NY CLS CPLR § 6301, Part 1 of 3

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Civil Practice Law And Rules (Arts. 1 — 100) **>**

Article 63 Injunction (§§ 6301 — 6330)

§ 6301. Grounds for preliminary injunction and temporary restraining order.

A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff. A temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had.

History

Add, L 1962, ch 308, eff Sept 1, 1963.

Annotations

Notes

Derivation Notes

Earlier statutes: CPA §§ 877, 878, 882; CCP §§ 603, 604, 609; Code Proc §§ 219, 221, 223.

Commentary

PRACTICE INSIGHTS:

RELATIONSHIP BETWEEN TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

By Harold A. Kurland, Ward Greenberg Heller & Reidy LLP

Updated By Hodgson Russ LLP

General Editor, David L. Ferstendig, Law Offices of David L. Ferstendig, LLC

INSIGHT

The court has broad discretion to grant a temporary restraining order ("TRO") if the proper showing is made. Because the court has clear authority to grant a TRO ex parte and without bond, the TRO is both a powerful device and easily abused. Counsel considering applying for a TRO should appreciate the unique attributes of a TRO and coordinate it well with preliminary injunction practice.

ANALYSIS

Key additional requirement for TRO is immediacy.

CPLR 6301 does not set forth the injunction standards, but it does state explicitly that a TRO may be obtained only where it is shown to be necessary to prevent "immediate and irreparable injury." The injunction standard is likelihood of success on the merits, irreparable injury to the plaintiff in the absence of injunctive relief, balance of hardships or equities favoring the moving party, and the requested relief not being outweighed by public policy considerations. *See Bianculli v. City of New York Off. of Labor Relations,* 216 A.D.3d 560, 190 N.Y.S.3d 21 (1st Dep't 2023); *See Bianculli v. City of New York Off. of Labor Relations*, 216 A.D.3d 560, 190 N.Y.S.3d 21 (1st Dep't 2023); *Greystone Staffing, Inc. v. Warner*, 106 A.D.3d 954, 965 N.Y.S.2d

599 (2d Dep't 2013); *Aetna Ins. Co. v. Capasso*, 75 N.Y.2d 860, 552 N.Y.S.2d 918, 552 N.E.2d 166 (1990); *Kuttner v. Cuomo*, 147 A.D.2d 215, 543 N.Y.S.2d 172 (3d Dep't 1989), aff'd, 75 N.Y.2d 596, 555 N.Y.S.2d 235, 554 N.E.2d 876 (1990); *Albini v. Solork Assocs.*, 37 A.D.2d 835, 326 N.Y.S.2d 150 (2d Dep't 1971). The key additional requirement for a TRO is immediacy, that is, an immediate and irreparable injury will occur to the plaintiff unless the defendant is restrained even before a preliminary injunction hearing can be held. *See* CPLR 6301 and CPLR 6313.

Impact of *ex parte* practice on TRO.

Practical considerations surround TRO practice, and are more important than the definitions as long as the immediacy requirement is kept firmly in mind. The flexibility of the TRO is the overriding factor. Few statutory limitations affect the court's power to grant a TRO, and CPLR 6313 explicitly authorizes the court to grant a TRO without notice.

While *ex parte* applications for a TRO remain authorized, the presumptions have shifted, and counsel applying for a TRO *ex parte* should expect to have to demonstrate why the adversary was not notified and given an opportunity to be heard. The relevant court rules are explicit in establishing a notice requirement unless the party seeking the TRO shows by affirmation demonstrating that there will be "significant prejudice" to the moving party if notice has to be given, and that absent such a showing, the affirmation must show that a "good faith effort" has been made to provide such notice. 22 NYCRR 202.7(f). Commercial Division Rule 20 also strongly disfavors *ex parte* applications for TROs, and states that a TRO will not be granted *ex parte*, unless the moving party demonstrates "that there will be significant prejudice by reason of giving notice." 22 NYCRR 202.70(g), Rule 20. This notice requirement, along with the "significant prejudice" and "good faith effort" exceptions, were recently reiterated in the Uniform Rules. 22 NYCRR 202.8-e (effective Feb. 1, 2021) ("Unless the moving party can demonstrate significant prejudice by reason of giving notice, or that notice could not be given despite a good faith effort to provide notice, a temporary restraining order should not be issued ex parte.").

Huge tactical advantage in striking first to seek TRO.

Instead of a specific time limitation, CPLR 6301 authorizes the court to enter a TRO pending the preliminary injunction hearing. CPLR 6313(a) states that the hearing on the preliminary injunction should be set "at the earliest possible time." The intent of that requirement is clear. The reality, however, is that the hearing can be put off by a variety of factors. The schedule of the court (often a different judge than the one who granted the TRO in the first place), counsel for all affected parties, the parties themselves, and witnesses will have to be considered. Depending on the nature of the TRO and its actual impact, the parties may acquiesce in letting several weeks or more go by, even though an *ex parte* order is in effect, often without bond. Being able to obtain the TRO in the first place thus becomes a critical factor that can itself be dispositive. The relief was obtained ex parte and without a hearing, and may last a considerable time period during which the hands of other parties are tied pending a hearing that has no time limits and can have numerous scheduling obstacles. In short, a party will enjoy a huge tactical advantage in striking first to seek a TRO, provided a solid basis exists to meet the immediacy standard.

Advisory Committee Notes

The first sentence of this section is derived from CPA § 877 and subd 1 of § 878. Subd 2 of former § 878 has been omitted. Since it is provided in § 6201 that the provisional remedy of attachment no longer be limited to actions for money only, attachment is the more appropriate remedy to prevent a removal or disposition of property. Service of an attachment order would have the same effect as an injunction. See § 6214(b); cf. Code Civ Proc § 604, note (Throop ed 1881): ". . . the remedy by attachment seems to be ample [to protect a simple contract creditor]. Indeed, the entire subd [2 of civil practice act § 878] ought to be confined strictly to exceptional cases. . . ."

The concept in former § 878(1) of threatening to procure or suffer an act to be done has been omitted; it is sufficiently covered by the phrase "threatens . . . to do."

The last sentence of former § 877 is omitted as wholly unnecessary; it “should have been stricken out by the amendatory act of 1877, as all the provisions of this article which referred to it were stricken out.” Code Civ Proc § 603 note (Throop ed 1881).

The second sentence of this section is based upon CPA § 882. For a discussion of the terminology used in the new CPLR, see introduction to this article.

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I. Under CPLR

A. In General

1. Generally

Preliminary injunctions should be issued cautiously and in accordance with appropriate procedural safeguards since they prevent litigants from taking actions that they are otherwise legally entitled to take in advance of adjudication on merits. Uniformed Firefighters Ass'n v New York, 79 N.Y.2d 236, 581 N.Y.S.2d 734, 590 N.E.2d 719, 1992 N.Y. LEXIS 821 (N.Y. 1992).

Even if nursing home owner who brought an action seeking to declare new Medicaid reimbursement rates null and void did not receive 60 days' notice of new rates from beginning of established rate period, owner was not entitled to temporary injunction against use of new rates in that he had received far more than 60 days' notice of new rates before order denying temporary injunction was entered. Demisay v Whalen, 59 A.D.2d 444, 399 N.Y.S.2d 922, 1977 N.Y. App. Div. LEXIS 13945 (N.Y. App. Div. 3d Dep't 1977).

Action for injunctive relief directing landlord to repair rent-controlled buildings, which were evacuated pursuant to vacate order of city department due to collapse of rear wall, was not rendered moot by destruction of buildings by fire while matter was pending before Appellate Term since (1) issue presented—that of demolition of building after court order to repair has been entered—was likely to be presented again, and (2) to hold otherwise would be incentive for unscrupulous owners to permit their properties to decay beyond point of reasonable rehabilitation and thus obtain unwarranted windfall; matter would be remanded for appropriate relief against landlords. Eyedent v Vickers Management, 150 A.D.2d 202, 541 N.Y.S.2d 210, 1989 N.Y. App. Div. LEXIS 6221 (N.Y. App. Div. 1st Dep't 1989).

In action by reinsurance company against former director to enjoin him from misappropriating proprietary “finite risk catastrophe reinsurance” product that he had helped to create, court should have accepted company’s offer to submit proprietary products themselves for in camera review in connection with request for preliminary injunction. U. S. Reinsurance Corp. v Humphreys, 205 A.D.2d 187, 618 N.Y.S.2d 270, 1994 N.Y. App. Div. LEXIS 10884 (N.Y. App. Div. 1st Dep't 1994).

Preliminary injunction is drastic remedy and should be issued cautiously. Rick J. Jarvis Assocs. v Stotler, 216 A.D.2d 649, 627 N.Y.S.2d 810, 1995 N.Y. App. Div. LEXIS 6078 (N.Y. App. Div. 3d Dep't 1995).

Appellants’ request to enjoin commencement of town’s project to widen and overlay airport runway was properly denied by Supreme Court where they failed to move in Appellate Division for preliminary injunction to preserve status quo pending determination of present appeal, and thus they failed to preserve their rights pending judicial review. Gorman v Town Bd. of E. Hampton, 273 A.D.2d 235, 709 N.Y.S.2d 433, 2000 N.Y. App. Div. LEXIS 6229 (N.Y. App. Div. 2d Dep't 2000).

It was improper for court, in effect, to convert motion for preliminary injunction into motion for summary judgment, and to grant summary judgment, without adequate notice to parties. Renda v City of New Rochelle, 282 A.D.2d 662, 723 N.Y.S.2d 413, 2001 N.Y. App. Div. LEXIS 3997 (N.Y. App. Div. 2d Dep't 2001).

The defense of retaliatory eviction is available in an eviction proceeding and thus there is no threat which could justify a preliminary injunction against an eviction which is patently retaliatory in nature. Church v Allen Meadows Apartments, 69 Misc. 2d 254, 329 N.Y.S.2d 148, 1972 N.Y. Misc. LEXIS 2147 (N.Y. Sup. Ct. 1972).

Injunction may be permissible form of equitable relief even where terms of injunction require that defendant expend money in order to obey or perform act mandated by injunction. United States v Price, 688 F.2d 204, 1982 U.S. App. LEXIS 25671 (3d Cir. N.J. 1982).

2. Continuance of injunction

A court has the power to condition on equitable grounds the continuance of an injunction on the payment of permanent damages. Boomer v Atlantic Cement Co., 26 N.Y.2d 219, 309 N.Y.S.2d 312, 257 N.E.2d 870, 1970 N.Y. LEXIS 1478 (N.Y. 1970), abrogated, Corsello v Verizon N.Y., Inc., 18 N.Y.3d 777, 944 N.Y.S.2d 732, 967 N.E.2d 1177, 2012 N.Y. LEXIS 583 (N.Y. 2012).

3. Purpose of injunctions

An injunction does not issue as punishment. Its only legitimate end is protection for the future. Sandfield v Goldstein, 33 A.D.2d 376, 308 N.Y.S.2d 25, 1970 N.Y. App. Div. LEXIS 5398 (N.Y. App. Div. 3d Dep't 1970), aff'd, 28 N.Y.2d 794, 321 N.Y.S.2d 904, 270 N.E.2d 723, 1971 N.Y. LEXIS 1421 (N.Y. 1971).

Court properly dismissed complaint sua sponte and enjoined plaintiff from initiating any further litigation against defendant without prior court approval in order to prevent plaintiff’s further use of courts to harass and embarrass defendant where plaintiff had made many frivolous motions and had repeatedly disregarded court orders. Jones v Maples, 286 A.D.2d 639, 731 N.Y.S.2d 356, 2001 N.Y. App. Div. LEXIS 8870 (N.Y. App. Div. 1st Dep't 2001), app. denied, 97 N.Y.2d 716, 740 N.Y.S.2d 690, 767 N.E.2d 147, 2002 N.Y. LEXIS 596 (N.Y. 2002).

It was clear that the trial court’s order granted the insurance company the ultimate relief requested in its summons — return of the money allegedly converted by the corporation; that relief went far beyond the ordinary purpose of preliminary injunctive relief, which was to maintain the status quo and to prevent any conduct which might impair the ability of the court to render final judgment. St. Paul Fire & Marine Ins. Co. v York Claims Serv., 308 A.D.2d 347, 765 N.Y.S.2d 573, 2003 N.Y. App. Div. LEXIS 9339 (N.Y. App. Div. 1st Dep't 2003).

Trial court did note err in enjoining defendant companies from paying for the cost of the defense of the action involving members of the companies because the statute did not create a legal duty to indemnify but instead permits the advancement of legal fees to a member. In addition,

the operating agreements did not provide for the advancement of legal fees, and the purpose of a preliminary injunction under was to preserve the status quo and to prevent dissipation of property which may make a judgment ineffectual. Mangovski v DiMarco, 175 A.D.3d 947, 107 N.Y.S.3d 235, 2019 N.Y. App. Div. LEXIS 6372 (N.Y. App. Div. 4th Dep't), app. dismissed, 175 A.D.3d 950, 105 N.Y.S.3d 326, 2019 N.Y. App. Div. LEXIS 6293 (N.Y. App. Div. 4th Dep't 2019).

The granting of a preliminary injunction does not determine the ultimate issues in the action, but only serves to preserve the status quo until such determination. Swarts v Board of Education, 42 Misc. 2d 761, 249 N.Y.S.2d 44, 1964 N.Y. Misc. LEXIS 1835 (N.Y. Sup. Ct. 1964).

4. Power of court

In an action to compel defendant to remove certain of its equipment from real property owned by plaintiffs, the trial court lacked jurisdiction to grant a preliminary injunction on defendant’s motion where defendant had filed no counterclaim. Arvay v New York Tel. Co., 81 A.D.2d 600, 437 N.Y.S.2d 721, 1981 N.Y. App. Div. LEXIS 11084 (N.Y. App. Div. 2d Dep't 1981).

In action brought by tribal bingo commission and Indians who conducted bingo games on Tuscarora Indian Reservation, against individual Indianswho allegedly interfered with plaintiffs’ businesses by picketing bingo games and adjacent gas station, court did not lack subject matter jurisdiction to grant preliminary injunction to plaintiffs on ground that action was barred by sovereign immunity, since defendants failed to establish (1) that they were duly designated law enforcement officials or were acting in that capacity in interfering with bingo games, (2) that Council of Chiefs (which had outlawed bingo) was tribe’s legislative body, and (3) that tribe had validly-enacted antigambling law; as pleaded by plaintiffs and as treated preliminarily by court, action involved private civil claim by Indians against Indians within purview of 25 USCS § 233 and CLS Indian § 5. People by Abrams v Anderson, 137 A.D.2d 259, 529 N.Y.S.2d 917, 1988 N.Y. App. Div. LEXIS 6044 (N.Y. App. Div. 4th Dep't 1988).

These CPLR article 78 proceedings, all seeking preliminary injunctions, were brought to bar implementation of certain departmental directives which petitioners alleged constituted material

and unilateral changes in terms and conditions of their employment; petitioners all had instituted collective bargaining proceedings before New York City Board of Collective Bargaining (BCB); however, as BCB does not have power to issue preliminary injunctions, petitioners applied to courts for this relief–unless there is underlying action which confers statutory authority on court to grant preliminary injunction, court has no jurisdiction to award such relief; unfair labor practice proceeding before body which has statutorily been given exclusive jurisdiction to hear such disputes is not “action” within intendment of CPLR 6301; given Legislature’s expressed intent that disputed public employment practices be submitted to administrative and not judicial forum, courts, therefore, should not interfere in matters before Board. Caruso v Ward, 146 A.D.2d 486, 536 N.Y.S.2d 447, 1989 N.Y. App. Div. LEXIS 109 (N.Y. App. Div. 1st Dep't 1989).

Court has no jurisdiction to award preliminary injunction unless there is underlying action which confers statutory authority to grant such relief. Caruso v Ward, 146 A.D.2d 486, 536 N.Y.S.2d 447, 1989 N.Y. App. Div. LEXIS 109 (N.Y. App. Div. 1st Dep't 1989).

In action by town for permanent injunction prohibiting defendant from storing certain junked motor vehicles and machinery on his property, it was not improper delegation of authority for court to direct fire commissioners to remove material that constituted violation of preliminary injunction where order provided specific standards to guide commissioners’ actions. Town of Hempstead v Davis, 245 A.D.2d 366, 666 N.Y.S.2d 440, 1997 N.Y. App. Div. LEXIS 12783 (N.Y. App. Div. 2d Dep't 1997).

In action seeking declaration of plaintiffs’ right to rent stabilization, court erred in granting plaintiffs’ motion for preliminary injunction staying all proceedings before Division of Housing and Community Renewal (DHCR) and denying defendants’ cross-motion to dismiss where, aside from applicability of rent regulation to aggregated former Mitchell-Lama developments, which was issue of first impression to which doctrine of primary jurisdiction applied, case involved factual evaluations within DHCR’s area of expertise, including whether building was subject to rent regulation by virtue of its completion date, and whether Emergency Tenant Protection Act of 1974 (L 1974, ch 576 § 4, as amended) applied to horizontal complex of multiple dwellings.

Davis v Waterside Hous. Co., 274 A.D.2d 318, 711 N.Y.S.2d 4, 2000 N.Y. App. Div. LEXIS 7761 (N.Y. App. Div. 1st Dep't), app. denied, 95 N.Y.2d 770, 722 N.Y.S.2d 473, 745 N.E.2d 393, 2000 N.Y. LEXIS 3850 (N.Y. 2000).

The authority to grant preliminary injunctions is not inherent in the court, but is derived from the CPLR, the applicable provisions of which must be fully complied with. Western New York Motor Lines, Inc. v Rochester-Genesee Regional Transp. Authority, 72 Misc. 2d 712, 340 N.Y.S.2d 252, 1973 N.Y. Misc. LEXIS 2266 (N.Y. Sup. Ct. 1973).

Surrogate's Court had jurisdiction to entertain discovery proceeding under CLS SCPA § 2103 seeking return of alleged estate property located in California, and to enjoin surviving spouse from proceeding with California action to obtain title to such property, although both claimants resided in California and property would remain in California regardless of court's determination, where decedent was New York domiciliary, will was probated in New York, executor resided in New York, proceedings were instituted in New York prior to institution of proceedings in California, and surviving spouse had not brought California action in good faith in that she did not disclose to California court that proceeding was already pending in New York; title to property might be relevant to computation of surviving spouse's elective share, and court was capable of applying California law if appropriate. In re Estate of Bauman, 140 Misc. 2d 412, 530 N.Y.S.2d 765, 1988 N.Y. Misc. LEXIS 438 (N.Y. Sur. Ct. 1988).

Surrogate's Court had authority to enjoin decedent's widow, coexecutrix of estate, from proceeding with Florida lawsuit for legal malpractice and breach of fiduciary duties against law firm which represented decedent during his life since (1) malpractice action was nothing more than request to partially vacate Surrogate's Court decree setting fees for law firm, issue which Surrogate's Court should decide, (2) widow's lawsuit was seeking declaration that she need not pay fees currently sought by firm in proceeding instituted in Surrogate's Court, matter within court's jurisdiction, (3) Florida lawsuit also attacked commissions ordered by Surrogate's Court to be paid to other coexecutor, (4) any trial of malpractice suit would entail rehearing of probate matter and was merely attempt to avoid settlement approved by Surrogate's Court, and (5)

Florida court had taken no action as to complaint and no final judgment had been issued in regard thereto. In re Estate of Johnson, 142 Misc. 2d 388, 539 N.Y.S.2d 243, 1988 N.Y. Misc. LEXIS 835 (N.Y. Sur. Ct.), aff'd, 145 A.D.2d 388, 536 N.Y.S.2d 363, 1988 N.Y. App. Div. LEXIS 14870 (N.Y. App. Div. 1st Dep't 1988).

Daughter of one of 2 life tenants of trust was not entitled to injunction to enjoin one life tenant, who was her uncle, from commencing adoption proceeding in any court other than Surrogate's Court with jurisdiction over trust where neither uncle nor currently identified potential adoptee were domiciled in state, and thus court had no jurisdiction over any potential adoption. In re Estate of Gardiner, 144 Misc. 2d 797, 545 N.Y.S.2d 466, 1989 N.Y. Misc. LEXIS 547 (N.Y. Sur. Ct. 1989).

Declaratory judgment with the equitable relief of a permanent injunction was warranted in a matter involving a mental patient stalking a famous singer because without a permanent injunction, the patient could legally continue to annoy, harass, or intimidate the singer, regardless of any lack of intent, and the singer had the right to be free from the fear of sexual assault, serious physical injury or death, and to the quiet enjoyment of her real property free of nuisance. Matter of Kevin M. v South Beach Psychiatric Ctr., 999 N.Y.S.2d 696, 46 Misc. 3d 455, 2014 N.Y. Misc. LEXIS 4755 (N.Y. Sup. Ct. 2014), app. dismissed, 136 A.D.3d 827, 24 N.Y.S.3d 519, 2016 N.Y. App. Div. LEXIS 961 (N.Y. App. Div. 2d Dep't 2016), rev'd in part, 136 A.D.3d 826, 26 N.Y.S.3d 84, 2016 N.Y. App. Div. LEXIS 964 (N.Y. App. Div. 2d Dep't 2016).

5. —Limitations on power of court

Where plaintiff sought preliminary injunction to prevent enforcement of local law imposing moratorium on cellular telephone antennae, court erred when it adjudicated rights of parties beyond requested relief by setting aside local law and declaring it null and void. Cellular Tel. Co. v Village of Tarrytown, 210 A.D.2d 196, 619 N.Y.S.2d 746, 1994 N.Y. App. Div. LEXIS 12330 (N.Y. App. Div. 2d Dep't 1994).

State courts are without power to restrain federal court proceedings in in personam actions. Leake v Merrill Lynch, Pierce, Fenner & Smith, 213 A.D.2d 155, 623 N.Y.S.2d 220, 1995 N.Y. App. Div. LEXIS 2343 (N.Y. App. Div. 1st Dep't 1995).

The power to issue a temporary injunction is granted by the Legislature and is not inherently part of the jurisdiction of a court of equity, and hence the Legislature may impose restrictions on the exercise of that power. In re Utica Teachers Ass'n, 67 Misc. 2d 770, 325 N.Y.S.2d 587, 1971 N.Y. Misc. LEXIS 1187 (N.Y. Sup. Ct. 1971).

6. Discretion of court

Decision to grant or deny provisional relief, which requires court to weigh variety of factors, is matter ordinarily committed to sound discretion of lower courts, and Court of Appeals' power to review such decisions is thus limited to determining whether lower courts' discretionary powers were exceeded or, as matter of law, abused. Doe v Axelrod, 73 N.Y.2d 748, 536 N.Y.S.2d 44, 532 N.E.2d 1272, 1988 N.Y. LEXIS 3328 (N.Y. 1988).

Where the right of plaintiff to any injunction is unclear, the relief must be denied. Ultra Fuel Corp., Inc. v Johnston, 30 A.D.2d 801, 291 N.Y.S.2d 996, 1968 N.Y. App. Div. LEXIS 3371 (N.Y. App. Div. 1st Dep't 1968).

In action to enjoin defendant from operating high-speed passenger-only ferry service until it sought and obtained site plan approval, court properly granted leave to intervene to organization representing neighboring homeowners where organization showed that its members, some of whom suffered from increase in noise, traffic, and air emissions on streets where they resided, possessed real and substantial interest in outcome of action. Town of Southold v Cross Sound Ferry Servs., 256 A.D.2d 403, 681 N.Y.S.2d 571, 1998 N.Y. App. Div. LEXIS 13447 (N.Y. App. Div. 2d Dep't 1998).

Mandamus did not lie to compel Supreme Court Justice to sign order for preliminary injunction against alleged nuisance, since application for injunctive relief requires, inter alia, balancing of

equities and finding of irreparable injury, which involves exercise of discretion and judgment and is not mere ministerial duty. Dyno v Rose, 260 A.D.2d 694, 687 N.Y.S.2d 497, 1999 N.Y. App. Div. LEXIS 3299 (N.Y. App. Div. 3d Dep't 1999), app. denied, 94 N.Y.2d 753, 700 N.Y.S.2d 426, 722 N.E.2d 506, 1999 N.Y. LEXIS 3681 (N.Y. 1999), app. dismissed, 94 N.Y.2d 869, 705 N.Y.S.2d 1, 726 N.E.2d 478, 2000 N.Y. LEXIS 17 (N.Y. 2000).

