

**On The Move Holdings, LLC v Singh**

2025 NY Slip Op 30544(U)

February 8, 2025

Supreme Court, New York County

Docket Number: Index No. 650392/2025

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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ON THE MOVE HOLDINGS, LLC, and VANDANA  
JAUHAR,

INDEX NO. 650392/2025

Plaintiffs,

MOTION DATE --

- v -

MOTION SEQ. NO. 001

PARAMDEEP SINGH, VIRENDA LAXMIKANT JHAVERI,  
MANMEET SINGH, and KEY HOTELS, LLC,

**DECISION + ORDER ON  
MOTION**

Defendants.

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 42  
were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR.

This is a dispute between members of nominal defendant Key Hotels, LLC (the  
Hotel) which owns a hotel in midtown Manhattan. In motion sequence 001, plaintiffs On  
The Move Holdings, LLC and Vandana Jauhar move pursuant to CPLR 6301 and 6313  
for a preliminary injunction

“enjoining [defendants Paramdeep Singh, Virendra Laxmikant Jhaveri, and  
Manmeet Singh a/k/a Prem Jyotish the ‘Astrologer’ (together, defendants)] from,  
directly or indirectly, spending, using, disbursing, and/or delivering to any  
individual or entity any funds owned by or for the benefit of [the Hotel] or  
otherwise payable to the [Hotel] by New York City’s Department of Homeless  
Services (‘DHS’) until further order or judgment of the Court, except to the extent  
such funds are (i) paid to the [Hotel]’s first lien mortgage holder, W Financial  
Fund, LP (‘W Financial’), or (ii) used to pay the [Hotel]’s operating expenses, if  
any, incurred in the ordinary course of its business and approved in writing by  
Plaintiffs or this Court.” (NYSCEF Doc. No. [NYSCEF] 47, Amended Order to  
Show Cause [OSC] at 2.)

Defendants were timely served with the OSC (see NYSCEF 43-46, affs of service) but did not file opposition papers or appear at the oral argument.<sup>1</sup>

## Background

Plaintiffs and defendants each hold 20% membership interest in the Hotel. (NYSCEF 1, Verified Complaint [VC] ¶¶ 2, 97; NYSCEF 4, Jauhar aff ¶ 4; *id.* at 2 n 1; NYSCEF 6, Amendment No. 3 to Operating Agreement at 38/39; NYSCEF 7, Schedule K-1 for 2019-2021.) Per the Hotel's Operating Agreement, the members manage the Hotel and are required to act by majority vote. (NYSCEF 6, Operating Agreement ¶¶ 5.1, 5.2, 5.7 [at 12/39].) Defendants, however, excluded plaintiffs from the Hotel's business and affairs. (NYSCEF 1, VC ¶ 3; NYSCEF 4, Jauhar aff ¶ 5.) Defendants allegedly misappropriated the entity's assets and mismanaged the Hotel's business. (See NYSCEF 1, VC ¶ 9.)

As against all defendants, plaintiffs allege eight derivative causes of action for the following breaches of fiduciary duties:

- (i) breach by secretly signing receivables contracts with nonparty Itria Ventures LLC (Itria) on behalf of the Hotel for which the Hotel received no consideration and signing confessions for judgment in favor of Itria, which led to Itria taking the Hotel's funds, and (b) failing to disclose the receivables contracts, confessions of judgment, or subsequent judgments (*Id.* ¶¶ 103-104);
- (ii) breach by "authorizing, approving, and/or initiating the Secret Itria Payments for ... [Paramdeep Singh]'s personal benefit, which were prohibited under the [Hotel]'s forbearance agreement with W Financial, left

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<sup>1</sup> Plaintiffs have initiated a special proceeding for inspection of the Hotel's books and record, *In the Matter of the Application of On The Move Holdings, LLC v Paramdeep Singh* (index. no. 650740/2024), where defendants likewise failed to appear.

the [Hotel]’s bank account empty, and led to its default under the forbearance agreement” (*id.* ¶ 111);<sup>2</sup>

- (iii) breach by “failing to address various defaults that were noticed by DHS, resulting in the termination of the [Hotel]’s agreement with DHS and the loss of the [Hotel]’s tenant and sole source of revenue” (*id.* ¶ 118);
- (iv) breach by “failing to prepare and submit a second ‘Hardship Accommodation Request’ to the SBA, which led to a default under the [United States Small Business Administration (SBA) \$2 million] loan” (*id.* ¶ 126);
- (v) breach by “secretly taking actions on behalf of the [Hotel] without informing Plaintiffs before or after-the-fact or obtaining their consent,” “acting without a meeting or a written consent,” “holding themselves out to lenders and other third parties as the [Hotel]’s sole managers,” and “excluding Plaintiffs from managerial decisions made on behalf of the [Hotel],” all “in order to prevent Plaintiffs from discovering Defendants’ wrongdoing and addressing its effects on the [Hotel]” (*id.* ¶ 133);
- (vi) breach by advancing \$240,000 to a management company, nonparty Rebel Hotel Company New York, LLC (Rebel), while the Hotel was still occupied by tenant, nonparty Luxurban Re Holdings LLC, and the Hotel had yet to sign an agreement with Rebel (*id.* ¶ 140);
- (vii) breach by paying to persons or entities unrelated to the Hotel and its businesses, including “Premier Hotels” and “JOSMIC LLC” (*id.* ¶ 149); and
- (viii) breach by engaging in the above conduct “in order to put their own self interests ahead of the [Hotel]’s interests, which actions were taken in bad faith and constituted willful misconduct, gross negligence, and mismanagement of the [Hotel], resulting in the destruction of the value of the [Hotel]’s sole asset” – the building. (*id.* ¶ 164.)<sup>3</sup>

