Studio Brooklyn, LLC v 90 S 8th, LLC
2025 NY Slip Op 34299(U)
November 12, 2025
Supreme Court, Kings County
Docket Number: Index No. 511795/25
Judge: Wavny Toussaint

At an IAS Term, Part 70 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 12th day of November, 2025.

P R E S E N T:

HON. WAVNY TOUSSAINT,
Justice.

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STUDIO BROOKLYN, LLC and ELECTRIC GARDEN, LLC,

Plaintiffs,

- against -

90 S 8TH LLC,

Defendant.

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Index No. 511795/25

DECISION AND ORDER

The following e-filed papers read herein:	NYSCEF Doc Nos.
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations)	2-17, 22-24
Opposing Affidavits (Affirmations)	34-40, 46, 48
Reply Affidavits (Affirmations)	56-60

Upon the foregoing papers, plaintiffs Studio Brooklyn, LLC (Studio Brooklyn) and Electric Garden, LLC (Electric Garden) (collectively, Plaintiffs or Tenants) move, by Order to Show Cause (OSC) (Seq. 01), for an order, pursuant to CPLR § 6301, granting them a preliminary injunction enjoining defendant 90 S 8TH, LLC (Defendant or Landlord) from: (1) commencing any action or proceeding to remove them from the commercial building located at 90 S. 8th Street, Brooklyn, New York (Premises) based upon the expiration of the lease, and/or any purported failure to exercise the option to renew the

lease; (2) interfering with Tenants' rights to use and occupy the Premises pursuant to the lease; and (3) marketing or leasing the Premises to a third party (NYSCEF Doc No. 22). Defendant opposes the motion.

Background

On April 8, 2025, Tenants commenced this action by filing a summons and a verified complaint alleging that "[p]laintiffs are the commercial tenants of the entire Building pursuant to a written triple net lease agreement with Defendant, dated June 1, 2015 (the 'Lease'), for a term that commenced on May 1, 2015, having an expiration date of April 30, 2025". The lease further provided that "[t]he Premises were rented for purposes of a music production studio and multi-media services, as well as administrative services related thereto" (Complaint at ¶¶ 5-6).

The complaint alleges that "[w]hen Tenants took possession of the Premises it was a dilapidated former factory which required substantial demolition and structural repairs to make the Building safe and bring it up to code" (*id.* at ¶ 9), and that they "took the Premises 'as is,' and, with the exception of a one-time payment by Landlord of $48,500.00 . . . [they] were responsible for making all repairs, improvements, and alterations to make the Premises suitable for Tenants' occupancy and to comply with applicable laws" (*id.* at ¶ 8). Tenants allegedly invested approximately $490,000.00 "to repair, construct, and ready the space for their intended use . . ." and "paid approximately $160,000 in rents and real estate taxes over the course of two and a half years while construction was ongoing" (*id.* at ¶ 10).

Paragraph E of the Lease Rider provides that if Tenants are not in default, they have "an option to renew the Lease for a five (5) year term at the then fair market rental value (the 'Option'), provided Tenants gave written notice, no less than one hundred and twenty days (120) in advance of the [April 30, 2025] Lease expiration, of their intent to exercise the Option[,]" which Tenants specifically negotiated "given their substantial expenditure necessary to build out, repair and equip the Premises . . ." (*id.* at ¶¶ 11-12).

The complaint alleges that under Paragraph 27 of the Lease, "notices from Tenants to Landlord were to be served by registered or certified mail addressed to Landlord at 805 Driggs Avenue, 1st Floor, Brooklyn, NY 11211, or such other address as Landlord shall designate by written notice" (*id.* at ¶ 13). However, the complaint further alleges that "[s]ince at least 2023, there have been issues with the delivery of mail to Landlord at the address provided for in the Lease, and mailings sent by Tenants by first class and certified mail to Landlord were regularly returned to Tenants as undeliverable" (*id.* at ¶ 15). The complaint alleges that "the parties established a course of conduct serving to modify the notice provision of the Lease to permit service of notices by e-mail and/or the lockbox" (*id.* at ¶ 18).

