

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PAM

PRESENT: EDMEAD  
Justice

PART 35

AJAMIAN, DENISE L.,  
ETAL

INDEX NO. 106957/06

MOTION DATE 5/30/06

MOTION SEQ. NO. 001

MOTION CAL. NO. \_\_\_\_\_

- v -  
251 EAST 51<sup>ST</sup> ST

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	_____
Answering Affidavits — Exhibits _____	_____
Replying Affidavits _____	_____

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

Based on the submissions and an in-court conference on March 30, 2006 with counsel for all parties, the instant order to show cause is resolved as follows:

Plaintiffs' order to show cause for an order preliminary enjoining defendant, 251 East 51<sup>st</sup> St, Corp., its Board of Directors, their agents, servants, employees and those acting under their authority from entering into any contracts or commitments in connection with the overhaul and renovation of the building exterior to make it Local Law 11 compliant, is denied.

In order for a preliminary injunction or temporary restraining order to be issued, the movant must demonstrate (1) a likelihood of success on the merits; (2) irreparable injury absent the granting of the preliminary injunction; and (3) a balancing of the equities which favors the issuance of injunctive relief (*St. Paul Fire and Marine Ins. Co. v York Claims Serv., Inc.*, 765 NYS2d 573, 308 AD2d 347 [1st Dept 2003]; *New York City Off-Track Betting Corp. v New York Racing Assn., Inc.*, 250 AD2d 437, 673 NYS2d 387 [1st Dept 1998]; *Grumet v Cuomo*, 162 Misc 2d 913, 617 NYS2d 620 [Supreme Court New York County 1994]). Preliminary injunctive relief is a drastic remedy, which will only be granted if it is established that there is a clear right to the relief under the law and the facts (*Koultukis v Phillips*, 285 AD2d 433, 728 NYS2d 440 [1st Dept 2001]).

The record fails to demonstrate the likelihood of success on the merits of plaintiffs' claim

Dated: \_\_\_\_\_ Page 1 of 2 J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
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MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE EDMEAD

WALTER B. TOLUB

that the Board failed to properly evaluate the physical condition of the building or violated any fiduciary duty to the plaintiffs. The claims that the Board will enter into a contract that breaches their fiduciary duty and is detrimental to the shareholders is speculative; the claim that the manager will be making an improper profit from the disputed contract is speculative; the claim that management improperly withheld production of certain contracts is unsubstantiated. In any event, the plaintiffs failed to demonstrate that irreparable harm would result in the absence of injunctive relief. The alleged damages resulting from the Board's alleged construction contract to repair the building are calculable.

Based on the foregoing, it is hereby

ORDERED that the plaintiffs' order to show cause for an order preliminary enjoining defendant, 251 East 51<sup>st</sup> Street, Corp., its Board of Directors, their agents, servants, employees and those acting under their authority from entering into any contracts or commitments in connection with the overhaul and renovation of the building exterior to make it Local Law 11 compliant, is denied; and it is further

ORDERED that the parties shall appear for a Preliminary Conference on July 11, 2006, 3:00 p.m.; and it is further

ORDERED that plaintiffs shall serve a copy of this order with notice of entry upon all parties within 20 days of entry.

This constitutes the decision and order of the Court.

Dated 5/31/06

ENTER:  , J.S.C.

**HON. CAROL EDMEAD**

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST  REFERENCE