

NY CLS CPLR § 6313

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New York

Consolidated Laws Service >
Civil Practice Law And Rules (Arts. 1 — 100) >
Article 63 Injunction (§§ 6301 — 6330)

§ 6313. Temporary restraining order.

(a) Generally. If, on a motion for a preliminary injunction, the plaintiff shall show that immediate and irreparable injury, loss or damages will result unless the defendant is restrained before a hearing can be had, a temporary restraining order may be granted without notice. Upon granting a temporary restraining order, the court shall set the hearing for the preliminary injunction at the earliest possible time. No temporary restraining order may be granted in an action arising out of a labor dispute as defined in section eight hundred seven of the labor law, nor against a public officer, board or municipal corporation of the state to restrain the performance of statutory duties.

(b) Service. Unless the court orders otherwise, a temporary restraining order together with the papers upon which it was based, and a notice of hearing for the preliminary injunction, shall be personally served in the same manner as a summons.

(c) Undertaking. Prior to the granting of a temporary restraining order the court may, in its discretion, require the plaintiff to give an undertaking in an amount to be fixed by the court, containing terms similar to those set forth in subdivision (b) of rule 6312, and subject to the exception set forth therein.

History

Add, L 1962, ch 308, eff Sept 1, 1963; amd, L 1962, ch 318, § 22, eff Sept 1, 1963; L 1964, ch 263, eff Sept 1, 1964; L 1982, ch 235, § 1, eff June 15, 1982.

Annotations

Notes

Derivation Notes

Earlier statutes: CPA §§ 879, 882, 883; CCP §§ 605, 609, 610; Code Proc §§ 220, 221, 223; ch 488 of 1841, §§ 1, 2.

Advisory Committee Notes

Subd (a) of this section is derived from CPA § 882, with simplification of language but no intended change in substance. See also § 6301. The last phrase of next to the last sentence has been inserted to preclude a restraining order without notice against a public officer, board or municipal corporation of the state; this, except for expansion to include municipal corporations, is in accord with the last phrase of CPA § 879. When a temporary restraining order is granted, the hearing on the application must be set down “at the earliest possible time.” The restraining order is therefore usually included in an order to show cause, for the notice of motion procedure would result in an unnecessary delay. The quoted words are a simplification of the language of CPA § 882 with no intended change in meaning.

Subd (b) of this section replaces CPA § 883, which provided that an “injunction order” be served by “delivering a copy thereof.” That personal delivery was contemplated may be inferred from the second sentence of CPA § 883, which provided for service upon a corporation “as prescribed by law for making personal service of a summons.” In the case of a court order, a certified copy was to be delivered; a judge’s order was served by exhibiting the original and delivering a copy. Under § 6311 as well as CPA § 882, however, a preliminary injunction may not be granted except upon notice. If the defendant has had notice of the motion, no reason appears why the order cannot be served in the manner of any other intermediate order—

ordinarily by serving it with a notice of entry by mail upon the defendant's attorney. See rule 2103. Similarly, the requirement of certification of a court order and exhibiting a judge's order is unnecessarily stringent; other orders are binding without such formality. Under rule 2220(b), all orders are served in the same manner. See notes to rule 2220(b). A temporary restraining order, on the other hand, may be granted without notice (see subd (a); CPA § 882) and personal service in the manner of a summons seems appropriate. Accordingly, this subdivision is limited to service of a temporary restraining order. The provisions of rule 2103, governing service of papers generally, are therefore applicable to preliminary injunctions. The former New York statutory law did not expressly indicate, as does the Federal rule, that an injunction is binding "upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise." Fed R Civ P 65(d). The New York decisional law, however, is substantially identical to this Federal provision. Thus an injunction may be binding even though not served. See generally 10 Carmody-Wait, Cyclopaedia of New York Practice 649, 761–772 (1954). This subdivision is not intended to change this.

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I. Under CPLR

1. In general

Issue of validity of order temporarily restraining enforcement of county local law as well as service station's right to seek such relief, as opposed to seeking writ of prohibition enjoining pending criminal action, was, for all intents and purposes, rendered moot since temporary restraining order had expired and had been superseded by permanent injunction in declaratory judgment action, there being no challenge to assertion of jurisdiction over defendants in the declaratory judgment action nor to trial court's authority to issue such remedy on a finding of unconstitutionality. *Stubbart v County of Monroe*, 58 A.D.2d 25, 395 N.Y.S.2d 307, 1977 N.Y. App. Div. LEXIS 11808 (N.Y. App. Div. 4th Dep't), app. denied, 42 N.Y.2d 808, 1977 N.Y. LEXIS 3857 (N.Y. 1977).

Court properly denied husband's motion to lift temporary restraining order blocking enforcement of his \$340,000 judgment against family corporation where wife alleged that corporation was marital property, and relationship among parts of corporate structure was complex. *Moss v Moss*, 251 A.D.2d 937, 674 N.Y.S.2d 858, 1998 N.Y. App. Div. LEXIS 7734 (N.Y. App. Div. 3d Dep't 1998).

Partnership was not entitled to vacatur of August 1996 temporary restraining orders, as superseded by same court's March 1997 order, where partnership never sought any relief from March order in its motion for summary judgment, and it failed to perfect its prior appeal from March order *Sunseri v Macro Cellular Partners*, 263 A.D.2d 365, 692 N.Y.S.2d 383, 1999 N.Y. App. Div. LEXIS 7797 (N.Y. App. Div. 1st Dep't 1999).