The complaint alleges that Tenants exercised the Option to renew the Lease by a January 2, 2024 notice sent to the Landlord by email and placed in the lockbox at the Premises and that Tenants "relied upon the parties' course of conduct and business by e-mail and through the lockbox in exercising the Option" (*id.* at ¶¶ 19-21). Regarding the January 2, 2024 Option notice, the complaint alleges that:

> "Tenants clearly expressing their intention to exercise the Option by stating: '[t]hat lease offered the option of extension, and we would very much like to continue upon similar lease terms with you.' Since the Lease provides that the rent during the renewal term shall be based on the 'fair market rental value of the [P]remises,' Tenants requested a discussion regarding this term and proposed a monthly rent schedule. Additionally, while exercising the Option, Tenants also presented an alternative offer to renew the lease for an additional ten (10) year term" (*id.* at ¶ 19; *see also* NYSCEF Doc No. 11).

Although Landlord allegedly acknowledged receipt of Tenants' January 2, 2024 notice regarding the Option to renew (Complaint at ¶ 22), Landlord's counsel, more than one year later, sent a February 5, 2025 letter to Tenants advising them that their January 2, 2024 notice regarding the renewal Option was not a timely or proper exercise of the Option (*id.* at ¶ 25). By a March 11, 2025 letter, Landlord's counsel asserted that "Lease paragraph 27 required notices to be sent by registered or certified mail, and that no notice exercising the Option was served in accordance therewith" (*id.* at ¶ 27). The complaint alleges that "Landlord has failed and refused to acknowledge that Tenants properly exercised the Option and/or are entitled to renew the Lease, or to engage in good faith discussions to determine the fair market value of the Premises to establish the rent for the renewal term" (*id.* at ¶ 29).

The complaint asserts causes of action for: (1) a judgment declaring that Tenants validly exercised their Option to renew the Lease on January 2, 2024, any objection to the manner of service of which was waived and/or excused by Landlord, and Tenants are entitled to renew the Lease for an additional five (5) year term commencing May 1, 2025,

with the rent to be determined based upon the fair market rental value of the Premises; (2) an injunction enjoining the Landlord from: (a) commencing any action or proceeding to remove Tenants from the Premises based upon the expiration of the Lease and/or any purported failure to exercise the Option; (b) interfering with Tenants' rights to use and occupy the Premises, pursuant to the Lease; and (c) marketing or leasing the Premises to a third party; or (3) a judgment declaring that Tenants are entitled to renewal of the Lease on equitable grounds based on Tenants' "excusable default, substantial investments to the premises and a valuable interest in the leasehold interest" and the absence of prejudice to the landlord.

The Parties' Contentions

Tenants' Instant Order to Show Cause

Contemporaneously with the commencement of this action, Tenants moved, by OSC, for an order, pursuant to CPLR 6301, granting them a preliminary injunction enjoining Landlord from: (1) commencing any action or proceeding to remove Tenants from the Premises based on the expiration of the Lease and/or Tenants' failure to exercise the Option; (2) interfering with Tenants' rights to use and occupy the Premises; and (3) marketing or leasing the Premises to a third party (NYSCEF Doc No. 22).

Tenants submit an affirmation from Benjamin Kane (Kane), a member of Electric Garden, who authenticates and describes the Lease (NYSCEF Doc No. 6 at ¶¶ 1-4 and NYSCEF Doc No. 7). Kane reiterates the allegations in the complaint regarding Tenants' substantial investment in the Premises, the Option to renew the Lease, the notice provision

under Paragraph 27 of the Lease, the "issues with the delivery of mail to Landlord at the address provided for in the Lease . . ." and Tenants' January 2, 2024 notice that they were exercising the Option to renew the Lease, which was emailed to the Landlord and placed in a lockbox at the Premises based on the parties' ongoing course of conduct since 2023 (NYSCEF Doc No. 6 at ¶¶ 3-18).

Kane affirms that "Landlord acknowledged receipt of Tenants' notice on March 20, 2024, indicating it 'need[ed] time to discuss,' and when Tenants sent an e-mail on October 22, 2024, following up about renewal terms, Landlord again acknowledged Tenants' exercise notice and requested additional time to begin discussions due to internal issues to be worked out" (*id.* at ¶ 19). Tenants submit as Exhibit F, an email chain, including: (1) Kane's January 2, 2024 email to the Landlord to exercise Tenants' Option to renew the Lease; (2) Kane's March 19, 2024 email to the Landlord trying to confirm Landlord's receipt of the January 2, 2024 notice; (3) the Landlord's March 20, 2024 email responding "[t]hanks for the reminder of the lease agreement, we need time to discuss"; (4) Kane's October 22, 2024 follow up email; (5) Landlord's November 1, 2024 email advising that "[w]e can't respond to your proposal, because internally we have some issues we need to sort out[,]" "[t]his matter requires legal assistance and we're hopeful they can resolve our differences as soon as possible" and "[o]nce our issues are settled, we'll discuss your proposal" (NYSCEF Doc No. 12).

Kane affirms that "Landlord indisputably received the e-mail copy of the [January 2, 2024] exercise notice, as it responded thereto, and did not raise any objection to the

manner of service . . .” and “Tenant relied to its detriment on the established method of notice and delivery in e-mailing the Option exercise and . . . Defendant’s claim that it needed ‘more time’ to work out the rent to be charged for the Option term” (*id.* at ¶¶ 20-21). Kane argues that “Landlord should be estopped from claiming that the method of notice was improper when it itself modified the Lease notice provision by engaging in a course of conduct demanding that rent be delivered to the lockbox, along with communicating with Plaintiffs by e-mail, only” (*id.* at ¶ 28). Kane further asserts that “[d]enial of the requested injunction risks a forfeiture of Plaintiffs’ significant investment in the Premises and the valuable goodwill that Plaintiffs have established at the present location over the past ten (10) years” (*id.* at ¶ 31).

Tenants submit a memorandum of law arguing that “[t]he record . . . establishes a likelihood of success on the merits of Plaintiffs’ claim for [a] declaration that their exercise of the Option was valid, warranting the grant of the requested preliminary injunction” and that they “have sought a declaration, in the alternative, that they are entitled to renewal of the Lease on equitable grounds” (NYSCEF Doc No. 18 at 5-6). Tenants assert that:

> “[a]s established in [the] Kane Affirmation, while the exercise letter was not served in the manner set forth in the Lease’s notice provision, such means were unreliable in providing actual notice to Landlord, and given the parties’ course of conduct in communicating by e-mail and through the lock-box, strict compliance should be excused. Plaintiffs have established their substantial improvements to the Premises, and the absence of prejudice to the Landlord, who indisputably received the exercise notice long before the deadline to provide notice expired. Plaintiffs have therefore also established a

> likelihood of success on their claim for a renewal on equitable grounds (*id.* at 6).

Tenants assert that "[t]he potential loss of [their] valuable leasehold interest in the Premises, the substantial investment made by [them] into the Premises and the goodwill created at the location . . ." warrants an injunction to maintain the status quo (*id.* at 7). Tenants argue that the equities favor them, "given their substantial investment in repairing, constructing and equipping the Premises, which they did in reliance on their right to renew the Lease term . . ." (*id.*).

Landlord's Opposition

The Landlord, in opposition, submits an affirmation from Scott Kwong (Kwong), a managing member of 90 S 8TH LLC, who affirms that:

> "Plaintiffs' motion for a preliminary injunction must fail because Plaintiffs' request for a 10-year extension exceeds the maximum 5-year renewal term allowed by the Lease, does not comply with the terms outlined in the Lease, and Plaintiffs have failed to timely and effectively exercise their option to renew the Lease for an additional five (5) years at a rent based upon the then fair market value. Thus, Plaintiffs fail to show a likelihood of success on the merits or a balancing of the equities in their favor" (NYSCEF Doc No. 34 at ¶ 2).

Although Tenants' January 2, 2024 email stated that "[the] lease offered the option of extension, and we would very much like to continue *upon similar lease terms* with you" (NYSCEF Doc No. 11 [emphasis added]), Kwong affirms that "Landlord did not consider Tenants' proposal to be an exercise of Tenants' option to renew the Lease since it did not accord with the 5-year renewal term or the fair market rental value under the option to

renew" (NYSCEF Doc No. 34 at ¶ 11). Kwong also asserts that "[a]t no time did Landlord dispense with the requirement of registered or certified mail notice even if Tenants wished to supplement such notice with emails and/or [a] lockbox" (*id.*).

Kwong contends that "[t]here is no inequity or hardship to Tenants" since they "received the benefit of their expenditures to build out, repair, and equip the Premises during the 10 year term of the Lease" (*id.* at ¶ 16). Kwong asserts that "[t]here is no inequity and Tenants have only themselves to blame if they experience any hardship over their failure to timely and properly exercise the option to renew" (*id.* at ¶ 23).

