

**MRKTPL Empire Outlets LLC v Brais**

2019 NY Slip Op 33029(U)

October 8, 2019

Supreme Court, New York County

Docket Number: 653336/2019

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: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

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INDEX NO. 653336/2019

MRKTPL EMPIRE OUTLETS LLC, DAWN HOLDING LLC, MANUEL DEL CASTILLO, and JAMIE HINOJOS,

MOTION DATE 08/10/2019

Petitioners,

MOTION SEQ. NO. 001

- v -

MICHAEL BRAIS,

DECISION + ORDER ON MOTION

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 19, 22, 23, 24, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87

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

ORDER

Upon the foregoing documents,

It appearing to this Court that there is no cause of action existing in favor of respondent and against petitioners, as respondent has yet to interpose any answer or counterclaim, to the extent the respondent moves by cross motion for a provisional remedy, such cross motion is denied; and it is further

It appearing to this Court that pursuant to CPLR § 7502(c) a cause of action exists in favor of the petitioners and against the respondent and that the petitioners are entitled to a preliminary injunction on the ground that the respondent threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the petitioners' rights respecting

the subject of the action/proceeding and tending to render the judgment ineffectual, as set forth in the aforesaid decision, the petitioners have demanded and would be entitled to a judgment restraining the respondent from the commission or continuance of an act, which, if committed or continued during the pendency of the action/proceeding, would produce injury to the petitioners, as set forth in the aforesaid decision], it is

ORDERED that the undertaking is fixed in the sum of \$ to be determined at a hearing as set forth below conditioned that the petitioners, if it is finally determined that they were not entitled to an injunction, will pay to the respondent all damages and costs which may be sustained by reason of this injunction; and it is further

ORDERED that respondent, his agents, servants, employees and all other persons acting under the jurisdiction, supervision and/or direction of respondent, 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 respondent or otherwise, any of the following acts:

- (1) From performing any actions for or on behalf of MRKTPL Empire Outlets LLC (MRKTPL), including, without limitation communicating with contractors or vendors under contract with MRKTPL for the

Empire Outlets project, communication with current or prospective MRKPTL subtenants, drawing upon any accounts controlled by MRKTPL, entering into any agreements or contracts for or on behalf of MRKTPL, approving any indebtedness or any refinancing of indebtedness for or on behalf of MRKTPL, or taking any Major Decision as defined in Schedule 5.1(s) of the Operating Agreement; and it is further

ORDERED that respondent, his agents, servants, employees and all other persons acting under the jurisdiction, supervision and/or direction of respondent, are compelled, during the pendency of this action/proceeding, to do or suffer to be done, directly or through any attorney, agent, servant, employee or other person under the supervision or control of respondent or otherwise, the following acts

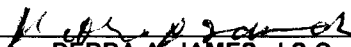
- (2) Producing within five (5) business days of service of a copy of this order with notice of entry, copies of all corporate records, including, without limitation, all vendor proposals, contracts, invoices and communications; and it is further

ORDERED that respondent shall serve and file an Answer to the Verified Petition within twenty (20) days of service of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear for a preliminary conference/undertaking hearing in Room 331, 60 Centre Street, New York, New York on December 4, 2019, at 9:30 AM.

DECISION

See Fieldstone Capital, Inc. v Loeb Partners Realty, 105 AD3d 559 (1<sup>st</sup> Dept. 2013).

<u>10/8/2019</u> DATE		 DEBRA A. JAMES, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE