

**Blue Jay Way Hospitality LLC v Twiggy Partners
LLC**

2025 NY Slip Op 32600(U)

June 30, 2025

Supreme Court, New York County

Docket Number: Index No. 655233/2023

Judge: Nancy M. Bannon

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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. NANCY M. BANNON PART 61M

Justice

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BLUE JAY WAY HOSPITALITY LLC, SHR VENTURES
LLC, CROSSROADS ADK LLC, CROSSROADS PRESERVE
LLC,

Plaintiff,

INDEX NO. 655233/2023

MOTION DATE 03/31/2025

MOTION SEQ. NO. 007

- v -

TWIGGY PARTNERS LLC, GREGORY PECK, SUSAN
CRONIN,

Defendant.

**DECISION + ORDER ON
MOTION**

-----X

TWIGGY PARTNERS LLC

Plaintiff,

Third-Party
Index No. 596150/2023

-against-

STANLEY RUMBOUGH, SHR VENTURES, LLC,
CROSSROADS ADK, LLC, CROSSROADS PRESERVE, LLC,
SIMOS DIMAS, DIMAS LAW GROUP

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 007) 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 213, 215, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 279, 281, 282, 283

were read on this motion to/for MODIFY.

In this action arising from a project to construct a campground, the plaintiffs seek declaratory and monetary relief. Specifically, in the amended complaint the plaintiffs seek a judgment declaring that (1) defendant Twiggy Partners, LLC (Twiggy) has breached its obligations under the parties' operating agreement, (2) the plaintiffs were justified in removing Twiggy as a managing member of plaintiff Blue Jay Way Hospitality LLC (Blue Jay Way) and (3) the plaintiff SHR Ventures LLC was justified in withdrawing its capital contribution and plaintiff

Crossroads ADK LLC was justified in effecting the withdrawal. The plaintiff also seeks compensatory damages on the causes of action for breach of fiduciary duty and fraudulent inducement. In an Order to Show Cause dated November 27, 2023, court (Ostrager, J. [Ret.]), granted the application of defendant Twiggy for a TRO, among other things, enjoining the plaintiffs from taking any action as the managing member of plaintiff Blue Jay Way on the condition that Twiggy post an undertaking of \$1,000,000 (MOT SEQ 001). The undertaking was posted on November 30, 2023. About the same time, Twiggy commenced a third-party action against plaintiffs Crossroads ADK LLC and SHR Ventures LLC and others. The hearing on Twiggy's underlying motion for a preliminary injunction was adjourned and the TRO was extended by the court (Ostrager, J.) in an order dated December 11, 2023.

By an order dated February 1, 2024, the court (Crane, J.), after oral argument, denied the preliminary injunction motion and vacated the TRO. The court concluded that since the only type of damages that may accrue in this matter are money damages, injunctive relief was improper, and that any TRO or preliminary injunction would serve only to delay the project further. Several motions and discovery ensued.¹ Although no TRO or preliminary injunction was in place at any time after February 1, 2024, no motion to release the undertaking pursuant to CPLR 6315 was made by Twiggy until October 24, 2024.

Defendant Twiggy now moves pursuant to CPLR 6315 to release the \$1,000,000.00 bond it posted, or in the alternative, to reduce the bond to a sum of no more than \$150,000.00 (MOT SEQ 007). Twiggy argues, in essence, that the plaintiffs suffered no damages or damages of no more than \$150,000 during the pendency of the TRO, from November 30, 2023, through February 1, 2024. Twiggy proffers no explanation or relevant and admissible proof in support of its \$150,000 estimate. To the extent Twiggy is attempting to renew its original motion for injunctive relief, it submits nothing that would support relief under CPLR 2221.

The plaintiffs oppose the motion arguing, in effect, that it suffered damages in the form of lost profits as a result of the TRO enjoining the plaintiffs from temporarily managing Blue Jay Way and thereby delaying the project just before the critical summer camp season, and attorney's fees incurred in regard to the TRO, and that those amounts exceed the undertaking

¹ The complaint was dismissed as against individual defendants Gregory Peck and Susan Cronin and the third-party complaint was dismissed as against third-party defendants Simos Dimas and Dimas Law Group by order dated November 15, 2024 (MOT SEQ 003, 005).