In action by school board member to restrain on the basis of bias a hearing by school board on charges of assault and unethical conduct brought by said board against board member, court had inherent power to issue ex parte restraining order pending a determination of board member's motion for preliminary injunction, where moving papers established prima facie that defendant school board might have been acting illegally if it conducted a hearing on the charges. *Komyathy v Board of Education*, 75 Misc. 2d 859, 348 N.Y.S.2d 28, 1973 N.Y. Misc. LEXIS 1387 (N.Y. Sup. Ct. 1973).

Determination of Environmental Conservation Commissioner prohibiting landing of seaplanes on certain waters in Adirondack State Park within Commissioner's power under New York Constitution, Art 14, § 1, ECL §§ 3-0301 and 9-0105, subds 1 and 3, and Executive Law § 816, subd 1; thus enforcement of such determination could not be enjoined under CPLR § 7805 and § 6313. *Helms v Diamond*, 76 Misc. 2d 253, 349 N.Y.S.2d 917, 1973 N.Y. Misc. LEXIS 1459 (N.Y. Sup. Ct. 1973).

Defendants' acts in holding themselves out falsely to be a state agency with ability and intent to investigate and determine whether applicants for advertising in their booklet were reputable and honest, and implied threat that anyone not appearing in booklet would be considered by consuming public to be dishonest and disreputable, constituted "fraud" within statute authorizing injunction against practices, restitution order, and cancellation of assumed name certificate and certificate of incorporation. *State by Lefkowitz v Slowek*, 79 Misc. 2d 1098, 362 N.Y.S.2d 110, 1974 N.Y. Misc. LEXIS 1825 (N.Y. Sup. Ct. 1974).

In action for breach of contract whereby plaintiff agreed to purchase goods to be imported into England, plaintiff was not entitled to attachment of funds that it deposited in bank account maintained by nonparty foreign financial institution for Russian defendants (who acted as "middlemen" between producers of goods and plaintiff), and related temporary restraining order (TRO) would be vacated, as no attachable interest of defendants existed in account when TRO was served; foreign financial institution established that it was not mere agent for collection, and thus it obtained title to money deposited by plaintiff when it credited defendants' Russian bank accounts. *Sidwell & Co. v Kamchatimpex*, 166 Misc. 2d 639, 632 N.Y.S.2d 455, 1995 N.Y. Misc. LEXIS 451 (N.Y. Sup. Ct. 1995).

2. Authority to issue

Court had authority to issue an ex parte temporary restraining order upon a municipality restraining any action by the municipality in rezoning plaintiff's property. 110 *Manno Realty*

Corp. v Huntington, 61 Misc. 2d 702, 306 N.Y.S.2d 746, 1970 N.Y. Misc. LEXIS 2008 (N.Y. Sup. Ct. 1970).

3. Service

Where the Attorney General of the State of New York is aware of the investigation and has been cooperating, an order under the Martin Act is analogous to a temporary restraining order issued in an “already pending action”; accordingly, service pursuant to CPLR 6313 is appropriate. Matter of James v iFinex Inc., 185 A.D.3d 22, 127 N.Y.S.3d 456, 2020 N.Y. App. Div. LEXIS 3931 (N.Y. App. Div. 1st Dep't 2020).

Where the relationship between the town attorney and the supervisor and clerk was such as to lead irresistably to the inference that notice to the town attorney would be promptly transmitted to the supervisor and clerk, and because there was no indication that the town was prejudiced by the method employed, service upon the town attorney, as directed by the court, was deemed effective service on the town. 110 Manno Realty Corp. v Huntington, 61 Misc. 2d 702, 306 N.Y.S.2d 746, 1970 N.Y. Misc. LEXIS 2008 (N.Y. Sup. Ct. 1970).

4. Labor disputes

Labor L § 807 and CPLR 6313(a) do not bar the granting of a temporary restraining order in a labor dispute without a hearing where mass picketing and violence endangering personal life and property are occurring. Nathan's Famous, Inc. v Joint Bd., AFL-CIO, 70 Misc. 2d 257, 332 N.Y.S.2d 513, 1972 N.Y. Misc. LEXIS 1888 (N.Y. Sup. Ct. 1972).

Action by employer to enjoin activities of strikers arose in the context of a “labor dispute” as that term is defined in the Labor Law and even extreme violence would not make inapplicable the provisions and requirements of Labor Law for granting injunctive relief. CPLR 3211(a) par. 7, 6313(a); Labor Law § 807. Robeson Appliances, Div. of Vanwyck International v International

Ass'n of Machinists & Aerospace Workers, 89 Misc. 2d 819, 392 N.Y.S.2d 562, 1977 N.Y. Misc. LEXIS 1948 (N.Y. Sup. Ct. 1977).

Public employees' union would not be granted injunction restraining county executive from involuntarily furloughing or laying off union's members since CLS Labor § 807 prohibits court from issuing either temporary restraining order or preliminary injunction in labor dispute, and CLS Labor § 807(1)(f)(6) specifically states that court must affirmatively find that any injunctive relief granted will not prohibit party from "[c]easing to ... employ any person or persons." Suffolk County Ass'n of Municipal Employees, Inc. v County of Suffolk, 147 Misc. 2d 744, 557 N.Y.S.2d 1013, 1990 N.Y. Misc. LEXIS 298 (N.Y. Sup. Ct.), modified, 163 A.D.2d 469, 557 N.Y.S.2d 946, 1990 N.Y. App. Div. LEXIS 8781 (N.Y. App. Div. 2d Dep't 1990).

Although it has been held that CLS Labor § 807 does not apply to public employees, inasmuch as CLS Civ S § 211 specifically allows injunctive relief against strikes as exclusion from CLS Labor § 807 but is silent as to other labor disputes, it would be concluded that § 807's ban applies to all other labor disputes involving public employees. Suffolk County Ass'n of Municipal Employees, Inc. v County of Suffolk, 147 Misc. 2d 744, 557 N.Y.S.2d 1013, 1990 N.Y. Misc. LEXIS 298 (N.Y. Sup. Ct.), modified, 163 A.D.2d 469, 557 N.Y.S.2d 946, 1990 N.Y. App. Div. LEXIS 8781 (N.Y. App. Div. 2d Dep't 1990).