In the exercise of its discretion and in balancing the equities, the court must weigh the relative hardship that may be imposed upon each of the parties by the issuance or denial of a preliminary injunction. Western New York Motor Lines, Inc. v Rochester-Genesee Regional Transp. Authority, 72 Misc. 2d 712, 340 N.Y.S.2d 252, 1973 N.Y. Misc. LEXIS 2266 (N.Y. Sup. Ct. 1973).

In action alleging discrimination against women seeking abortions or other family planning services, court reasonably concluded that public safety was one interest justifying injunction tailored to respondents' claims for relief, even though complaint asserted purely private rights under CLS Civ R § 40-c, in view of dangerous situation created by interaction between cars and protestors and because of fights that threatened to (and sometimes did) develop between them. Schenck v Pro-Choice Network, 519 U.S. 357, 117 S. Ct. 855, 137 L. Ed. 2d 1, 1997 U.S. LEXIS 1270 (U.S. 1997).

7. —Granting injunction was not abuse of discretion

In action against counsel who had retained no lien on being discharged and who claimed entitlement, by reason of agreement between himself, his successor and trial counsel, to one-third of amount collected for infant, Special Term properly exercised discretion by constituting infant's trial counsel at stakeholder of one-third the fee pending adjudication of plaintiff's claim. Geller v Julien, 50 A.D.2d 747, 377 N.Y.S.2d 11, 1975 N.Y. App. Div. LEXIS 11531 (N.Y. App. Div. 1st Dep't 1975), app. dismissed, 39 N.Y.2d 797, 385 N.Y.S.2d 757, 351 N.E.2d 424, 1976 N.Y. LEXIS 2740 (N.Y. 1976).

Preliminary injunction was not an abuse of discretion as medical records showed that the decedent could not make financial decisions and a decedent's accountant and attorney unequivocally averred and/or testified that: (1) the decedent could not understand a stock transfer to a mother or her transfer of the money into a grantor retained annuity trust (GRAT), (2) the decedent had always emphasized his desire to treat his children equally, and (3) the decedent was unable to appreciate that the transfer and the GRAT went against his wishes; given the seriousness of the allegations of undue influence, a daughter would be irreparably harmed absent the injunction and the equities balanced in her favor. Matter of Kalichman, 31 A.D.3d 1066, 820 N.Y.S.2d 648, 2006 N.Y. App. Div. LEXIS 9632 (N.Y. App. Div. 3d Dep't 2006).

Property owners were entitled to a preliminary injunction barring an amended rental policy's enforcement because (1) the owners showed a probability of success on the merits, (2) there was no reason to believe the owners' claims of irreparable harm were illusory, and (3) it was not shown what harm a subdivision community would suffer if the status quo were preserved. Laker v Association of Prop. Owners of Sleepy Hollow Lake, Inc., 172 A.D.3d 1660, 100 N.Y.S.3d 750, 2019 N.Y. App. Div. LEXIS 3845 (N.Y. App. Div. 3d Dep't 2019).

Threat by city and city school district to refuse enrollment of pupils of annexed towns unless they paid tuition, contrary to a previously established practice, was deemed sufficient to warrant the exercise of the court's discretion to issue a preliminary injunction to maintain status quo until final determination of action to have local law prescribing such fees declared invalid. Swarts v Board of Education, 42 Misc. 2d 761, 249 N.Y.S.2d 44, 1964 N.Y. Misc. LEXIS 1835 (N.Y. Sup. Ct. 1964).

8. —Granting injunction was abuse of discretion

Court erred in granting temporary restraining order to prevent defendants from removing laundry machines or entering into any other commitment for provision of laundry services during pendency of action where plaintiff, if necessary, could be fully compensated by monetary

damages. Linro Equip. Corp. v Westage Tower Assocs., 233 A.D.2d 824, 650 N.Y.S.2d 399, 1996 N.Y. App. Div. LEXIS 12179 (N.Y. App. Div. 3d Dep't 1996).

Declaring defendants to be in violation of CLS County § 218-a(B), NYC Charter § 677(c), and 9 NYCRR § 180.5(a)(3)(iv) on motion for preliminary injunctive relief, without evidentiary hearing, was abuse of discretion in light of court's acknowledgment that defendants opposed treating motion as one for permanent injunctive relief, and fact issues existed as to whether shortage of non-secure detention (NSD) facilities was ongoing, whether courts were being encouraged to make "open" remands in light of such shortage, and whether their were, in fact, adequate temporary NSD arrangements at alternate-site secure facilities. Jamie B. v Hernandez, 274 A.D.2d 335, 712 N.Y.S.2d 91, 2000 N.Y. App. Div. LEXIS 8048 (N.Y. App. Div. 1st Dep't 2000).

Trial court erred in granting a commercial tenant's motion to preliminarily enjoin the landlord from terminating the subject lease and in directing the tenant to pay rent in a reduced sum because the tenant failed to establish that the balance of the equities favored an injunction where its alleged damages were compensable in money damages and capable of calculation, the tenant's vague and conclusory allegations regarding its inability to pay the full rent under the lease were insufficient to establish irreparable injury, and the court impermissibly rewrote the terms of the lease by directing that the tenant be permitted to pay only part of the rent due under the lease while it continued to occupy the premises. Soundview Cinemas, Inc. v AC I Soundview, LLC, 149 A.D.3d 1121, 53 N.Y.S.3d 157, 2017 N.Y. App. Div. LEXIS 3151 (N.Y. App. Div. 2d Dep't 2017).

9. Standing

In Article 78 proceeding alleging that respondents violated CLS Pub O §§ 3(9) and 30(5) and constitutional requirements for civil service appointments (CLS NY Const Art V § 6) by letting prior eligible list for firefighter position expire for purpose of favoring New York City residents who would receive 5-point residency credit on subsequent firefighter examination, candidates on prior eligible list were not aggrieved by application of residency credit and thus lacked standing

to seek to enjoin its use, where no residency credit was applied to their examination, they did not allege that they sat for subsequent examination, and they did not allege that all appointments could not lawfully be fulfilled from subsequent list unless residency credit was dropped as factor in determining that list. Altamore v Barrios-Paoli, 90 N.Y.2d 378, 660 N.Y.S.2d 834, 683 N.E.2d 740, 1997 N.Y. LEXIS 1369 (N.Y. 1997).

Organizations concerned with care and protection of children had standing to seek declaratory and injunctive relief based on claim that city violated statutory duty to provide child protective services, although organizations' allegation that they suffered injury due to added burden on their resources was presented in general terms only; practical effect of dismissing claim would be to foreclose judicial review of city's failure to comply with statutory directives since abused children were unable to seek judicial remedy, and it was not likely that parents or caretakers, who were objects of claims of abuse, would do so. Grant v Cuomo, 130 A.D.2d 154, 518 N.Y.S.2d 105, 1987 N.Y. App. Div. LEXIS 45076 (N.Y. App. Div. 1st Dep't 1987), app. dismissed, 70 N.Y.2d 899, 524 N.Y.S.2d 428, 519 N.E.2d 339, 1987 N.Y. LEXIS 19943 (N.Y. 1987), aff'd, 73 N.Y.2d 820, 537 N.Y.S.2d 115, 534 N.E.2d 32, 1988 N.Y. LEXIS 3514 (N.Y. 1988).

Coalition for Homeless, not-for-profit organization providing advocacy and direct services to homeless persons, had standing in its own right or in representative capacity to seek injunctive relief to compel New York City to provide medically appropriate housing to homeless individuals infected with HIV virus; in alleging that its resources had not only been spent on advocating on behalf of homeless, but on providing noncongregate housing, coalition had sufficiently alleged specific burden on its resources caused by city's failure to provide appropriate housing. Mixon v Grinker, 157 A.D.2d 423, 556 N.Y.S.2d 855, 1990 N.Y. App. Div. LEXIS 6766 (N.Y. App. Div. 1st Dep't 1990).

Membership corporations which served as advocacy and resource centers for disabled persons, many of whom were medicaid recipients, had standing to seek injunctive relief against implementation of Medicaid Utilization Thresholds (new system for delivery of medicaid

services); membership corporations were proper parties because they had specific interest, greater than that of concerned citizens or taxpayers, in administration of medicare program, and to hold otherwise would possibly leave unprotected that part of society most in need of representation and protection. Community Service Soc. v Cuomo, 167 A.D.2d 168, 561 N.Y.S.2d 461, 1990 N.Y. App. Div. LEXIS 13524 (N.Y. App. Div. 1st Dep't 1990).

Homeowners' association had standing to bring action to enjoin defendants from building homes on their property in violation of setback requirement contained in private restrictive covenant which applied to all real property in development, although association may not have met technical requirements of privity of estate, since (1) association was formed to advance property owners' common interests and had substantial identification with property owners, and (2) covenant appeared in defendants' chain of title, thereby notifying defendants of its existence. Westmoreland Ass'n v West Cutter Estates, Ltd., 174 A.D.2d 144, 579 N.Y.S.2d 413, 1992 N.Y. App. Div. LEXIS 227 (N.Y. App. Div. 2d Dep't 1992).

Plaintiff had standing to seek preliminary injunction enjoining payment of irrevocable letter of credit where record revealed that plaintiff was in direct contractual privity with defendant as buyer of merchandise in underlying transaction and was thus responsible to its ultimate customers, who had opened letter of credit for defendant. Takeo Co. v Mead Paper, 204 A.D.2d 123, 611 N.Y.S.2d 543, 1994 N.Y. App. Div. LEXIS 5118 (N.Y. App. Div. 1st Dep't 1994).

Neighborhood coalition lacked standing to seek injunction against construction on once-vacant lots allegedly occupied by community gardens where members of coalition occupied those lots either without any enforceable license or permission or under terminated license. New York City Coalition for the Preservation of Gardens v Giuliani, 246 A.D.2d 399, 666 N.Y.S.2d 918, 1998 N.Y. App. Div. LEXIS 285 (N.Y. App. Div. 1st Dep't 1998).

Building a Better New York Committee (BBNYC) could not claim protections afforded by Personal Privacy Protection Law, CLS Pub O Art 6-A (PPPL) since CLS Pub O § 97(1) provides that only "data subject" may commence proceeding to seek judicial relief of purported violation of PPPL, and "data subject" is defined under CLS Pub O § 92 as any natural person; thus,

BBNYC lacked standing to bring proceeding to restrain State Commission on Government Integrity and State Board of Elections from publicly revealing contents of files prepared by board in its investigation of town election campaign. Building a Better New York Committee v New York State Com. on Government Integrity, 138 Misc. 2d 829, 525 N.Y.S.2d 488, 1988 N.Y. Misc. LEXIS 203 (N.Y. Sup. Ct. 1988).

10. —Illustrative cases

North Carolina subcontractor having no contacts with New York should not be enjoined, in action against general contractor regarding work performed in North Carolina, from prosecuting action anywhere but in New York forum, despite forum selection clause in general contractor's prime contract with owner which specified New York forum, where subcontract did not refer to prime contract, prime contract applied only to disputes between owner and either general contractor or its subcontractors, and general contractor did not demonstrate that subcontractor's action was due to any act by owner, or involved prime contract documents. George Hyman Constr. Co. v Precision Walls, Inc., 132 A.D.2d 523, 517 N.Y.S.2d 263, 1987 N.Y. App. Div. LEXIS 49053 (N.Y. App. Div. 2d Dep't 1987).

Owner of cooperative apartment whose pro rata share of real estate taxes was at least $1,000 had standing, under CLS Gen Mun § 51, to seek injunctive relief and declaratory judgment with respect to city contracts which allegedly violated CLS Gen Oblig §§ 5-322.1 and 5-323; such owner has same right as fee owner to maintain taxpayer action. Fisher v Biderman, 154 A.D.2d 155, 552 N.Y.S.2d 221, 1990 N.Y. App. Div. LEXIS 2385 (N.Y. App. Div. 1st Dep't), app. denied, 76 N.Y.2d 702, 559 N.Y.S.2d 239, 558 N.E.2d 41, 1990 N.Y. LEXIS 1349 (N.Y. 1990).

Medicaid recipients who showed no actual injury nevertheless had standing to seek injunction against implementation of Medicaid Utilization Thresholds (new system for delivery of medicaid services) even though it might ultimately be found that new regulations complied with statutory mandate; allegations that medicaid recipients could be adversely affected by regulations restricting and controlling their medical services was sufficient to confer standing. Community

Service Soc. v Cuomo, 167 A.D.2d 168, 561 N.Y.S.2d 461, 1990 N.Y. App. Div. LEXIS 13524 (N.Y. App. Div. 1st Dep't 1990).

Medicaid health care providers had standing to seek injunctive relief against implementation of Medicaid Utilization Thresholds (new system for delivery of medicaid services); providers had more than mere generalized business interest in medicare, for as members of medical community already reluctant to accept medicaid patients, they were essential participants without whom system would fail. Community Service Soc. v Cuomo, 167 A.D.2d 168, 561 N.Y.S.2d 461, 1990 N.Y. App. Div. LEXIS 13524 (N.Y. App. Div. 1st Dep't 1990).

President of hospital community board of long-term health care facility had standing to seek preliminary injunction barring patient from hospital following patient’s administrative discharge where president brought action both individually and on behalf of members of board, and president and board members were members of hospital community, so that their claim that patient posed danger to community demonstrated sufficiently clear personal interest to establish standing. Kaufman v Axelrod, 135 Misc. 2d 293, 515 N.Y.S.2d 202, 1987 N.Y. Misc. LEXIS 2213 (N.Y. Sup. Ct. 1987).

Daughter of one of 2 life tenants of trust did not have standing to bring proceeding to enjoin one life tenant, who was her uncle, from commencing adoption proceeding in any court other than Surrogate’s Court with jurisdiction over trust since daughter was only one possible contingent remainderman of trust and, during lives of life tenants, had no vested interest in trust. In re Estate of Gardiner, 144 Misc. 2d 797, 545 N.Y.S.2d 466, 1989 N.Y. Misc. LEXIS 547 (N.Y. Sur. Ct. 1989).

Candidate seeking independent line for Office of Governor had standing to seek injunctive relief challenging constitutionality of CLS Elec §§ 5-602, 5-604 and 6-140, as he was citizen-taxpayer and person specifically aggrieved by prohibitive impact of statutes that established procedures for accessing registration and enrollment records. Schulz v New York State Bd. of Elections, 167 Misc. 2d 404, 633 N.Y.S.2d 915, 1995 N.Y. Misc. LEXIS 468 (N.Y. Sup. Ct. 1995).

New York City Lawyers' Association (NYCLA) had direct, third-party and organizational standing to commence action for declaratory and injunctive relief, challenging compensation levels and limits for assigned private counsel as set by CLS County § 722-b, CLS Family Ct Act § 245 and CLS Jud § 35(3), as (1) NYCLA and its members who were panel members of Assigned Counsel Plan and/or Family Court Law Guardian Plan suffered injury in fact within zone of interest of court rules implemented to facilitate effective assistance of counsel to children and indigent persons, and their injury was different from that of public at large and substantially different from most other bar groups and associations, and (2) traditional standing principles aside, to deny NYCLA standing would exempt from judicial review state's alleged failure to comply with its statutory and constitutional obligations. N.Y. County Lawyers' Ass'n v Pataki, 188 Misc. 2d 776, 727 N.Y.S.2d 851, 2001 N.Y. Misc. LEXIS 205 (N.Y. Sup. Ct. 2001), aff'd, 294 A.D.2d 69, 742 N.Y.S.2d 16, 2002 N.Y. App. Div. LEXIS 4822 (N.Y. App. Div. 1st Dep't 2002).

11. Persons bound by injunction

A person may be bound by the terms of an injunction even though not a party to the action in which it is granted if he has notice or knowledge of the order and is within the class of persons whose conduct it is intended to be restrained or if he acts in concert with a person who is in that class. Fordham University v King, 63 Misc. 2d 611, 313 N.Y.S.2d 208, 1970 N.Y. Misc. LEXIS 1497 (N.Y. Sup. Ct. 1970).

12. Pleadings

Where, after preliminary injunction was issued, complaint was amended so as to omit demand for permanent injunction, preliminary injunctive relief was no longer merited. Halmar Distributors, Inc. v Approved Mfg. Corp., 49 A.D.2d 841, 373 N.Y.S.2d 599, 1975 N.Y. App. Div. LEXIS 10983 (N.Y. App. Div. 1st Dep't 1975).

Where party seeking preliminary injunctive relief sought in his complaint only to recover moneys which had been advanced to defendants, such moneys were not "subject of the action" within

meaning of statute permitting injunctive relief where plaintiff's rights with respect to subject of action are threatened; preliminary injunctive relief was therefore not proper. Halmar Distributors, Inc. v Approved Mfg. Corp., 49 A.D.2d 841, 373 N.Y.S.2d 599, 1975 N.Y. App. Div. LEXIS 10983 (N.Y. App. Div. 1st Dep't 1975).

Court properly ruled on validity of plaintiffs' cause of action seeking determination of claims to real property by adjudging defendant to be owner thereof on basis of deed appended to defendant's affirmation in opposition of plaintiffs' motion to enjoin sale or encumbrance of property, since motion for preliminary injunction opens record and gives court authority to pass on sufficiency of underlying pleading, and plaintiffs never challenged validity or authenticity of deed, which transferred property to defendant and deceased third party as joint tenants; contrary to plaintiffs' assertion, court's determination of ownership was not tantamount to granting summary judgment, sua sponte, in favor of defendant. Bero v Bero, 143 A.D.2d 866, 533 N.Y.S.2d 531, 1988 N.Y. App. Div. LEXIS 10278 (N.Y. App. Div. 2d Dep't 1988).

In action by town to enjoin builder from maintaining modular home constructed on 3 undersized lots pursuant to permit granted by town's building inspector, on ground that lots lacked sufficient frontage under town's zoning laws, town was not required to serve complaint prior to seeking preliminary injunction, since present and ongoing violation of zoning laws was alleged. Esopus v Fausto Simoes & Associates, 145 A.D.2d 840, 535 N.Y.S.2d 827, 1988 N.Y. App. Div. LEXIS 13441 (N.Y. App. Div. 3d Dep't 1988).

Although motion for preliminary injunction allows court to search record and pass on sufficiency of underlying pleadings, such inquiry is limited to whether plaintiff has cause of action, and court may not make evaluation of conflicting evidence. Six Nations Apartment Housing Fund Dev. Co. v Six Nations Properties, Ltd., 175 A.D.2d 567, 572 N.Y.S.2d 234, 1991 N.Y. App. Div. LEXIS 10065 (N.Y. App. Div. 4th Dep't 1991).

In Article 78 proceeding by area residents and community groups against university, city, and State Dormitory Authority to temporarily and permanently enjoin construction of new student center, court properly refused to accept as true petitioners' allegation that site was subject to

restrictions in urban redevelopment plan where (1) text and official maps of plan, submitted in support of respondents' motion to dismiss petition, clearly showed that site was beyond geographical boundaries of plan, and (2) plan expired by its own terms in 1994 and thus did not apply to construction begun in 1999. Comm. to Save Wash. Square Inc. v Dormitory Auth., 281 A.D.2d 770, 722 N.Y.S.2d 112, 2001 N.Y. App. Div. LEXIS 2490 (N.Y. App. Div. 3d Dep't 2001).

13. —Appealability

Special Term's denial of beauty shop owner's request for preliminary injunction to enjoin shopping mall landlord from interfering with shop owner's business or from terminating her lease was not appealable where shop owner failed to avail herself of CLS RPAPL § 751 procedures to stay Special Term's concurrent order granting possession of premises to landlord, and instead vacated premises thereby rendering moot any issue concerning propriety of Special Term's ruling on request for injunction. Bissell v Pyramid Cos., 125 A.D.2d 876, 510 N.Y.S.2d 462, 1986 N.Y. App. Div. LEXIS 63067 (N.Y. App. Div. 3d Dep't 1986), app. dismissed in part, app. denied, 69 N.Y.2d 1015, 517 N.Y.S.2d 935, 511 N.E.2d 78, 1987 N.Y. LEXIS 16807 (N.Y. 1987).

Petitioner's appeal from dismissal of his application for preliminary injunction to restrain unmarried respondent from aborting their unborn child would be dismissed as moot where record contained respondent's affidavit stating that abortion had already been performed and that she had no interested in further litigation of matter, since injunction will not issue to prohibit fait accompli. Doe v Roe, 158 A.D.2d 759, 551 N.Y.S.2d 75, 1990 N.Y. App. Div. LEXIS 981 (N.Y. App. Div. 3d Dep't 1990).

14. Burden of proof

On an application for a preliminary injunction pending on appeal the moving party has the burden of establishing a reasonable probability of success on the appeal and the existence of irreparable injury in the event an injunction does not issue. Schwartz v Rockefeller, 38 A.D.2d 995, 329 N.Y.S.2d 482, 1972 N.Y. App. Div. LEXIS 5180 (N.Y. App. Div. 3d Dep't), app.

dismissed, 30 N.Y.2d 484, 331 N.Y.S.2d 1025, 282 N.E.2d 335, 1972 N.Y. LEXIS 1968 (N.Y. 1972), app. dismissed, 30 N.Y.2d 664, 332 N.Y.S.2d 100, 282 N.E.2d 886, 1972 N.Y. LEXIS 1414 (N.Y. 1972).

Plaintiffs' rights to preliminary injunction must be certain as to law and facts, and burden of establishing such undisputed right rests upon the plaintiffs. Camardo v Board of Education, 50 A.D.2d 1073, 376 N.Y.S.2d 344, 1975 N.Y. App. Div. LEXIS 12095 (N.Y. App. Div. 4th Dep't 1975).

15. —Complaint

When plaintiff has moved for preliminary injunction, court has authority to dismiss defective complaint even in absence of formal cross motion. Loira v Anagnastopolous, 204 A.D.2d 608, 612 N.Y.S.2d 189, 1994 N.Y. App. Div. LEXIS 5550 (N.Y. App. Div. 2d Dep't 1994).

The presence of a complaint is unnecessary for a wife to secure a restraining order to prevent her husband from withdrawing more than one half the amounts deposited in their joint account during the pendency of divorce action instituted by her. Aqualina v Aqualina, 56 Misc. 2d 357, 288 N.Y.S.2d 671, 1968 N.Y. Misc. LEXIS 1631 (N.Y. Sup. Ct. 1968).

Failure to serve complaint in underlying action did not bar granting of preliminary injunction in favor of committee of local organizations (plaintiffs) to prevent city (defendant) from constructing correctional facility since injunctive relief would not be based on "nature of the action" but rather on assertion that defendant was performing acts in violation of plaintiffs' rights. Hart Island Committee v Koch, 137 Misc. 2d 521, 520 N.Y.S.2d 977, 1987 N.Y. Misc. LEXIS 2616 (N.Y. Sup. Ct. 1987), modified, 150 A.D.2d 269, 541 N.Y.S.2d 790, 1989 N.Y. App. Div. LEXIS 7109 (N.Y. App. Div. 1st Dep't 1989).

16. Orders

Without proof that anyone has violated any provision of the court order or has been harmed or aggrieved thereby, the order to “immediately cease and desist” from occupying certain buildings owned by the college cannot stand and a temporary injunction restraining certain persons, instructors and students at the institution therefrom was vacated. Monroe Community College v Hughes, 34 A.D.2d 890, 312 N.Y.S.2d 556, 1970 N.Y. App. Div. LEXIS 4798 (N.Y. App. Div. 4th Dep't 1970).

An earlier order containing improper decisional material, factual findings and conclusions, should have been stricken upon motion for resettlement. Catskill v Winter, 35 A.D.2d 854, 315 N.Y.S.2d 149, 1970 N.Y. App. Div. LEXIS 3572 (N.Y. App. Div. 3d Dep't 1970).

On plaintiff’s appeal from order granting defendant’s motion for preliminary injunction in action involving exclusive sales region contract, Appellate Division would not consider defendant’s assertion that trial court improperly conditioned injunction on requirement that defendant refrain from discussing matter with plaintiff’s potential customers; such contention should be made by way of motion to trial court to vacate or modify its order, not by appeal. Paddock Constr., Ltd. v Automated Swimpools, Inc., 130 A.D.2d 894, 515 N.Y.S.2d 662, 1987 N.Y. App. Div. LEXIS 46888 (N.Y. App. Div. 3d Dep't 1987).

In action seeking permanent injunction barring defendants from interfering with plaintiff’s antenna situated on roof of defendant’s building, court erred in declaring that plaintiff was trespasser and directing plaintiff to vacate premises, since court was only presented with application for preliminary relief pending final resolution of action and defendants had not yet interposed answer nor cross-moved for order directing removal of antenna; court’s order exceeded scope of application by awarding permanent relief to nonmoving party, and court should have confined its ruling to preliminary injunction question. 123 Limousine, Inc. v Kennedy House, 136 A.D.2d 683, 524 N.Y.S.2d 98, 1988 N.Y. App. Div. LEXIS 662 (N.Y. App. Div. 2d Dep't 1988).

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).

Defendant was entitled to vacatur of preliminary injunction entered on his default where court did not question defense counsel's excuse for not appearing at scheduled conference—that he never received any written or telephone notice of conference because court used outdated address and telephone number for his office. Simpson & Co. v Simpson Florist, Inc., 281 A.D.2d 329, 722 N.Y.S.2d 509, 2001 N.Y. App. Div. LEXIS 3149 (N.Y. App. Div. 1st Dep't 2001).

Plaintiff had little or no likelihood of success on its causes of action for breach of stipulation and trade name infringement, and thus defendants were entitled to vacatur of preliminary injunction, entered on their default, barring them from using name "Simpson" in their business, where (1) plaintiff Simpson & Co. was not in existence at time of stipulation in which defendant Berson agreed not to use trade names "Simpson & Co." or "Simpson & Co. Florist West," (2) defendants' use of trade name "Simpson Florist, Inc." predated plaintiff's use of trade name "Simpson & Co.," and (3) defendants were not required to agree, as condition of vacatur, to court's proposal that any use by them of name "Simpson" in their trade name be limit to "Berson & Simpson" rather than "Simpson Florist, Inc." Simpson & Co. v Simpson Florist, Inc., 281 A.D.2d 329, 722 N.Y.S.2d 509, 2001 N.Y. App. Div. LEXIS 3149 (N.Y. App. Div. 1st Dep't 2001).

Supreme court erred in requiring an individual defendant in a fraud action to offer additional security as a condition of denying plaintiff's motion for a preliminary injunction and continuing a temporary restraining order because once the supreme court found plaintiff had not shown she would suffer irreparable injury, there was no basis to continue the temporary restraining order. Crescentini v Slate Hill Biomass Energy, LLC, 113 A.D.3d 806, 979 N.Y.S.2d 635, 2014 N.Y. App. Div. LEXIS 474 (N.Y. App. Div. 2d Dep't 2014).

17. General criteria for injunctions

§ 6301. Grounds for preliminary injunction and temporary restraining order.

Preliminary injunction may be granted under CLS CPLR Art 63 when party seeking such relief demonstrates (1) likelihood of ultimate success on merits, (2) prospect of irreparable injury if provisional relief is withheld, and (3) balance of equities tipping in moving party's favor. Doe v Axelrod, 73 N.Y.2d 748, 536 N.Y.S.2d 44, 532 N.E.2d 1272, 1988 N.Y. LEXIS 3328 (N.Y. 1988).

The mere fact that an action has first been commenced in New York is an insufficient basis for a New York court to enjoin a party to such action from litigating issues involved in the action in another State. Roman v Sunshine Ranchettes, Inc., 98 A.D.2d 744, 469 N.Y.S.2d 449, 1983 N.Y. App. Div. LEXIS 21059 (N.Y. App. Div. 2d Dep't 1983).

Showing of bad faith or fraudulent intent is not prerequisite to granting of injunction relief. Adirondack Appliance Repair, Inc. v Adirondack Appliance Parts, Inc., 148 A.D.2d 796, 538 N.Y.S.2d 118, 1989 N.Y. App. Div. LEXIS 2148 (N.Y. App. Div. 3d Dep't 1989).

Existence of factual dispute will not bar granting of preliminary injunction if one is necessary to preserve status quo and party to be enjoined will suffer no great hardship as result of its issuance. Mr. Natural, Inc. v Unadulterated Food Products, Inc., 152 A.D.2d 729, 544 N.Y.S.2d 182, 1989 N.Y. App. Div. LEXIS 10622 (N.Y. App. Div. 2d Dep't 1989).

Preliminary injunctive relief will not issue absent showing by movant of (1) likelihood of ultimate success on merits, (2) irreparable injury to movant absent granting of such relief, and (3) balancing of equities in movant's favor. Allmacher v Digiacomo, 153 A.D.2d 651, 544 N.Y.S.2d 983, 1989 N.Y. App. Div. LEXIS 11029 (N.Y. App. Div. 2d Dep't 1989).

Preliminary injunction may be granted when there is likelihood of ultimate success on merits, prospect of irreparable injury if relief is withheld, and balancing of equities favoring moving party; matter is ordinarily committed to sound discretion of trial court. Rick J. Jarvis Assocs. v Stotler, 216 A.D.2d 649, 627 N.Y.S.2d 810, 1995 N.Y. App. Div. LEXIS 6078 (N.Y. App. Div. 3d Dep't 1995).

Preliminary injunction may granted when the moving party first establishes (1) a likelihood of ultimate success on the merits, (2) that irreparable injury will occur absent a preliminary

injunction, and (3) a balancing of the equities in favor of the movant; the trial court properly denied a request for a preliminary injunction where the court could not fashion a workable remedy for a convenience store's suppliers blocking a property owner's easement for egress and ingress onto his property. Hoeffner v John F. Frank, Inc., 302 A.D.2d 428, 756 N.Y.S.2d 63, 2003 N.Y. App. Div. LEXIS 1351 (N.Y. App. Div. 2d Dep't 2003).

Where a lessor demonstrated a likelihood of success on the merits, irreparable harm, and a balancing of the equities in its favor, the trial court erred in denying the lessor's motion for injunctive relief to prevent the loan servicers from holding it in default and from invading a lockbox account to purchase terrorism risk insurance. Four Times Square Assocs., L.L.C. v Cigna Invs., Inc., 306 A.D.2d 4, 764 N.Y.S.2d 1, 2003 N.Y. App. Div. LEXIS 6170 (N.Y. App. Div. 1st Dep't 2003).

In an action to impose a constructive trust on real property, the trial court properly issued a preliminary injunction because (1) the property's alleged owner established a likelihood of success on her claim; (2) denying the motion for an injunction would have been inconsistent with the purposes of the equitable doctrine of constructive trust, which was to prevent a breach of trust and restore to the owner her real property; and (3) the balance of the equities favored the alleged owner as the corporations in whom title was vested would suffer no great hardship if the injunction issued to preserve the status quo, as long as the undertaking required by N.Y. C.P.L.R. 6312(b) was filed. Hightower v Reid, 5 A.D.3d 440, 772 N.Y.S.2d 575, 2004 N.Y. App. Div. LEXIS 2517 (N.Y. App. Div. 2d Dep't 2004).

Where a payee failed to demonstrate a likelihood of success on the merits, where the assets sought to be restrained were not specific funds which could rightly have been regarded as "the subject of the action," and because the payee could have been adequately compensated by damages or could have pursued relief for a provisional order of attachment, there was a failure to demonstrate irreparable injury, and denial of the payee's motion enjoin a corporation and its escrowee from releasing funds was proper. 39 College Point Corp. v Transpac Capital Corp., 12

A.D.3d 664, 784 N.Y.S.2d 905, 2004 N.Y. App. Div. LEXIS 14478 (N.Y. App. Div. 2d Dep't 2004).

Trial court did not err in granting a preliminary injunction preventing an owner from cutting trees because, notwithstanding a fact question as to whether the cutting fell within the declaration's easement for "completing construction," the trial court properly found that an association established a probability of success on the merits, the threatened removal of trees constituted irreparable harm, the injunction preserved the status quo, and the equities balanced in favor of the association. Green Harbour Homeowners' Assn., Inc. v Ermiger, 67 A.D.3d 1116, 889 N.Y.S.2d 687, 2009 N.Y. App. Div. LEXIS 7752 (N.Y. App. Div. 3d Dep't 2009).

Petitioners were without standing to enjoin New York City fare increases ordered by the transit authority under the rule that where the wrong complained of is, in fact, a "public injury", and the right violated is a "public right," no private person (or number of persons) can maintain an action for an injunction or for any other relief unless he suffers a special injury different from that suffered by the public at large. Glen v Rockefeller, 61 Misc. 2d 942, 307 N.Y.S.2d 46, 1970 N.Y. Misc. LEXIS 1991 (N.Y. Sup. Ct.), aff'd, 34 A.D.2d 930, 313 N.Y.S.2d 938, 1970 N.Y. App. Div. LEXIS 4450 (N.Y. App. Div. 1st Dep't 1970).

Even if a preliminary injunction may constitutionally be granted, the motion must nevertheless be denied unless plaintiffs demonstrate that they are entitled to such relief by satisfactorily establishing a likelihood of success on the merits, that irreparable injury will result absent injunctive relief, and a balancing of equities in their favor. Quinn v Aetna Life & Casualty Co., 96 Misc. 2d 545, 409 N.Y.S.2d 473, 1978 N.Y. Misc. LEXIS 2639 (N.Y. Sup. Ct. 1978).

A preliminary injunction may be issued in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff (CPLR 6301), and upon a motion for a preliminary injunction, the movant must prove the likelihood of ultimate success on the merits, irreparable injury absent the granting of

the preliminary injunction, and a balancing of the equities. Rivera v Blum, 98 Misc. 2d 1002, 420 N.Y.S.2d 304, 1978 N.Y. Misc. LEXIS 2897 (N.Y. Sup. Ct. 1978).

Homeless persons were entitled to preliminary injunction in action to enjoin operators of supermarkets from refusing to redeem 240 returnable cans at one time since (1) there was little doubt that plaintiffs would prevail on merits where they had documented 28 instances of clear violations of law and regulations, notwithstanding defendants' contentions regarding problems associated with receiving cans for collection, (2) defendants' interference with plaintiffs' rights caused irreparable injury, especially in light of fact that plaintiffs were not in employment situation where they could expect to receive back pay in event they were to ultimately prevail, and (3) balancing of equities militated in favor of preliminary injunction, as hardship from obeying law was not proper consideration and plaintiffs were in circumstances of extreme poverty and homelessness. Farmer v D'Agostino Supermarkets, Inc., 144 Misc. 2d 631, 544 N.Y.S.2d 943, 1989 N.Y. Misc. LEXIS 453 (N.Y. Sup. Ct. 1989).

Trial court erred in granting a developer's motion to preliminarily enjoin a department from demanding or collecting rent and or from declaring a default under a lease because the developer's alleged damages were compensable in money damages and capable of calculation, and the developer thus failed to establish irreparable harm; moreover, the developer failed to show that the alleged harm was imminent, and not remote or speculative. The developer's vague and conclusory allegations that its principals would suffer harm to their business reputations were not sufficient to establish irreparable injury. Trump on the Ocean, LLC v Ash, 81 A.D.3d 713, 916 N.Y.S.2d 177, 2011 N.Y. App. Div. LEXIS 905 (N.Y. App. Div. 2d Dep't 2011).

18. —"Clear right"

It is well established that the drastic remedy of a temporary injunction is not to be granted unless a clear right to the relief demanded is established. Paliotto v Islip, 22 A.D.2d 930, 256 N.Y.S.2d

58, 1964 N.Y. App. Div. LEXIS 2424 (N.Y. App. Div. 2d Dep't 1964), app. dismissed, 16 N.Y.2d 484, 1965 N.Y. LEXIS 2138 (N.Y. 1965).

Where a complaint fails to allege a cause of action for a permanent injunction, a party is not entitled to a temporary injunction. Rodgers v Rodgers, 30 A.D.2d 548, 290 N.Y.S.2d 608, 1968 N.Y. App. Div. LEXIS 4045 (N.Y. App. Div. 2d Dep't), app. denied, 22 N.Y.2d 644, 1968 N.Y. LEXIS 2048 (N.Y. 1968).

Since the facts as to the transaction, or transactions, involving a contract by plaintiffs for the purchase of real property in the East New York section of Brooklyn, were disputed, and since plaintiffs could not demonstrate that they had a clear right to the declaratory and injunctive relief requested, the Appellate Division could not enjoin respondents from exercising all rights of ownership over Suffolk County properties conveyed to respondents by plaintiffs as collateral security; however, the purpose of a preliminary injunction being to maintain the status quo, the Appellate Division would enjoin respondents from conveying the Suffolk County properties, pending a final determination on the merits, since such a conveyance might render any judgment ineffectual. Blake v Biscardi, 52 A.D.2d 834, 382 N.Y.S.2d 831, 1976 N.Y. App. Div. LEXIS 12654 (N.Y. App. Div. 2d Dep't 1976).

In order for appellant to prevail and gain reversal of order of special term refusing appellant’s request for preliminary injunction, appellant must establish its clear right to a preliminary injunction by demonstrating both that it was likely to succeed on the merits in the underlying action and that irreparable injury would result absent a granting of the preliminary injunction. People by Whalen v Woman's Christian Asso., 56 A.D.2d 101, 392 N.Y.S.2d 93, 1977 N.Y. App. Div. LEXIS 10024 (N.Y. App. Div. 3d Dep't 1977).

Where party did not make requisite showing of clear legal right to injunction sought or that it would be irreparably harmed without it and furthermore did not demonstrate it could not be adequately compensated by money damages, temporary injunction was properly denied. Multi Media Entertainment, Inc. v National Telefilm Associates, Inc., 58 A.D.2d 785, 396 N.Y.S.2d 653, 1977 N.Y. App. Div. LEXIS 12941 (N.Y. App. Div. 1st Dep't 1977).

In an action for an injunction to prevent eviction of plaintiff sublessee, plaintiff's assertion of right to the premises was without merit, where no further sublease was shown to have been entered by a sublease entered into after expiration of the original subletting, and plaintiff did not rely on any consent or waiver by the landlord. Asherson v Schuman, 106 A.D.2d 340, 483 N.Y.S.2d 253, 1984 N.Y. App. Div. LEXIS 21385 (N.Y. App. Div. 1st Dep't 1984).

Preliminary injunction is drastic remedy that should not be granted unless clear legal right thereto is shown. McGuinn v City of New York, 219 A.D.2d 489, 645 N.Y.S.2d 770, 1995 N.Y. App. Div. LEXIS 9276 (N.Y. App. Div. 1st Dep't 1995), app. dismissed in part, app. denied, 87 N.Y.2d 966, 642 N.Y.S.2d 193, 664 N.E.2d 1256, 1996 N.Y. LEXIS 274 (N.Y. 1996).

Court erred in issuing permanent injunction enjoining city and state from reducing, terminating, or suspending petitioner's homemaker services since regulations specifically provided that services were to be reviewed on 6-month basis to determine need for such services (18 NYCRR § 460.2(c)(3)). Leide v Dowling, 224 A.D.2d 427, 638 N.Y.S.2d 104, 1996 N.Y. App. Div. LEXIS 861 (N.Y. App. Div. 2d Dep't 1996).

In action for judgment declaring that village acquired ownership of certain valves and water lines located in defendant town, motion for preliminary injunction enjoining town and county water authority from interfering with subject valves and lines was properly denied on ground that village was not entitled to relief sought in complaint, but court erred in dismissing complaint rather than declaring parties' rights. Village of Webster v Town of Webster, 270 A.D.2d 910, 705 N.Y.S.2d 774, 2000 N.Y. App. Div. LEXIS 3556 (N.Y. App. Div. 4th Dep't), app. denied, 710 N.Y.S.2d 238, 2000 N.Y. App. Div. LEXIS 10449 (N.Y. App. Div. 4th Dep't 2000), app. denied, 95 N.Y.2d 901, 716 N.Y.S.2d 639, 739 N.E.2d 1143, 2000 N.Y. LEXIS 2947 (N.Y. 2000).

Where constitutional and other issues remain to be fully established or fully controverted, the plaintiff's clear right to relief is not readily apparent that injunctive relief can be granted without any further development of the facts and the law. Walsh v New York State Liquor Authority, 45 Misc. 2d 601, 257 N.Y.S.2d 971, 1965 N.Y. Misc. LEXIS 2149 (N.Y. Sup. Ct.), aff'd in part and

rev'd in part, 23 A.D.2d 876, 259 N.Y.S.2d 491, 1965 N.Y. App. Div. LEXIS 4248 (N.Y. App. Div. 2d Dep't 1965).

Before a preliminary injunction will be granted, moving party must establish a “clear right” to the relief requested; a “clear right” means that a cause of action must be established and that the cause of action must be ripe for determination before a court with jurisdiction over the matter. Rosemont Enterprises, Inc. v McGraw-Hill Book Co., 85 Misc. 2d 583, 380 N.Y.S.2d 839, 1975 N.Y. Misc. LEXIS 3321 (N.Y. Sup. Ct. 1975).

19. — —Illustrative cases

Absent showing that nursing home owner had clear right to relief in his action seeking to declare new Medicaid reimbursement rates null and void, owner was not entitled to temporary injunction restraining Department of Health from using new rates pending determination of action, regardless of demonstration of possible irreparable injury. Demisay v Whalen, 59 A.D.2d 444, 399 N.Y.S.2d 922, 1977 N.Y. App. Div. LEXIS 13945 (N.Y. App. Div. 3d Dep't 1977).

In an action to set aside a deed to a certain parcel of real property, plaintiff’s motion to preliminarily enjoin defendants from moving earth in preparation for construction on the subject property was properly denied, where plaintiff failed to satisfy its burden of proving a clear right to preliminary injunctive relief, in that the record showed numerous substantial factual issues between the parties, and in that the balance of equities did not favor plaintiff in light of defendants’ substantial damages resulting from the dispute. County of Orange v Lockey, 111 A.D.2d 896, 490 N.Y.S.2d 605, 1985 N.Y. App. Div. LEXIS 50169 (N.Y. App. Div. 2d Dep't 1985).

Denial of a lawyer’s motion for a preliminary injunction under enjoining a client from transferring property until the legal fees which were the subject of the lawyer’s suit against the client were paid was proper because the lawyer did not sustain his burden of showing an undisputed right to that relief. Abinanti v Pascale, 41 A.D.3d 395, 837 N.Y.S.2d 740, 2007 N.Y. App. Div. LEXIS 6868 (N.Y. App. Div. 2d Dep't 2007).

Although plaintiffs, who have pending personal injury actions, have shown that advertisements paid for by defendant insurance company which imply that personal injury awards are often excessive and unwarranted, violate their right to an impartial jury, not curable by voir dire, they are not entitled to a preliminary injunction restraining defendant from continuing the advertisements since they have not sustained their burden of showing a clear right to such preliminary relief in the first instance. Since there is a basis for finding that the language of the advertisements is not constitutionally protected and that the language impedes plaintiffs' ability to impanel a constitutionally guaranteed impartial jury, plaintiffs have established a cause of action for a permanent injunction against defendant insurance company, but, due to the stringent conditions which must be satisfied when seeking to restrain freedom of the press, the cause of action is dismissed as to defendant publishers. Quinn v Aetna Life & Casualty Co., 96 Misc. 2d 545, 409 N.Y.S.2d 473, 1978 N.Y. Misc. LEXIS 2639 (N.Y. Sup. Ct. 1978).

A drilling company that had acquired top leases covering portions of lands described in another drilling company's unitization designations concerning separately leased parcels, that had been grouped together in order to promote efficient drilling and to prevent unnecessary and wasteful depletion of resources, would have no standing to request an injunction requiring the cessation of defendant company's drilling activities based on an allegation that defendant company had exercised the unitization and drilling rights contained in its several leases solely to prevent the expiration of such leases, thereby preventing plaintiff's top leases from ripening into possessory interests, since, though plaintiff had an interest in the outcome of any action to declare defendant company's leases expired, it was not a beneficiary of the implied covenant contained in every lease that unitization be done properly and fairly in order to benefit landowners and the State's citizenry by minimizing waste, since plaintiff was not the representative of either the landowners or of the State, which had tacitly approved the unitization by granting drilling permits to defendant company, and since the proposed well spacings did not appear to be wasteful. Envirogas, Inc. v Consolidated Gas Supply Corp., 120 Misc. 2d 24, 465 N.Y.S.2d 141, 1983 N.Y. Misc. LEXIS 3656 (N.Y. Sup. Ct.), modified, 98 A.D.2d 119, 469 N.Y.S.2d 499, 1983 N.Y. App. Div. LEXIS 20859 (N.Y. App. Div. 4th Dep't 1983).

Property owner failed to establish right to preliminary injunctive relief against erection of pedestrian barriers, for safety reasons, near its building; argument that the barriers would make its investment somewhat less valuable did not show entitlement to recover on the merits. 475 Ninth Ave. Assocs. LLC v Bloomberg, 773 N.Y.S.2d 790, 2 Misc. 3d 597, 2003 N.Y. Misc. LEXIS 1579 (N.Y. Sup. Ct. 2003).

20. —Commencement of action

No action was pending between parties, and thus preliminary injunction to stay termination of lease was not available, where (1) jurisdiction over defendants had not been obtained pursuant to CLS CPLR § 2103 by service of summons and complaint on law firm which had represented defendants in underlying lease dispute, since § 2103 presupposes existence of pending action in which attorney has appeared, and (2) order to show cause for preliminary injunction, providing for service of accompanying papers on attorneys, could not be construed as authorization for expedient service of process under CLS CPLR § 308(5), since plaintiff had made no showing or request for such service. Happy Age Shops, Inc. v Matyas, 128 A.D.2d 754, 513 N.Y.S.2d 710, 1987 N.Y. App. Div. LEXIS 44439 (N.Y. App. Div. 2d Dep't 1987).

Rule of comity forbids granting of injunction to stay proceedings which have been commenced in court of competent jurisdiction of sister state unless it is clearly shown that suit sought to be enjoined was brought in bad faith, motivated by fraud or intent to harass party seeking injunction, or to evade law of domicile of parties. George Hyman Constr. Co. v Precision Walls, Inc., 132 A.D.2d 523, 517 N.Y.S.2d 263, 1987 N.Y. App. Div. LEXIS 49053 (N.Y. App. Div. 2d Dep't 1987).

Unfair labor practice proceeding before body which has been given exclusive jurisdiction to hear such disputes is not “action” within intendment of CLS CPLR § 6301. Caruso v Ward, 146 A.D.2d 486, 536 N.Y.S.2d 447, 1989 N.Y. App. Div. LEXIS 109 (N.Y. App. Div. 1st Dep't 1989).

Valid commencement of action is condition precedent to court’s acquiring jurisdiction even to entertain application for preliminary injunction. Hart Island Committee v Koch, 150 A.D.2d 269,

541 N.Y.S.2d 790, 1989 N.Y. App. Div. LEXIS 7109 (N.Y. App. Div. 1st Dep't 1989), app. denied, 75 N.Y.2d 705, 552 N.Y.S.2d 928, 552 N.E.2d 176, 1990 N.Y. LEXIS 204 (N.Y. 1990).

Plaintiffs were not entitled to preliminary injunction to prevent construction of prison facility and transfer of prisoners to facility, even though there was considerable evidence to support contention that defendants failed to comply with State Environmental Quality Review Act and New York City Uniform Land Use Review Procedures, where plaintiffs had not served complaint, and summons stated that plaintiffs sought preliminary injunction but did not describe nature of action or even that plaintiffs ultimately sought permanent injunction; as such, summons did not provide adequate notice to defendants and thus was insufficient to confer jurisdiction. Hart Island Committee v Koch, 150 A.D.2d 269, 541 N.Y.S.2d 790, 1989 N.Y. App. Div. LEXIS 7109 (N.Y. App. Div. 1st Dep't 1989), app. denied, 75 N.Y.2d 705, 552 N.Y.S.2d 928, 552 N.E.2d 176, 1990 N.Y. LEXIS 204 (N.Y. 1990).

Court properly denied plaintiff’s request for preliminary injunction given that motion was not part of pending action or proceeding. Glover v Coughlin, 203 A.D.2d 846, 612 N.Y.S.2d 967, 1994 N.Y. App. Div. LEXIS 4452 (N.Y. App. Div. 3d Dep't), app. dismissed, 84 N.Y.2d 845, 617 N.Y.S.2d 131, 641 N.E.2d 151, 1994 N.Y. LEXIS 2770 (N.Y. 1994).

Petitioner was not entitled to injunctive relief where there was no pending action to support that relief. Church Mut. Ins. Co. v People, 251 A.D.2d 1014, 674 N.Y.S.2d 201, 1998 N.Y. App. Div. LEXIS 7036 (N.Y. App. Div. 4th Dep't 1998).

This section prohibits a preliminary injunction or restraining order where no action has been commenced. McCampbell v Di Nuzzo, 50 Misc. 2d 437, 270 N.Y.S.2d 685, 1966 N.Y. Misc. LEXIS 2297 (N.Y. Sup. Ct. 1966).

Injunctive relief may not be granted where no action has been commenced. Schoeman v Consolidated Edison Co., 66 Misc. 2d 784, 322 N.Y.S.2d 132, 1971 N.Y. Misc. LEXIS 1555 (N.Y. Sup. Ct. 1971).

21. —Impermissible prior restraint

Not all injunctions which may incidentally affect expression are impermissible prior restraints, and narrowly tailored reasonable time, place, and manner regulations may be imposed to further significant government interests when they do not regulate content of speech and leave open alternate means of communication. Lambert v Williams, 218 A.D.2d 618, 631 N.Y.S.2d 31, 1995 N.Y. App. Div. LEXIS 8939 (N.Y. App. Div. 1st Dep't 1995).

Restraining testing service from notifying law schools of reason it was cancelling applicant's scores on law school admission test would not constitute a prior restraint in violation of the First Amendment; not only did plaintiff never agree to a notice in the form contemplated, i. e., that score was cancelled due to serious doubts as to its authenticity, but possible harm to plaintiff far exceeded the possible use and purposes which would be served by such notice. D. v Educational Testing Service, 87 Misc. 2d 657, 386 N.Y.S.2d 747, 1976 N.Y. Misc. LEXIS 2272 (N.Y. Sup. Ct. 1976).

22. —Ineffectual judgment

Unsecured contract creditors, who sued defendant for money damages, were not entitled to preliminary injunction under CLS CPLR § 6301 to prevent dissipation of assets needed to satisfy anticipated money judgment. Credit Agricole Indosuez v Rossiyskiy Kredit Bank, 94 N.Y.2d 541, 708 N.Y.S.2d 26, 729 N.E.2d 683, 2000 N.Y. LEXIS 508 (N.Y. 2000).

A preliminary injunction is proper in an action where an act in violation of plaintiff's right threatens to render the judgment, if obtained, ineffectual. Freeman v Lamb, 33 A.D.2d 331, 308 N.Y.S.2d 580, 1970 N.Y. App. Div. LEXIS 5482 (N.Y. App. Div. 4th Dep't), app. dismissed, 26 N.Y.2d 612, 1970 N.Y. LEXIS 1787 (N.Y. 1970).

Injunction was denied under CPLR §§ 6301, 6312, where plaintiffs failed to show either acts done in violation of their rights which would render any judgment ineffectual, or acts in violation

of such rights which would cause injury. Grossman v Rankin, 40 A.D.2d 595, 335 N.Y.S.2d 991, 1972 N.Y. App. Div. LEXIS 3857 (N.Y. App. Div. 1st Dep't 1972).

Court did not abuse its discretion in denying preliminary injunctive relief where record supported determination that money damages would be adequate to compensate plaintiff for defendants' unlawful conduct. Esi-Data Connections, Inc. v Proulx, 185 A.D.2d 705, 587 N.Y.S.2d 888, 1992 N.Y. App. Div. LEXIS 9282 (N.Y. App. Div. 4th Dep't 1992).

23. — —Illustrative cases

Interior decorating company was not entitled to preliminary injunction enjoining customer from continuing her California action against company for conversion and intentional infliction of emotional distress arising from same contract which was subject of company's breach of contract action against customer in New York since (1) such injunction would deprive customer of right to sue in forum of her choice, (2) remedy is available only when defendant might violate plaintiff's rights regarding subject of action or when plaintiff might do something to interfere with or render judgment ineffectual, (3) company sought money damages so no "subject of the action" existed which customer could affect in her California tort action, and (4) California case could not render ineffectual any New York judgment due to fact that actions were separate and distinct. Leif B. Pederson, Inc. v Weber, 128 A.D.2d 453, 513 N.Y.S.2d 146, 1987 N.Y. App. Div. LEXIS 44156 (N.Y. App. Div. 1st Dep't 1987).

Action which sought preliminary injunction directing city to develop plan to meet obligation of CLS Soc Serv §§ 409 et seq. to provide preventive services to families whose children were determined to be at risk of foster care and enjoining state from imposing 90-day limit on emergency shelter as preventive service was not moot, even if plaintiffs had subsequently been provided with certain services, since issues raised were of public importance and significance, and likely to recur and yet evade review. Martin A. v Gross, 153 A.D.2d 812, 546 N.Y.S.2d 75, 1989 N.Y. App. Div. LEXIS 11926 (N.Y. App. Div. 1st Dep't 1989), app. dismissed, 75 N.Y.2d 808, 552 N.Y.S.2d 110, 551 N.E.2d 603, 1990 N.Y. LEXIS 31 (N.Y. 1990).

Injunctive relief under CLS UCC § 8-317 would not be available to require debtors to transfer stock shares into New York so that they could be attached by New York sheriff where applicant for injunction did not yet have any money judgment and so was only mere claimant, not "creditor" under UCC, and where there was no indication that extra-state assets were going to be disposed of or that any award of money damages would be inadequate. Siy v McMicking, 134 Misc. 2d 164, 510 N.Y.S.2d 407, 1986 N.Y. Misc. LEXIS 3079 (N.Y. Sup. Ct. 1986).

State court employees' claim for declaratory and injunctive relief as remedy for state's implementation of "lag payroll" in derogation of contract clause of the U.S. Constitution was not rendered moot by fact that 2 weeks' salary had already been withheld where lag payroll continued, and would continue, to impair state's contractual obligations by deferring every salary check of each employee for period of 2 weeks until employee left state service. Association of Surrogates & Supreme Court Reporters v New York, 940 F.2d 766, 1991 U.S. App. LEXIS 17928 (2d Cir. N.Y. 1991), cert. denied, 502 U.S. 1058, 112 S. Ct. 936, 117 L. Ed. 2d 107, 1992 U.S. LEXIS 504 (U.S. 1992).

24. —Irreparable injury

In action to enjoin the sale of a purchase money mortgage, plaintiffs arguably met the three requirements for the issuance of a preliminary injunction by proving (1) likelihood of ultimate success on the merits, (2) irreparable injury absent granting of the preliminary injunction, and (3) a balancing of equities. Albini v Solork Associates, 37 A.D.2d 835, 326 N.Y.S.2d 150, 1971 N.Y. App. Div. LEXIS 3356 (N.Y. App. Div. 2d Dep't 1971).

Since irreparable damage must be shown for either a stay or a preliminary injunction, order reinstating petitioners to their positions was improper in the absence of allegation of irreparable damage and in light of fact that loss of employment does not constitute irreparable damage. Stewart v Parker, 41 A.D.2d 785, 341 N.Y.S.2d 189, 1973 N.Y. App. Div. LEXIS 5000 (N.Y. App. Div. 3d Dep't 1973).

Member of professional corporation, seeking preliminary injunctive relief to prevent his expulsion from corporation and redemption of his shares, was not entitled to such relief where there was no showing of irreparable injury since defendants could respond in money damages if plaintiff ultimately prevailed. Zandman v Nissenbaum, 53 A.D.2d 837, 385 N.Y.S.2d 562, 1976 N.Y. App. Div. LEXIS 13666 (N.Y. App. Div. 1st Dep't 1976).

In view of the irreparable harm facing plaintiffs whose home relief benefits would be terminated by implementation of statute terminating benefits to certain persons as contrasted with damage state would face by postponing implementation of statute until action challenging constitutionality of statute was heard on merits and possibility of plaintiffs' success on merits, Special Term properly exercised its discretion in granting preliminary injunction enjoining implementation of statute. Tucker v Toia, 54 A.D.2d 322, 388 N.Y.S.2d 475, 1976 N.Y. App. Div. LEXIS 14035 (N.Y. App. Div. 4th Dep't 1976).

Preliminary injunctive relief would be denied in view of facts that matter was pending for administrative agency and plaintiff had not shown danger of imminent irreparable harm. Uhrman v Board of Education, 54 A.D.2d 589, 387 N.Y.S.2d 27, 1976 N.Y. App. Div. LEXIS 13957 (N.Y. App. Div. 2d Dep't 1976).

In order for appellant to prevail and gain reversal of order of special term refusing appellant's request for preliminary injunction, appellant must establish its clear right to a preliminary injunction by demonstrating both that it was likely to succeed on the merits in the underlying action and that irreparable injury would result absent a granting of the preliminary injunction. People by Whalen v Woman's Christian Asso., 56 A.D.2d 101, 392 N.Y.S.2d 93, 1977 N.Y. App. Div. LEXIS 10024 (N.Y. App. Div. 3d Dep't 1977).

A preliminary injunction is a drastic form of relief, requiring a showing of irreparable harm and a reasonable probability of success. Suffolk Outdoor Advertising Co. v Hulse, 56 A.D.2d 365, 393 N.Y.S.2d 416, 1977 N.Y. App. Div. LEXIS 10446 (N.Y. App. Div. 2d Dep't 1977), modified, 43 N.Y.2d 483, 402 N.Y.S.2d 368, 373 N.E.2d 263, 1977 N.Y. LEXIS 2565 (N.Y. 1977), rev'd, 45 N.Y.2d 922, 411 N.Y.S.2d 230, 383 N.E.2d 876, 1978 N.Y. LEXIS 2354 (N.Y. 1978).

Absent showing that nursing home owner had clear right to relief in his action seeking to declare new Medicaid reimbursement rates null and void, owner was not entitled to temporary injunction restraining Department of Health from using new rates pending determination of action, regardless of demonstration of possible irreparable injury. Demisay v Whalen, 59 A.D.2d 444, 399 N.Y.S.2d 922, 1977 N.Y. App. Div. LEXIS 13945 (N.Y. App. Div. 3d Dep't 1977).

On a motion for a preliminary injunction, the movant must demonstrate a likelihood of success on the merits and irreparable injury if the opposing party is allowed to act unrestrained. Doe v Greco, 62 A.D.2d 498, 405 N.Y.S.2d 801, 1978 N.Y. App. Div. LEXIS 10867 (N.Y. App. Div. 3d Dep't 1978).

On a motion for a preliminary injunction, one of the tests of irreparability of injury is whether a litigant can obtain adequate compensation by invoking the legal damage remedy; but, the legal remedy must be as complete, practicable and efficient as the equitable remedy. Accordingly, in an action, inter alia, to compel the defendants to convey a certain steel tank vessel to plaintiff, on the theory of diversion of corporate opportunity, plaintiff would be granted its motion for a preliminary injunction, pendente lite, enjoining the defendants from selling or transferring the vessel where plaintiff alleged that a vessel of similar size and type could not be obtained either new or used. Poling Transp. Corp. v A & P Tanker Corp., 84 A.D.2d 796, 443 N.Y.S.2d 895, 1981 N.Y. App. Div. LEXIS 15997 (N.Y. App. Div. 2d Dep't 1981).

Appellate Division would not exercise its discretion to grant preliminary injunction awarding corporation possession of automobile pendente lite in corporation’s action alleging wrongful taking and detention of automobile by ousted corporate director where corporation had failed to make out prima facie showing of irreparable injury as it had adequate remedy at law in suit for damages, and since granting of preliminary injunction would amount to giving corporation ultimate relief it sought, which should be avoided where no inequity would result. Byrne Compressed Air Equipment Co. v Sperdini, 123 A.D.2d 368, 506 N.Y.S.2d 593, 1986 N.Y. App. Div. LEXIS 60144 (N.Y. App. Div. 2d Dep't 1986).

Plaintiff was entitled to preliminary order enjoining lottery winner from receiving or exercising dominion and control over future lottery payments where plaintiff had demonstrated likelihood of success on merits of his claim that he had agreement with winner to share any winnings and where, despite having already received payments totaling over $1,200,000 and nearly 50 percent of total winnings, winner appeared to have negligible current assets and so there was possibility that there would be insufficient funds to ensure payment if suit were successful. Pando v Fernandez, 124 A.D.2d 495, 508 N.Y.S.2d 8, 1986 N.Y. App. Div. LEXIS 61816 (N.Y. App. Div. 1st Dep't 1986).

In action for injunctive relief, defendant’s motion for summary judgment was properly granted since plaintiff failed to establish irreparable harm where (1) if plaintiff had already suffered injury, action for monetary damages was available, and (2) plaintiff could avoid alleged future injury by refraining from further use of defendant’s product. Solomon v Pepsi-Cola Co., 140 A.D.2d 323, 527 N.Y.S.2d 556, 1988 N.Y. App. Div. LEXIS 4639 (N.Y. App. Div. 2d Dep't 1988).

Trial court erred in preliminarily enjoining defendant HOA board members from enforcing amended HOA by-laws that were not recorded as the bylaws required and from proceeding with an annual election of directors because 1) plaintiff HOA member failed to establish that she would suffer irreparable harm in the absence of an injunction, since the election had concluded and she did not show that, but for the unrecorded amendments to the by-laws, she would have won; and 2) as the HOA had been operating under the amended by-laws for nearly two decades, granting an injunction would disturb the status quo rather than maintain it. Keller v Kay, 170 A.D.3d 978, 96 N.Y.S.3d 605, 2019 N.Y. App. Div. LEXIS 2054 (N.Y. App. Div. 2d Dep't 2019).

Buyer was not entitled to temporary injunctive relief because the seller’s demand that the buyer fulfill his contractual obligation to close on the “time-is-of-the-essence” closing date did not pose a threat of irreparable harm, the buyer failed to demonstrate a likelihood of success in establishing that it was impossible to obtain Phase II Assessment report on the property, and retention of the down payment by the seller’s attorney was no more burdensome to the buyer

than to the seller. Berman v TRG Waterfront Lender, LLC, 181 A.D.3d 783, 122 N.Y.S.3d 317, 2020 N.Y. App. Div. LEXIS 1959 (N.Y. App. Div. 2d Dep't 2020).

When threatened acts, if continued and accomplished, would render any decision of the court academic to the irreparable damage of plaintiff and of inconsequential damage to defendant, a preliminary injunction is a matter for the exercise of sound discretion. Swarts v Board of Education, 42 Misc. 2d 761, 249 N.Y.S.2d 44, 1964 N.Y. Misc. LEXIS 1835 (N.Y. Sup. Ct. 1964).

An action for declaratory judgment and an injunction may be had against a threat of enforcement even with respect to penal statutes and against a public official or public agency whose duty is to conduct appropriate prosecutions, if the purpose be to avoid irreparable injury and if the sole question is one of law. Burlingame v Milone, 62 Misc. 2d 853, 310 N.Y.S.2d 407, 1970 N.Y. Misc. LEXIS 1681 (N.Y. Sup. Ct. 1970).

The party moving for a preliminary injunction has the burden of establishing not only a clear legal right to such drastic relief, but also of making a firm showing that such party will suffer irreparable injury. Western New York Motor Lines, Inc. v Rochester-Genesee Regional Transp. Authority, 72 Misc. 2d 712, 340 N.Y.S.2d 252, 1973 N.Y. Misc. LEXIS 2266 (N.Y. Sup. Ct. 1973).

Attorneys charged in misdemeanor complaint with engaging in unlawful collection practice would be allowed to seek injunction of prosecution on that complaint where no further proceedings had taken place thereon, question was solely one of law and attorneys would sustain irreparable personal and professional injury if they were not permitted to enjoin what might be useless arraignment and criminal proceedings. Finkelstein, Mauriello, Kaplan & Levine, P.C. v McGuirk, 90 Misc. 2d 649, 395 N.Y.S.2d 377, 1977 N.Y. Misc. LEXIS 2125 (N.Y. Sup. Ct. 1977).

New York City ordinances limiting types of musical instruments which can provide incidental musical entertainment in unlicensed eating and drinking establishments are unconstitutional since no substantial government interest is furthered by refusing certain types of instruments

sufficient to sustain infringement upon constitutionally protected freedom of musical expression, warranting imposition of preliminary injunctive relief, however limit on number of musicians who can play in such establishments is not unconstitutional. Chiasson v New York City Dep't of Consumer Affairs, 132 Misc. 2d 640, 505 N.Y.S.2d 499, 1986 N.Y. Misc. LEXIS 2750 (N.Y. Sup. Ct. 1986).

Necessary showing of irreparable injury, in actions for injunctive relief under consumer fraud provisions of CLS Gen Bus Art 22-A, encompasses irreparable injury to public-at-large, not just to one consumer; while CLS Gen Bus § 350-d gives individual right to seek injunctive relief and legislature contemplated and intended to encourage small claims, it is highly unlikely that any person whose damage is less than $50 could ever prove irreparable injury. McDonald v North Shore Yacht Sales, Inc., 134 Misc. 2d 910, 513 N.Y.S.2d 590, 1987 N.Y. Misc. LEXIS 2128 (N.Y. Sup. Ct. 1987).

Petitioners failed to show that irreparable harm would occur if transit authority and Department of Transportation ended experiment which altered bus routes and converted 2-way streets into one-way streets, notwithstanding contention that sales at petitioners' stores would fall if bus passengers were given convenient ride home instead of being forced to take circuitous route in front of stores, since petitioners had no vested right to continued economic benefit derived from flow of passengers. Jamaica Chamber of Commerce v Metropolitan Transp. Auth., 159 Misc. 2d 601, 608 N.Y.S.2d 758, 1993 N.Y. Misc. LEXIS 501 (N.Y. Sup. Ct. 1993).

25. — —Zoning

Town was not required to present proof of irreparable injury in suit under CLS Town § 268 to enjoin alleged zoning violation. Blooming Grove v Blooming Farms Joint Venture, 128 A.D.2d 772, 513 N.Y.S.2d 255, 1987 N.Y. App. Div. LEXIS 44458 (N.Y. App. Div. 2d Dep't 1987).

26. — —Illustrative cases

A party seeking the issuance of a preliminary injunction must demonstrate that he will suffer irreparable harm in the absence of the injunction, and that such harm is greater than the harm which the opposing party will suffer if the injunction is granted. Thus, the trial court erred in issuing a preliminary injunction enjoining the enforcement of a New York City local law imposing an excise tax and a floor tax on certain distributors and importers of alcoholic beverages where the record did not support the conclusory allegations of plaintiffs, two liquor dealers and a trade association of retail liquor dealers, that many establishments liable for the taxes would be forced out of business, and where the taxes collected under the local law would be refunded if plaintiffs succeeded on the merits. Metropolitan Package Store Ass'n v Koch, 80 A.D.2d 940, 437 N.Y.S.2d 760, 1981 N.Y. App. Div. LEXIS 10840 (N.Y. App. Div. 3d Dep't 1981).

In an action by a tenant who alleged that his landlord had waived a lease provision limiting use of the demised premises to residential purposes, the tenant would be entitled to a preliminary injunction enjoining the landlord from terminating or otherwise interfering with his right to the apartment; RPAPL § 753(4) was not intended to eliminate the power to render Yellowstone injunctions, but merely to make available an additional remedy to protect the tenant where appropriate, where a breach has been adjudicated against him. Wilen v Harridge House Associates, 94 A.D.2d 123, 463 N.Y.S.2d 453, 1983 N.Y. App. Div. LEXIS 17959 (N.Y. App. Div. 1st Dep't 1983).

A labor organization would not be entitled to a preliminary injunction preventing the implementation of Retire & S S Law § 613, even though that section could force nonvested state employees to choose between their careers with the state and receipt of their pensions before the age of 62 or their death, where an employee’s decision to remain with the state was purely personal, where the statute had an effect only on the timing of that decision, not the substandard nature of the decision itself, where the employees would benefit from the injunction only if the statute were declared unconstitutional, where if the statute were declared unconstitutional nonvested employees who had left the state service would receive their contributions irrespective of when the decision to leave was made, where the injunction would deprive the

state of its right to retain the employee's contributions while providing the employee with an unearned benefit, where the statute had already become effective so that nonvested employees were no longer confronted with such a choice, and where the labor organization thus failed to demonstrate the irreparable injury necessary for the issuance of the injunction. Public Employees Federation v Cuomo, 96 A.D.2d 1118, 467 N.Y.S.2d 696, 1983 N.Y. App. Div. LEXIS 19784 (N.Y. App. Div. 3d Dep't 1983).

Plaintiffs were properly granted a preliminary injunction in an action against a former employee and a competitor for whom the former employee worked, based on an alleged breach of a nonsolicitation covenant contained in an employment agreement, where there was a likelihood of plaintiffs' ultimate success on the merits and a danger of irreparable injury to plaintiffs, and the equities balanced in plaintiffs' favor, due to (1) the nature of the employment agreement, which contained a covenant restricting the employee from soliciting plaintiffs' customers, and in which he agreed that their customer list was a valuable and unique asset, that irreparable harm would result from a breach of the covenant, and that a violation would be a proper subject for injunctive relief, (2) the nature of plaintiff's customer list, which could properly be treated as a trade secret, (3) statements made by the former employee in an affidavit made while employed by plaintiff in support of a contempt motion against defendant competitor in a similar action against another former employee, (4) the high position attained by the former employee while working for plaintiff, and (5) actions taken by defendant. Giffords Oil Co. v Wild, 106 A.D.2d 610, 483 N.Y.S.2d 104, 1984 N.Y. App. Div. LEXIS 21596 (N.Y. App. Div. 2d Dep't 1984).

Plaintiffs, seeking preliminary injunction against enforcement of legislation (L 1995 ch 119 §§ 13 and 16) affecting retirement benefits to be paid to former public employees under CLS Retire & S S §§ 78 and 378, failed to show irreparable harm by asserting probability that many retirees, given their advanced age, would die before receiving benefits, since any individual plaintiff bears risk that he or she may expire before matter is resolved. McCall v State, 215 A.D.2d 1, 632 N.Y.S.2d 725, 1995 N.Y. App. Div. LEXIS 10677 (N.Y. App. Div. 3d Dep't 1995).

In law partners' contribution action against a former partner and another law firm, no preliminary injunction should have been granted to the partners to restrain the firm from paying legal fees on referred cases to the former partner; plaintiffs failed to show irreparable injury because they could have been adequately compensated by damages or could have pursued relief under N.Y. C.P.L.R. 6201(3) for a provisional order of attachment. Leo v Levi, 304 A.D.2d 621, 759 N.Y.S.2d 94, 2003 N.Y. App. Div. LEXIS 3964 (N.Y. App. Div. 2d Dep't 2003).

Parking garage was not entitled to enjoin any conduct by a stock exchange in establishing a security zone around the stock exchange, as there was no need to enjoin any conduct by the stock exchange to avoid speculative future damages consequent to a continuing harm to the parking garage because it was clear that the parking garage's loss of business was predominantly caused by the city's construction work, a temporary condition that no longer existed. Wall St. Garage Parking Corp. v N.Y. Stock Exch., Inc., 10 A.D.3d 223, 781 N.Y.S.2d 324, 2004 N.Y. App. Div. LEXIS 10166 (N.Y. App. Div. 1st Dep't 2004).

