

Nasdaq, Inc. v 4TS II LLC
2026 NY Slip Op 31305(U)
March 30, 2026
Supreme Court, New York County
Docket Number: Index No. 650977/2026
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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NASDAQ, INC.,

Plaintiff,

- v -

4TS II LLC,

Defendant.

INDEX NO. 650977/2026

MOTION DATE _____

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

-----X

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 17, 23, 24, 25, 26, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73,74, 75, 76, 82, 83, 84, 85

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

In motion sequence 001, plaintiff Nasdaq, Inc. (Tenant) moves for a Yellowstone injunction,

“enjoining and restraining Landlord, and its employees, servants, agents, attorneys, affiliates, partners, and all other persons acting on behalf of or in concert with Landlord, during the pendency of this action, from:

1. Taking any action cancelling, terminating, modifying, or otherwise altering the lease, dated October 13, 2009, as amended, between [Tenant] and Landlord (the ‘MarketSite Lease’) for the premises at 4 Times Square, New York, New York (the ‘Premises’);
2. Taking any action cancelling, terminating, modifying, or otherwise altering the lease, dated February 6, 2018 (the ‘Office Lease,’ together with the ‘MarketSite Lease’ the ‘Leases’), between [Tenant] and the Landlord (the ‘Office Lease’) for the premises at 4 Times Square, New York, New York (the ‘Premises’);
3. Commencing any action or proceeding in furtherance of evicting [Tenant] from the Premises, or otherwise disturbing in any manner the possession and rights of [Tenant] in and to the Premises based upon the Notice of Default served by Landlord, dated January 13, 2026 (the ‘Office Lease Default Notice’); [and]
4. Commencing any action or proceeding in furtherance of evicting [Tenant] from the Premises, or otherwise disturbing in any manner the possession and rights of

[Tenant] in and to the Premises based upon the Notice of Default served by Landlord, dated January 13, 2026 (the 'MarketSite Lease Default Notice,' together with the 'Office Lease Default Notice,' the 'Default Notices')." (NYSCEF Doc. No. [NYSCEF] 24, Order to Show Cause at 1-2.)

Additionally, Tenant asks the court to "[t]oll[] the thirty (30) day cure period set forth in the Leases and the Default Notices; and [] [a]ward [Tenant] attorneys' fees and costs." (*Id.*)

Defendant 4TS II LLC (Landlord) served Tenant with notices of default dated January 13, 2026, objecting to Tenant's use of the premises for third-party events. (NYSCEF 4, Office Lease Default Notice; NYSCEF 5, MarketSite Default Notice.) Specifically, Landlord objects to the use of Tenant's space by unaffiliated entities or persons for payment. (*Id.*) Landlord is particularly offended by Tenant advertising the premises as an event space for use by persons or entities unaffiliated with NASDAQ. (See e.g. NYSCEF 4, Default Notice, Rules and Regulations ¶ 12 at 55/59 [NYSCEF pagination]; NYSCEF 4, Default Notice, Event Space Advertising at 16/59 to 23/59 [NYSCEF pagination].) Tenant had until February 18, 2026 to cure. (*Id.*; NYSCEF 5, Default Notice.) On February 17, 2026, Tenant filed this action seeking a Yellowstone injunction. The issue is whether Tenant's use of the premises for profit by hosting events for unaffiliated persons or entities is a violation of the leases.¹

The purpose of a Yellowstone injunction is to stop the running of the applicable cure period. (*Post v 120 East End Ave. Corp.*, 62 NY2d 19, 25-26 [1984].)

"A *Yellowstone* injunction maintains the status quo so that a commercial tenant, when confronted by a threat of termination of its lease, may protect its investment in the leasehold by obtaining a stay tolling the cure period so that upon an adverse determination on the merits the tenant may cure the default and avoid a

¹ Tenant holds two leases at the premises for various floors at 4 Times Square including setbacks. (NYSCEF 2, MarketSite Lease; NYSCEF 3, Office Lease.)

forfeiture.” (*Graubard Mollen Horowitz Pomeranz & Shapiro v 600 Third Ave. Assocs.*, 93 NY2d 508, 514 [1999].)