5. Undertaking

Party on whose behalf undertaking is not posted cannot recover thereon absent proof of malice even if that party opposed injunction and sustained loss by reason of its issuance; thus, in action involving question whether certain stock was pledged by plaintiffs to defendants as collateral for loan or sold outright, defendants were not entitled to recover damages sustained by reason of improperly issued temporary restraining order which enjoined transfer agent and persons acting in concert with it from transferring registration of stock, where undertaking named only transfer agent as indemnitee, court lacked authority to amend undertaking nunc pro tunc once temporary

restraining order was vacated, and no malice was claimed or shown. *Thompson v Topsoe*, 237 A.D.2d 113, 654 N.Y.S.2d 363, 1997 N.Y. App. Div. LEXIS 2139 (N.Y. App. Div. 1st Dep't 1997).

In landlords' action against a tenant, the lower court's order fixing an undertaking of a \$25,000 bond as to a previously issued temporary restraining order in favor of the landlords was vacated because although it was appropriate in some instances to require an undertaking to be posted before granting a temporary restraining order under N.Y. C.P.L.R. 6313(c), there was no indication as to why an undertaking would be necessary, nor was there evidence to support the propriety of the amount set by the lower court. *Sibersky v Winters*, 42 A.D.3d 402, 840 N.Y.S.2d 66, 2007 N.Y. App. Div. LEXIS 8799 (N.Y. App. Div. 1st Dep't 2007).

6. Violation of temporary restraining order

Ex parte temporary restraining order directed to city manager was void on its face, in that trial court was without authority to grant said order, and therefore, city manager could not be cited for contempt for failure to obey. *Di Fate v Scher*, 45 A.D.2d 1002, 358 N.Y.S.2d 215, 1974 N.Y. App. Div. LEXIS 4239 (N.Y. App. Div. 2d Dep't 1974).

In action for permanent injunction to bar violation of covenant not to compete, defendants could be held in contempt for violation of temporary restraining order, even though grant of preliminary injunction was reversed on appeal, since defendants were found to be in contempt and in violation of temporary restraining order before grant of preliminary injunction was reversed. *Busters Cleaning Corp. v Frati*, 203 A.D.2d 409, 610 N.Y.S.2d 558, 1994 N.Y. App. Div. LEXIS 3973 (N.Y. App. Div. 2d Dep't 1994).

In action for permanent injunction, plaintiff's motion to hold defendants in contempt was properly denied where plaintiff failed to prove with any reasonable certainty that 1995 temporary restraining order was disobeyed while it remained in effect. *Frew v Dime Sav. Bank, FSB*, 251 A.D.2d 622, 675 N.Y.S.2d 878, 1998 N.Y. App. Div. LEXIS 7886 (N.Y. App. Div. 2d Dep't 1998).

Plaintiff's request that town officials be found guilty of contempt for failure to furnish water to premises owned by plaintiff in violation of a temporary restraining order contained in an order to show cause which prohibited the termination of such water services to plaintiff's property would be denied, where such order was issued two and one-half years prior to the termination of water service for plaintiff's alleged failure to pay outstanding water charges and, during that period, the requisite hearing was never held on the merits of plaintiff's order to show cause pursuant to CPLR § 6313(a). *Sommerset Group, Inc. v Lewiston*, 115 Misc. 2d 398, 454 N.Y.S.2d 220, 1982 N.Y. Misc. LEXIS 3699 (N.Y. Sup. Ct. 1982).

7. Expiration

Temporary restraining order, which was ordered continued until entry of judgment, was not properly ordered to continue beyond disposition of motion for preliminary injunction, which was granted but "solely to the extent that this matter is directed to proceed to immediate trial." *People v Asiatic Petroleum Corp.*, 45 A.D.2d 835, 357 N.Y.S.2d 542, 1974 N.Y. App. Div. LEXIS 4421 (N.Y. App. Div. 1st Dep't 1974).

State-court temporary restraining order issued on notice, and in anticipation of preliminary injunction, expired 10 days after action was removed to federal court, even if CPLR 6313 provided that order remained in effect until preliminary injunction hearing. *Carrabus v Schneider*, 111 F. Supp. 2d 204, 2000 U.S. Dist. LEXIS 11883 (E.D.N.Y.), dismissed, 119 F. Supp. 2d 221, 2000 U.S. Dist. LEXIS 15845 (E.D.N.Y. 2000).

8. Damages resulting from temporary restraining order

Enjoined party was precluded from seeking damages sustained by reason of temporary restraining order, despite court's later denial of preliminary injunction, where temporary restraining order had not been conditioned on posting of undertaking, and enjoined party produced no proof of malice. *Gardino v Rescignano*, 152 A.D.2d 911, 544 N.Y.S.2d 392, 1989 N.Y. App. Div. LEXIS 9744 (N.Y. App. Div. 4th Dep't 1989).

In action based on defendants' failure to honor letters of credit, wherein plaintiff initially obtained temporary restraining order under CLS CPLR § 6313(a) but order of attachment was never issued, and defendants sought to recover damages as consequence of restraint on asset transfers after plaintiff's complaint was dismissed on forum non conveniens grounds, any damages sustained by reason of operation of temporary restraining order would be ascertained under CLS CPLR § 6315, not by reference to CLS CPLR § 6312(e). *A & M Exports, Ltd. v Meridien Int'l Bank, Ltd.*, 222 A.D.2d 378, 636 N.Y.S.2d 35, 1995 N.Y. App. Div. LEXIS 13751 (N.Y. App. Div. 1st Dep't 1995).

