

**Han v Fulton Gardens 1584, LLC**

2025 NY Slip Op 33959(U)

October 10, 2025

Supreme Court, Kings County

Docket Number: Index No. 506905/2025

Judge: Anne J. Swern

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This opinion is uncorrected and not selected for official publication.

At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 10<sup>th</sup> day of October 2025.

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

PHILIP HAN,

*Plaintiff(s),*

*-against-*

FULTON GARDENS 1584, LLC,

*Defendant(s).*

**DECISION & ORDER**

Index No.: 506905/2025

Calendar No.: 25

Motion Seq.: 001

Return Date: 5/29/2025

*Recitation of the following papers as required by CPLR 2219(a):*

**Papers  
Numbered**

Order to Show Cause, Affirmation and Supporting Documents (NYSCEF 4-12) .....	1, 2
Affirmation in Opposition and Exhibits in Opposition (NYSCEF 16-21) .....	3

*Upon the foregoing papers, the decision and order of the Court is as follows:*

**Introduction**

Plaintiff commenced this action for breach of a license agreement with defendant. The license agreement granted defendant permission to enter plaintiff’s property known as 1582 Fulton Street, Brooklyn, New York 11213 (“plaintiff’s premises”) for the purposes of developing the adjoining property known as 1584 Fulton Street, Brooklyn, New York 11213 (“defendant’s premises”).

Plaintiff has now moved by Order to Show Cause for a preliminary injunction against defendant under Article 63 of the Civil Practice Law and Rules. The Order to Show Cause seeks order (1) enjoining defendant, its agents, servants, employees and all persons acting on their

behalf from entering plaintiff's property in furtherance of the license agreement and (2) awarding reasonable attorney fees.

### **Facts**

#### **a) Plaintiff's Affidavit in Support (NYSCEF 9).**

Plaintiff alleges that at the time the license agreement dated 12/27/2021 was executed, it was his understanding that defendant would construct a new building on defendant's premises on the east side plaintiff's premises. The license agreement granted plaintiff limited access to plaintiff's property to do the following:

(a) install overhead protection and roof protection; and (b) access the airspace above the Adjacent Premises, all as set forth in the License Agreement and in accordance with the New York City Construction Codes, including the New York City Building Code, as may be amended from time to time, the Department of Buildings ("DOB"), and all other applicable laws, rules and regulations of governmental authorities having jurisdiction over the Project Premises, Project, and/or the Adjacent Premises (the "Applicable Law"). (NYSCEF 9, ¶8).

After the license agreement was executed, plaintiff granted defendant and its construction team a limited license and access to plaintiff's property "to install, maintain, inspect, repair, and remove equipment for overhead protection in the rear yard of the Adjacent Premises in the form of sidewalk shed and rooftop protection (the "Temporary Protections")" (*id.* at ¶9). Section 3 of the license agreement also granted defendant a "limited license to enter the air space above plaintiff's premises "to (a) install and maintain hanging scaffolding from the new building on the Project Premises and to work off of that scaffolding, and (b) maintain any other projections and/or intrusions into the air space over the Adjacent Premises as reasonably required in connection with the Project (collectively the "Airspace Access")" (*id.* at ¶10). Section 4 prohibited the storage of materials on top of the sidewalk shed and lighting was to be provided under it 24 hours per day/7 days per week per the New York Code. Under Section 5, plaintiff

was obligated to provide reasonable access. (*id.* at ¶¶11-13). Finally, defendant was to coordinate with plaintiff all access to plaintiff's premises (*id.* at ¶14).

Despite the license agreement, (a) defendant installed a sidewalk shed in front of plaintiff's premises and a backyard shed without prior notice or coordination (NYSCEF 9, ¶¶16 and 17), and (b) defendant has allowed construction vehicles and construction-related "obstructions" to block visibility of plaintiff's commercial tenant's business. This severely impacted the tenant's business operations and caused a loss of revenue because they could only operate as a seafood market and not as a seafood market/restaurant. (*id.* at ¶¶20-22).

Defendant's breach of the license agreement has caused damage to his property and due to the tenant's business interruption, a loss of rent revenue (*id.* at ¶¶31 and 32).

**b) Defendant's Affirmations in Opposition**

**i) Yehunda Tyrnauer, Construction Project Representative**

Yehunda Tyrnauer, defendant's representative for the construction project affirmed that defendant required seven days of access to the airspace over plaintiff's property to complete exterior stucco work. Once this was completed and approved by the New York City Department of Buildings (DOB), the roof and overhead protections installed on plaintiff's property would be removed. (NYSCEF 18, ¶3). Defendant was constructing a ten (10) story residential building with 35 apartments which came to halt once this Court issued the preliminary injunction enjoining any further work pending the hearing of plaintiff's Order to Show Cause. This has caused defendant substantial hardship because of increased carrying costs including taxes, interest on loans, construction costs and legal fees and expenses. (*id.* at ¶¶ 4-7; *see also* NYSCEF 12).

Mr. Tyranauer acknowledged that prior notice was not provided for the extension of the sidewalk shed but that this fact did not create a safety issue, and the roof of plaintiff's property was not accessed to construct the extension (*id.* at ¶¶18-23). In compliance with the DOB's Code, defendant offered to place the tenant's sign on the sidewalk, but the tenant refused and demanded that defendant pay \$5,500.00, the cost of its sign. Defendant tried to redesign the sidewalk shed so that the tenant's sign would not be blocked. However, the sidewalk shed could not be redesigned in compliance with the DOB's Code. Defendant then offered to pay the tenant \$8,500 to compensate it for blocking the sign, but plaintiff and the tenant demanded that defendant pay the tenant (1) \$8,500.00 plus \$5,500, the cost of the sign and (2) \$7,000.00 per month as compensation for its inability to renovate the rear yard to create an outdoor dining space due to the ongoing construction. The tenant demanded that defendant enter into a license agreement with the tenant incorporating the foregoing demands (NYSCEF 18, ¶¶24-28).

It is defendant's position that "Fulton has not caused property damage or economic loss to Han. Any harm to Han, and there has been none, is not 'irreparable' but can be compensated by damages." (*id.* at ¶39). Defendant denies all remaining allegations.

**ii) Benjamin Follman, Project Manager and Safety Consultant**

Benjamin Follman is a safety consultant for Park Developers & Buildings, Inc., the contractor hired by defendant with respect to the construction project on defendant's premises (NYSCEF 20, ¶1). Mr. Follman states that what plaintiff observed on the deck of the sidewalk shed was "pipe scaffolding equipment" that is enclosed in debris netting and supported by the sidewalk shed (*id.* at ¶2). He explained that plaintiff's photo submitted herewith as Exhibit B depicts horizontal safety netting that extended from the new building into the airspace over the rear yard of plaintiff's premises. It does not depict construction materials. Rather, the

photo depicts “tools, equipment and discarded building materials from the renovation project that Han’s tenant was engaged in at 1580 and 1582 Fulton from in or about September 2024 through at least February 2025.” Annexed to Mr. Follman’s affirmation as Exhibit 1 are copies of Work Permits issued to plaintiff’s tenant and letters of completion from the DOB. (*id.* at ¶3; NYSCEF 21).

**c) Procedural History**

The parties appeared for oral argument on 5/8/2025. After oral argument, the Court adjourned the Order to Show Cause to 5/29/2025 based on the representations of the parties that the work was near completion. On 5/29/2025, the parties advised the court that their “issues were resolved” and the only outstanding issue for determination was attorneys’ fees.

**Attorneys’ Fees**

Pursuant to Section 11 of the license agreement, defendant agreed to pay reasonable attorneys’ fees incurred by plaintiff in connection with any (1) damage to plaintiff’s property or (2) breach of the license agreement by defendant. (NYSCEF 6, p.7).

**Analysis**

Plaintiff’s Order to Show Cause is denied in its entirety. Plaintiff did not submit an affidavit from the tenant attesting to the hearsay statements in Mr. Tyrnauer’s affirmation concerning any loss of business due to either the sidewalk shed or the inability to conduct business as a restaurant inside the commercial space. Plaintiff also did not cite case law or statutory authority that defendant was required to pay damages if a sidewalk shed could not be configured to display a tenant’s business sign instead of attaching the sign to the sidewalk shed in compliance with the DOB’s Code. Other than Mr. Tyrnauer’s statements, plaintiff did not submit in support of this application its books and records concerning the loss of rent revenue or even

the amount of rent that the tenant was obligated to pay each month. It is important to note that plaintiff also did not submit evidence of any agreement with the tenant concerning the payment of any alleged rent arrears. Therefore, plaintiff has failed to demonstrate a likelihood of success on the merits, irreparable harm or a clear right to relief (*Gagnon Bus Co. v Vallo Transp., Ltd.*, 13 AD3d 334, 335 [2d Dept 2004]). The application is also denied because the parties represented to the Court on 5/29/2025 that all issues, except for attorneys' fees, were resolved and did not request permission to submit supplemental briefs or submit a stipulation memorializing this fact.

Based on the foregoing, plaintiff's request for reasonable attorneys' fees is denied. Plaintiff's attorney did not submit an affirmation of legal services in support of this application. The attorney only mentions the request for reasonable attorney's fees in the opening and closing paragraphs of his affirmation. The affirmation is devoid of any legal or factual argument on this issue.

The Court has considered plaintiff's remaining arguments and finds them to be without merit.

Accordingly, it is hereby

ORDERED that plaintiff's Order to Show Cause for preliminary injunction pursuant to Article 63 of the Civil Practice Law & Rules and for an award of attorneys' fees is denied in its entirety.

This constitutes the decision and order of the Court.

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For Clerks use only:

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**Hon. Anne J. Swern, J.S.C.**

**Dated: 10/10/2025**