For the court to grant a Yellowstone injunction, Tenant must demonstrate that:

“(1) it holds a commercial lease; (2) it received from the landlord either a notice of default, a notice to cure, or a threat of termination of the lease; (3) it requested injunctive relief prior to the termination of the lease; and (4) it is prepared and maintains the ability to cure the alleged default by any means short of vacating the premises”. (*Id.* [citation omitted].)

Unlike other injunctions, Tenant need not demonstrate likelihood of success on the merits. (*Podolsky v Hoffman*, 82 AD2d 763, 763 [1st Dept 1981].) Rather, a tenant seeking a Yellowstone injunction need only “deny the alleged breach of its lease.” (*Artcorp Inc. v Citirich Realty Corp.*, 124 AD3d 545, 546 [1st Dept 2015] [citation omitted].) While the tenant “must also convince the court of its desire and ability to cure” (*American Airlines, Inc. v Rolex Realty Co.*, 165 AD2d 701, 702 [1st Dept 1990]), where tenant denies it is in default, as opposed to admitting default and needing more time to cure, it need only allege that it is “willing and prepared to cure any default.” (*Wharton v 388 Broadway*, 237 AD3d 72, 80 [1st Dept 2025]).

As stated on the record on March 30, 2026, Tenant’s motion is granted because Tenant satisfied the elements for a Yellowstone injunction.

Accordingly, it is

ORDERED that Tenant’s motion for a Yellowstone injunction is granted; and it is further

ORDERED that the undertaking is fixed in the sum of \$500,000 conditioned that the Tenant, if it is finally determined that it was not entitled to an injunction, will pay to

Landlord all damages and costs which may be sustained by reason of this injunction;
and it is further

ORDERED that Landlord, its agents, servants, employees and all other persons acting under the jurisdiction, supervision and/or direction of defendant, are enjoined and restrained, during the pendency of this action, from doing or suffering to be done, directly or through any attorney, agent, servant, employee or other person under the supervision or control of Landlord or otherwise, any of the following acts:

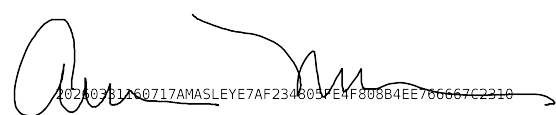
1. Taking any action to cancel or terminate, the lease dated October 13, 2009, as amended, between Nasdaq and Landlord (MarketSite Lease) for the premises at 4 Times Square, New York, New York (Premises), with respect to alleged defaults stated in the default notices;
2. Taking any action to cancel or terminate, the lease, dated February 6, 2018 (Office Lease) together with the MarketSite Lease the Leases), between Nasdaq and the Landlord (the Office Lease) for the premises at 4 Times Square, New York, New York (the Premises) with respect to alleged defaults stated in the default notices;
3. Commencing any action or proceeding in furtherance of evicting Nasdaq from the Premises, or otherwise disturbing in any manner the possession and rights of Nasdaq in and to the Premises based upon the Notice of Default served by Landlord, dated January 13, 2026 (the Office Lease Default Notice); and
4. Commencing any action or proceeding in furtherance of evicting Nasdaq from the Premises, or otherwise disturbing in any manner the possession

and rights of Nasdaq in and to the Premises based upon the Notice of Default served by Landlord, dated January 13, 2026 (the MarketSite Lease Default Notice); and it is further

ORDERED that the thirty-day cure periods set forth in the Leases and the Default Notices are tolled until further order of this court; and it is further

ORDERED that the parties shall meet and confer to draft a stipulation as to lobby procedures including but not limited to: (1) Tenant shall give weekly notice of events to Landlord. Notice shall be given to the same individuals Tenant has notified in the past. To be clear, Landlord shall have at least 7 days' notice before all events, regardless of size, including all the details Tenant has given Landlord in the past; (2) for large events, over 150 people, Tenant shall continue to post an employee in the elevator area; and (3) for large events, Tenant shall post three people in the lobby, including the employee in the elevator area, as stated in the Duffe affidavit ¶ 43. (NYSCEF 73.)

ORDERED that Tenant shall file the transcript in NYSCEF and email it to the court to be so ordered.



3/30/2026

DATE

ANDREA MASLEY, 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