9. Illustrative cases

Refusal of an inspector of elections to accept an affidavit purporting to comply with § 168 of the Election Law on the ground that the instrument must be executed in the presence of the inspector would not warrant an injunction to prevent enforcement of a ruling of the Attorney General requiring a registrant to fill out and sign the affidavit in the inspector's presence, since § 331 of the Election Law provided a complete and summary remedy to one whose registration had been unlawfully refused. *Gournet v Lefkowitz*, 27 A.D.2d 809, 277 N.Y.S.2d 800, 1967 N.Y. App. Div. LEXIS 4717 (N.Y. App. Div. 1st Dep't 1967).

In an action to collect for legal services, it was improper for the trial court to issue an order of attachment against property formerly owned by the defendant, currently a nonresident, where the plaintiff's motion papers had not been personally served upon the defendant and contained no order restricting the defendant's right of alienation of the property pending determination of the motion for attachment, and where, prior to the return date of the motion, the defendant had conveyed the property to his daughter, without consideration, who duly recorded the conveyance. *Dempsey & Spring, P. C. v Ramsay*, 79 A.D.2d 1017, 435 N.Y.S.2d 336, 1981 N.Y. App. Div. LEXIS 9922 (N.Y. App. Div. 2d Dep't 1981).

Tenant was entitled to temporary injunctive relief prohibiting landlords (sponsors of cooperative conversion) from transferring shares of his apartment pending determination of consolidated

action regarding propriety of landlords' cancellation of subscription agreement for purchase of apartment where tenant had conducted his professional practice from apartment for approximately 10 years, he would be irreparably harmed if apartment were sold and he were dispossessed pending final disposition, and grant of relief would cause landlords only slight harm by delaying their profit from apartment's sale should they prevail. *Wendling v 136 East 64th Street Associates*, 128 A.D.2d 419, 513 N.Y.S.2d 119, 1987 N.Y. App. Div. LEXIS 44126 (N.Y. App. Div. 1st Dep't 1987).

In combined Article 78 proceeding and declaratory judgment action commenced by order to show cause which, by its terms, temporarily restrained town from expending any further amounts for payment of legal fees of town officials in their defense of 2 lawsuits, court properly dismissed petitioners' motion to hold respondents in contempt for allegedly violating terms of temporary restraining order, where evidence established only that town paid some legal fees during relevant period, not that amounts paid were attributable to lawsuits at issue. *Bauernfeind v Doetsch (In re Schulz)*, 217 A.D.2d 861, 629 N.Y.S.2d 841, 1995 N.Y. App. Div. LEXIS 8171 (N.Y. App. Div. 3d Dep't 1995).

Plaintiff wife in divorce action was not entitled to pendente lite relief in nature of orders restraining husband from selling, transferring, borrowing against, hypothecating, or otherwise disposing of any marital assets where she failed to rebut his contention that such restraints would severely limit his continued management of parties' extensive marital estate, she had taken passive role in such management for over 40 years, there was no proof that he intended to defraud her, and there was no reason to disturb Supreme Court's discretion in denying injunction. *MacKinnon v MacKinnon*, 245 A.D.2d 676, 665 N.Y.S.2d 121, 1997 N.Y. App. Div. LEXIS 12547 (N.Y. App. Div. 3d Dep't 1997).

In action commenced by order to show cause seeking, inter alia, temporary restraining order to prevent sale of certain property by defendants and declaration that contract for sale was null and void, plaintiffs failed to acquire personal jurisdiction over defendants by service of order to show cause on their attorney, there being no underlying action and no evidence that service by any

other method available under CPLR was impracticable. *Foster v Piasecki*, 259 A.D.2d 804, 686 N.Y.S.2d 184, 1999 N.Y. App. Div. LEXIS 2105 (N.Y. App. Div. 3d Dep't 1999).

In city's action to restrain operation of adult establishment in special purpose district, which was primarily light manufacturing district, defendant's adult establishment, "The Black Garter," which had operated in that district for 25 years, was not in violation of city zoning resolution prohibiting "adult establishments" from being located "in a manufacturing district in which residences...are, under the provisions of the Zoning Resolution, allowed as-of-right or by special permit or authorization" where (1) zoning resolution allowed planning commission to "authorize developments or enlargements of residential uses" only if there would be no adverse effect on existing commercial or manufacturing uses, (2) "The Black Garter" would be forced to close if commission authorized residences in special purpose district, and (3) thus, "The Black Garter" was in area in which residences were not allowed as of right or by special permit or authorization. *City of New York v "The Black Garter"*, 273 A.D.2d 188, 709 N.Y.S.2d 110, 2000 N.Y. App. Div. LEXIS 6306 (N.Y. App. Div. 2d Dep't 2000).

Application to restrain Governor of the State and a committee appointed by him from negotiating with Civil Service Employees Association on basis that Governor did not follow intent and purpose of Taylor Law § 207 when he publicly recognized the Association as representative for all purposes of collective negotiation of 124,000 state employees in one general negotiating unit of virtually all state employees, was denied, because court could not judge an executive decision of Governor which was made under legal and rightful power bestowed by constitution and statute. *New York State Employees Council 50, etc. v Rockefeller*, 55 Misc. 2d 250, 284 N.Y.S.2d 803, 1967 N.Y. Misc. LEXIS 1062 (N.Y. Sup. Ct. 1967).