amount such that no amount of the undertaking should be released back to Twiggy. The plaintiffs submit sufficient proof to warrant an evidentiary hearing on the application to determine its actual damages resulting from the TRO, which may exceed \$150,000 and even reach \$1,000,000. Briefly, the plaintiffs submit affirmations of Jill Trudeau, a local construction manager who was directly involved with the campground project and Jerelyn Creutz, manager of plaintiffs Crossroads ADK LLC and SHR Ventures LLC. These affiants provide a basis to conclude that the plaintiff suffered various types of damages as a result of the TRO but they do not provide a specific amount of any category of damages. Regarding the claimed attorney's fees, the plaintiffs submit an affirmation from its counsel who avers that he and his firm billed \$209,972.50 arising from the TRO. This sum includes fees not recoverable under CPLR 6315. For purposes of the hearing, the parties shall be guided by the following:

CPLR 6312(b) provides, in pertinent part, that "prior to the granting of a preliminary injunction, the plaintiff shall give an undertaking in an amount to be fixed by the court [and] 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." An undertaking posted under CPLR 6312(b) does not constitute liquidated damages (see A & M Exports, Ltd. v Meridien Int'l Bank, Ltd., supra), but provides a "ready source from which the defendant may recover for damages which [it] may have sustained" where "it is later finally determined that the preliminary injunction was improperly granted". Margolies v Encounter, Inc., supra at 479.

CPLR 6315 provides an expeditious procedure "permit[ting] the court that imposed [a preliminary injunction] . . . to fix damages resulting from that restraint." A & M Exports, Ltd. v Meridien Int'l Bank, Ltd., supra at 380 [citation omitted]. The party seeking such damages bears the burden of presenting evidence to prove the damages sought. See A & M Exports, Ltd. v Meridien Int'l Bank, Ltd., supra; Cross Properties, Inc. v Brook Realty Co., 76 AD2d 445, 458-59 (2nd Dept. 1980); see also Shu Yiu Louie v David & Chiu Place Rest., Inc., 261 AD2d 150 (1st Dept. 1999). The measure of such damages is the amount necessary to compensate the injured party for losses sustained by reason of the improperly granted preliminary injunction. See CPLR 6312(b); A & M Exports, Ltd. v Meridien Int'l Bank, Ltd., supra; Cross Properties, Inc. v Brook Realty Co., supra at 458-459.

“Any damages must arise directly from the injunction, and damages cannot be recovered for costs related to litigating the merits of the case or other underlying issues.” Bison Elevator Serv., Inc. v City of Buffalo, 193 AD3d 1428, 1429 (4th Dept. 2021). Counsel fees incurred in opposing a preliminary injunction motion in the first instance are not recoverable because they would be incurred even if the injunction were denied. See Cross Properties, Inc. v Brook Realty Co., supra. However, where supported by the record, “attorneys’ fees incurred in a successful effort to vacate a restraining order may be recoverable damages under CPLR 6315.” Shu Yiu Louie v David & Chiu Place Rest., Inc., supra at 152; see A & M Exports, Ltd. v Meridien Int’l Bank, Ltd., supra; Cross Properties, Inc. v Brook Realty Co., supra.

Notably, since the motion papers were submitted, certain of the plaintiffs’ conduct weighs against granting any relief. In a status conference order dated March 3, 2025, the court noted that the parties had entered into an agreement to arbitrate “any and all issues” remaining between them, save for this motion. The court further noted that arbitration does not stay discovery and scheduled another status conference for June 26, 2025. In the same order, the court noted that the Note of Issue date had expired without the plaintiffs having filed one, and that the parties had not completed discovery as directed and had not taken any steps to commence arbitration as they agreed. Consequently, the complaint became subject to dismissal pursuant to CPLR 3126 and 3216.

For these reasons, Twiggy’s motion is granted to the extent that an evidentiary hearing is to be held on October 24, 2025, and the motion is otherwise denied without prejudice. As explained above, the plaintiffs have the burden of proving its recoverable damages at the hearing. In the interim, the parties are still free to settle the matter of the undertaking.

Accordingly, upon the foregoing papers and the court’s prior orders, it is

ORDERED that the motion of defendant Twiggy Partners, LLC pursuant to CPLR 6315 for release of the undertaking posted on November 30, 2023, is granted to the extent that an evidentiary hearing is scheduled for October 24, 2025, at 10:00 a.m., in Part 61, Room 232, at 60 Centre Street, N.Y., N.Y., and the motion is otherwise denied with prejudice, and it is further

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision and Order of the court.


NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

6/30/2025

DATE

CHECK ONE:

CASE DISPOSED
GRANTED

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART

OTHER