Kwong argues that if an injunction is issued, Tenants are required to post an undertaking in an amount to be fixed by the court, pursuant to CPLR 6312 (b), "as security for the potential liability for past and ongoing use and occupancy pursuant to the lease" (*id.* at ¶¶ 3 and 26). Kwong explains that "[i]n 2015, Landlord and Tenants agreed to an extremely low $5,000.00 per month initial minimum base rent because . . . the Building then was a dilapidated former factory which required substantial demolition and structural repairs to make it safe and bring it up to code" (*id.* at ¶ 5). After Tenants made substantial renovations to the Premises, Kwong asserts that "[t]he blended rate for the first and second floors is $55 per square foot, or $17,082.00 per month for the current fair market rental value of the Building"[1] (*id.* at ¶ 29). Kwong asserts that "Tenants currently are paying $6,523.88 per month which is $10,666.90 per month below the current $17,190.78 per

[1] Landlord also submits an affirmation from Richard Wong, a licensed real estate broker, who estimated the annual fair market rental value of the renovated Premises (NYSCEF Doc No. 36).

month market rental value for the Building" and projects that "[o]ver a 12 month period, the Landlord will lose $128,002.80 in fair market rental income . . ." (*id.* at ¶¶ 31-32). Kwong thus asserts that "the undertaking initially should be fixed at no less than $128,002.80, subject to increase if the case continues for more than one year" (*id.* at ¶ 33).

Tenants' Reply

Tenants, in reply, submit an affirmation from Kane who affirms that Tenants' January 2, 2024 notice clearly expressed their intention to exercise the Option to renew the Lease because the notice explicitly stated that the "lease offered *the option of extension*, and we would very much like to continue upon similar lease terms with you" (NYSCEF Doc No. 58 at ¶ 5). Kane asserts that:

> "[t]here is no other 'option' provision in the Lease conferring any rights by Tenants to renew or extend, and the reference in our notice was clearly invoking the Option provision set forth in Rider Paragraph E. While we also included a proposal to extend/renew the Lease for an additional ten (10) years, implicit in that proposal was a request that the Lease be renewed for at least an additional five (5) year term" (*id.*).

Kane asserts that "Tenants sent the January 2, 2024 exercise notice [by] e-mail and by placing a copy in the lockbox, together with that month's rent payment (which was promptly retrieved, and the check cashed)" (*id.* at ¶ 6). Kane notes that "[i]t was not until Landlord's counsel's March 11, 2025 letter (over a year later and well after the exercise deadline), that Landlord raised any issue as to the manner of service of the January 2, 2024 Option notice . . ." (*id.* at ¶ 7).

Kane asserts that "Landlord concedes that a notice setting forth Tenants' intention

to exercise the Option was ultimately served by certified mail . . . on or about January 14, 2025" and Landlord cannot claim prejudice regarding that "brief delay in service of that notice" since Landlord was "aware of Plaintiffs' intention to exercise the Option for over a year at that point" (*id.* at ¶ 8).

Finally, Kane asserts that "Landlord's estimation of the fair market value of the Premises (which is submitted in support of its request for an undertaking) is far exaggerated and not grounded in reality or what the market demands" (*id.* at ¶ 10). Kane explains that the Landlord's description of the Premises as "fully renovated commercial music studios and offices" is misleading since Tenants own all furniture, decor, light fixtures, music production and soundproofing equipment and other "trade fixtures," pursuant to Paragraph 3 of the Lease (*id.* at ¶ 11). Kane thus asserts that "[t]he fair market rental value of the space should not be based upon the value including Tenants' property . . ." (*id.*).

Kane argues that the Landlord's real estate broker's estimate of the annual fair market rental value of the Premises is inaccurate because his valuation of the second floor is based on multi-story, high-end office buildings with large windows, which are not comparable to the Premises, a two-story building with no windows or natural light (*id.* at ¶ 12). In addition, Kane asserts that the defendant's expert's "reliance on 'commercial ground floor retail spaces' for the fair market value of the ground floor is misplaced, given that there is no retail 'storefront' [and] the Building is not presently legally occupiable as 'retail space' . . ." (*id.*). Kane asserts that Landlord's real estate broker's valuation based on purportedly "comparable" properties in "prime" areas of Williamsburg do not take into

account the location of the Premises or "that Plaintiffs are triple-net lessees of the entirety of the Building who bear responsibility for the costs of maintaining, repairing, and operating the property, including paying property taxes, which must be factored into the fair market rental value . . ." (*id.* at ¶ 13).

