

Sklar v OAE Group, Inc.

2025 NY Slip Op 30617(U)

February 9, 2025

Supreme Court, New York County

Docket Number: Index No. 850444/2024

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

-----X

PAUL SKLAR, SOLELY IN HIS CAPACITY AS THE
 COURT APPOINTED RECEIVER FOR THOR 494
 BROADWAY PARTNERS LLC,

Plaintiff,

- v -

OAE GROUP, INC., OLGA EKMEN, and VOLODYMYR
 BURLAKOV

Defendants.

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INDEX NO. 850444/2024

MOTION DATE --

MOTION SEQ. NO. 001

**DECISION + ORDER ON
 MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 37, 38, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61

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

In motion sequence 001, plaintiff Paul Sklar, in his capacity as the Court Appointed Receiver for Thor 494 Broadway Partners LLC (receiver), moves for an order (i) enjoining defendant OAE Group, Inc. (OAE), tenant at 494 Broadway, from taking any actions that are in violation of the Lease Agreement,¹ (ii) enjoining OAE from causing or permitting any music to emanate from the Leased Premises that exceeds 42 dB(A), in accordance with NYC Administrative Code § 24-231(a), or otherwise violating any section of the New York City Noise Code, (iii) enjoining OAE from allowing more than ten people from gathering at the Leased Premises at one time, (iv) terminating the

¹ OAE leased the entire fourth floor located at 494 Broadway, New York, New York 10012 (Leased Premises). (NYSCEF Doc. No. [NYSCEF] 2, Complaint ¶¶1, 8; NYSCEF 11, Feb. 8, 2023 Lease Agreement at 1.)

Lease Agreement, (v) entering a judgment of possession for the receiver, and (vi) entering a warrant of eviction for the receiver.

For the reasons stated on the record on February 5, 2025, the motion is granted, in part, to the extent that preliminary injunction is granted, and the balance of the motion is denied. This decision supplements the decision on the record.

The receiver argues that absent preliminary injunction, he will suffer irreparable harm as OAE's conduct is exposing the receiver to a civil liability by the owner of the neighboring property, 496 Broadway, New York, New York (496 Broadway).

"[I]rreparable injury means a continuing harm resulting in substantial prejudice caused by the acts sought to be restrained if permitted to continue" while the action is pending. (*Chrysler Corp. v Fedders Corp.*, 63 AD2d 567, 569 [1st Dept 1978].)

The receiver met his burden to demonstrate "the prospect of irreparable injury if the provisional relief is withheld." (*Doe v Axelrod*, 73 NY2d 748, 750 [1988] [citation omitted].) The receiver states that several notices of breach were sent to OAE notifying it of lease breaches and complaints of loud and disruptive sounds and wild parties at the Lease Premises. (NYSCEF 10, Sklar aff ¶¶23-24, 30; NYSCEF 12, March 17, 2023 letter; NYSCEF 13, August 24, 2023 letter.) He maintains that despite the warnings, OAE's "disruptive behavior has continued, leading a neighboring property owner to threaten the property for which [he is] the receiver with legal action for [OAE's] misconduct." (NYSCEF 10, Sklar aff ¶31.) The property manager of 496 Broadway states that in August 2023, tenants at 496 Broadway started 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 18, 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 advertisement 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 20, Galo Space ad.) Several events are advertised to be held at night hours. (NYSCEF 21, 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 18, Spitzer aff ¶¶20, 22-23, 29.) The owner of 496 Broadway has already initiated an action naming the owner of 494 Broadway as a defendant and also seeking a preliminary injunction (*496 Broadway Fee Owner LLC v OAE Group, Inc.*, Index. No. 161220/2024). The owner of 496 Broadway threatens further legal action against the receiver. (NYSCEF 55, Jan, 2, 2025 letter.)

This evidence demonstrates irreparable harm to the receiver – exposure to civil liability – 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, OAE "has not claimed or shown that [it] changed [its] 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 56, investigator aff ¶¶3, 7-8; *id.*, 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 to OAE Group, Inc. all damages and costs which may be sustained by reason of this injunction; and it is further

ORDERED that OAE Group, Inc., its agents, servants, employees and all other persons acting under the jurisdiction, supervision and/or direction of OAE Group, Inc., are enjoined and restrained, during the pendency of this action, from doing or suffering

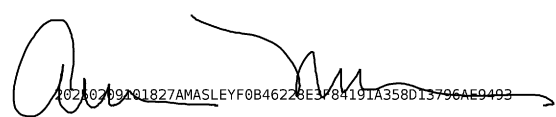
to be done, directly or through any attorney, agent, servant, employee or other person under the supervision or control of OAE Group, Inc. or otherwise, any of the following acts: (i) taking any actions that are in violation of the Lease Agreement, (ii) causing or permitting any music to emanate from the Leased Premises that exceeds 42 dB(A), in accordance with NYC Administrative Code § 24-231(a), or otherwise violating any section of the New York City Noise Code, and (iii) allowing more than ten people from gathering at the Leased Premises at one time; and it is further

ORDERED that the balance of the motion is denied; 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:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED			<input checked="" type="checkbox"/>	GRANTED IN PART		
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