Upon application by wife to prevent husband from selling, transferring or otherwise disposing of marital property including his one-half interest in a service station until the trial of the pending matrimonial action, each party would be enjoined from disposing of any marital asset for less than its fair and reasonable value in an arms-length transaction, but curtailment of the operation of husband's business or restriction of his free right to dispose of it if it became unprofitable

could cause more harm than good in preserving the marital assets. *Gramazio v Gramazio*, 108 Misc. 2d 579, 438 N.Y.S.2d 71, 1981 N.Y. Misc. LEXIS 2244 (N.Y. Sup. Ct. 1981).

Citizen-taxpayers (plaintiffs) were not entitled to temporary restraining order to enjoin funding and operation of school district, formed under Laws of 1994 chapters 241 and 279 and located in municipality composed mostly of Hasidic Jews, since (1) facially, conditions established by legislature for creation of new school districts under chapter 241 appeared religion-neutral, reasonable, appropriate, and effectuated legitimate state function, (2) plaintiffs' claim that they would suffer irreparable harm because moneys for school year would be unconstitutionally disbursed and expended was meritless inasmuch as state aid would be disbursed for education of children regardless of school district they attended, and (3) injunction would have serious disruptive effects on defendants and children, and dissolution of school district pending outcome would cause administrative expense and disruption for no practical reason and to no effect. *Grumet v Cuomo*, 162 Misc. 2d 913, 617 N.Y.S.2d 620 (N.Y. Sup. Ct. 1994).

Trial court refused to sign the attorney's order to show cause in which she sought injunctive relief enjoining the payment, transfer, or alienation of funds by the clients from a certain account and a further order granting an attachment of funds in that account in a certain amount in a case where she claimed that she had an agreement to perform professional legal services for them for working they were doing for the Venezuelan government and had not been paid the full amount she was owed under the agreement; she had not shown that she had a probability of success on the merits, she had not shown that there was property in New York such that the trial court had quasi-in-rem jurisdiction, and, in any event, the agreement had a forum selection clause stating a preference for the Venezuelan courts to handle the parties' dispute. *Silvestre v De Loaiza*, 820 N.Y.S.2d 440, 12 Misc. 3d 492, 235 N.Y.L.J. 74, 2006 N.Y. Misc. LEXIS 696 (N.Y. Sup. Ct. 2006).

Law office failed to support its contention that it was entitled to a restraining order pursuant to N.Y. C.P.L.R. 6301, 6313 in an action brought by a former client. *Felix v Law Off. of Thomas F. Liotti*, 90 A.D.3d 597, 933 N.Y.S.2d 874, 2011 N.Y. App. Div. LEXIS 8753 (N.Y. App. Div. 2d

Dep't 2011), app. denied, 2012 N.Y. App. Div. LEXIS 7001 (N.Y. App. Div. 2d Dep't Jan. 19, 2012).

Telecommunications systems equipment lessor was not entitled to temporary restraint of the lessee and guarantors with respect to removal of allegedly secured equipment because the lessor did not show that immediate and irreparable injury would result without such restraint, there was insufficient evidence that the lessee was no longer operational, and the alleged injury was compensable by money damages. *Axis Capital, Inc. v JAINA Sys. Network Inc.*, 49 Misc. 3d 350, 13 N.Y.S.3d 860, 2015 N.Y. Misc. LEXIS 2453 (N.Y. Sup. Ct. 2015).

II. Under Former Civil Practice Laws

10. Generally

CPA § 879 was merely limiting statute and did not grant any authority not elsewhere found, for injunctions against State officers. *Psaty v Duryea*, 306 N.Y. 413, 118 N.E.2d 584, 306 N.Y. (N.Y.S.) 413, 1954 N.Y. LEXIS 1022 (N.Y. 1954).

CPA § 879 related to temporary and not final injunctions incidental to other relief, as to which supreme court had inherent power. *E. P. Lawson Co. v Browne*, 266 A.D. 183, 41 N.Y.S.2d 804, 1943 N.Y. App. Div. LEXIS 3517 (N.Y. App. Div.), app. denied, 266 A.D. 846, 43 N.Y.S.2d 854, 1943 N.Y. App. Div. LEXIS 4840 (N.Y. App. Div. 1943).

CPA § 879 has no application to action for injunctive relief against State officers. *Psaty v Duryea*, 282 A.D. 94, 121 N.Y.S.2d 703, 1953 N.Y. App. Div. LEXIS 4403 (N.Y. App. Div. 1953), *aff'd*, 306 N.Y. 413, 118 N.E.2d 584, 306 N.Y. (N.Y.S.) 413, 1954 N.Y. LEXIS 1022 (N.Y. 1954).

CPA § 883 did not apply to an order for injunction under CPA § 981 (now Real Prop Actions & Proc Law 211). *Trustees of Episcopate v Matteson*, 12 N.Y. St. 370.

11. Notice

Ex parte stay, in connection with order to show cause upon application for injunction pendente lite, was improper, where there was no showing that immediate and irreparable injury, loss or damage would have resulted if notice of day or two had been given to adverse parties. *McCall v Beck*, 284 A.D. 838, 130 N.Y.S.2d 785, 1954 N.Y. App. Div. LEXIS 3631 (N.Y. App. Div.), modified, 284 A.D. 857, 134 N.Y.S.2d 193, 1954 N.Y. App. Div. LEXIS 3763 (N.Y. App. Div. 1954).

12. Emergency Housing Board

Application for temporary injunction, against Emergency Housing Board, located at Albany in Third Department, was properly made in District in such Department. *Bull v Stichman*, 72 N.Y.S.2d 202, 189 Misc. 590, 1947 N.Y. Misc. LEXIS 2725 (N.Y. Sup. Ct. 1947), *aff'd*, 273 A.D. 311, 78 N.Y.S.2d 279, 1948 N.Y. App. Div. LEXIS 4589 (N.Y. App. Div. 1948).

13. Deputy commissioner of excise

The court has no power to grant a temporary injunction restraining a deputy commissioner of excise from canceling and taking possession of a liquor tax certificate pursuant to chap. 697 of the Laws of 1905. *Born v Hopper*, 110 A.D. 218, 96 N.Y.S. 671, 96 N.Y.S. 674, 1905 N.Y. App. Div. LEXIS 3897 (N.Y. App. Div. 1905).

14. Service

15. —Papers to be served

The provision requiring service of copy of papers includes the undertaking approved by the judge and seems to be imperative. In the absence of proof to the contrary it will be presumed to have been done. *McFarland v Delaney*, 3 Month L Bull 93.

16. —Time for service

The summons and order may be served together; but the order cannot be regularly served prior to the summons. *Leffingwell v Chave*, 18 Super Ct 703; *Penfield v White*, 8 How. Pr. 87, 1853 N.Y. Misc. LEXIS 47 (N.Y. Sup. Ct. Mar. 1, 1853).

17. —Personal service

Affidavit by deputy sheriff in Arkansas that he served certified copy of injunction order in New York separation action, by leaving personally with defendant true copy thereof, was sufficient. *Cohen v Cohen*, 86 N.Y.S.2d 168, 193 Misc. 1023, 1948 N.Y. Misc. LEXIS 3885 (N.Y. Sup. Ct. 1948).

Personal service upon the person enjoined is not absolutely necessary, but if he has knowledge thereof he is guilty of contempt for disobedience of it. *Koehler v Farmers' & Drovers' Nat'l Bank*, 6 N.Y.S. 470, 53 Hun 637, 1889 N.Y. Misc. LEXIS 638 (N.Y. Sup. Ct.), *aff'd*, 117 N.Y. 661, 22 N.E. 1134, 117 N.Y. (N.Y.S.) 661, 1889 N.Y. LEXIS 1545 (N.Y. 1889).

18. —Service on managing agent

Service of injunction upon a division superintendent of a railroad and who is a “managing agent” will bind the corporation; although there has not been strict service thereof. *Rochester, H. & L. R. Co. v New York, L. E. & W. R. Co.*, 48 Hun 190, 15 N.Y. St. 686 (N.Y.).

19. —Service of affidavits

A neglect to serve the affidavits promptly does not destroy jurisdiction once acquired. *Davis v Brooks*, 4 Month L Bull 49.

20. —Of summons

An injunction to restrain picketing by defendant labor union will not be granted upon service of summons on one who was not and never has been an officer of defendant, as required by § 13,

General Associations Law. *Salitra v Borson*, 215 N.Y.S. 332, 127 Misc. 173, 1926 N.Y. Misc. LEXIS 932 (N.Y. Sup. Ct. 1926).

21. —Effect of insufficient service

As to effect of the omission to serve the papers on which the injunction was granted, and also the regularity of the papers served. See *People ex rel. Davis v Sturtevant* 8 Super Ct 451, affd 9 N.Y. 263 (1853); *Watson v Fuller*, 9 How Pr 425; *Augrich v McOwen*, 4 Month L Bull 66.

22. Proceedings for contempt

To punish one for contempt for violating an injunction order, it is not necessary to prove a certified copy was personally served upon him; his knowledge thereof and information of its contents is sufficient. *United States v Sumner*, 217 N.Y.S. 645, 127 Misc. 907, 1926 N.Y. Misc. LEXIS 704 (N.Y. Sup. Ct. 1926).

The fact that the mode of service of an injunction order was insufficient does not warrant the vacating of the order. *Phoenix Foundry & Machine Co. v North River Constr. Co.*, 33 Hun 156 (N.Y.).

Proceedings for contempt cannot be founded upon service not in accordance with law. *Coddington v Webb*, 6 Super Ct 639; *Watson & Gallup v Fuller & Wadsworth*, 9 How. Pr. 425, 1854 N.Y. Misc. LEXIS 109 (N.Y. Sup. Ct. May 1, 1854); but see *Livingston v Swift*, 23 How. Pr. 1, 1861 N.Y. Misc. LEXIS 273 (N.Y. Sup. Ct. Dec. 1, 1861).

Research References & Practice Aids

Cross References:

This section referred to in CLS St Fin § 123-e.

Houses of prostitution; injunction; temporary restraining order; service, CLS Pub Health § 2323.

Federal Aspects:

Service and notice of hearing of motion in United States District Courts, Rule 6(d) of Federal Rules of Civil Procedure, USCS Court Rules.

Temporary restraining orders in United States District Courts, Rule 65(b) of Federal Rules of Civil Procedure, USCS Court Rules.

Security for injunctions in United States District Courts, Rule 65(c) of Federal Rules of Civil Procedure, USCS Court Rules.

Form and scope of restraining order in United States District Courts, Rule 65(d) of Federal Rules of Civil Procedure, USCS Court Rules.

Treatises

Matthew Bender's New York Civil Practice:

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 6313, Temporary Restraining Order.

3 Lansner, Reichler, New York Civil Practice: Matrimonial Actions § 39.04.

Matthew Bender's New York CPLR Manual:

CPLR Manual § 15.01. Motions and orders — in general.

CPLR Manual § 15.02. The Individual Assignment System (IAS).

Matthew Bender's New York Civil Practice:

CPLR Manual § 17.01 .In general.

CPLR Manual § 28.08. Procedure for obtaining an order of attachment.

CPLR Manual § 28.16. Injunction as a provisional remedy.

§ 6313. Temporary restraining order.

CPLR Manual § 28.18. Temporary restraining order; grounds.

CPLR Manual § 28.21. Motion to vacate or modify preliminary injunction or temporary restraining order.

CPLR Manual § 30.02. Seizure of a chattel as a provisional remedy; procedure.

CPLR Manual § 30.05. Order affecting unique chattel.

CPLR Manual § 36.04. Seizures by federal authorities .

Matthew Bender's New York Practice Guides:

1 New York Practice Guide: Domestic Relations §§ 3.09, 11.07.

Matthew Bender's New York AnswerGuides:

LexisNexis AnswerGuide New York Civil Litigation § 14.17. Meeting Procedural Requirements for Temporary Restraining Order .

LexisNexis AnswerGuide New York Civil Litigation § 14.19. Meeting Procedural Requirements for Obtaining Preliminary Injunction.

LexisNexis AnswerGuide New York Civil Litigation § 14.21. Moving on Notice to Ascertain Preliminary Injunction or Temporary Restraining Order.

LexisNexis AnswerGuide New York Civil Litigation § 14.34. Chart: Requirements for Various Provisional Remedies.

Warren's Weed New York Real Property:

Warren's Weed: New York Real Property § 3.47.

Matthew Bender's New York Checklists:

Checklist for Obtaining, Vacating, or Modifying Attachment LexisNexis AnswerGuide New York Civil Litigation § 14.02.

Checklist for Obtaining, Vacating, or Modifying Temporary Restraining Order (TRO) or Preliminary Injunction LexisNexis AnswerGuide New York Civil Litigation § 14.15.

Checklist for Filing or Canceling Notice of Pendency LexisNexis AnswerGuide New York Civil Litigation § 14.29.

Forms:

Bender's Forms for the Civil Practice Form No. CPLR 6313:1 et seq.

LexisNexis Forms FORM 140-719.3.— Order to Show Cause to Enjoin Public Nuisance (City of New York).

LexisNexis Forms FORM 140-723.9(3).— Undertaking for Temporary Restraining Order Pending Preliminary Injunction Motion.

LexisNexis Forms FORM 140-723.9(4).— Undertaking for Temporary Restraining Order and Preliminary Injunction.

LexisNexis Forms FORM 75-CPLR 6313:1.— Order to Show Cause in Support of Motion for Preliminary Injunction with Temporary Restraining Order.

LexisNexis Forms FORM 75-CPLR 6313:10.— Order to Show Cause in Support of Motion for Preliminary Injunction with Temporary Restraining Order Restraining Sale of Cooperative Apartment.

LexisNexis Forms FORM 75-CPLR 6313:11.— Affidavit in Support of Motion for Preliminary Injunction with Temporary Restraining Order Restraining Sale of Cooperative Apartment.

LexisNexis Forms FORM 75-CPLR 6313:12.— Order to Show Cause for Preliminary Injunction with Temporary Restraining Order Restraining Termination of Contract of Sale and Enjoining Sale of Cooperative Apartment.

LexisNexis Forms FORM 75-CPLR 6313:13.— Attorney's Affirmation in Support of Motion for Preliminary Injunction with Temporary Restraining Order Restraining Termination of Contract of Sale and Enjoining Sale of Cooperative Apartment.

LexisNexis Forms FORM 75-CPLR 6313:14.— Order to Show Cause for Preliminary Injunction with Temporary Restraining Order Enjoining Blocking or Barring of Access Across Easement.

LexisNexis Forms FORM 75-CPLR 6313:15.— Affidavit in Support of Motion for Preliminary Injunction with Temporary Restraining Order Enjoining Blocking or Barring of Access Across Easement.

LexisNexis Forms FORM 75-CPLR 6313:16.— Complaint in Action for Permanent Injunction to Enjoin Blocking or Barring of Access Across Easement.

LexisNexis Forms FORM 75-CPLR 6313:17.— Order to Show Cause with Temporary Restraining Order Enjoining Defendant From Clearing Parcel of Land.

LexisNexis Forms FORM 75-CPLR 6313:18.— Affidavit in Support of Motion for Temporary Restraining Order Enjoining Defendant From Clearing Parcel of Land.

LexisNexis Forms FORM 75-CPLR 6313:19.— Attorney's Affirmation in Support of Motion for Temporary Restraining Order Enjoining Defendant From Clearing Parcel of Land.

LexisNexis Forms FORM 75-CPLR 6313:2.— Order Permitting Service of Summons and Order to Show Cause with Temporary Restraining Order on Sunday.

LexisNexis Forms FORM 75-CPLR 6313:20.— Order to Show Cause for Preliminary Injunction with Temporary Restraining Order Restraining Escrow Agent from Paying Money Deposited with Him Pending Sale of House.

LexisNexis Forms FORM 75-CPLR 6313:21.— Attorney's Affirmation in Support of Motion for Preliminary Injunction with Temporary Restraining Order Restraining Escrow Agent from Paying Money Deposited with Him Pending Sale of House.

LexisNexis Forms FORM 75-CPLR 6313:22.— Order to Show Cause for Preliminary Injunction with Temporary Restraining Order in Proceeding for Dissolution of Corporation.

LexisNexis Forms FORM 75-CPLR 6313:23.— Affidavit in Support of Motion for Preliminary Injunction with Temporary Restraining Order in Proceeding for Dissolution of Corporation.

LexisNexis Forms FORM 75-CPLR 6313:24.— Order to Show Cause for Injunction and Temporary Restraining Order Preventing Defendant From Direct or Indirect Contact with Plaintiff During Pendency of Action.

LexisNexis Forms FORM 75-CPLR 6313:25.— Attorney's Affidavit in Support of Motion for Injunction and Temporary Restraining Order Preventing Defendant From Direct or Indirect Contact with Plaintiff During Pendency of Action.

