

**239 Elizabeth Realty LLC v Beltrez**

2025 NY Slip Op 34290(U)

November 13, 2025

Supreme Court, New York County

Docket Number: Index No. 151495/2023

Judge: Denis Reo

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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. DENIS REO PART 65

Acting Justice

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239 ELIZABETH REALTY LLC,

Plaintiff,

- v -

JOSE BELTREZ, LAURA GORDON, JOHN DOE, JANE DOE

Defendant.

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INDEX NO. 151495/2023

MOTION DATE 08/13/2025

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

By order dated January 25, 2024, the Honorable Shlomo Hagler preliminarily enjoined defendant Jose Beltrez (defendant) from entering the building located at 239 Elizabeth Street, New York, New York. Defendant is a tenant in an apartment in the building. Defendant now moves by order to show for an order vacating and lifting the preliminary injunction on the ground that he has successfully completed inpatient treatment and rehabilitation at Su Casa Residential Treatment Center (Su Casa) and has demonstrated the capacity to refrain from the objectionable and nuisance-related conduct that gave rise to the preliminary injunction. In support of the motion, defendant submits his own affirmation as well as affirmations from the Medical Director at Su Casa, a Doctor of Nursing Practice at Su Casa, a social worker Su Casa and a counselor at Su Casa. Plaintiff 239 Elizabeth Realty LLC (plaintiff) opposes the order to show cause. Defendant's prior application to have the preliminary injunction lifted was denied by Justice Hagler without prejudice, apparently on the ground that the affirmation submitted by defendant was insufficient.

The affirmation of Dr. Gallo, Medical Director at Su Casa, states that during defendant's nearly fifteen (15) months of continuous residential treatment, defendant completed the core components of his treatment. According to Dr. Gallo, defendant was successfully weaned off methadone and is currently on no medication-assisted treatment for substance use disorder. Dr. Gallo states that defendant is medically stable and all of his chronic medical conditions have been properly managed and brought under control. Dr. Gallo further states that defendant has responded positively to therapeutic interventions and is now clinically appropriate for discharge into the community. Dr. Gallo indicates that defendant's recovery plan includes outpatient treatment for substance abuse, mental health and medical follow-up to maintain defendant's progress. It is Dr. Gallo's professional opinion that defendant is now capable of refraining from the objectionable and nuisance-related conduct that initially gave rise to the preliminary injunction. The affirmations submitted by Su Casa's licensed social worker, counselor and Doctor of Nursing Practice are virtually identical to the affirmation submitted by Dr. Gallo.

The law of case doctrine is a rule of practice, an articulation of sound policy, that, when an issue is once judicially determined, that should be the end of the matter as far as judges and courts of co-ordinate jurisdiction are concerned (*Abbas v Cole*, 44 AD3d 31, 37 [2d Dept 2007]). Although the preliminary injunction issued in this matter is not the law of the case since it is a provisional remedy (*Icy Splash Food & Bev., Inc. v Henckel*, 14 AD3d 595 [2d Dept 2005]), the standard for vacating the preliminary injunction, as stated by Justice Hagler in his January 25, 2024 order, is the law of the case for the purpose of resolving this order to show cause. Therefore, in order to vacate the preliminary injunction, per Judge Hagler's order, defendant must "demonstrate through testimony from appropriate medical and/or professional personnel an ability to refrain from the delineated objectionable and nuisance-type conduct and behavior

(potentially after assistance rendered in an appropriate facility) as well as an absence of that conduct and behavior” (NYSCEF Doc. No. 86). The affirmations submitted by defendant are insufficient to satisfy this standard. In the context of a motion for summary judgment, an expert opinion that is conclusory, speculative and/or not based upon the facts in the record is insufficient to satisfy the moving party’s prima facie burden or to raise an issue of fact in response to a prima facie showing (*see generally Diaz v New York City Health & Hosps. Corp.*, 223 AD3d 516 [1<sup>st</sup> Dept 2024]). None of the affirmations submitted by defendant address, or even mention, the “objectionable and nuisance-type conduct” that defendant engaged in and that gave rise to the preliminary injunction barring him from his apartment building. Without expressly addressing defendant’s “nuisance-type” conduct and establishing that the treatment defendant received at Su Casa has rectified such conduct, the opinions of defendant’s treatment providers that defendant is now capable of refraining from such behavior are speculative and conclusory. Because the welfare and safety of the other tenants in the building is of paramount concern, defendant cannot be allowed to return to the apartment building without a more detailed and factual-oriented showing by his medical and professional care providers. Therefore, defendant’s motion to lift the preliminary injunction is DENIED. However, because a preliminary injunction is only meant to preserve the status quo until a decision is reached on the merits, and since the preliminary injunction in this matter has been in place for nearly a year, plaintiff is directed to move for a permanent injunction within sixty (60) days of the date of this order.

Accordingly, it is hereby

ORDERED that defendant's order to show cause is denied and the preliminary injunction remains in effect; and it is further

ORDERED that plaintiff is to move for a permanent injunction within sixty (60) days of the date of this order.

*Denis Reo*

11/13/2025

DATE

DENIS REO, A.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