

**496 Broadway Fee Owner LLC v OAE Group Inc.**

2025 NY Slip Op 30505(U)

February 9, 2025

Supreme Court, New York County

Docket Number: Index No. 161220/2024

Judge: Andrea Masley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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496 BROADWAY FEE OWNER LLC,  
  
Plaintiff,

- v -

OAE GROUP INC., OLGA EKMEN, VOLODYMYR  
BURLAKOV, and THOR 494 BROADWAY PARTNERS  
LLC,  
  
Defendants.

INDEX NO. 161220/2024

MOTION DATE --

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

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HON. ANDREA MASLEY:

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, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47

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

In motion sequence 001, plaintiff 496 Broadway Fee Owner LLC (Owner) moves for an order (i) enjoining defendants OAE Group, Inc., Olga Ekmen and Volodymyr Burlakov (collectively, defendants) from playing unreasonably loud music between the hours of 10pm – 8am from the unit located at 494 Broadway, New York, New York, 4th Floor and rooftop (Leased Premises), (ii) enjoining defendants from violating their Lease, (iii) enjoining defendants from violating New York City’s Noise Code; and (iv) enjoining defendants allowing more than ten people from gathering in the Leased Premises.

For the reasons stated on the record on February 5, 2025, the motion is granted. This decision supplements the decision on the record.

Plaintiff, the owner of a building located at 496 Broadway, New York, New York which is adjacent to the property where the Lease Premises are located, argues that it

will suffer irreparable harm absent preliminary injunction because the manner in which defendants use the Leased Premises prevents plaintiff's tenants from enjoying their properties causes additional tenants to seek lease termination.

Plaintiff's property manager avers that from August 2023, 496 Broadway tenants have been repeatedly complaining of "very loud music, with very high bass which causes their windows to shake, preventing them from sleeping and unable to enjoy their own homes" which emanates from the fourth floor of 494 Broadway where the Leased Premises are located. (NYSCEF 8, Joel Spitzer a/k/a Elliot Spitzer aff ¶¶6; see *id.* ¶¶7, 12-19, 26.) Indeed, OAE uses the Leased Premises to hold events; the advertising states that the space "can hold up to 95 people and is equipped with pro sound/lighting system, DJ council, mics, projector, backdrop." (*id.* ¶9 [internal quotation marks and citation omitted]; see NYSCEF 10, Galo Space ad.) Several events are advertised to be held at night hours. (NYSCEF 11, event postings [advertising event on March 22 from 11:00 p.m. to 11:00 a.m., and May 16 from 6:00 p.m. to 8:00 a.m.]) The property manager avers that several 496 Broadway tenants ceased rent payments or terminated their leases due to noise. (NYSCEF 8, Spitzer aff ¶¶20, 22-23, 29.)

This evidence demonstrates irreparable harm to plaintiff and its tenants' use of its property absent provisional injunctive relief. (*61 W. 62 Owners Corp. v CGM EMP LLC*, 77 AD3d 330, 335 [1st Dept 2010] [irreparable harm was demonstrated where noise exceeded legal limit by approximately four times and residents averred as to "the nightly assault on the quiet enjoyment" of their premises]; *Brooklyn Tabernacle v Thor 180 Livingston LLC*, 2020 NY Slip Op 31511[U], \*10 [Sup Ct, Kings County 2020] [irreparable harm demonstrated where "property is currently contaminated with sewage

and leaking water, and cannot be used for the church's purposes"]; *251 W. 30th St. LLC v 251 W. 30th St. Owner, LLC*, 55 Misc 3d 1208[A], 2017 NY Slip Op 50464[U], \*4-5 [Sup Ct, NY County 2017] [irreparable harm demonstrated as tenants' use of fire escape routes for non-emergency purposes constitutes safety hazard to public and first responders and places property owner at risk of civil liability].)

OAE's delay argument is rejected. "Mere delay, without the necessary elements creating an equitable estoppel, does not preclude the grant of an injunction." (*NY Real Estate Inst., Inc. v Edelman*, 42 AD3d 321, 322 [1st Dept 2007] [citation omitted].) Indeed, defendants "have not claimed or shown that [they] changed [their] position or would be prejudiced as a consequence of plaintiff's delay." (*Id.* at 322.) The record shows that the noise disturbance is ongoing. (See *e.g.* NYSCEF 45, investigator aff ¶¶3, 7-8; NYSCEF 46, Field Investigation Report.)

Accordingly,

It appearing to this court that a cause of action exists in favor of plaintiff and against defendants and that plaintiff is entitled to a preliminary injunction on the ground that defendants threaten or is about to do, or is doing or procuring or suffering to be done, an act in violation of plaintiff's rights respecting the subject of the action and tending to render the judgment ineffectual, as set forth in the aforesaid decision, it is

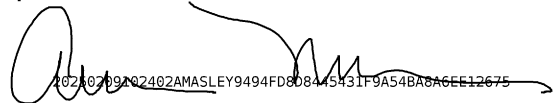
ORDERED that the undertaking is fixed in the sum of \$1,000 conditioned that plaintiff, if it is finally determined that he was not entitled to an injunction, will pay defendants all damages and costs which may be sustained by reason of this injunction; and it is further

ORDERED that defendants, their agents, servants, employees and all other persons acting under the jurisdiction, supervision and/or direction of defendants, are enjoined and restrained, during the pendency of this action, from doing or suffering to be done, directly or through any attorney, agent, servant, employee or other person under the supervision or control of defendants or otherwise, any of the following acts: (i) playing unreasonably loud music between the hours of 10:00 p.m. – 8:00 a.m. from the Leased Premises, (ii) violating their Lease, (iii) violating New York City’s Noise Code; and (iv) allowing more than ten people from gathering in the Leased Premises; and it is further

ORDERED that by March 5, 2025, the parties shall complete initial disclosure (see Part 48 Procedures); and it is further

ORDERED that by February 19, 2025, the parties shall submit (via email and NYSCEF) a joint proposed preliminary conference order or, if no agreement can be reached, competing proposed orders; and it is further

ORDERED that movant shall submit transcript to be so ordered.



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2/9/2025  
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  OTHER  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT  REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: