

**Birnbaum v East W. Renovating Co.**

2016 NY Slip Op 30859(U)

May 6, 2016

Supreme Court, New York County

Docket Number: 156462/2015

Judge: Debra A. James

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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: DEBRA A. JAMES**  
*Justice*

**PART 59**

PHILIP BIRNBAUM and YARINA BIRNBAUM,

Index No.: 156462/2015

Plaintiffs,

Motion Date: 01/15/2016

- v -

Motion Seq. No.: 001

Motion Cal. No.: \_\_\_\_\_

EAST WEST RENOVATING CO., BAGEL-TALK, INC.,  
and JOHN and JANE DOE CORP. [LARAIB] d/b/a  
BAGEL TALK, and JOHN and JANE DOE CORP. d/b/a  
BAGEL TALK, the name of said entity being fictitious and  
unknown to Plaintiffs but believed to be an entity doing  
business in the subject premises described herein,

Defendants.

A motion having duly come on to be heard on the 15<sup>th</sup> of January 2016 , for  
an order granting plaintiffs Philip Birnbaum and Yarina Birnbaum a preliminary  
injunction enjoining and restraining defendants Laraib, Inc.. d/b/a Bagel Talk and East-  
West Renovating Co. from themselves or causing others to generate heat emanating  
from and through the commercial condominium unit no. 1003 (the "Commercial Unit")  
owned by the Defendant East West Renovating Co. (and occupied by defendant Laraib,  
Inc., an entity doing business as "Bagel Talk") located on the ground floor of The  
Morgan Condominium, 200 West 78<sup>th</sup> Street a/k/a 368-378 Amsterdam Avenue, City,  
County and State of New York (the "Condominium"), rendering the residential Unit 2A  
("Residential Unit 2A") on the second floor of the Condominium owned by the plaintiffs,  
uninhabitable/or untenable, and

A cross motion having come on to be heard on the 15<sup>th</sup> of January 2016 for  
an order granting defendant/third party plaintiff Laraib. d/b/a Bagel Talk a preliminary

MOTION/CASE IS RESPECTFULLY REFERRED TO  
JUSTICE

**injunction compelling third party defendant East-West Renovating Co. (“Landlord”) to take all steps necessary to lawfully and in compliance with all applicable laws and regulations, and with the proper consents and approvals, do all construction work required (the cost of which to be allocated between them) to expeditiously repair and/or install a lawful and applicable code-compliant exhaust and ventilation system within and around the Commercial Unit;**

**NOW, on reading and filing the following papers submitted to the Court, the Order to Show Cause dated July 1, 2015, the Emergency Affirmation of Marci S. Zimm, Esq. dated June 29, 2015, the Affidavit in Support of Plaintiff, Philip Birnbaum, sworn to on the 26<sup>th</sup> day of June 2015, and the summons and complaint and exhibits attached thereto, the Notice of Cross Motion dated June 27, 2015, the Affirmation of Audrey H. Bedolis, Esq. dated July 27, 2015, the Affidavit of Abid Islam, sworn to on the 27<sup>th</sup> day of July 2015, and the third party summons with notice, which has no third party index number assigned thereto or endorsed thereon, and exhibits attached thereto, the Affidavit in Opposition to Plaintiffs’ Motion and to Defendant’s Cross Motion of James Hefelfinger, sworn to on the 30<sup>th</sup> day of July 2016, the Affirmation in Further Support of Plaintiffs’ Motion of Marci S. Zinn, Esq., dated August 3, 2015, the Affidavit of Gary Trias, sworn to on the 3<sup>rd</sup> day of August 2015, the Affidavit of Philip Birnbaum, sworn to on the 3<sup>rd</sup> day of August 2015, and the exhibits attached thereto, the Memorandum of Law in Support of Plaintiffs’ Motion of Marci S. Zinn, Esq., affirmed on January 15, 2016, the Memorandum of Law in Opposition to Plaintiff’s Motion of Audrey H. Bedolis, affirmed on January 15, 2016, and the Memorandum of Law in Opposition to Plaintiff’s Motion of Adam Paul Pollack, Esq., affirmed on January 15, 2016, and upon the decision of this**

court dated May 6, 2016,

Due deliberation having been had, and it appearing to this Court that as there is no cause of action for tortious interference with contract and/or for tortious interference with business in favor of the defendant/third party plaintiff Bagel Talk and against the defendant/third party defendant East-West Renovating Co., and defendant/third party plaintiff Laraib, Inc. is not entitled to a preliminary injunction against defendant/third party defendant East-West Renovating Co.; and

Due deliberation having been had, and it appearing to this Court that a cause of action exists in favor of the plaintiffs and against the defendants East-West Renovating Co. and Bagel Talk, plaintiffs are entitled to a preliminary injunction on the ground that the defendants East-West Renovating Co. and Bagel Talk are doing or procuring or suffering to be done an act in violation of the plaintiffs' rights respecting the subject of the action and the plaintiffs have demanded and would be entitled to a judgment restraining the defendants East-West Renovating Co. and Bagel Talk, as set forth in the aforesaid decision, it is

ORDERED that there shall be a hearing in IAS Part 59, 60 Centre Street, Room 331, to set the amount of the undertaking on June 6, 2015 in connection with the aforesaid preliminary injunction so that if it is finally determined that plaintiffs were not entitled to an injunction, plaintiffs will pay to the defendants East-West Renovating Co. and Bagel Talk all damages and costs which may be sustained by reason of this preliminary injunction; and it is further

ORDERED that upon the posting of the foregoing undertaking by plaintiffs,

defendants East-West Renovating Co. and Laraib, Inc.. d/b/a Bagel Talk, their agents, servants, employees and all other persons acting under their jurisdiction, supervision and/or direction of such defendants, 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 defendants or otherwise, to generate heat that emanates from and through the Commercial Unit that renders Residential Unit 2A uninhabitable/or untenable, and it is further,

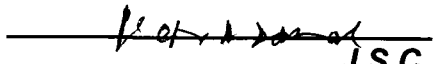
ORDERED that the cross motion of defendant third party plaintiff Laraib, Inc. d/b/a Bagel Talk for a preliminary injunction is denied; and it is further

ORDERED that defendants shall serve and file an Answer to the Complaint within twenty (20) days of service of a copy of this order with notice of entry and filing with proof of service of the undertaking with the County Clerk, and it is further

ORDERED that all parties are directed to appear for a evidentiary hearing to set the amount of the undertaking in Room 331, 60 Centre Street on June 6, 2016, 2:30 PM.

Dated: May 6, 2016

ENTER

  
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J.S.C.  
**DEBRA A. JAMES**