Village could not establish irreparable harm if a preliminary injunction was denied because the Department of Environmental Conservation's issuance of the 2016 renewal permit largely obviated the need for an order preliminarily enjoining defendants from accepting and processing more than 500 tons of commercial waste and/or construction and demolition debris per day. Incorporated Vil. of Lindenhurst v One World Recycling, LLC, 186 A.D.3d 1498, 131 N.Y.S.3d 365, 2020 N.Y. App. Div. LEXIS 5118 (N.Y. App. Div. 2d Dep't 2020).

Tenants could not preliminarily enjoin sponsors of a noneviction cooperative conversion plan accepted for filing by the Attorney General's office over tenants' objections, from selling shares in the cooperative apartment building pending determination of their underlying action for a declaratory judgment so that they could retain their rights to purchase the apartments at the lower, "insider" prices until the underlying issues were resolved, since the lost opportunity to buy at "insider" prices by allowing the exclusive "insider" buying period to pass without buying did not constitute irreparable harm sufficient to grant tenants a preliminary injunction, inasmuch as the harm to tenants, if any, was a pecuniary one and tenants would have a cause of action for

money damages if their loss was found to have been caused by defendants. 1045 Park Ave. Tenant Ass'n v 1045 Park Ave. Owners Corp., 119 Misc. 2d 339, 462 N.Y.S.2d 740, 1983 N.Y. Misc. LEXIS 3510 (N.Y. Sup. Ct. 1983).

In an action by insurance agents against a competitor for alleged interference with contractual relations, plaintiffs' motion for a preliminary injunction, grounded upon an Insurance Department regulation that established certain procedures in connection with the replacement of life insurance policies, would be denied where plaintiffs had not shown a likelihood of success on the merits of their claim in that it was not clear that defendant had done anything more than compete with plaintiffs for life insurance business among certain potential clients, and, even if defendant's actions constituted a violation of the subject regulation, the requisite "pattern of violations" was not established by plaintiffs' showing that such violations occurred on two occasions, where there was no showing of irreparable injury to plaintiffs in that damages would be a sufficient remedy for plaintiffs' lost commissions in the event defendant's acts were ultimately determined to have been wrongful, and where the subject regulation was neither designed to protect competing insurance salesmen nor intended to give such competitors a right of action to enforce its terms. Lidogoster v Krasnerman, 119 Misc. 2d 678, 463 N.Y.S.2d 1019, 1983 N.Y. Misc. LEXIS 3576 (N.Y. Sup. Ct. 1983).

Preliminary injunction was properly granted pursuant to N.Y. C.P.L.R. 6301 to order a lender to fund certain draw requests on a construction loan because cases of construction mortgages were an exception to the general rule that irreparable injury was not established where any damages sustained were calculable, the project's unique character rendered it difficult to calculate the borrower's damages, and the borrower established a likelihood of success on merits, the enormous potential for harm to its reputation, and that a balancing of the equities favored granting the preliminary injunction; however, the order that the lender pay all future sums due as draws or advances as they came due was improper. Further, by determining that the notice of deficiency and notice of default were null and void and in thus vacating them, by determining that the term deficiency as used in the agreement did not include certain costs, and

by determining that the lender had breached the agreement, the trial court erred in determining the ultimate rights of the parties. Destiny USA Holdings, LLC v Citigroup Global Mkts. Realty Corp., 69 A.D.3d 212, 889 N.Y.S.2d 793, 2009 N.Y. App. Div. LEXIS 8119 (N.Y. App. Div. 4th Dep't 2009).

27. — — —Injunction not granted

In light of the absence of actual injury and the lessor's waiver of its claims, there was neither a justiciable controversy upon which a declaratory judgment could have been rendered, nor the irreparable harm necessary for injunctive relief. Ovitz v Bloomberg L.P., 18 N.Y.3d 753, 944 N.Y.S.2d 725, 967 N.E.2d 1170, 2012 N.Y. LEXIS 549 (N.Y. 2012).

Injunctive relief was improperly granted where moving papers established neither a clear legal right thereto, issues of fact being sharply disputed, nor that movant would be irreparably damaged if an injunction were not granted before trial. Hartford v Resorts International, Inc., 43 A.D.2d 828, 351 N.Y.S.2d 414, 1974 N.Y. App. Div. LEXIS 5857 (N.Y. App. Div. 1st Dep't 1974).

Construction company was not entitled to preliminary injunction staying hearing to be held by city regarding default on contract where company's attempt to demonstrate irreparable injury consisted merely of affidavit by its construction manager which stated that company did 90 percent of its work for municipal agencies, and affirmation submitted by company's attorney alleging that company would be forced out of business if it were declared in default by city, and company's claims were not substantiated by financial statements or other evidence. Benjamin Kurzban & Son, Inc. v Board of Education, 129 A.D.2d 756, 514 N.Y.S.2d 749, 1987 N.Y. App. Div. LEXIS 45453 (N.Y. App. Div. 2d Dep't 1987).

Court properly denied plaintiffs' motion for preliminary injunction to enjoin Superintendent of Insurance from proceeding with license revocation hearing on basis that superintendent had prejudged plaintiffs' case with evidence unrelated to specific charges against them, as there could be no harm (irreparable or otherwise) until there was some adverse determination against plaintiffs; plaintiffs' remedy was Article 78 proceeding, which would automatically stay

superintendent's determination for 30 days, with possibility of further court-ordered stay on showing of lack of injury to public interests pursuant to CLS Ins § 2124. Ambriano v Curiale, 222 A.D.2d 272, 635 N.Y.S.2d 20, 1995 N.Y. App. Div. LEXIS 12824 (N.Y. App. Div. 1st Dep't 1995).

Provider of services for homeless persons with AIDS was not entitled to preliminary injunction restraining city from terminating its contracts, even though eviction of such persons would qualify as irreparable harm, where city was prepared to rely on other vendors to house them, and there was no reason to discredit city's representations that such persons would not be neglected during any transition period. Housing Works, Inc. v City of New York, 255 A.D.2d 209, 680 N.Y.S.2d 487, 1998 N.Y. App. Div. LEXIS 12526 (N.Y. App. Div. 1st Dep't 1998).

Order denying an owner's motion for a temporary restraining order and a preliminary injunction pursuant to N.Y. C.P.L.R. 6301 was proper because the owner failed to demonstrate a likelihood of success on the merits of its claims relating to an agreement between the owner and a limited liability company (LLC); among other things, to the extent that the LLC breached the agreement by contacting the city about an allegedly invalid certificate of occupancy (C/O) issued to the owner, thereby instigating proceedings by the department of buildings to revoke the C/O, that breach was past conduct adequately compensable by damages. An injunction against future breaches was unnecessary in view of the fact that the department of buildings had agreed not to continue with the revocation proceedings until the court determined whether the LLC was required to consent to the owner's filing of its application. Purvi Enters., LLC v City of New York, 62 A.D.3d 508, 879 N.Y.S.2d 410, 2009 N.Y. App. Div. LEXIS 3692 (N.Y. App. Div. 1st Dep't 2009).

Plaintiff was not entitled to a preliminary injunction in her contract and loan claims because she sought money damages, and economic loss, which was compensable by money damages, did not constitute irreparable harm for N.Y. C.P.L.R. 6301 purposes; moreover, plaintiff failed to establish a likelihood of success on the merits or a balancing of the equities in her favor. Matter of Rice, 105 A.D.3d 962, 963 N.Y.S.2d 327, 2013 N.Y. App. Div. LEXIS 2516 (N.Y. App. Div. 2d Dep't 2013).

Trial court properly denied plaintiff's motion to preliminarily enjoin defendant from evicting him from a condominium unit in which he claimed one-half ownership. Though he was likely to succeed on the merits of his unjust enrichment claim, based on money he paid with respect to the unit, he could not show irreparable harm because money damages would be an adequate remedy. Kurlandski v Kim, 111 A.D.3d 676, 975 N.Y.S.2d 98, 2013 N.Y. App. Div. LEXIS 7424 (N.Y. App. Div. 2d Dep't 2013).

Supreme Court providently exercised its discretion in denying the purported owners' motion for a preliminary injunction enjoining the signing checks or documents on behalf of the purported transferee as plaintiffs failed to demonstrate irreparable injury absent the preliminary injunction. Malek v Malek, 2025 N.Y. App. Div. LEXIS 2863 (N.Y. App. Div. 2d Dep't 2025).

In proceeding by daughter of one of 2 life tenants of trust to enjoin one life tenant, who was her uncle, from commencing adoption proceeding in any court other than Surrogate's Court with jurisdiction over trust, petitioner had not shown any irreparable harm to herself that would warrant injunctive relief where her own attorney had stated in papers that he believed that any adoption effected by petitioner's uncle would be sham and would fail to defeat his client's rights. In re Estate of Gardiner, 144 Misc. 2d 797, 545 N.Y.S.2d 466, 1989 N.Y. Misc. LEXIS 547 (N.Y. Sur. Ct. 1989).

Family member, who was party to an agreement settling a family dispute, was not entitled to a preliminary injunction to enjoin another family member and a publisher from continuing to publish, print, and distribute a book regarding a different family member, was in public office, because there was no showing of irreparable harm from the release of alleged confidential family information due to the public office held by the book's subject, the heightened media attention to the matter, and public comments by family members. Trump v Trump, 69 Misc. 3d 285, 128 N.Y.S.3d 801, 2020 N.Y. Misc. LEXIS 3412 (N.Y. Sup. Ct. 2020).

Defendant did not receive a preliminary injunction to enjoin co-defendant from transferring surplus money deposited with it after the sale of a mortgaged premises because while defendant established it would likely receive all or at least some of the surplus money at issue, it did not allege the impending transfer would in any way prevent it from obtaining the money. JY Not So Common L.P. v P & R Bronx, LLC, 79 Misc. 3d 626, 191 N.Y.S.3d 904, 2023 N.Y. Misc. LEXIS 1973 (N.Y. Sup. Ct. 2023).

28. —Damages

Owner failed to demonstrate the irreparable harm in the absence of a preliminary injunction required under N.Y. C.P.L.R. 6301 as the owner failed to allege damages of a noneconomic nature. Di Fabio v Omnipoint Communications, Inc., 66 A.D.3d 635, 887 N.Y.S.2d 168, 2009 N.Y. App. Div. LEXIS 7049 (N.Y. App. Div. 2d Dep't 2009).

29. — —Money damages

Where plaintiffs' action was for a sum of money only and money could not be considered the subject of action, plaintiffs were not entitled to a preliminary injunction to restrain transfer of promissory notes which were defendants' only known assets but which did not constitute an identifiable fund the proprietorship of which was contested. Antorino v Birk, 59 A.D.2d 931, 399 N.Y.S.2d 443, 1977 N.Y. App. Div. LEXIS 14158 (N.Y. App. Div. 2d Dep't 1977).

Restrictive covenant entered into between licensed optician and licensed optometrist, requiring optometrist to refrain from "retail sale of eyeglasses, lenses and optical equipment" for 5 years, was in nature of covenant that arises in employment contract situation; thus, court erred in granting optician's motion for preliminary injunction to enjoin optometrist from engaging in retail activity in contravention of covenant since (1) optician failed to show that enforcement of covenant was required to protect trade secrets or confidential customer lists, and (2) optician set forth claim for money damages. Cliff v R.R.S. Inc., 207 A.D.2d 17, 620 N.Y.S.2d 190, 1994 N.Y. App. Div. LEXIS 13039 (N.Y. App. Div. 3d Dep't 1994).

In law partners' contribution action against a former partner and another law firm, no preliminary injunction should have been granted to the partners to restrain the firm from paying legal fees on referred cases to the former partner; the legal fees were not specific funds that could have been rightly regarded as the subject of the action. Leo v Levi, 304 A.D.2d 621, 759 N.Y.S.2d 94, 2003 N.Y. App. Div. LEXIS 3964 (N.Y. App. Div. 2d Dep't 2003).

Because the clients failed to demonstrate that an award of monetary damages would not adequately compensate them, a necessary element for a preliminary injunction under N.Y. C.P.L.R. 6301, the trial court erred in directing their attorney to place into an escrow account the funds that the attorney allegedly misappropriated. Zodkevitch v Feibush, 49 A.D.3d 424, 854 N.Y.S.2d 373, 2008 N.Y. App. Div. LEXIS 2570 (N.Y. App. Div. 1st Dep't 2008).

Supreme court properly denied plaintiffs request for a preliminary injunction pursuant to CPLR 6301 because plaintiffs could not obtain an injunction to preserve assets as security for a potential monetary judgment even if the evidence showed that defendants intended to frustrate any judgment by making it uncollectible. Buckley v McAteer, 210 A.D.3d 1044, 179 N.Y.S.3d 329, 2022 N.Y. App. Div. LEXIS 6663 (N.Y. App. Div. 2d Dep't 2022).

In an action for a permanent injunction and damages, plaintiffs seek a temporary injunction to restrain defendant-publishers from publishing plaintiffs' pictures, names or biographical accounts of their lives or purported first person narratives in connection with a book aimed at demonstrating the terrible poverty and miserable living conditions in a slum area of New York City. Where the material complained of has been widely disseminated through its reprinting in a magazine and through sales and reviews of the book, a temporary injunction would be more harmful to defendant-publishers than its denial would be to the plaintiffs; money damages appeared to be the relief "really sought." Smith v Goro, 66 Misc. 2d 1011, 323 N.Y.S.2d 47, 1970 N.Y. Misc. LEXIS 1197 (N.Y. Sup. Ct. 1970).

Complainant was not entitled to a preliminary injunction under N.Y. Debt. & Cred. Law § 279 because the alter ego claim on which its fraudulent conveyance claims were predicated was brought to recover on any judgment that the complainant may ultimately have obtained on its

legal causes of action for breach of contract and fraudulent inducement. UBS Sec. LLC v Highland Capital Mgt., L.P., 977 N.Y.S.2d 610, 42 Misc. 3d 580, 2013 N.Y. Misc. LEXIS 5440 (N.Y. Sup. Ct. 2013), app. dismissed, 135 A.D.3d 586, 23 N.Y.S.3d 877, 2016 N.Y. App. Div. LEXIS 416 (N.Y. App. Div. 1st Dep't 2016).

Complainant was not entitled to a preliminary injunction under N.Y. Debt. & Cred. Law § 279 because the alter ego claim on which its fraudulent conveyance claims were predicated was brought to recover on any judgment that the complainant may ultimately have obtained on its legal causes of action for breach of contract and fraudulent inducement. UBS Sec. LLC v Highland Capital Mgt., L.P., 977 N.Y.S.2d 610, 42 Misc. 3d 580, 2013 N.Y. Misc. LEXIS 5440 (N.Y. Sup. Ct. 2013), app. dismissed, 135 A.D.3d 586, 23 N.Y.S.3d 877, 2016 N.Y. App. Div. LEXIS 416 (N.Y. App. Div. 1st Dep't 2016).

30. —Ultimate success

Before preliminary injunction will be granted, party seeking relief must demonstrate strong probability of ultimate success, and thus clear right to relief sought, particularly in proceeding to enforce restrictive covenant against former employee. Rick J. Jarvis Assocs. v Stotler, 216 A.D.2d 649, 627 N.Y.S.2d 810, 1995 N.Y. App. Div. LEXIS 6078 (N.Y. App. Div. 3d Dep't 1995).

Provider of services for homeless persons with AIDS was not entitled to preliminary injunction restraining city from terminating its contracts, on ground that city was acting in retaliation for provider’s exercise of its right of free speech by, inter alia, criticizing city officials, where audits of provider’s books revealed “woefully deficient” records and serious financial improprieties, which made it likely that city would have taken same action against provider even in absence of its protected activities, and thus provider did not show likelihood of success on merits of retaliation claim. Housing Works, Inc. v City of New York, 255 A.D.2d 209, 680 N.Y.S.2d 487, 1998 N.Y. App. Div. LEXIS 12526 (N.Y. App. Div. 1st Dep't 1998).

Entitlement of preliminary relief pursuant to CPLR 6301 depends in the first instance upon a likelihood of success. Metz v People, 73 Misc. 2d 219, 341 N.Y.S.2d 940, 1973 N.Y. Misc. LEXIS 2094 (N.Y. Sup. Ct. 1973).

When hearing a motion for preliminary injunction, it is not the function of the court to adjudicate the merits of the underlying action and it is not necessary that the plaintiff show with absolute certainty that it will prevail on the main action in order to warrant grant of the motion. Rosemont Enterprises, Inc. v McGraw-Hill Book Co., 85 Misc. 2d 583, 380 N.Y.S.2d 839, 1975 N.Y. Misc. LEXIS 3321 (N.Y. Sup. Ct. 1975).

Before court will grant drastic provisional remedy of preliminary injunctive relief, plaintiff must demonstrate likelihood of ultimate success on the merits of the underlying action, that irreparable harm will occur absent the granting of the preliminary injunction, and that a balancing of the equities in the case mandates grant of injunctive relief. Rosemont Enterprises, Inc. v McGraw-Hill Book Co., 85 Misc. 2d 583, 380 N.Y.S.2d 839, 1975 N.Y. Misc. LEXIS 3321 (N.Y. Sup. Ct. 1975).

Family member, who was party to an agreement settling a family dispute, was not entitled to a preliminary injunction to enjoin another family member and a publisher from continuing to publish, print, and distribute a book regarding a different family member, was in public office, because he was unlikely to succeed on his claim that the book violated the terms of the settlement agreement. Trump v Trump, 69 Misc. 3d 285, 128 N.Y.S.3d 801, 2020 N.Y. Misc. LEXIS 3412 (N.Y. Sup. Ct. 2020).

31. — —Issues of fact

Although party moving for preliminary injunction need not establish certainty of success on merits, such injunction should not issue where facts necessary to establish cause of action are in sharp dispute. Sutton, DeLeeuw, Clark & Darcy v Beck, 155 A.D.2d 962, 547 N.Y.S.2d 773, 1989 N.Y. App. Div. LEXIS 14832 (N.Y. App. Div. 4th Dep't 1989).

Requirement of likelihood of ultimate success, for issuance of preliminary injunction, does not compel showing that success on merits is practically certain; mere fact that there may be issues of fact for trial does not prelude court from exercising its discretion in granting injunction. Egan v New York Care Plus Ins. Co., 266 A.D.2d 600, 697 N.Y.S.2d 776, 1999 N.Y. App. Div. LEXIS 11244 (N.Y. App. Div. 3d Dep't 1999).

32. — —Degree of proof

On motion for preliminary injunction to prevent trustees of park from cutting down trees, degree of proof required to establish element of likelihood of success on merits would be reduced in light of fact that denial of injunctive relief would render final judgment ineffectual, since trees, once cut down, could not be replaced. Gramercy Co. v Benenson, 223 A.D.2d 497, 637 N.Y.S.2d 383, 1996 N.Y. App. Div. LEXIS 733 (N.Y. App. Div. 1st Dep't 1996).

Because a wife sought to enjoin the sale of property that was owned by a non party limited liability company, she failed to demonstrate she was entitled to a temporary restraining order or a preliminary injunction under either N.Y. C.P.L.R. 6301 or N.Y. Dom. Rel. Law § 234. Silva v Silva, 895 N.Y.S.2d 704, 27 Misc. 3d 526, 243 N.Y.L.J. 43, 2010 N.Y. Misc. LEXIS 348 (N.Y. Sup. Ct. 2010).

33. — —Injunction denied

Plaintiff’s application for a preliminary injunction must be denied where there was no strong showing of ultimate success or of immediate need, and the court would not grant the same relief that might have obtained in the action upon a plenary trial. Smith v Robilotto, 25 A.D.2d 454, 265 N.Y.S.2d 832, 1966 N.Y. App. Div. LEXIS 5245 (N.Y. App. Div. 3d Dep't 1966).

In action to enjoin the sale of a purchase money mortgage, plaintiffs arguably met the three requirements for the issuance of a preliminary injunction by proving (1) likelihood of ultimate success on the merits, (2) irreparable injury absent granting of the preliminary injunction, and (3)

a balancing of equities. Albini v Solork Associates, 37 A.D.2d 835, 326 N.Y.S.2d 150, 1971 N.Y. App. Div. LEXIS 3356 (N.Y. App. Div. 2d Dep't 1971).

A preliminary injunction is a drastic form of relief requiring a showing of irreparable harm and a reasonable probability of success. Suffolk Outdoor Advertising Co. v Hulse, 56 A.D.2d 365, 393 N.Y.S.2d 416, 1977 N.Y. App. Div. LEXIS 10446 (N.Y. App. Div. 2d Dep't 1977), modified, 43 N.Y.2d 483, 402 N.Y.S.2d 368, 373 N.E.2d 263, 1977 N.Y. LEXIS 2565 (N.Y. 1977), rev'd, 45 N.Y.2d 922, 411 N.Y.S.2d 230, 383 N.E.2d 876, 1978 N.Y. LEXIS 2354 (N.Y. 1978).

On a motion for a preliminary injunction, the movant must demonstrate a likelihood of success on the merits and irreparable injury if the opposing party is allowed to act unrestrained. Doe v Greco, 62 A.D.2d 498, 405 N.Y.S.2d 801, 1978 N.Y. App. Div. LEXIS 10867 (N.Y. App. Div. 3d Dep't 1978).

A preliminary injunction staying an action was improperly granted, where the plaintiffs in a second action failed to demonstrate a clear likelihood of success on the merits and showed only that minority shareholders and perhaps a single officer of a corporation objected to the litigation, and where the plaintiff in the first action established that all three directors of the corporation had ratified the institution of the action. In addition, a plaintiff’s attempt to stay the first action as an officer of the corporation was defective where she failed to join any officer or director of the corporation as a defendant in the second action. NYF Properties Corp. v SB Investors, Ltd., 96 A.D.2d 481, 465 N.Y.S.2d 37, 1983 N.Y. App. Div. LEXIS 18984 (N.Y. App. Div. 1st Dep't 1983).

Provider of services for homeless persons with AIDS was not entitled to preliminary injunction restraining city from terminating its contracts, on ground that city’s conduct was de facto debarment without due process, where (1) city did not issue blanket preclusion of contracts with provider but examined each contact on case-by-case basis, (2) even if city’s actions constituted debarment or suspension, there was no due process violation, because provider had meaningful postdeprivation remedies, including administrative remedies under city charter and PPB Rules and commencement of Article 78 proceeding, and (3) thus, provider did not show likelihood of

success on merits of debarment claim. Housing Works, Inc. v City of New York, 255 A.D.2d 209, 680 N.Y.S.2d 487, 1998 N.Y. App. Div. LEXIS 12526 (N.Y. App. Div. 1st Dep't 1998).

Because the controlling documents of a corporation failed to demonstrate that a shareholder had been designated a holder of unsold shares, the shareholder failed to demonstrate a likelihood of success on the merits that would entitle it to a preliminary injunction under N.Y. C.P.L.R. 6301; therefore, pursuant to N.Y. C.P.L.R. 2221(e), the trial court properly denied its motion for leave to renew. 515 Ave. I Corp. v 515 Ave. I Tenants Corp., 44 A.D.3d 707, 844 N.Y.S.2d 79, 2007 N.Y. App. Div. LEXIS 10592 (N.Y. App. Div. 2d Dep't 2007).

Denial of a motion for preliminary injunction to prohibit any actions in furtherance of the Secure Ammunition and Firearms Enforcement Act was proper. Plaintiff had no likelihood of success on the merits because under N.Y. Const. art. III, § 14, factual statements in the Governor’s certificate of necessity for passage of the Act precluded further judicial review. Schulz v State of N.Y Exec., 108 A.D.3d 856, 969 N.Y.S.2d 195, 2013 N.Y. App. Div. LEXIS 4949 (N.Y. App. Div. 3d Dep't 2013), transferred, 23 N.Y.3d 1010, 992 N.Y.S.2d 771, 16 N.E.3d 1250, 2014 N.Y. LEXIS 1414 (N.Y. 2014), transferred, 23 N.Y.3d 1010, 992 N.Y.S.2d 771, 16 N.E.3d 1250, 2014 N.Y. LEXIS 1430 (N.Y. 2014).

Trial court properly denied plaintiff’s motion to preliminarily enjoin defendant from evicting him from a condominium unit in which he claimed one-half ownership, as he was unlikely to prevail on the merits of his claims of breach of contract, specific performance, constructive trust, and partition. The parties’ alleged oral agreement to buy the unit as tenants-in-common was unenforecable under the statute of frauds, since plaintiff’s payments with respect to the unit were not unequivocally referable to the agreement and thus did not establish part performance. Kurlandski v Kim, 111 A.D.3d 676, 975 N.Y.S.2d 98, 2013 N.Y. App. Div. LEXIS 7424 (N.Y. App. Div. 2d Dep't 2013).

In an action by insurance agents against a competitor for alleged interference with contractual relations, plaintiffs’ motion for a preliminary injunction, grounded upon an Insurance Department regulation that established certain procedures in connection with the replacement of life

insurance policies, would be denied where plaintiffs had not shown a likelihood of success on the merits of their claim in that it was not clear that defendant had done anything more than compete with plaintiffs for life insurance business among certain potential clients, and, even if defendant's actions constituted a violation of the subject regulation, the requisite "pattern of violations" was not established by plaintiffs' showing that such violations occurred on two occasions, where there was no showing of irreparable injury to plaintiffs in that damages would be a sufficient remedy for plaintiffs' lost commissions in the event defendant's acts were ultimately determined to have been wrongful, and where the subject regulation was neither designed to protect competing insurance salesmen nor intended to give such competitors a right of action to enforce its terms. Lidogoster v Krasnerman, 119 Misc. 2d 678, 463 N.Y.S.2d 1019, 1983 N.Y. Misc. LEXIS 3576 (N.Y. Sup. Ct. 1983).

34. — —Illustrative cases

Although a wife failed to establish that a promissory note was usurious under N.Y. Gen. Oblig. Law § 5-501(6)(b) in support of her N.Y. C.P.L.R. 6301 motion for a preliminary injunction, the lender failed to timely file a confession of judgment in accordance with N.Y. C.P.L.R. 3218(b). Shasho v Pruco Life Ins. Co. of N.J., 67 A.D.3d 663, 888 N.Y.S.2d 557, 2009 N.Y. App. Div. LEXIS 7841 (N.Y. App. Div. 2d Dep't 2009).

35. — — —Preliminary injunction appropriate

Plaintiffs were properly granted a preliminary injunction in an action against a former employee and a competitor for whom the former employee worked, based on an alleged breach of a nonsolicitation covenant contained in an employment agreement, where there was a likelihood of plaintiffs' ultimate success on the merits and a danger of irreparable injury to plaintiffs, and the equities balanced in plaintiffs' favor, due to (1) the nature of the employment agreement, which contained a covenant restricting the employee from soliciting plaintiffs' customers, and in which he agreed that their customer list was a valuable and unique asset, that irreparable harm

would result from a breach of the covenant, and that a violation would be a proper subject for injunctive relief, (2) the nature of plaintiff's customer list, which could properly be treated as a trade secret, (3) statements made by the former employee in an affidavit made while employed by plaintiff in support of a contempt motion against defendant competitor in a similar action against another former employee, (4) the high position attained by the former employee while working for plaintiff, and (5) actions taken by defendant. Giffords Oil Co. v Wild, 106 A.D.2d 610, 483 N.Y.S.2d 104, 1984 N.Y. App. Div. LEXIS 21596 (N.Y. App. Div. 2d Dep't 1984).

In an action for declaratory relief and to recover damages for fraud and unjust enrichment, the appellate division concluded that: (1) plaintiffs demonstrated a likelihood of success on the merits on their declaratory judgment causes of action, (2) demonstrated the likelihood of irreparable injury absent the granting of the preliminary injunction, and (3) established that the balanced of equities was in their favor. Liberty Mut. Ins. Co. v Raia Med. Health, P.C., 140 A.D.3d 1029, 35 N.Y.S.3d 179, 2016 N.Y. App. Div. LEXIS 4768 (N.Y. App. Div. 2d Dep't 2016).

Trial court providently exercised its discretion in granting the tenant's motion for a preliminary injunction because the tenant demonstrated, inter alia, that it had a likelihood of success on the merits of its claim for a judgment declaring that it validly exercised its option to renew the lease, which thus had been extended and expired on November 30, 2022, and was in full force and effect. Karr Graphics Corp. v Spar Knitwear Corp., 192 A.D.3d 673, 144 N.Y.S.3d 64, 2021 N.Y. App. Div. LEXIS 1308 (N.Y. App. Div. 2d Dep't 2021).

Buyers were entitled to specific performance, declaratory, and preliminary injunctive relief under N.Y. C.P.L.R. 6301 because, while it was theoretically possible that they could exercise an option to purchase the seller's air rights more than 21 years after its creation, N.Y. Est. Powers & Trusts Law § 9-1.3(d) required that it be construed in such a way as to avoid invalidating it. Maestro W. Chelsea SPE LLC v Pradera Realty Inc., 954 N.Y.S.2d 819, 38 Misc. 3d 522, 2012 N.Y. Misc. LEXIS 5360 (N.Y. Sup. Ct. 2012), dismissed in part, 2017 N.Y. Misc. LEXIS 2450 (N.Y. Sup. Ct. June 20, 2017).

Petitioners, businesses who manufactured, distributed, or sold hemp-infused products in New York State, were entitled to a preliminary injunction to enjoin respondents, state entities that promulgated regulations for New York's cannabis industry, from implementing and/or enforcing emergency regulations that addressed the processing and retail sale of cannabinoid hemp products, because petitioners were likely to prevail on their claim that respondents' Emergency Justification did not comply with SAPA 202(6)(d)(iv), rendering their emergency regulations void; petitioners established that they had suffered or will suffer harm in the form of loss of good will, loss of profits that were too speculative to quantify, and loss of market share. North Fork Distrib., Inc. v New York State Cannabis Control Bd., 81 Misc. 3d 952, 203 N.Y.S.3d 496, 2023 N.Y. Misc. LEXIS 15442 (N.Y. Sup. Ct. 2023).

36. — — —Preliminary injunction not appropriate

In an action to recover personal belongings from a former employer in which plaintiff sought a preliminary injunction, the trial court erred in issuing the injunction where plaintiff failed to demonstrate any liklihood of success on the merits, in that the only allegation to support the contention that he was entitled to the property in question was not supported by any evidence to substantiate the claim and that the employer submitted proof that the property was trade secrets by virtue of agreements the employer had with other companies, and where the only support offered by plaintiff that he would suffer irreparable harm was the bald assertion that the property was not easily replaceable; bare conclusory allegations are insufficient to support a motion for a preliminary injunction. Kaufman v International Business Machines Corp., 97 A.D.2d 925, 470 N.Y.S.2d 720, 1983 N.Y. App. Div. LEXIS 20714 (N.Y. App. Div. 3d Dep't 1983), aff'd, 61 N.Y.2d 930, 474 N.Y.S.2d 721, 463 N.E.2d 37, 1984 N.Y. LEXIS 4170 (N.Y. 1984).

The trial court erred in granting plaintiff dress manufacturer a preliminary injunction enjoining a bank from honoring drafts or demands for payment under eight specified letters of credit based on plaintiff's contention that although the documents facially complied with the letters of credit the documents were necessarily falsified by the shippers, where, even if plaintiff's allegations of

fraud were substantiated, the proof offered to refute the defendant bank's or advising bank's status as holders in due course was insufficient to establish the liklihood of plaintiff's success on the merits. Eljay Jrs., Inc. v Rahda Exports, 99 A.D.2d 408, 470 N.Y.S.2d 12, 1984 N.Y. App. Div. LEXIS 16565 (N.Y. App. Div. 1st Dep't 1984).

In action under CLS RPAPL article 15 to determine interests of party in certain parcel of real property, plaintiff was not entitled to preliminary injunction to prevent defendant from interfering with his quiet enjoyment of disputed property where plaintiff failed to establish likelihood of success on merits of his claim of adverse possession, since plaintiff was required by CLS CPLR § 212 to show that he had actually possessed property for continuous period of 10 years, whereas testimony adduced at hearing on motion for preliminary injunction established only that plaintiff had cultivated and maintained parcel for one year and that his gardener had done likewise for next 6 or 7 years. Kromholz v Notey, 121 A.D.2d 668, 503 N.Y.S.2d 883, 1986 N.Y. App. Div. LEXIS 58658 (N.Y. App. Div. 2d Dep't 1986).

Civic association and its president were not entitled to preliminary injunction to prevent construction of neighborhood bus depot by New York City Transit Authority, despite having established that irreparable injury would occur to neighborhood if construction were allowed to proceed, where plaintiffs based their prayer for injunctive relief on City Board of Estimate's rescinding of its prior approval of project and where plaintiffs were unlikely to prevail on merits since Board's act of rescission was probably not unconstitutional impairment of contract. Chester Civic Improv. Asso. v New York City Transit Authority, 122 A.D.2d 715, 505 N.Y.S.2d 638, 1986 N.Y. App. Div. LEXIS 59256 (N.Y. App. Div. 1st Dep't 1986).

Preliminary injunctive relief was improperly granted in action for judgment declaring that amendment to town code of ethics was unconstitutional since record did not demonstrate likelihood that plaintiffs would ultimately succeed on merits. Allmacher v Digiacomo, 153 A.D.2d 651, 544 N.Y.S.2d 983, 1989 N.Y. App. Div. LEXIS 11029 (N.Y. App. Div. 2d Dep't 1989).

Trial court erred in granting an officer of the New York State Air National Guard/Reserve a preliminary injunction in his action, seeking to be reinstated to his position after he was notified

that his position would not be renewed upon expiration of his tour, as he did not show that he had a likelihood of success on the merits. Matter of Figueroa v Maguire, 37 A.D.3d 829, 831 N.Y.S.2d 248, 2007 N.Y. App. Div. LEXIS 2372 (N.Y. App. Div. 2d Dep't 2007).

Because an alleged intern and his business entities failed to establish a likelihood of success on the merits as the submissions by the parties indicated that it was unclear whether the alleged former intern entered into a joint venture with the principals, or that they would suffer an irreparable injury without injunctive relief, the assets sought to be restrained were not specific funds which could rightly be regarded as the subject of the action, and the alleged former intern and his business entities failed to establish that a balancing of the equities was in their favor, the preliminary injunction should have been denied. Coby Group, LLC v Hasenfeld, 46 A.D.3d 593, 847 N.Y.S.2d 239, 2007 N.Y. App. Div. LEXIS 12535 (N.Y. App. Div. 2d Dep't 2007).

Trial court properly denied a former wife’s motion for a preliminary injunction prohibiting her former husband and two of his companies from transferring certain money and assets in her suit for fraud against them involving the alleged sale of a warehouse that was not disclosed to her in the divorce action with the former husband since she failed to establish a likelihood of success on the merits as, despite her allegation that electronic computer evidence existed that would establish the alleged fraudulent misrepresentation, the evidence submitted by the parties, including the affidavit of the real estate agent who brokered the sale, made it unclear as to whether any active deals or pending negotiations for the sale of the warehouse property existed at the time the parties entered into their divorce settlement agreement. Further, the trial court properly found that money damages would be sufficient to satisfy the former wife’s claim, therefore, she did not establish that she would suffer irreparable injury in the absence of a preliminary injunction. Etzion v Etzion, 62 A.D.3d 646, 880 N.Y.S.2d 79, 2009 N.Y. App. Div. LEXIS 3643 (N.Y. App. Div. 2d Dep't 2009).

Trial court, upon reargument, erred in granting plaintiffs’ motion for a preliminary injunction because plaintiffs failed to establish a likelihood of success on the merits, as the property at issue was conveyed to plaintiffs subject to an easement benefitting other property owners in the

neighborhood, which easement had not been extinguished. Seagate Mini Mall, Inc. v Seagate Assn., Inc., 201 A.D.3d 759, 156 N.Y.S.3d 911, 2022 N.Y. App. Div. LEXIS 179 (N.Y. App. Div. 2d Dep't 2022).

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).

Buyers' were not entitled to a preliminary injunction pursuant to N.Y. C.P.L.R. 6301 on their claim of breach of a contract to sell a cooperative apartment because, inter alia, the complaint contained no allegation as to the "uniqueness" of the apartment or as to the inadequacy of a remedy at law or irreparable injury, and affidavits submitted failed to allege facts; a contract for the purchase and sale of the ownership interest in a cooperative apartment was governed, as a contract for the sale of goods, by N.Y. U.C.C. Law art. 2, including art. 2's remedy provisions, but no other evidence offered that would have supported an inference that suitable alternatives were not available in the market to allow cover or a reasonably certain determination of damages based upon the market price/contract price differential under N.Y. U.C.C. Law § 2-713(1). The buyers thus failed to demonstrate a likelihood of success on the merits of their specific performance or irreparable injury claims. Lezell v Forde, 891 N.Y.S.2d 606, 26 Misc. 3d 435, 2009 N.Y. Misc. LEXIS 2820 (N.Y. Sup. Ct. 2009).

While an owner was not entitled to a preliminary injunction mandating the removal of a neighbor's sidewalk bridge under N.Y. C.P.L.R. 6301, conversion of the action into one for a license under N.Y. Real Prop. Acts. Law § 881 was warranted with the imposition of durational limits, a license fee, and damages incurred as a result of the neighbor's entry on the owner's property. Ponito Residence LLC v 12th St. Apt. Corp., 959 N.Y.S.2d 376, 38 Misc. 3d 604, 2012 N.Y. Misc. LEXIS 5135 (N.Y. Sup. Ct. 2012).

Because a contract between a city and an "occupy" group clearly and unambiguously permitted the city to deny any renewal, and because a city code prohibiting overnight camping without a permit complied with the public trust doctrine in N.Y. Gen. City Law § 20(2) and did not violate the group's free speech rights, it was constitutional, therefore, the group was not entitled to a preliminary injunction under N.Y. C.P.L.R. 6301. Miller-Jacobson v City of Rochester, 941 N.Y.S.2d 475, 35 Misc. 3d 846, 2012 N.Y. Misc. LEXIS 1462 (N.Y. Sup. Ct. 2012).

Likelihood of success on the merits was not established in an action regarding claims that New York State and federal procurement laws were violated by statutory amendments and issuance of a request for proposals (RFP) for a statewide fiscal intermediary because the statutory amendments and RFP were rationally related to legitimate government purposes of regulating the fiscal intermediaries industry, reducing administrative costs, and using the savings to benefit Medicaid consumers and did not violate separation of powers or equal protection. Save Our Consumer Directed Home Care Program, Inc. v New York State Dept. of Health, 227 N.Y.S.3d 886, 2025 N.Y. Misc. LEXIS 716 (N.Y. Sup. Ct. 2025).

37. —Illustrative cases

In an action for a permanent injunction, plaintiff would be granted a preliminary injunction to the extent of ordering the parties to resume their professional practice in accordance with office

hours existing prior to their dispute, where plaintiff would suffer irreparable injury by the loss of patients and damage to his reputation absent the injunction, and where plaintiff had shown that he had a valid interest in the office in question and that he might prevail on the merits in his action to prevent defendant's interfering with his use of the office. Konishi v Lin, 88 A.D.2d 905, 450 N.Y.S.2d 585, 1982 N.Y. App. Div. LEXIS 17235 (N.Y. App. Div. 2d Dep't 1982).

In an injunction action brought by an accounting firm against a former partner in the firm to enforce a noncompetition agreement pursuant to which the former partner had agreed to refrain from soliciting the business of the firm's clients for a period of two years in the event of the former partner's "withdrawal" from the firm, a preliminary injunction in plaintiff's favor would be limited so as to apply only to those clients of the firm who had never been clients of either defendant or his current business partner where it was not at all clear that plaintiff would probably succeed on the merits in that defendant had been fired and thus arguably did not "withdraw" from the firm, and in that plaintiff made no allegation that defendant had been privy to trade secrets or insider information, or that his services as an accountant were special, unique, or extraordinary, where the loss of $36,500 worth of the firm's business that allegedly had resulted from defendant's actions did not amount to "immediate and irreparable injury" as required for the grant of an injunction pursuant to CLS § 6301 in light of the fact that the firm received $800,000,000 in annual revenues, where a balance of the equities showed that defendant would be the party most seriously burdened by an extensive injunction, and where monetary damages, if proven, would constitute adequate compensation to plaintiff for its losses. Arthur Young & Co. v Black, 97 A.D.2d 369, 466 N.Y.S.2d 10, 1983 N.Y. App. Div. LEXIS 19920 (N.Y. App. Div. 1st Dep't 1983).

Failure to exhaust administrative remedies did not bar action which sought preliminary injunction directing city to develop plan to meet obligation of CLS Soc Serv § 409 et seq. to provide preventive services to families whose children were determined to be at risk of foster care, and enjoining state from imposing 90-day limit on emergency shelter as preventive service, where systematic failures which plaintiffs challenged could not meaningfully be addressed in

administrative hearing, plaintiffs encountered frustration even after court orders were rendered on their behalf, and delays involved in administrative process could cause irreparable harm of separation of children from their parents, since resort to administrative remedies was futile. Martin A. v Gross, 153 A.D.2d 812, 546 N.Y.S.2d 75, 1989 N.Y. App. Div. LEXIS 11926 (N.Y. App. Div. 1st Dep't 1989), app. dismissed, 75 N.Y.2d 808, 552 N.Y.S.2d 110, 551 N.E.2d 603, 1990 N.Y. LEXIS 31 (N.Y. 1990).

Court properly denied landlord's motion for preliminary injunction to enjoin Division of Housing and Community Renewal (DHCR) from holding hearings to determine whether landlord harassed tenants since landlord had adequate remedy at law in Article 78 proceeding to review determination of DHCR. Malik v Higgins, 173 A.D.2d 791, 570 N.Y.S.2d 652, 1991 N.Y. App. Div. LEXIS 7965 (N.Y. App. Div. 2d Dep't 1991).

Provider of services for homeless persons with AIDS was not entitled to preliminary injunction restraining city from terminating its contracts, because equities did not lie in provider's favor even though it served important public service, where city could not be forced to extend expired contracts against its will, and investigation had revealed possibility that provider was misusing public funds. Housing Works, Inc. v City of New York, 255 A.D.2d 209, 680 N.Y.S.2d 487, 1998 N.Y. App. Div. LEXIS 12526 (N.Y. App. Div. 1st Dep't 1998).

Bylaw of plumbers association establishing a Bidders Registry consisting of a system of reporting and recording the names of prospective bidders and the successful bidders for every job, including notifying each prospective bidder of the names of the other prospective bidders, and making available the name of prospective bidders to all determined by a committee of the association to be properly interested was in violation of the Donnelly Act and would be enjoined although it had been discontinued prior to judgment. People v Association of Contracting Plumbers, 57 Misc. 2d 256, 291 N.Y.S.2d 624, 1968 N.Y. Misc. LEXIS 1453 (N.Y. Sup. Ct. 1968).

Where a heating fuel oil company's program, which was established to reduce the risk of fuel oil spills for its customers, was a warranty contract which was exempt from insurance regulation,

the Superintendent of Insurance of the State of New York was denied his request for a preliminary injunction against further issuance of the contracts, pursuant to N.Y. Ins. Law § 327(b) and the standard under N.Y. C.P.L.R. 6301, as the merits of the declaratory judgment action were in favor of the company, there was no irreparable harm shown by speculative assertions about the company's financial instability, and the balance of the equities was not in favor of issuance of the injunction. Petro, Inc. v Serio, 804 N.Y.S.2d 598, 9 Misc. 3d 805, 2005 N.Y. Misc. LEXIS 1572 (N.Y. Sup. Ct. 2005).

38. Expiration of injunction

Once decision on merits of case is made, need for provisional relief ends, and any order granting preliminary injunction expires. Heisler v Gingras, 238 A.D.2d 702, 656 N.Y.S.2d 70, 1997 N.Y. App. Div. LEXIS 3746 (N.Y. App. Div. 3d Dep't 1997).

Supreme Court's issuance of preliminary injunction would be vacated as nullity under CLS CPLR § 6301 where Supreme Court had already rendered decision on merits of case, so that underlying proceeding was no longer pending. Heisler v Gingras, 238 A.D.2d 702, 656 N.Y.S.2d 70, 1997 N.Y. App. Div. LEXIS 3746 (N.Y. App. Div. 3d Dep't 1997).

B. Specific Grounds for Injunctions

39. Arbitration

It is an improvident exercise of discretion to grant a temporary injunction where, under an arbitration agreement, the arbitrators can adequately dispose of all of the issues posed in the action in which an injunction pendente lite is sought. Meda International, Inc. v Salzman, 24 A.D.2d 710, 263 N.Y.S.2d 12, 1965 N.Y. App. Div. LEXIS 3402 (N.Y. App. Div. 1st Dep't 1965).

A carrier's request to remain exclusive agent in stated area for household moving company and demands for arbitration on that point raised substantial antitrust questions sufficient to justify a

permanent stay of pending arbitration proceedings as the interest not only of the particular litigants but of the public in general should be settled by the judiciary rather than by arbitrators. Allied Van Lines, Inc. v Hollander Express & Van Co., 35 A.D.2d 191, 315 N.Y.S.2d 162, 1970 N.Y. App. Div. LEXIS 3555 (N.Y. App. Div. 1st Dep't 1970), rev'd, 29 N.Y.2d 35, 323 N.Y.S.2d 693, 272 N.E.2d 70, 1971 N.Y. LEXIS 1242 (N.Y. 1971).

In attempt by school district to enjoin arbitration with teachers' association, allegation of school board president that arbitration would be long and costly and that the question would be determined by a nonlawyer and quite possibly involve judicial review was a conclusory allegation insufficient to support the granting of a temporary injunction. Belmont Cent. Sch. Dist. v Belmont Teachers Ass'n, 51 A.D.2d 653, 378 N.Y.S.2d 198, 1976 N.Y. App. Div. LEXIS 11004 (N.Y. App. Div. 4th Dep't 1976).

Plaintiff, who brought action, inter alia, for return of moneys constituting payment for equity interest in defendant partnership and who cross-moved for preliminary injunction after defendants moved to compel arbitration, was not bound by American Stock Exchange arbitration requirements, in light of fact that his allied membership in Exchange was subject to his status as a partner of a member firm and that his status as a partner never became finalized; granting of cross motion for preliminary injunctive relief was not an abuse of discretion under such circumstances. Kaufmann v Levy, 55 A.D.2d 946, 391 N.Y.S.2d 143, 1977 N.Y. App. Div. LEXIS 10231 (N.Y. App. Div. 2d Dep't), modified, 58 A.D.2d 658, 396 N.Y.S.2d 1013, 1977 N.Y. App. Div. LEXIS 12754 (N.Y. App. Div. 2d Dep't 1977).

Petitioner was entitled to preliminary injunction in aid of arbitration pursuant to CLS CPLR § 7502(c) where it established that award could be rendered ineffectual without such relief; petitioner was not required to establish irreparable harm and probability of success on merits. National Telecommunications Ass'n v National Communications Ass'n, 189 A.D.2d 573, 592 N.Y.S.2d 591, 1993 N.Y. App. Div. LEXIS 49 (N.Y. App. Div. 1st Dep't 1993).

Defendants' opposition to plaintiff's motion for preliminary injunction and appeal from grant thereof were not uses of judicial process indicative of waiver of any right to arbitrate since court

is authorized to grant such injunction even while arbitration is pending (CLS CPLR § 7502(c)). Congregation Darech Amuno v Blasof, 226 A.D.2d 236, 640 N.Y.S.2d 564, 1996 N.Y. App. Div. LEXIS 3916 (N.Y. App. Div. 1st Dep't 1996).