Kane references the affirmation and expert report of Tiana H. Ramalanjaona, Tenants' licensed real estate appraiser, who determined that the present fair market rental value for a triple net lease of the Premises is $25 per square feet, which amounts to a monthly rent of $7,764.58 based on the Landlord's estimate of the square footage of the Premises (3,727 square feet) (*id.* at ¶ 14; NYSCEF Doc Nos. 59-60). Kane also argues that any undertaking from Tenants should be minimal.

Discussion

Tenants' Injunction Request

"Although the purpose of a preliminary injunction is to preserve the status quo pending a trial, the remedy is considered a drastic one, which should be used sparingly. As a general rule, the decision to grant or deny a preliminary injunction lies within the sound discretion of the court. In exercising that discretion, the court must determine if the moving party has established: (1) a likelihood of success on the merits, (2) irreparable harm in the absence of an injunction, and (3) a balance of the equities in favor of the injunction" (*Trump on the Ocean, LLC v Ash*, 81 AD3d 713, 715 [2d Dept 2011] [internal citations omitted]).

"An election to renew must be timely, definite, unequivocal, and strictly in compliance with the terms of the lease" (*Laundry Mgmt.-N. 3rd St., Inc. v BFN Realty*

Assocs., LLC, 179 AD3d 776, 778 [2d Dept 2020]). "Although the general rule is that a tenant that fails to exercise an option to renew within the time and in the manner provided in the lease is without remedy at law (*Dan's Supreme Supermarkets v Redmont Realty Co.*, 240 AD2d 460, 461 [1997]), equity will intervene to relieve a commercial tenant's failure to exercise an option to renew within the time and in the manner provided in the lease 'where (1) such failure was the result of 'inadvertence,' 'negligence' or 'honest mistake'; (2) the nonrenewal would result in a 'forfeiture' by the tenant; and (3) the landlord would not be prejudiced by the tenant's failure to send, or its delay in sending, the renewal notice'" (*Laundry Mgmt.-N. 3rd St., Inc.*, 179 AD3d at 778-779; *see also Baygold Assocs., Inc. v Congregation Yetev Lev of Monsey, Inc.*, 19 NY3d 223, 225 [2012]; *Bench 'N' Gavel Rest., Ltd. v Time Equities, Inc.*, 169 AD2d 755, 756 [2d Dept 1991]).

Here, Tenants failed to establish that they exercised the Option to renew the Lease in the manner provided in the Lease. Indeed, they admit that their January 2, 2024 Option to renew notice was not sent in strict compliance with Paragraph 27 of the Lease, which provides that "[a]ny notice by Tenant to Owner must be served by registered or certified mail addressed to Owner at the address first hereinabove given or at such other address as Owner shall designate by written notice" (NYSCEF Doc No. 7 at ¶ 27).

However, Tenants reasonably believed that they provided timely and adequate notice to Landlord of their intent to exercise their Option to renew the Lease through the January 2, 2024 notice sent to the Landlord by email and placed in the lock box at the Premises. The tenants' submission supports an honest mistake based on the parties' course

of conduct of using a lockbox and email to communicate since 2023, after Tenants' communications mailed to the Landlord at the address designated in the Lease were returned undelivered. In addition, Landlord confirmed receipt of the January 2, 2024 notice, and failed to object to the manner in which the Tenants exercised the Option until February 5, 2025, more than one year later. Had Landlord timely objected to the manner in which the January 2, 2024 Option to renew was exercised, Tenants could have sent the January 2, 2024 notice by registered or certified mail well in advance of the deadline to exercise the Option.

Further, Tenants spent nearly $500,000.00 making substantial renovations to the formerly dilapidated Premises, which was more than sufficient to constitute a forfeiture justifying equitable relief. If Tenants were evicted from the subject commercial leasehold at the Premises, they would stand to lose the major improvements worth half a million dollars made by them during the course of the lease term and the good will that they established during their 10-year tenancy at the Premises.

Finally, the Landlord was not prejudiced by Tenants' failure to properly send the January 2, 2024, Option notice to renew the Lease by registered or certified mail, since Landlord acknowledged receipt of Tenants' January 2, 2024 notice to exercise the Option more than one year before the Lease was due to expire in April 2025. Furthermore, any arguable prejudice to the Landlord due to Tenants' failure to send the January 2, 2024 notice to exercise the Option to renew by registered or certified mail is clearly outweighed

by the prejudice to the Tenants of the loss of the leasehold (*Pepe's Shamrock, Inc. v Vecchio*, 128 AD2d 599, 600 [2d Dept 1987]).