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<sup>2</sup> In connection with the Hotel’s purchase of the hotel building in 2019, the Hotel borrowed \$16.75 million from W Financial, which loan was secured by a mortgage lien against the building. (NYSCEF 1, VC ¶¶ 28-29.)

<sup>3</sup> Plaintiffs’ counsel states that the direct breach of contract cause of action against Jhaveri, who is referred to in the complaint as Viren, is not relevant to this application. (NYSCEF 18, Jeffrey A. Miller, Esq. aff ¶ 18.)

Plaintiffs seek compensatory and punitive damages as well as attorneys' fees.

(*Id.* at 22-24 ¶¶ [a]-[g], [i]-[j].)

## Discussion

“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.” (CPLR 6301.)

To obtain a preliminary injunction, a movant must establish: “(1) a likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the provisional relief is withheld; and (3) a balance of equities tipping in the moving party's favor.” (*Doe v Axelrod*, 73 NY2d 748, 750 [1988] [citation omitted].) Movant must meet its burden “by clear and convincing evidence.” (*Uber Tech., Inc. v Am. Arbitration Assn., Inc.*, 204 AD3d 506, 508 [1st Dept 2022] [internal quotation marks and citations omitted].) A verified complaint can properly be considered on a preliminary injunction motion. (See *Faith In Action Deliverance Ministries v 3231 Assoc., LLC*, 168 AD3d 502, 503 [1st Dept 2019].)

### Likelihood of Success

As a preliminary matter, plaintiffs have established demand futility. (See *Najjar Group, LLC v W. 56th Hotel LLC*, 110 AD3d 638, 639 [1st Dept 2013] [showing of demand futility or “[a] pre-suit demand is ... required in a derivative action involving a limited liability company” (citation omitted)].)<sup>4</sup> Specifically, plaintiffs have shown that defendants, who hold 60% of the Hotel's membership interest, acted in their own

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<sup>4</sup> The court applies New York law as the Hotel is a New York limited liability company. (See NYSCEF 6, Operating Agreement at 2/39.)

interest (see NYSCEF 1, VC ¶¶ 9, 66, 68, 89, 91, 111, 133; NYSCEF 4, Jauhar aff ¶¶ 14, 74-75, 77-78, 98-99) and might have failed to exercise sound business judgment by losing the DHS tenant. (See NYSCEF 4, Jauhar aff ¶¶ 108-110; NYSCEF 39, Termination Notice; *Wandel v Eisenberg*, 60 AD3d 77, 80 [1st Dept 2009] [pre-suit demand requirement is excused “when the complaint’s specific allegations support the conclusion that (1) a majority of the directors are interested in the transaction, or ... (3) the directors failed to exercise their business judgment in approving the transaction” (internal quotation marks and citation omitted)]; *Javaheri v Old Cedar Dev. Corp.*, 22 AD3d 804, 805 [2d Dept 2005] [demand was excused where plaintiff alleged that director dominated corporation “reduc[ing] it to a mere instrumentality to be used for his own self-interest” (internal quotation marks and citations omitted)].)

“To state a claim for breach of fiduciary duty, plaintiffs must allege that (1) defendant owed them a fiduciary duty, (2) defendant committed misconduct, and (3) they suffered damages caused by that misconduct.” (*Burry v Madison Park Owner LLC*, 84 AD3d 699, 699-700 [1st Dept 2011] [citations omitted].)

Plaintiff has demonstrated “likelihood of success on the merits of at least some of [the] claims” (*TDA, LLC v Lacey*, 202 AD3d 1474, 1475 [4th Dept 2022]) by tendering sufficient proof that (i) defendants, as members-managers, owed the Hotel fiduciary duties (see NYSCEF 1, VC ¶ 97; NYSCEF 6, Operating Agreement ¶ 5.1 [at 12/39]; NYSCEF 6, Amendment No. 3 to Operating Agreement at 38/39; *McKinnon Doxsee Agency, Inc. v Gallina*, 187 AD3d 733, 736 [2d Dept 2020] [“A managing member of an LLC owes a fiduciary duty to the LLC” (citation omitted)]; Limited Liability Company Law § 409[a]) and (ii) committed misconduct (see e.g. NYSCEF 1, VC ¶¶ 9, 103, 111, 118,

126, 133, 140, 149, 164; NYSCEF 4, Jauhar aff ¶¶ 14, 74-75, 77-78, 98-99, 108-110), thereby (iii) causing damages to the Hotel. (See e.g. NYSCEF 1, VC ¶¶ 92, 150; NYSCEF 4, Jauhar aff ¶¶ 15, 75, 98-99, 114-115.)