LexisNexis Forms FORM 75-CPLR 6313:26.— Plaintiff's Affidavit in Support of Motion for Injunction and Temporary Restraining Order Preventing Defendant From Direct or Indirect Contact with Plaintiff During Pendency of Action.

LexisNexis Forms FORM 75-CPLR 6313:27.— Reply Affidavit in Support of Motion for Injunction and Temporary Restraining Order Preventing Defendant From Direct or Indirect Contact with Plaintiff During Pendency of Action.

LexisNexis Forms FORM 75-CPLR 6313:28.— Order Preventing Defendant From Direct or Indirect Contact with Plaintiff During Pendency of Action.

LexisNexis Forms FORM 75-CPLR 6313:3.— Affidavit in Support of Motion for Preliminary Injunction with Temporary Restraining Order.

LexisNexis Forms FORM 75-CPLR 6313:4.— Order to Show Cause for Preliminary Injunction with Temporary Restraining Order Enjoining Interference with College Property.

LexisNexis Forms FORM 75-CPLR 6313:5.— Affidavit in Support of Motion for Preliminary Injunction with Temporary Restraining Order Enjoining Interference with College Property.

LexisNexis Forms FORM 75-CPLR 6313:6.— Order to Show Cause for Preliminary Injunction with Temporary Restraining Order to Prevent Interference with Construction.

LexisNexis Forms FORM 75-CPLR 6313:7.— Affidavit in Support of Motion for Preliminary Injunction with Temporary Restraining Order to Prevent Interference with Construction.

LexisNexis Forms FORM 75-CPLR 6313:8.— Order to Show Cause in Support of Motion for Preliminary Injunction with Temporary Restraining Order Prohibiting Unlawful Picketing by Labor Union.

LexisNexis Forms FORM 75-CPLR 6313:9.— Affidavit in Support of Motion for Preliminary Injunction with Temporary Restraining Order Prohibiting Unlawful Picketing by Labor Union.

3 Medina's Bostwick Practice Manual (Matthew Bender), Forms 36:101 et seq .(injunction).

Texts:

Gerrard, Ruzow, Weinberg, Environmental Impact Review in New York (Matthew Bender) § 7.16[1][b][iv].

Hierarchy Notes:

NY CLS CPLR, Art. 63

Forms

Forms

Form 1 Order to Show Cause on Motion for Preliminary Injunction Embodying Temporary Restraining Order

Supreme Court, _____ County.

.

Order to Show Cause

[Title of cause]

Index No. _____ [if assigned]

Present: Hon. _____, Justice.

Upon reading and filing the annexed affidavit of _____, duly sworn to the _____ day of _____, 20_____, and a copy of the summons and complaint in this action, duly verified by plaintiff the _____ day of _____, 20_____, and [recite any other papers used on the motion], which is hereto annexed as an exhibit,

Let the defendant, _____, show cause before one of the Justices of this Court, at a [motion] term of this Court, held in and for the County of _____, at the _____ County Court House in the City of _____, New York, on the _____ day of _____, 20_____, [the earliest possible time] at _____ o'clock in the _____ noon of that day or as soon thereafter as counsel can be heard, why an order should not be made and entered herein restraining and enjoining the defendant, _____, pending the determination of the issues in this action from [show conduct of defendant to be restrained or enjoined], and it is

ORDERED, that in the meantime and until the determination of the motion brought on by this order to show cause, and the entry of an order thereon, the defendant, _____, be and he is hereby stayed, enjoined and restrained from [set out action of defendant restrained].

Sufficient cause appearing therefor, let service of a copy of this order and the papers upon which it is based upon the defendant _____, on or before the _____ day of _____, 20_____, be deemed good and sufficient service thereof.

Signed this _____ day of _____, 20_____ at _____, New York.

Enter

[Print signer's name]

below signature]

Justice, Supreme Court

_____ County

[Name, address, and telephone number of attorney or party serving or filing order]

[Certification and notice of entry]

Form 2 Body of Affidavit of Service of Restraining Order

1 That on the _____ day of _____, 20_____, at _____ o'clock in the _____ noon, at No. _____ street, in the City of _____, County of _____, State of New York, I served the annexed order on the defendant, _____, in the following manner:

That at said time and place I delivered to and left with _____ a certified copy of the order and that I also delivered to and left with _____ at said time and place certified copies of the annexed summons, complaint and affidavits of _____ and _____, which complaint was verified the _____ day of _____, 20_____, and which affidavits were sworn to the _____ day of _____, 20_____, and also a certified copy of the undertaking recited in said order which was dated the _____ day of _____, 20_____, which were the papers on which said order was granted.

2 That I knew the person so served to be _____, the person described in the order and in the summons as the defendant in this action. Form 3 FORM 3 FORM 3

§ 6313. Temporary restraining order.

Affidavit

[Title of court and cause]

Index No. _____ [if assigned]

SS:

State of New York

County of _____

_____, being duly sworn, deposes and says:

1 That I am over 18 years of age and I am not a party to the above-titled action.

2 That on the _____ day of _____, 20_____, at No. _____ street, in the City of _____, County of _____, State of New York, I served the annexed order on the _____ company, the defendant herein, by delivering a certified copy thereof to _____, an officer [or "agent"], to wit, the President [or other officer or agent named in CPLR 311(1)] of said corporation, and by delivering to _____, together with a certified copy of the order, certified copies of _____ [enumerate all the papers upon which the order was granted].

3 That I knew _____ so served to be such officer [or "agent"] of said _____ company, the corporation described as the defendant in said order.

[Signature]

[Print signer's name below signature]

[Jurat]

§ 6313. Temporary restraining order.

New York Consolidated Laws Service

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