David and their sister were in control of TIA's banking, taxes and finances, and were responsible for using monies from the business to pay the mortgage and other expenses of the Bronx Property as well as TIA's operating expenses. As the monies from TIA and Jus Jerk were being used to pay the mortgage and expenses of the Bronx Property, Claudette, David, Patrick and their sister agreed that David and Patrick would only take "nominal stipends" from the cash proceeds of TIA to pay themselves to "get by." Patrick did not know that David was misappropriating monies from TIA and Jus Jerk for his own personal gain. Without Patrick's permission, David used the monies from TIA and Jus Jerk to open a separate printing company, TIA Graphics Enterprises.

In her affidavit, Shelly Ann reiterates much of what Patrick states and, in addition, states, in pertinent part: In 2020, she married Patrick and she and her minor son moved into the Bronx Property to live with him. Claudette, David and his sister do not like Shelly Ann or her son. When she moved into the Bronx Property, she knew that it was owned by the whole family– Claudette, David, Patrick and their sister. For as long as she has known Claudette, David has exercised undue influence, force, control and coercion over Claudette. She and Patrick first became aware of the unlawful deed transfer from Claudette to David for $10.00 during the eviction proceeding in Housing Court. Claudette, David and his sister have been harassing Shelly Ann and Patrick by making false allegations about them to the police in order to remove them from their home.

Plaintiffs also submitted an IRS tax return transcript for David for tax period ending December 31, 2019 which states "TI Grap Ente" as the business name.

Based on the foregoing, plaintiffs fail to establish entitlement to a preliminary injunction, *inter alia,* enjoining David from transferring the Bronx Property and/or the Scarsdale Property.

As noted above, a preliminary injunction will only be granted when the party seeking such relief demonstrates a likelihood of ultimate success on the merits, irreparable injury if the preliminary injunction is withheld, and a balance of equities tips them in favor of the moving party (*Nobu Next Door, LLC* at 840; *Doe* at 750; *61 West 62 Owners Corp.* at 334; *Second on Second Café, Inc.* at 264; *Stockley* at 536).

Here, with regard to the likelihood of success on the merits, the Court finds that plaintiffs fail to establish that they are likely to succeed on the merits concerning their cause of action for declaratory judgment, the only one which would warrant the grant of a preliminary injunction. However, plaintiffs have not submitted any documentary evidence or affidavits,[5] other than their own self-serving affidavits, to demonstrate that either of them have ever had an ownership interest in either the Bronx Property and the Scarsdale Property. As noted above, while the proponent of a preliminary injunction need not tender conclusive proof beyond any factual dispute establishing ultimate success in the underlying action (*Ma* at 187; *Moy* at 605), "[a] party seeking the drastic remedy of a preliminary injunction must [nevertheless] establish a clear right to that relief under the law and the undisputed facts upon the moving papers" (*Gagnon Bus Co., Inc.* at 335). Here, then, whether plaintiffs are likely to succeed on the merits is determined by examining plaintiffs' proof against the backdrop to the causes of action he seeks in his complaint.

The general purpose of a declaratory judgment is to serve some practical end in quieting or stabilizing an uncertain or disputed jural relation either as to present or prospective obligations (*James v Alderton Dock Yards,* 256 NY 298, 305 [1931]; *Touro College v Novus University Corp.,*146 AD3d 679, 679 [1st Dept 2017]). Pursuant to CPLR § 3001, "[t]he supreme court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed." Indeed, declaratory judgments are commonly used to determine parties' rights and interests in real property. As noted above, here, plaintiffs have not submitted a scintilla of documentary evidence to support their claim to an ownership interest in either the Bronx Property or the Scarsdale Property; or that Patrick has an ownership interest in an entity named TIA Graphics Enterprises, for that matter. Indeed, David states that he formed no such entity. However, even if he had, plaintiffs have submitted no documentary evidence to support their claim to an ownership interest in that entity. Instead, they offer mere speculation that

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[5]While plaintiffs assert that the closing attorney for the Bronx Property told them that he would support their claims with regard to ownership of the Bronx Property, they failed to submit an affidavit by him.

documentary evidence will be obtained during discovery which will support their claims. This is insufficient to establish a clear right to the declaratory relief which they seek.

In addition to the foregoing, plaintiffs fail to establish a likelihood of success on the merits because Patrick's alleged ownership in either of the properties is not memorialized in writing, as required by the Statute of Frauds. (General Obligations Law § 5-703[3]). To be sure, General Obligations Law § 5-703(3) states that "[a] contract to devise real property or establish a trust of real property, or any interest therein, is void unless the contract or some note or memorandum thereof is in writing and subscribed by the party to be charge therewith, or by his lawfully authorized agent." Thus, the absence of a writing is generally fatal to a claim of partial ownership in real property (*Magnum Real Estate Servs., Inc. v 133-134-135 Assoc., LLC,* 59 AD3d 362, 363 [1st Dept 2009] ["Plaintiff's claim of a 25% ownership interest in real property allegedly conveyed, not by or on behalf of a partnership that already existed between the parties, but by or on behalf of an entity created by defendants in which plaintiff had no interest, must be in writing or it is barred by the statute of frauds. Here, there is no evidence that such a writing existed, and none of the documents contained in the record establish that plaintiff is entitled to an ownership interest in either the properties or in the entity to which the properties were conveyed."]). While partial performance empowers courts of equity to compel performance on oral agreements to which the Statue of Frauds applies, "the claimed partial performance must be unequivocally referable to the agreement" (*Kurlandski v Kim,* 111 AD3d 676, 677 [2d Dept 2013]). Here, the record is bereft of any actions expressly undertaken by Patrick in reliance on any oral promise by David.

Plaintiffs also move, pursuant to CPLR §§ 6301 and 6312, for an order staying the Housing Court proceeding, in which a holdover eviction is sought by David.[6] As discussed above, plaintiffs have failed to demonstrate a likelihood of success on the merits on their declaratory judgment cause of action in the instant matter. For the reason set forth below, this is fatal to their application for a preliminary injunction staying the Housing Court proceeding.

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[6]By Decision and Order dated November 6, 2023, this Court granted plaintiffs' application for a TRO and stayed the summary proceeding bearing Index No. LT-317242/23, pending further order of this Court.

Since a preliminary injunction will only be granted when the party seeking such relief demonstrates a likelihood of ultimate success on the merits, irreparable injury if the preliminary injunction is withheld, and a balance of equities tips them in favor of the moving party (*Nobu Next Door, LLC* at 840; *Doe* at 750; *61 West 62 Owners Corp.* at 334; *Second on Second Café, Inc.* at 264; *Stockley* at 536), the failure to establish a likelihood of success on the merits, by itself, warrants denial of the instant motion (*Eljay Jrs., Inc. v Rahda Exports,* 99 AD2d408, 409 [1st Dept 1984].

To the extent that the OSC seeks an Order directing the production of documents and information, the Court notes that there has been no preliminary conference in this action. In this regard, the parties are directed to review this Court's Part Rules regarding preliminary conferences as well as Commercial Division Rule 8 and 22 NYCRR 202.11.

Accordingly, it is hereby

ORDERED that all stays, including the stay of the summary proceeding bearing Index No. LT-317242/23, be lifted. It is further

ORDERED that this matter shall be set down for a preliminary conference to be held on **March 11, 2024 at 10:00 a.m.** It is further

ORDERED that plaintiffs serve a copy of this Decision an Order upon defendant within thirty (30) days hereof.

This constitutes the Decision and Order of this Court.

Dated: Bronx, New York
February 5 , 2024

Hon. **FIDEL E. GOMEZ, J.S.C.**

[* 12]