

**JZ Villa Realty Corp. v Board of Mgrs. of the Cent.
Condominium**

2025 NY Slip Op 34193(U)

October 31, 2025

Supreme Court, New York County

Docket Number: Index No. 158416/2024

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

-----X

JZ VILLA REALTY CORP.

Plaintiff,

- v -

THE BOARD OF MANAGERS OF THE CENTRAL
CONDOMINIUM,

Defendant.

-----X

INDEX NO. 158416/2024

MOTION DATE 09/12/2025,
10/15/2025

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41

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

The following e-filed documents, listed by NYSCEF document number (Motion 002) 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 55, 56, 57, 58, 59, 60

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

Upon the foregoing documents, motion sequence no. 001 is granted, and motion sequence no. 002 is denied.

Background

The building located at 250 West 88th Street is a mixed-use condominium managed by Defendant. Plaintiff is the owner of the sole commercial unit. Under the building’s Bylaws, Plaintiff has the right to make alterations to the Commercial Limited Common Elements but requires board approval in order to make alterations to other forms of common elements. Plaintiff has struggled to find and maintain tenants for the commercial unit, and in May of 2023 they signed a lease with the operator of a deli and grocery store. This tenant will need to install a kitchen, which in turn requires the installation of additional venting on the building’s exterior, on the Courtyard Roof. When Plaintiff brought their plans to the Defendant, the board refused to

approve the installation. After fruitless discussion on the matter, Plaintiff brought this underlying proceeding, with claims for breach of contract, specific performance, declaratory relief, and breach of fiduciary duty. Part of the relief sought in the complaint is an order directing Defendant to permit installation of the vent. Defendant has answered, and both parties have moved by order to show cause for a preliminary injunction in this matter.

Standard of Review

The granting of a preliminary injunction lies in the court's discretion, and it is "an extraordinary provisional remedy which will only issue where the proponent demonstrates (1) a likelihood of success on the merits; (2) irreparable injury absent a preliminary injunction, and (3) a balance of equities tipping in its favor." *Harris v. Patients Med., P.C.*, 169 A.D.3d 433, 434 [1st Dept. 2019].

Discussion

In motion sequence no. 001, Defendant seeks a preliminary injunction enjoining Plaintiff from installing the vent during the pendency of the action. In the alternative, they seek to dismiss the complaint in its entirety and sanctions. In motion sequence no. 002, Plaintiff seeks a preliminary injunction ordering Defendant to permit them to install the vent. For the reasons that follow, Defendant's preliminary injunction is granted, and Plaintiff's preliminary injunction is denied.

Plaintiff's Preliminary Injunction Seeks the Ultimate Relief

As an initial matter, Plaintiff's preliminary injunction seeks the ultimate relief sought in their complaint. The rule is that "a mandatory preliminary injunction (one mandating specific conduct), by which the movant would receive some form of the ultimate relief sought as a final judgment, is granted only in unusual situations, where the granting of the relief is essential to

maintain the *status quo* pending trial of the action.” *Jones v. Park Front Apts., LLC*, 73 A.D.3d 612, 612 [1st Dept. 2010]. Here, a Courtyard Roof that is lacking in the ventilation shaft at issue is the status quo. For that reason, Plaintiff’s order to show cause should be denied. *See, e.g., Montgomery v. 215 Chrystie LLC*, 201 A.D.3d 503, 503 [1st Dept. 2022] (holding that denial of a motion is proper when the preliminary injunction sought is “tantamount to the ultimate relief sought” in the complaint). Plaintiff’s order to show cause also fails for the further reasons given below.

Likelihood of Success on the Merits Favors Defendant

An initial issue for both parties on the matter of likelihood of success on the merits turns on whether the Courtyard Roof is a General Common Element or a Commercial Common Element. The Condominium’s Declaration defines General Common Elements as including “the roof between the First and Second Floors within the Courtyard, and ceilings in, on, or under the Building.” The Commercial Common Elements are defined as including those areas “either currently or hereafter existing for the exclusive use of, or which service only, or encloses the Commercial Unit.” Plaintiff argues that because the proposed venting would lie alongside an existing vent in place for a pizzeria owned by Plaintiff, the Courtyard Roof has become a Commercial Common Element. But the clear and explicit language of the definition of General Common Element encompasses the roof on the courtyard through which Plaintiff proposes installing the ventilation shaft. Nor has Plaintiff established that the Courtyard Roof is “only” for the use of the Commercial Unit.

As Plaintiff has not established a likelihood of success on the merits, the analysis shifts to whether Defendant has met this prong. The “threshold inquiry is whether the proponent has tendered sufficient evidence demonstrating ultimate success in the underlying action.” *1234*

Broadway LLC v. West Side SRO Law Project, Goddard Riverside Community Ctr., 86 A.D.3d 18, 23 [1st Dept. 2011]. The movant does not need, however, to “tender conclusive proof beyond any factual dispute.” *Id.* Defendant has tendered sufficient proof showing that the Courtyard Roof falls under the General Common Elements and therefore Plaintiff requires Defendant’s permission before installing equipment through said space.

The Other Two Prongs Also Favor Defendant

Defendant has also adequately shown that there is a potential for irreparable injury. Plaintiff’s proposed plans would involve drilling into the building’s façade. Plaintiff’s counsel also sent Defendant a letter in September of this year threatening to commence work on the ventilation shaft without Defendant’s approval. Furthermore, the Second Department has found that the installation of equipment in a condominium’s common areas can constitute irreparable harm such that would justify the granting of a preliminary injunction preventing such a construction. *Stockley v. Gorelik*, 24 A.D.3d 535, 536 [2nd Dept. 2005]. And finally, the balance of the equities favors Defendant. Not only would preventing installation of the vent maintain the status quo, but Plaintiff’s counsel represented in a hearing on this matter held October 31, 2025, that they now intend to refrain from installing the vent absent court permission or resolution of this matter. Therefore, Defendant has established entitlement to their preliminary injunction. As the Court is granting the primary relief sought in Defendant’s order to show cause, it will not reach the issue of the alternative relief they seek. Accordingly, it is hereby

ADJUDGED that motion sequence no. 001 is granted as to the primary relief sought; and it is further

ADJUDGED that motion sequence no. 002 is denied; and it is further

ORDERED that Plaintiff JZ Villa Realty Corp., or any other person acting on its behalf, is hereby enjoined from taking any action to vent the Commercial Unit into the Condominium's Common Elements of the building located at 250 W. 88th Street, New York, New York, including, but not limited to, the Courtyard Roof during the pendency of this action through a final adjudication on the merits or a court order expressly permitting such installation.

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10/31/2025
DATE

LYLE E. FRANK, 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