Preliminary injunction prohibiting congregant from worshipping at synagogue was warranted by evidence, including common obscenity congregant repeatedly shouted to synagogue's president in presence of young children, among others, which was hardly innocuous or inoffensive considering context; moreover, if "Beth Din," religious tribunal chosen to arbitrate dispute, ultimately ruled that congregant's alleged misconduct warranted expulsion from synagogue, award would have little meaning if, in meantime, continued misconduct drove away synagogue's other members or otherwise doomed its continued vitality. Congregation Darech Amuno v Blasof, 226 A.D.2d 236, 640 N.Y.S.2d 564, 1996 N.Y. App. Div. LEXIS 3916 (N.Y. App. Div. 1st Dep't 1996).

Because a seller failed to establish entitlement to injunctive relief under N. Y. C.P.L.R. 6301, 7502(c), and failed to demonstrate that an arbitration award to which the seller might be entitled would be rendered ineffectual without the granting of provisional relief, the trial court erred in continuing the temporary restraining order. Winter v Brown, 49 A.D.3d 526, 853 N.Y.S.2d 361, 2008 N.Y. App. Div. LEXIS 1898 (N.Y. App. Div. 2d Dep't 2008).

Because the only issue for the arbitrators was whether a seller was entitled to recover its deal costs, and the plain language of the parties' share purchase agreement did not allow the seller to recover from a trust any attorneys' fees it was awarded in arbitration, the trustee was improperly enjoined pursuant to N.Y. C.P.L.R. 7502(c) and 6301 from distributing the funds. Vanship Holdings Ltd. v Energy Infrastructure Acquisition Corp., 65 A.D.3d 405, 884 N.Y.S.2d 24, 2009 N.Y. App. Div. LEXIS 5924 (N.Y. App. Div. 1st Dep't 2009).

The Supreme Court has jurisdiction to enjoin respondents from transferring or otherwise encumbering property between the time of filing a demand for arbitration and the designation of arbitrators, inasmuch as petitioners, who had contracted to renovate and redevelop the property, following which a one-third interest would be conveyed to them, would be irreparably injured if

the subject property were transferred or otherwise encumbered during that time period. Shay v 746 Broadway Corp., 96 Misc. 2d 346, 409 N.Y.S.2d 69, 1978 N.Y. Misc. LEXIS 2605 (N.Y. Sup. Ct. 1978).

CPLR § 7501 which prohibits a court, once arbitration has been sought, from passing upon the merits of the dispute, only applies when a party attempts to compel or prevent the performance of the arbitration agreement, and does not prevent the court from contemporaneously restraining a party to maintain the status quo; thus, a member of the National Association of Securities Dealers, whose former registered representative was subsequently employed by another NASD member, was entitled to a preliminary injunction (CPLR § 6301) pending arbitration, enjoining the latter member from soliciting its customers; the NASD arbitration rule prohibiting any party to an arbitration from initiating any suit, action, or proceeding against another party touching on the subject matter of the arbitration could not be interpreted to mean that one party could pirate away customers from another party while an arbitration panel was being assembled. J. Brooks Secur., Inc. v Vanderbilt Secur., Inc., 126 Misc. 2d 875, 484 N.Y.S.2d 472, 1985 N.Y. Misc. LEXIS 2524 (N.Y. Sup. Ct. 1985).

40. Business matters

In action to enjoin the sale of a purchase money mortgage, plaintiffs arguably met the three requirements for the issuance of a preliminary injunction by proving (1) likelihood of ultimate success on the merits, (2) irreparable injury absent granting of the preliminary injunction, and (3) a balancing of equities. Albini v Solork Associates, 37 A.D.2d 835, 326 N.Y.S.2d 150, 1971 N.Y. App. Div. LEXIS 3356 (N.Y. App. Div. 2d Dep't 1971).

Although a bank, which sought to submit a joint venture consent document to the court on renewal for purposes of clarifying its responsibilities to pay maintenance charges with regard to an apartment, should have been granted renewal since in the course of denying a request for a preliminary injunction, Special Term imposed upon bank a duty which it did not have, Special Term nevertheless properly denied preliminary injunctive relief in light of the corrected

interpretation of the maintenance charge provisions. Flushing Sav. Bank v Smith, 90 A.D.2d 709, 455 N.Y.S.2d 601, 1982 N.Y. App. Div. LEXIS 18877 (N.Y. App. Div. 1st Dep't 1982).

Court did not abuse its discretion in appointing receiver and granting preliminary injunction enjoining defendant corporation from transferring assets where plaintiff showed likelihood of waste and fraudulent transfer of assets by defendant. Nesis v Paris Int'l Lighting, Inc., 184 A.D.2d 485, 587 N.Y.S.2d 152, 1992 N.Y. App. Div. LEXIS 8604 (N.Y. App. Div. 1st Dep't 1992).

Corporation was not entitled to preliminary injunction precluding former employee/officer from using corporation’s tools and equipment where complaint sought only award of money damages for officer’s alleged unauthorized use of tools and equipment, thereby acknowledging that it could be made whole by award of damages. Lawrence H. Morse, Inc. v Anson, 185 A.D.2d 505, 586 N.Y.S.2d 36, 1992 N.Y. App. Div. LEXIS 8970 (N.Y. App. Div. 3d Dep't 1992).

Preliminary injunctive relief granted to attorney by motion court on remand, enjoining clients from disposing of escrow funds and directing redeposit of funds into escrow, appropriately returned parties to status quo that exited prior to reversed order granting summary judgment to clients, and protected attorney’s potential right to recover reasonable value of his services, where Court of Appeals had determined that attorney had enforceable charging lien against proceeds of settlement in question, provided there was just cause for his withdrawal. Klein v Eubank, 232 A.D.2d 183, 648 N.Y.S.2d 17, 1996 N.Y. App. Div. LEXIS 9832 (N.Y. App. Div. 1st Dep't 1996).

Defendant cooperative would be enjoined from taking any unfavorable action with respect to shares and leases of plaintiff (35 percent owner of cooperative shares) pending determination on merits where cooperative’s precipitous and extrajudicial determination that plaintiff breached condition of earlier order by suspending maintenance payments, without providing plaintiff new notice to cure, was unjustified, and plaintiff would suffer irreparable harm if wrongfully forced to relinquish his shares. Parker v 304 East 73rd St. Corp., 241 A.D.2d 361, 661 N.Y.S.2d 1, 1997 N.Y. App. Div. LEXIS 7305 (N.Y. App. Div. 1st Dep't 1997).

Plaintiffs involved with defendants in business venture were not entitled to preliminary injunction against prosecution of 2 prior actions where plaintiffs (1) had adequate remedy at law under CLS CPLR § 3216 to seek dismissal for failure to prosecute but never availed themselves of that remedy, (2) failed use procedural remedies available to them to move prior actions forward and thus could not assert claim of laches, and (3) failed to submit any relevant documentary evidence to support their claim that prior actions had been settled. Johnson v Shea, 251 A.D.2d 460, 673 N.Y.S.2d 602, 1998 N.Y. App. Div. LEXIS 6848 (N.Y. App. Div. 2d Dep't 1998).

In action to impose constructive trust, court improperly granted plaintiff's motion to enjoin defendant from "disposing, transferring, dissipating, removing, or otherwise affecting shares of stock in various businesses, as well as all income derived directly or indirectly therefrom, except for the purposes of providing for the care and support of (named individual)," where there was no showing of likelihood of plaintiff's success on merits and that injuries alleged would not be compensable by money damages. Schrager v Klein, 267 A.D.2d 296, 699 N.Y.S.2d 880, 1999 N.Y. App. Div. LEXIS 12947 (N.Y. App. Div. 2d Dep't 1999).

Where a lessee allowed its laundry contract with a lessor to expire without exercising a right of first refusal and actively participated in the subsequent bidding process, its conduct was inconsistent with the right of first refusal; as a result, the lessee was not entitled to a preliminary injunction enjoining the lessor from interfering with the lessee's exclusive right of use and occupancy of laundry rooms in the lessor's premises. Coinmach Corp. v Fordham Hill Owners Corp., 3 A.D.3d 312, 770 N.Y.S.2d 310, 2004 N.Y. App. Div. LEXIS 24 (N.Y. App. Div. 1st Dep't 2004).

Temporary injunction enjoining limited liability companies (LLCs) and individual owners from collecting a capital call made only to a member or impairing the member's rights for not paying was proper because, based on the applicable operating agreements and certain promissory notes in question, capital calls were required to have been shared pro rata by the "members" plural, and, thus, it was at least likely that the member would have succeeded in proving the impropriety of the capital call made only to the member; an opportunity to shift the balance of

power and wrest complete control over the LLCs, which could have occurred if the member failed to meet the capital call, or the selling major assets and dissolution of the LLCs, constituted irreparable injuries. The possibility of the member losing any real say in the LLCs, as opposed to maintaining the status quo where the LLCs and the individual owner suffered no actual harm, suggested that the equities balanced in the member's favor. Cooperstown Capital, LLC v Patton, 60 A.D.3d 1251, 876 N.Y.S.2d 186, 2009 N.Y. App. Div. LEXIS 2226 (N.Y. App. Div. 3d Dep't 2009).

Where purported release executed by one plaintiff raised question as to whether she was still a party entitled to injunctive relief, and affidavits submitted were insufficient, especially in light of purported release, to enable determination of right to maintain action as a class action, preliminary injunction would be granted only enjoining defendants, from requiring other plaintiff in private proprietary home for adults to negotiate her social security checks to defendants as condition to delivery to her of mail containing checks unless she authorized defendants to exercise control over checks. Andres v Mountainview Home for Adults, 92 Misc. 2d 136, 399 N.Y.S.2d 852, 1977 N.Y. Misc. LEXIS 2514 (N.Y. Sup. Ct. 1977).

State would be granted injunctive relief against rental car companies' refusal to rent vehicles to persons under age 25, in violation of CLS Gen Bus § 391-g, since legislative intent of statute was clear, insurance was available to companies, and cost could be passed on to consumers, and thus state established likelihood of success on merits, threat of irreparable harm, and balance of equities in its favor. People by Koppell v Alamo Rent A Car, 162 Misc. 2d 636, 620 N.Y.S.2d 695, 1994 N.Y. Misc. LEXIS 551 (N.Y. Sup. Ct. 1994), aff'd, 226 A.D.2d 294, 642 N.Y.S.2d 213, 1996 N.Y. App. Div. LEXIS 4649 (N.Y. App. Div. 1st Dep't 1996).

Where 2 corporations had been granted identical corporate name, first corporation was in business of managing property and had been dissolved by Secretary of State for failure to pay its corporate franchise taxes, and second corporation had later been formed to conduct business of dissemination and communication of sports information, first corporation remained de facto corporation by continuing to conduct new business after its dissolution, and court would

grant each corporation's motion for preliminary injunction, with first corporation being enjoined from initiating any new court action or proceeding pending further order and from using corporate name in connection with any educational or sports publication, and second corporation being enjoined from interfering with business of first corporation, including its pending lawsuits, and from exercising any control over property owned by first corporation, and each corporation would be ordered to file undertaking. H.E.G. Dev. & Mgmt. Corp. v Blumberg, 171 Misc. 2d 740, 656 N.Y.S.2d 127, 1997 N.Y. Misc. LEXIS 65 (N.Y. Sup. Ct. 1997).

Plaintiff corporation was not entitled to preliminary injunction staying tender offer for shares of defendant corporation by nonparty, after tender offer agreement between plaintiff and defendant fell apart and defendant decided to offer shares to nonparty, where, inter alia, merger agreement contained clause limiting parties to claim for damages in event of breach, more than 50 percent of shareholders were committed to deal with nonparty and opposed merger with plaintiff, and plaintiff delayed proceeding until last day to interfere with nonparty deal, when facts were known in time for proper litigation. Starrett Acquisition v Starrett Corp., 174 Misc. 2d 808, 664 N.Y.S.2d 1020, 1997 N.Y. Misc. LEXIS 546 (N.Y. Sup. Ct. 1997).

In class action challenging defendant tax preparer's Refund Anticipation Loan (RAL) application form as violative of CLS Gen Bus § 349, court denied plaintiff's motion for preliminary injunction enjoining defendant from submitting revised RAL form with mandatory arbitration clause to its customers, but plaintiff's motion for order limiting applicability of arbitration clause in instant action was granted; court had authority under CLS CPLR § 907 to control precertification contact between defendants, their counsel and putative class members, but restraining defendant from all use of RAL forms was extreme remedy which would effectively shut down its RAL program and impermissibly interfere with its normal business operations. Carnegie v H&R Block, Inc., 180 Misc. 2d 67, 687 N.Y.S.2d 528, 1999 N.Y. Misc. LEXIS 108 (N.Y. Sup. Ct. 1999).

41. —Bankruptcy

Trial court properly denied motion for preliminary injunction enjoining certain defendants from participating in bankruptcy proceedings in Newfoundland, though incorrect in its observation that plaintiff lacked legal capacity to maintain the action because a trustee in bankruptcy had been appointed, since allegedly champertous assignment and violation of forum selection clause were interposed as defenses in Newfoundland proceeding; any error claimed in that regard had to be rectified in Newfoundland. SNR Holdings, Inc. v Ataka America, Inc., 58 A.D.2d 547, 396 N.Y.S.2d 11, 1977 N.Y. App. Div. LEXIS 12550 (N.Y. App. Div. 1st Dep't 1977).

42. —Confidential business information

It was abuse of discretion to grant preliminary injunction prohibiting former employee from soliciting, servicing or doing business with customers of former employer where employer merely submitted affidavits of its executives alleging that its customer names and usage information was confidential and known only to employer, whereas employee submitted (1) copy of national publication containing names, addresses, rates, and other vital data on specific clients referred to by employer in lawsuit, (2) copy of directory issued annually by employer containing virtually all pertinent available information on its clients, and (3) letters from several clients indicating that choice to switch their accounts to employee’s new business was based on employee’s familiarity with and knowledge of their needs; injunctive relief was unwarranted because customers could be ascertained by persons outside employer’s business, were generally known in trade, and were discoverable by ordinary efforts. Walter Karl, Inc. v Wood, 137 A.D.2d 22, 528 N.Y.S.2d 94, 1988 N.Y. App. Div. LEXIS 4972 (N.Y. App. Div. 2d Dep't 1988).

Neither balancing of equities nor claim of irreparable harm favored granting preliminary injunction prohibiting former employee from soliciting, servicing or doing business with employer’s customers where it was undisputed that (1) 30 percent or less of employer’s business was derived from activities in which employee was now engaged, (2) clients who chose services of employee’s new business nonetheless had continued using employer’s other

services, and (3) some clients would suffer disruption of their businesses if they did not wish to return to employer's business and were forced to seek similar services elsewhere. Walter Karl, Inc. v Wood, 137 A.D.2d 22, 528 N.Y.S.2d 94, 1988 N.Y. App. Div. LEXIS 4972 (N.Y. App. Div. 2d Dep't 1988).

Former employer (plaintiff) was not entitled to preliminary injunction prohibiting its former employee and his new employer from disclosing or using plaintiff's allegedly confidential business information, including customer lists, and from soliciting or otherwise doing business with any entity which was plaintiff's customer during employee's former employment since (1) term of nonsolicitation clause in employee's contract with plaintiff had expired, and (2) plaintiff had not alleged existence of confidential customer list, nor demonstrated that employee physically appropriated, copied or intentionally memorized any purported confidential business information, or that customers were not ascertainable through sources other than plaintiff's records. Best Metropolitan Towel & Linen Supply Co. v A & P Coat, Apron & Linen Supply, Inc., 149 A.D.2d 642, 540 N.Y.S.2d 300, 1989 N.Y. App. Div. LEXIS 5404 (N.Y. App. Div. 2d Dep't 1989).

Plaintiff, which rented props for photography and motion pictures and specialized in kitchen fixtures and decorative accessories, was entitled to preliminary injunction against former employee (defendant) to enjoin her from soliciting any of plaintiff's customers or placing orders with any of plaintiff's suppliers where (1) plaintiff presented circumstantial evidence, supported by documentation and witnesses, that defendant misappropriated confidential information concerning photography stylists and prop masters who particularly favored renting kitchenware props, and concerning suppliers who would sell kitchenware to prop companies at wholesale prices, and (2) although defendant had selectively denied certain allegations, many serious allegations stood without categorical denial until reply papers were served; further, cases in which customer lists were publicly available were distinguishable as defendant failed to refute allegation by plaintiff that only it had lists of photo stylists and prop masters interested in its

specialized inventory. Props for Today, Inc. v Kaplan, 163 A.D.2d 177, 558 N.Y.S.2d 38, 1990 N.Y. App. Div. LEXIS 8409 (N.Y. App. Div. 1st Dep't 1990).

Paper distributor was not entitled to preliminary injunction, on basis of protecting its trade secrets, barring its former salesman from using its customer list or other information concerning its customers' needs and desires as salesman for competitor where customers on list were all openly engaged in business, their names could be found by reviewing public documents, record of their needs and desires consisted merely of employee's recollections, and if successful in litigation, paper distributor could be fully recompensed by monetary award. Price Paper & Twine Co. v Miller, 182 A.D.2d 748, 582 N.Y.S.2d 746, 1992 N.Y. App. Div. LEXIS 6235 (N.Y. App. Div. 2d Dep't 1992).

Court properly denied plaintiff's motion to preliminarily enjoin its former employee (defendant) from utilizing allegedly confidential client information (which defendant returned when accused by plaintiff of illegal removal) as such information appeared to be readily ascertainable from publicly available sources and otherwise unqualified for trade secret protection, and it could not be shown, without further proceedings, that defendant's physical taking of materials containing information was "egregious breach of trust and confidence" while still in plaintiff's employ. Ruesch Int'l v MacCormack, 222 A.D.2d 343, 635 N.Y.S.2d 226, 1995 N.Y. App. Div. LEXIS 13301 (N.Y. App. Div. 1st Dep't 1995).

Despite showing of likelihood of success on merits, plaintiff was not entitled to preliminary injunction against defendants' using its client lists or servicing or soliciting its clients where it failed to prove that it would suffer irreparable injury absent injunction or that balance of equities was in its favor. Wallack Freight Lines, Inc. v Next Day Express, Inc., 245 A.D.2d 367, 666 N.Y.S.2d 452, 1997 N.Y. App. Div. LEXIS 12815 (N.Y. App. Div. 2d Dep't 1997).

Corporations were not entitled to an injunction pursuant to N.Y. C.P.L.R. 6301 preventing a former vice president from disclosing confidential information to his new employer, because the corporations failed to show a likelihood that the vice president had breached a confidentiality agreement with the corporations, as the vice president's denial that he revealed any confidences

to any of the companies he contacted was not contradicted. U.S. RE Cos. v Scheerer, 41 A.D.3d 152, 838 N.Y.S.2d 37, 2007 N.Y. App. Div. LEXIS 6882 (N.Y. App. Div. 1st Dep't 2007).

43. —Contracts

Where food vendor had enjoyed the exclusive right to sell food and drinks on Sundays at operator's flea markets, pursuant to a written contract, and on Tuesdays and Saturdays, pursuant to an alleged oral modification of the written agreement, and where operator sought to bar vendor from participating on Tuesdays and Saturdays, a preliminary injunction to prevent the operator from doing so was appropriate to maintain the status quo and to avoid irreparable harm to the vendor. Cut Corners Corp. v Barterama Corp., 83 A.D.2d 948, 442 N.Y.S.2d 790, 1981 N.Y. App. Div. LEXIS 15398 (N.Y. App. Div. 2d Dep't 1981).

44. — —Distributorship agreements

Court would grant preliminary injunction enjoining defendant ice cream company from terminating plaintiffs' exclusive license to sell "Carvel" ice cream in Israel and from taking any action to interfere with shipment of goods and supplies to plaintiffs, to preserve status quo pending trial on issues of breach of contract, fraud, and intentional interference with plaintiffs' contractual and business relationships with sublicensees, since defendant was clearly trying to terminate licensing agreement and, absent preliminary injunction, there was no assurance that plaintiffs would be able to stay in business pending trial; despite presence of fact issues, interference with ongoing business involving unique product and exclusive licensing and distribution arrangement may be enjoined pendente lite in absence of proof that defendant will be harmed thereby. U.S. Ice Cream Corp. v Carvel Corp., 136 A.D.2d 626, 523 N.Y.S.2d 869, 1988 N.Y. App. Div. LEXIS 440 (N.Y. App. Div. 2d Dep't 1988).

Plaintiff, exclusive distributor of certain beverages in 5 territories, should have been granted preliminary injunction preventing defendant manufacturer of beverages from terminating distributorship agreements, notwithstanding existence of factual dispute as to plaintiff's breach

of agreements, since there was no assurance that plaintiff would be able to stay in business pending trial, and defendant did not show that it would be inconvenienced by injunction. Mr. Natural, Inc. v Unadulterated Food Products, Inc., 152 A.D.2d 729, 544 N.Y.S.2d 182, 1989 N.Y. App. Div. LEXIS 10622 (N.Y. App. Div. 2d Dep't 1989).

45. — —Employment contracts

Employment contract which prohibited executive employee of firm in the building maintenance business from soliciting accounts within a specific area and which account such employee had been involved in solicitation or which employer had service for a period of 18 months prior to the employee's termination, for a 3-year period following employee's termination was reasonable and enforceable by the injunctive relief. Service Systems Corp. v Harris, 41 A.D.2d 20, 341 N.Y.S.2d 702, 1973 N.Y. App. Div. LEXIS 5048 (N.Y. App. Div. 4th Dep't 1973).

It was error to preliminarily enjoin Jewish center from terminating rabbi's employment where clear and unambiguous terms of employment contract did not provide for employment beyond certain date, and contract had expired by its own terms. Saffra v Rockwood Park Jewish Ctr., 239 A.D.2d 507, 658 N.Y.S.2d 43, 1997 N.Y. App. Div. LEXIS 5371 (N.Y. App. Div. 2d Dep't), app. denied, 90 N.Y.2d 805, 662 N.Y.S.2d 431, 685 N.E.2d 212, 1997 N.Y. LEXIS 2680 (N.Y. 1997).

Employer was not entitled to permanent injunction because the competition restrictions contained in the employment agreement expired nine months following the former employee's termination of his employment with the employer, or on or about July 14, 2015. Tri-Star Light. Corp. v Goldstein, 151 A.D.3d 1102, 58 N.Y.S.3d 448, 2017 N.Y. App. Div. LEXIS 5180 (N.Y. App. Div. 2d Dep't 2017).

46. — —Television

Professional baseball team, seeking various remedies to extricate itself from contract with broadcaster for televising team's games, failed to show such irreparable injury as to justify preliminary injunction where team's only claim of injury was its need to complete other televising arrangements and to obtain subscribers and advertisers before baseball season began, but (1) contractual uncertainty was matter of team's own making, and (2) if successful in action, team could be compensated in money damages. New York Yankees Partnership v SportsChannel Associates, 126 A.D.2d 470, 510 N.Y.S.2d 870, 1987 N.Y. App. Div. LEXIS 41615 (N.Y. App. Div. 1st Dep't 1987).

Professional baseball team, seeking various remedies to extricate itself from contract with broadcaster for televising team's games, failed to show likelihood of success on merits and thus was not entitled to preliminary injunction against broadcaster where (1) modification of contract was not demonstrated by offer and counteroffer which showed no meeting of minds, (2) broadcaster was not estopped from denying alleged oral modification by virtue of any clear and unambiguous promise on which team could reasonably have relied, (3) broadcaster's alleged tortious interference with team's attempt to arrange for other television coverage consisted only of broadcaster's refusal to relinquish its own contract rights, and (4) merits of team's claim for rescission could not be determined before trial, and could not in any event justify preliminary injunction which would change, rather than maintain, status quo between parties. New York Yankees Partnership v SportsChannel Associates, 126 A.D.2d 470, 510 N.Y.S.2d 870, 1987 N.Y. App. Div. LEXIS 41615 (N.Y. App. Div. 1st Dep't 1987).