Because Tenants have demonstrated that their failure to exercise the Option to renew the Lease in strict compliance with the Lease was the result of an excusable default based on their honest mistake. Tenants also demonstrated a likelihood of success on the merits, that they would suffer irreparable harm without an injunction and that the equities lie in their favor. Under these circumstances, a preliminary injunction is warranted to maintain the status quo pending the outcome of the case.

Use and Occupancy

The Second Department has held that in such circumstances, the court should also direct Tenants to pay monthly use and occupancy in the amount of rent and any additional rent due under the Lease as if the Lease were validly renewed, and that the parties shall comply with and perform all non-monetary obligations under the Lease during the pendency of this action (*Karr Graphics Corp. v Spar Knitwear Corp.*, 192 AD3d 673, 676-677 [2d Dept 2021]). Here, the Tenants' real estate expert credibly determined that the current fair market rental value for a triple net lease of the Premises is $25 per square foot, which amounts to a monthly rent of $7,764.58 calculated based on Landlord's estimate that the Premises is 3,727 square feet.

In contrast, Landlord's real estate expert improperly appraised the rental value of the Premises without considering Tenants' triple net Lease, requiring Tenants to maintain the Premises, including payment of the property taxes. Landlord's real estate appraiser also

offers an inflated monthly rental value of $17,190.78 for the Premises based on commercial properties in Williamsburg that have large windows and retail space on the ground floor, which are not comparable to the Premises. Consequently, this court has determined that Tenants shall pay Landlord monthly use and occupancy in the amount of $7,764.58, and any additional rent due under the Lease as if the Lease were validly renewed, during the pendency of this action.

The Undertaking

"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'" (*2339 Empire Mgmt., LLC v 2329 Nostrand Realty, LLC*, 71 AD3d 998, 999 [2d Dept 2010]). The fixing of the amount of an undertaking when granting a motion for a preliminary injunction is within the sound discretion of the court (*Congregation Erech Shai Bais Yosef, Ins. v Werzberger*, --- N.Y.S.3d ---, 2025 WL 2922150, *2 [2d Dept 2025]). "The amount [of the undertaking] must not be based upon speculation and must be rationally related to the damages the nonmoving party might suffer if the court later determines that the relief to which the undertaking relates should not have been granted" (*Id.,* [internal quotations omitted]). Where defendant has not demonstrated that it will suffer any undue hardship as a result of the injunctive relief, courts have set the undertaking at a nominal amount (*see Wright v Lewis*, 21 Misc.3d 1120 [A], *14 - *16 [Sup Ct Kings

County 2008] [court set undertaking, pursuant to CPLR 6312 (b), at the nominal amount of $100.00]).

Here, Kwong, on behalf of the Landlord, confirmed that Tenants are currently paying $6,523.88 per month to lease the Premises, which is $1,240.70 less than the current $7,764.58 per month market rental value for the Premises that Tenants are hereby ordered to pay during the pendency of this action. Given the increase in monthly rent during the pendency of this action to reflect the current market value, and the Landlord's failure to demonstrate that it will suffer any undue hardship as a result of the injunctive relief granted, a minimal undertaking in the amount of $23,293.74, the equivalent of three-months of fair market rent for the Premises, is required prior to the issuance of the preliminary injunction.

Conclusion

Accordingly, it is hereby

ORDERED, that the Tenants' motion (Seq. 01) for a preliminary injunction, pursuant to CPLR § 6301, is granted upon the conditions set forth below and the Landlord is enjoined, pending the outcome of this action, from: (1) commencing any action or proceeding to remove Tenants from the Premises based upon the expiration of the Lease and/or any purported failure to exercise the Option to renew the Lease; (2) interfering with Tenants' rights to use and occupy the Premises; and (3) marketing or leasing the Premises to a third party; and it is further

ORDERED, that Tenants shall pay Landlord monthly use and occupancy in the amount of $7,764.58 and any additional rent due under the Lease as if the Lease were

validly renewed during the pendency of this action, and the parties shall comply with and perform all non-monetary obligations under the Lease during the pendency of this action; and it is further

ORDERED, that Tenants shall give an undertaking in the amount of $23,293.74, pursuant to CPLR § 6312 (b), within twenty (20) days after service of this decision and order with notice of entry thereof.

This constitutes the decision and order of the Court.

E N T E R

J. S.C.

HON. WAVNY TOUSSAINT
J. S. C.

KINGS COUNTY CLERK
FILED
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