### Irreparable Harm

Plaintiffs have established irreparable harm. The Hotel, whose major asset is the hotel building, is facing foreclosure sale due to its default on the W Financial loan.

(NYSCEF 4, Jauhar aff ¶¶ 15, 114-115.) Jauhar avers that plaintiffs seek injunctive relief

“in order to preserve what little funds remain in the [Hotel]’s bank accounts as well as any additional monthly payments received by the [Hotel] from DHS. At best, this relief will stave off foreclosure, but at the very least, it will protect the [building]’s and the [Hotel]’s value and minimize any deficiency judgment against the [Hotel] and, in turn, its members (i.e., Plaintiffs) if the [building] is sold.” (*Id.* ¶ 17.)

Any further dissipation of the Hotel’s assets and loss of the hotel building due to foreclosure would render any future judgment ineffectual. (See e.g. *BFG 104 LLC v Greenwich Bus. Capital, LLC*, 226 AD3d 454, 455 [1st Dept 2024] [“plaintiff’s affidavit that it would likely default on its obligations to its lenders and go out of business absent an injunction enjoining defendants from diverting collections to themselves, was sufficient to establish irreparable harm” (citation omitted)]; *Invesco Inst. (N.A.), Inc. v Deutsche Inv. Mgt. Ams., Inc.*, 74 AD3d 696, 697 [1st Dept 2010] [irreparable harm established where absent injunction, “plaintiff would likely sustain a loss of business impossible, or very difficult, to quantify” (internal quotation marks and citation omitted)]; *Winchester Glob. Tr. Co. Ltd. v Donovan*, 58 AD3d 833, 834 [2d Dept 2009] [where record demonstrates improper transfers by defendants, “uncontrolled sale and disposition by [defendants] of their assets would threaten to render ineffectual any

judgment which the plaintiff might obtain herein” (citation omitted)]; *Puro v Purofied Down Prods. Corp.*, 87 AD2d 566, 566 [1st Dept 1982] [preliminary injunction is appropriate where plaintiff demonstrated “the potential for the diversion of corporate earnings and assets to the majority shareholders to the detriment of the minority interest of plaintiff”].)

### Balance of Equities

To demonstrate entitlement to a preliminary injunction, plaintiff must show “that the irreparable injury to be sustained ... is more burdensome [to the plaintiff] than the harm caused to defendant through imposition of the injunction.” (*McLaughlin, Piven, Vogel, Inc. v W. J. Nolan & Co.*, 114 AD2d 165, 174 [2d Dept 1986], *lv denied* 67 NY2d 606 [1986].) Here, as discussed, the potential irreparable injury is significant. There is no indication that defendants will suffer significant harm, if any, because of the preliminary injunction. (*See Dong-Pyo Yang v 75 Rockefeller Cafe, Corp.*, 50 AD3d 320, 320 [1st Dept 2008].) The balance of equities thus favors granting the preliminary injunction, which is intended to protect the Hotel’s funds and maintain status quo. (*See Ouch Indus., Inc. v Wenzel*, 2023 NY Misc LEXIS 33872, \*28 [Sup Ct, Westchester County 2023] [“With regard to closely held corporations or limited liability companies, the purpose of a preliminary injunction is often to maintain the status quo pendente lite and to preserve assets and prevent dissipation of the property at issue” (internal quotation marks and citation omitted)].)

### Undertaking

“[P]rior 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.” (CPLR 6312 [b].)

The undertaking shall be fixed at \$1,000 given that there is no indication that defendants will suffer economic damages as a result of the preliminary injunction.

Accordingly,

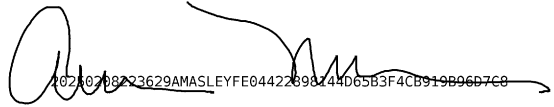
It appearing to this court that a cause of action exists in favor of plaintiffs and against defendants and that plaintiffs are entitled to a preliminary injunction on the ground that defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of plaintiffs’ 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 plaintiffs, if it is finally determined that they were not entitled to an injunction, will pay to 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 defendant, 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 defendant or otherwise, any of the following acts: spending, using, disbursing, and/or delivering to any individual or entity any funds owned by or for the benefit of Key Hotels, LLC or otherwise payable to Key Hotels, LLC by New York City’s Department of Homeless Services until further order or judgment of the court, except to the extent such funds are (i) paid to Key Hotels, LLC’s first lien mortgage holder, W Financial Fund, LP, or (ii) used to pay Key Hotels, LLC’s operating

expenses, if any, incurred in the ordinary course of its business and approved in writing by Plaintiffs or this Court; and it is further

ORDERED that upon defendants' appearance in this action, parties shall engage in initial disclosure per Part 48 Procedures and notify the court upon completion of initial disclosure.



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2/8/2025  
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE