

**Tribeca Hummus Inc. v NJ Funding, Inc.**

2025 NY Slip Op 30500(U)

February 10, 2025

Supreme Court, New York County

Docket Number: Index No. 153935/2024

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M**

*Justice*

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TRIBECA HUMMUS INC. D/B/A NISH NUSH

Plaintiff,

- v -

NJ FUNDING, INC.,

Defendant.

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INDEX NO. 153935/2024

MOTION DATE 05/03/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42

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

Upon the foregoing documents, and after a final submission date of November 19, 2024, Plaintiff Tribeca Hummus Inc. d/b/a Nish Nush’s (“Plaintiff”) order to show cause seeking a preliminary injunction is denied.

Defendant NJ Funding Inc. (“Defendant”) owns the premises located at 88-90 Reade Street a/k/a 176 Church Street (the “Premises”) and leases to Plaintiff the portion of the Premises known as “Corner Store #1” along with a portion of the Premises’ basement. Plaintiff operates a falafel restaurant in the leased portion of the Premises.

On March 8, 2024, Defendant sent a notice of default letter to Plaintiff alleging rental arrears in the amount of \$52,086.29 (NYSCEF Doc. 7). After Plaintiff did not pay the rental arrears, Defendant initiated an ejectment action in Landlord/Tenant Court captioned *NJ Funding, Inc. v Tribeca Hummus, Inc. et. al.*, LT-306838-24/NY (the “Housing Court Action”). Plaintiff then initiated this action seeking an injunction restraining Defendant from terminating Plaintiff’s

lease and staying the Housing Court Action because Plaintiff alleges it has fallen into arrears due to Defendant's failure to supply gas to the Premises.

In opposition, Defendant argues that Plaintiff has failed to meet its burden in obtaining a preliminary injunction as it has failed to show any evidence that the gas was turned off, that it is entitled to a rent abatement if the gas was turned off, or the length of time the gas was turned off. Defendant also argues that the lack of gas has been raised as a defense in the Housing Court Action and can be fully litigated there. Moreover, Defendant has submitted in opposition evidence that the resumption of gas service was delayed because Plaintiff, without permission, installed non-compliant gas-fired kitchen appliances to which the Department of Buildings objected. The gas service was not turned back on until April 11, 2024.

In seeking a preliminary injunction, plaintiff must “demonstrate by clear and convincing evidence, (1) a likelihood of success on the merits, (2) irreparable injury absent the granting of the preliminary injunction, and (3) a balancing of the equities in the movant's favor” (*Uber Technologies, Inc. v American Arbitration Association, Inc.*, 204 AD3d 506 [1st Dept 2022] quoting *Gilliland v Acquafredda Enters., LLC*, [1st Dept 2011]).

Here, the Court finds that Plaintiff has failed to tender clear and convincing evidence to obtain injunctive relief. As a preliminary matter, in its moving papers, Plaintiff provided no evidence regarding the cause of the gas disruption, the timeline in which the gas service was delayed, or the reason for any delay<sup>1</sup> (*Hertz Computer Corp. v Mark*, 158 AD2d 267 [1st Dept 1990] [lack of evidence regarding breach of contract required denial of preliminary injunction]). Second, Plaintiff has failed to show irreparable injury in the absence of this preliminary injunction

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<sup>1</sup> Although Plaintiff introduces a letter from dated April 11, 2024 from “Ariel Services Inc.” (NYSCEF Doc. 42), the letter has been improperly introduced for the first time on reply (*Hakim v 65 Eighth Ave., LLC*, 42 AD3d 374 [1st Dept 2007]) and in any event, it postdates by five months the DOB's objection to the gas equipment being non-compliant with prior permits.

as the failure to provide gas has been raised as an affirmative defense in the Housing Court Action. Denial of the injunctive relief sought here simply means that the impact of Defendant's failure to provide gas and whether it excuses Plaintiff's alleged default under the lease will be fully litigated in the Housing Court Action.

Third, Plaintiff has not shown a likelihood of success on the merits since the delay in resuming gas service appears to be a result of Plaintiff installing multiple gas kitchen appliances in contravention of a previous Department of Buildings permit. The lease entered by Plaintiff and Defendant explicitly states:

“[t]enant shall make no changes in or to the demised premises of any nature without Owner's prior written consent...Tenant shall, before making any alterations, additions, installations or improvements, at its expense, obtain all permits, approvals and certificates required by any governmental or quasi-governmental bodies and (upon completion) certificates of final approval thereof, and shall deliver promptly duplicates of all permits, approvals and certificates to Owner...” (NYSCEF Doc. 6 at ¶ 3).

Nowhere has Plaintiff shown it had permission to install the gas equipment which played a role in delaying the resumption of gas service, let alone permits to install that equipment (*see, e.g. Famo, Inc. v Green 521 Fifth Ave. LLC*, 51 AD3d 578 [1st Dept 2008] [injunctive relief properly denied in landlord/tenant dispute where unambiguous language of lease contravened allegations forming basis of injunctive relief]). The evidence submitted shows that Defendant promptly worked to restore the gas outage and resumption of gas service was delayed due to unpermitted equipment in Plaintiff's kitchen. It would be inequitable to allow Plaintiff, at Defendant's expense, to reap the benefits of failing to comply with provisions of the Lease by staying the ongoing Housing Court Action. Nor is the status quo upset by denying Plaintiff's request for injunctive relief, as denying Plaintiff's request for an injunction simply means the parties will resume litigating the rental arrears and interruption of gas service in Housing Court,

which is the preferred forum for these kinds of disputes (*see, e.g. 44-46 West 65th Apartment Corp. v Stvan*, 3 AD3d 440 [1st Dept 2004]).

Accordingly, it is hereby,


ORDERED that Plaintiff Tribeca Hummus Inc. d/b/a Nish Nush’s (“Plaintiff”) order to show cause seeking a preliminary injunction is denied; and it is further

ORDERED that any and all temporary restraints imposed by this Court pending the determination of the instant order to show cause (NYSCEF Doc. 11) are hereby vacated and dissolved; and it is further

ORDERED that on or before May 5, 2025, the parties are directed to meet and confer and submit a proposed preliminary conference order to the Court via e-mail to SFC-Part33-Clerk@nycourts.gov. In the event the parties cannot agree to a proposed preliminary conference, they shall appear for an in-person preliminary conference on May 7, 2025 at 9:30 a.m. in Room 442, 60 Centre Street, New York, New York; and it is further

ORDERED that within ten days of entry, counsel for Defendant shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

<u>2/10/2025</u> DATE	 HON. MARY V. ROSADO, J.S.C.				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<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