Cable television station was not entitled to preliminary injunction against National Hockey League (NHL) to enjoin it from performance of agreement with another cable television station for broadcast of hockey games since (1) right of first refusal in agreement between plaintiff and NHL was ambiguous, (2) damages to plaintiff were compensable in money and able to be calculated, and (3) injunction would have improper effect of granting ultimate relief sought. SportsChannel America Assoc. v National Hockey League, 186 A.D.2d 417, 589 N.Y.S.2d 2, 1992 N.Y. App. Div. LEXIS 11341 (N.Y. App. Div. 1st Dep't 1992).

New York City Off-Track Betting Corporation (OTB) was not entitled to preliminary injunctive relief, enjoining New York Racing Association (NYRA) from withdrawing or disrupting simulcast signal of races pending arbitration of dispute concerning amount that OTB should be required to pay to NYRA, as (1) OTB failed to demonstrate likelihood of success on merits of its cause of action to compel arbitration under CLS Racing & Wagering § 1013, and it had no further rights under CLS Racing & Wagering § 1003, (2) injury alleged was pecuniary in nature and thus there was no showing that OTB would be irreparably injured absent injunction, and (3) equities were equally balanced. New York City Off-Track Betting Corp. v New York Racing Ass'n, 250 A.D.2d 437, 673 N.Y.S.2d 387, 1998 N.Y. App. Div. LEXIS 8376 (N.Y. App. Div. 1st Dep't 1998).

A motion for a preliminary injunction enjoining a television network from broadcasting a boxing “exhibition” would be denied, despite another network’s exclusive right to broadcast a “fight” between the same boxers, since a “fight” and an “exhibition” are intended to be clearly distinguishable entities. CBS, Inc. v American Broadcasting Cos., 112 Misc. 2d 571, 447 N.Y.S.2d 367, 1982 N.Y. Misc. LEXIS 3169 (N.Y. Sup. Ct. 1982).

47. — —Time of essence

Plaintiff was not entitled to preliminary injunction where there were questions as to whether time was of the essence in the contract, whether plaintiff was able and willing to perform on the stipulated closing date and balance of convenient and relative hardship did not tip in plaintiff’s favor since defendant’s contract to sell the business on substantially more favorable terms might be lost if preliminary injunction delayed the transaction too long. Edgeworth Food Corp. v Stephenson, 53 A.D.2d 588, 385 N.Y.S.2d 64, 1976 N.Y. App. Div. LEXIS 13232 (N.Y. App. Div. 1st Dep't 1976).

48. — —Illustrative cases

In action for specific performance of contract wherein cooperative corporation agreed to amend its offering plan and proprietary lease to allow 2 doctors (who already resided in cooperative

apartments) to purchase additional unit for use as medical office, and to "cooperate" with doctors in obtaining amended certificate of occupancy, doctors were entitled to interim injunctive relief preventing corporation's attempted cancellation of contract, based on doctors' showing of (1) likelihood of success on merits, since corporation refused to cooperate only after learning that doctors treated patients suffering from acquired immune deficiency syndrome (AIDS), (2) irreparable injury absent grant of injunctive relief, in that doctors would be prevented from having office in building where they lived if they were relegated to monetary damages, and (3) equities in favor of granting relief, in view of public policy as codified by CLS Exec § 296 which makes it unlawful to refuse to sell commercial space to anyone because premises will be used in furnishing of facilities or services to disabled. Seitzman v Hudson River Associates, 126 A.D.2d 211, 513 N.Y.S.2d 148, 1987 N.Y. App. Div. LEXIS 41216 (N.Y. App. Div. 1st Dep't 1987).

Special Term did not abuse its discretion in directing employer to continue payment of employee's medical insurance premiums during pendency of employee's wrongful discharge action, especially since employee (who was suffering from lymphatic cancer) would have been unable to obtain alternate medical coverage; furthermore, employee was properly directed to post undertaking covering cost of premiums. Gibouleau v Society of Women Engineers, 127 A.D.2d 740, 511 N.Y.S.2d 932, 1987 N.Y. App. Div. LEXIS 43224 (N.Y. App. Div. 2d Dep't 1987).

In action for breach of plaintiff's contract to manage defendant's restaurant, court erred in preliminarily enjoining defendant from selling, subletting or contracting for management of restaurant unless copy of plaintiff's contract was incorporated in any such agreement, since plaintiff failed to show that he had clear likelihood of success on merits where his criminal record would prevent him from obtaining liquor license under CLS Al Bev § 111 and thus prevent him from fulfilling terms of agreement, and defendant had signed contract while hospitalized, under heavy doses of medication, and virtually unable to read, and since damages were compensable in money and capable of calculation, and thus plaintiff failed to show that he would suffer irreparable injury; plaintiff's assertion that contract and real property associated with it were

unique, and that damages would accordingly be incapable of determination, was without merit. Scotto v Mei, 219 A.D.2d 181, 642 N.Y.S.2d 863, 1996 N.Y. App. Div. LEXIS 4664 (N.Y. App. Div. 1st Dep't 1996).

Buyer was entitled to a preliminary injunction prohibiting the seller from transferring any of its rights under a purchase and sale agreement with the seller's landlord or transferring the property, or any interest in the property, to any entity other than the buyer because the buyer submitted sufficient evidence that the $ 1 million deposit was wired, on its behalf, to the escrow agent designated in the purchase agreement but the seller had then attempted to cancel the stock sale agreement. Vanderbilt Brookland, LLC v Vanderbilt Myrtle, Inc., 147 A.D.3d 1104, 48 N.Y.S.3d 251, 2017 N.Y. App. Div. LEXIS 1380 (N.Y. App. Div. 2d Dep't 2017).

In an action for a judgment declaring the rights of the parties under (1) an agreement relative to a partnership composed of plaintiff and defendants setting forth their financial arrangement to purchase property, and providing that title would be transferred to plaintiff 24 months after the partnership acquired title in the event that the property was not sold and defendants had not exercised their right to buy plaintiff out, and (2) an extension agreement, which substantially curtailed the automatic forfeiture provisions of the original agreement, and which contained a no-cure provision in the event defendants failed to pay the additional interest on plaintiff’s “capital investment” before each extension period, defendants’ motion for a Yellowstone injunction staying the running of the period within which they could pay plaintiff any sums owed him would be denied, where there was no cure provision in either agreement, and therefore no time period which could be tolled by an injunction designed solely as a tolling device, and where defendants were presently incapable of curing their defaults. Boyarsky v Froccaro, 125 Misc. 2d 352, 479 N.Y.S.2d 606, 1984 N.Y. Misc. LEXIS 3414 (N.Y. Sup. Ct. 1984).

Assignee of license agreement (plaintiff) was entitled to preliminary injunction invalidating notice of termination of license agreement, where defendant licensor, who had approved assignment of license to plaintiff, served notice of termination on original licensee, which was ineffective to obtain jurisdiction over plaintiff or inform plaintiff of termination of license agreement; fact that

notice to cure, stating that plaintiff could avoid termination on curing alleged default in providing insurance coverage, was properly served on plaintiff did not negate or validate service of first notice of termination. Michael's Pub Prods. v P.M. Assocs., 170 Misc. 2d 184, 650 N.Y.S.2d 72, 1996 N.Y. Misc. LEXIS 416 (N.Y. Sup. Ct. 1996).

A mandatory injunction directing the buyer of a small business to close immediately at the contract price set forth in the parties' stock purchase agreement (SPA), without a concession in price, was appropriate because the seller more than satisfied the traditional elements and established the additional requirements for a mandatory injunction: a clear right under the traditional criteria and extraordinary circumstances. Furthermore, there was no breach of the SPA by the seller for the buyer to rely on to delay the closing. James Riv. Group Holdings, Ltd. v Fleming Intermediate Holdings LLC, 84 Misc. 3d 931, 224 N.Y.S.3d 305, 2024 N.Y. Misc. LEXIS 2365 (N.Y. Sup. Ct. 2024).

49. — — —Preliminary injunction appropriate

Court properly granted kennel owner's motion, in action for breach of employment agreement, to compel employee (well-known dog trainer), inter alia, to remove herself and deliver possession of business premises, and to deliver all books, records, bills, etc., of business, despite employee's contention that she was partner in business, where (1) owner alleged that employee's failure to properly manage business and her refusal to vacate premises were causing irreparable injury to, and interfering with, kennel's ability to function as business, (2) employee's response consisted only of memorandum of law which failed to address or dispute owner's assertions, and (3) court did not render substantive evaluation of employee's assertions regarding her alleged status as partner. Country Kennel, Inc. v Booth, 150 A.D.2d 418, 541 N.Y.S.2d 28, 1989 N.Y. App. Div. LEXIS 6468 (N.Y. App. Div. 2d Dep't 1989).

In arbitration proceeding seeking reformation of royalty clause of parties' license agreement, petitioner was entitled to preliminary injunction to prevent termination of agreement since (1) arbitration clause was broad enough to encompass claim asserted in demand for arbitration, (2)

only asset of petitioner's corporation was sublicense and marketing agreement, which would be defeated if license were lost, threatening irreparable injury if relief were withheld, and (3) equities favored injunction, conditioned on posting of undertaking and continued payment of currently accruing royalties on all products for which royalty clause was not sought to be reformed; in determining application for injunction in aid of arbitration, court may not consider merits, which is exclusive preserve of arbitrator. Saferstein v Wendy, 137 Misc. 2d 1032, 523 N.Y.S.2d 725, 1987 N.Y. Misc. LEXIS 2757 (N.Y. Sup. Ct. 1987).

50. — — —Preliminary injunction not appropriate

It was error to grant preliminary injunction prohibiting defendant corporation from terminating plaintiff's employment pursuant to disability clause contained in parties' stockholders' agreement, in absence of showing that plaintiff would suffer anything other than pecuniary loss. Miller v Macri, 132 A.D.2d 691, 518 N.Y.S.2d 170, 1987 N.Y. App. Div. LEXIS 49234 (N.Y. App. Div. 2d Dep't), app. denied, 70 N.Y.2d 610, 522 N.Y.S.2d 110, 516 N.E.2d 1223, 1987 N.Y. LEXIS 19348 (N.Y. 1987).

Plaintiffs were not entitled to preliminary injunction directing that $1,000,000 of sale proceeds of corporate defendant be deposited in escrow pending judgment in employment contract dispute where issue as to whether contract was breached was sharply contested by parties, and thus plaintiffs could not show "likelihood of success" on merits; also, even if success were likely, plaintiffs solely sought monetary damages and thus award of damages would constitute adequate and complete remedy at law. Rosenthal v Rochester Button Co., 148 A.D.2d 375, 539 N.Y.S.2d 11, 1989 N.Y. App. Div. LEXIS 2821 (N.Y. App. Div. 1st Dep't 1989).

Allegations of foreclosure or diminishment of potential employment were insufficient to establish right of physician's professional corporation to injunctive relief under CLS CPLR § 6301 following termination of its professional privileges by hospital. Del Castillo v Bayley Seton Hosp., 172 A.D.2d 796, 569 N.Y.S.2d 168, 1991 N.Y. App. Div. LEXIS 5345 (N.Y. App. Div. 2d Dep't 1991).

Defendant was entitled to neither preliminary injunction nor summary judgment dismissing action for breach of alleged oral agreement to assign to plaintiffs defendant's right to buy certain mortgages from third party where (1) that agreement was governed by CLS Gen Oblig § 5-703(1), (2) there was triable issue of fact as to whether plaintiffs' payments to third parties, purportedly on defendant's behalf, constituted part performance of oral agreement, and (3) defendant did not prove that oral agreement was executory accord. Ognenovski v Wegman, 275 A.D.2d 1013, 713 N.Y.S.2d 594, 2000 N.Y. App. Div. LEXIS 9783 (N.Y. App. Div. 4th Dep't 2000).

Plaintiff was not entitled to preliminary injunction in breach of contract action where (1) it was not clear that defendant had in fact violated contract, (2) plaintiff had not demonstrated that its potential damages were not compensable in money and capable of calculation, and (3) there was no reason to believe that any injury to plaintiff would be more burdensome to it than harm likely to be caused to defendants through imposition of injunction. Credit Index, L.L.C. v RiskWise Int'l, L.L.C., 282 A.D.2d 246, 722 N.Y.S.2d 862, 2001 N.Y. App. Div. LEXIS 3554 (N.Y. App. Div. 1st Dep't 2001).

Since the suit did not involve a claim to a specific fund, a preliminary injunction was not appropriate under the express wording of N.Y. C.P.L.R. 6301; thus, the trial court should have denied the restaurant's motion for a preliminary injunction without reaching the issue of whether restaurant satisfied the test for the granting of such relief. Dinner Club Corp. v Hamlet on Olde Oyster Bay Homeowners Assn., Inc., 21 A.D.3d 777, 801 N.Y.S.2d 25, 2005 N.Y. App. Div. LEXIS 9148 (N.Y. App. Div. 1st Dep't 2005).

Order denying an owner's motion for a temporary restraining order and a preliminary injunction pursuant to N.Y. C.P.L.R. 6301 was proper because the owner failed to demonstrate a likelihood of success on the merits of its claims relating to an agreement between the owner and a limited liability company (LLC); among other things, with respect to its cause of action for mandatory injunctive relief against the LLC, the owner failed to demonstrate that the LLC was required by the parties' agreement to execute and deliver an authorization permitting the owner to file an

application with the planning commission on the owner's behalf without having the opportunity to review the application first to determine if it would adversely affect the LLC's property interests. Purvi Enters., LLC v City of New York, 62 A.D.3d 508, 879 N.Y.S.2d 410, 2009 N.Y. App. Div. LEXIS 3692 (N.Y. App. Div. 1st Dep't 2009).

Plaintiffs were not entitled to preliminary injunction in action alleging that defendant refused to employ union personnel in contravention of CLS Labor § 201-d, where defendant claimed that it had "absolute" right to refuse to employ personnel in question pursuant to parties' collective bargaining agreement, and that it would not oppose plaintiffs' efforts to submit matter to grievance procedure under collective bargaining agreement. Devine v New York Convention Ctr. Operating Corp., 167 Misc. 2d 372, 639 N.Y.S.2d 904, 1996 N.Y. Misc. LEXIS 64 (N.Y. Sup. Ct. 1996).

Family member, who was party to an agreement settling a family dispute, was not entitled to a preliminary injunction to enjoin another family member and a publisher from continuing to publish, print, and distribute a book regarding a different family member, was in public office, because the publisher could not be enjoined since it was not a party to the agreement or an agent of the author. Trump v Trump, 69 Misc. 3d 285, 128 N.Y.S.3d 801, 2020 N.Y. Misc. LEXIS 3412 (N.Y. Sup. Ct. 2020).

51. —Corporate officers

"Trust fund doctrine," by virtue of which officers and directors of insolvent corporation are said to hold remaining corporate assets in trust for benefit of corporation's general creditors, does not create actual lien or equitable interest as such in corporate assets upon insolvency, and thus it could not be invoked by plaintiff unsecured contract creditors who sought to obtain preliminary injunction against defendants in aid of money judgment not yet obtained. Credit Agricole Indosuez v Rossiyskiy Kredit Bank, 94 N.Y.2d 541, 708 N.Y.S.2d 26, 729 N.E.2d 683, 2000 N.Y. LEXIS 508 (N.Y. 2000).

Where principals of defendant had been directors of plaintiff and transferred trademark from plaintiff to defendant and trademark was principal asset of plaintiff, disposal of principal asset of plaintiff without approval of board of directors and two-thirds of the outstanding shares of plaintiff may violate Business Corporation Law § 909 and temporary injunction should have been issued. Shorell Laboratories, Inc. v Allen Lightman, Inc., 24 A.D.2d 856, 264 N.Y.S.2d 829, 1965 N.Y. App. Div. LEXIS 2907 (N.Y. App. Div. 1st Dep't 1965), app. dismissed, 17 N.Y.2d 870, 271 N.Y.S.2d 300, 218 N.E.2d 336, 1966 N.Y. LEXIS 1366 (N.Y. 1966).

Corporate treasurer who commenced action against corporation for alleged mismanagement and waste established no clear right to preliminary injunction against his removal from office where treasurer's removal did not involve subject matter of action, and where question of fact was raised with respect to treasurer's loyalty to corporation. Redmond v Redmond, 42 A.D.2d 542, 345 N.Y.S.2d 12, 1973 N.Y. App. Div. LEXIS 4134 (N.Y. App. Div. 1st Dep't 1973).

In stockholder's derivative action alleging waste, mismanagement and self-dealing against corporation's president and sole operating officer, it was error to grant preliminary injunction removing officer from his position solely on basis of "suspicion" that officer favored his wholly owned corporation to detriment of subject corporation, especially where court recognized that conflicting affidavits presented sharp issues of fact, and court did not find that shareholder was being irreparable injured. O'Hara v Corporate Audit Co., 161 A.D.2d 309, 555 N.Y.S.2d 82, 1990 N.Y. App. Div. LEXIS 5277 (N.Y. App. Div. 1st Dep't 1990).

Court properly granted plaintiffs' motion to enjoin corporation from interfering with plaintiffs' rights as owners of patent for aircraft de-icing apparatus, despite corporation's contention that, as officers of corporation, plaintiffs owed fiduciary duty not to divert corporate opportunity and obligation to assign all rights to inventions and patents to corporation, since New York had not adopted such rule, and, in any event, corporation failed to show that plaintiffs had sufficient control over management of corporation or exercised power of president or chief executive officer to come within that rule. Radiant Energy Corp. v Roberts-Gordon, Inc., 225 A.D.2d 1025, 639 N.Y.S.2d 237, 1996 N.Y. App. Div. LEXIS 2840 (N.Y. App. Div. 4th Dep't 1996).

It was abuse of discretion to deny plaintiffs' motion to preliminarily enjoin defendants from expending corporate funds in defense of proceeding before New York State Department of Insurance where individual defendant had been convicted of grand larceny and scheme to defraud in first degree: it was unlawful for corporation to indemnify individual defendant for expenses he incurred in defending criminal action inasmuch as element of intent under CLS Penal §§ 155.05 and 190.65 required finding of deliberate dishonesty. Pilipiak v Keyes, 286 A.D.2d 231, 729 N.Y.S.2d 99, 2001 N.Y. App. Div. LEXIS 7925 (N.Y. App. Div. 1st Dep't), app. denied, 97 N.Y.2d 653, 737 N.Y.S.2d 54, 762 N.E.2d 932, 2001 N.Y. LEXIS 3458 (N.Y. 2001).

Where plaintiff was elected as a member of the board of directors of the Jamaica Community Corporation for a term of one year commencing in June of 1967 and continued to serve as director until receiving a letter on October 4, 1968 which purported to terminate his membership; plaintiff was entitled to a preliminary injunction to enjoin the defendant chairman of the board from conducting meetings unless and until plaintiff was permitted to participate, where no successor had been elected to his position on the board. Ming v Simpkins, 59 Misc. 2d 853, 300 N.Y.S.2d 805, 1968 N.Y. Misc. LEXIS 1028 (N.Y. Sup. Ct. 1968).

Amendment to "rights" plan, adopted by board of directors of banking corporation in response to second corporation's tender offer for all outstanding shares, which restricted power of duly elected directors by creating different classes of directors and permitting members of present board if reelected to act on tender offer by majority vote while prohibiting board other than current board or those approved by it from so acting unless by supermajority ⅔ vote, was invalid since certificate of incorporation contained no provision restricting action of future board nor provision requiring supermajority vote; thus, in view of probability that presence of amendment would taint yearly election of board of directors, court would enjoin enforcement thereof. Bank of New York Co. v Irving Bank Corp., 139 Misc. 2d 665, 528 N.Y.S.2d 482, 1988 N.Y. Misc. LEXIS 225 (N.Y. Sup. Ct. 1988).

Board chairman was not entitled to preliminary injunction against chief executive officer's (CEO) use of limited liability company's funds for legal defense against chairman's suit because (1)

chairman showed no likelihood of success on the merits, as his derivative claims were not authorized under the New York Limited Liability Company Law, judicial dissolution under N.Y. Ltd. Liab. Co. Law § 702 was unwarranted because the company conformed to its articles of organization and was financially healthy, and N.Y. Ltd. Liab. Co. Law § 420 and the company's operating agreement allowed payment of the CEO's legal expenses; (2) the chairman was not irreparably injured; and (3) the equities did not favor him. Schindler v Niche Media Holdings, LLC, 772 N.Y.S.2d 781, 1 Misc. 3d 713, 2003 N.Y. Misc. LEXIS 1207 (N.Y. Sup. Ct. 2003).

52. —Derivative actions

In shareholder derivative action, court erred in denying plaintiffs' motion to prohibit defendants' use of corporate funds in defense of action where corporation had made no provisions for indemnification of shareholders or directors (CLS Bus Corp § 721), there was no receipt of undertaking by or on behalf of director or officer in question, and with shareholder or board approval (CLS Bus Corp § 723(c)), litigation had barely commenced, and defendants' "good faith" and motives were plainly at issue (CLS Bus Corp § 722(a) and (b)). Donovan v Rothman, 253 A.D.2d 627, 677 N.Y.S.2d 327, 1998 N.Y. App. Div. LEXIS 9335 (N.Y. App. Div. 1st Dep't 1998).

Minority shareholders' motion for reargument and renewal seeking injunction in derivative action was not made moot by majority shareholder's agreement to personally pay his criminal defense costs (for which use of corporate funds was objected to by minority shareholders) where minority shareholders were attacking validity of any expenditures by corporation on majority shareholder's behalf, including considerable sums that corporation had already spent on his criminal defense, as well as any future proceedings and civil actions. Pilipiak v Keyes, 185 Misc. 2d 636, 712 N.Y.S.2d 757, 2000 N.Y. Misc. LEXIS 319 (N.Y. Sup. Ct. 2000), rev'd, 286 A.D.2d 231, 729 N.Y.S.2d 99, 2001 N.Y. App. Div. LEXIS 7925 (N.Y. App. Div. 1st Dep't 2001).

53. —False advertising

Mail-order seller of photographic equipment was entitled to hearing in proceeding in which Attorney General sought permanent injunction to prevent seller from engaging in fraudulent conduct (failure to ship and to issue refunds), and in false and deceptive advertising, where proof of such conduct consisted only of unsworn complaint letters and affirmation of attorney who lacked knowledge of facts; prior to hearing, relief granted should be limited to preliminary injunction. People by Abrams v D.B.M. International Photo Corp., 135 A.D.2d 353, 521 N.Y.S.2d 246, 1987 N.Y. App. Div. LEXIS 52325 (N.Y. App. Div. 1st Dep't 1987).

Court properly enjoined charitable organization from distributing allegedly misleading advertisements for solicitations since (1) there would be significant risk that people would contribute money under mistaken impression concerning where their contributions would go if charity were allowed to persist in its deceptive practices, (2) plaintiffs merely wished to preserve status quo and not prevent charity from soliciting donations, and (3) there was strong likelihood that plaintiffs would ultimately prevail on merits. Marcus v Jewish Nat'l Fund, Inc., 158 A.D.2d 101, 557 N.Y.S.2d 886, 1990 N.Y. App. Div. LEXIS 7472 (N.Y. App. Div. 1st Dep't 1990).

Sufficient irreparable injury existed from false advertising to warrant preliminary relief enjoining yacht manufacturer from advertising in state where manufacturer stated that New York was its largest market, in which it did over $4 million worth of business annually, and thus very significant number of consumers could be affected by such advertising. McDonald v North Shore Yacht Sales, Inc., 134 Misc. 2d 910, 513 N.Y.S.2d 590, 1987 N.Y. Misc. LEXIS 2128 (N.Y. Sup. Ct. 1987).

Equities were in purchaser’s favor in his prayer for preliminary relief enjoining yacht manufacturer from advertising in state, despite manufacturer’s assertion that if enjoined it would have to abandon its entire national advertising campaign, where injunction could be limited to advertising likely to be found false and misleading; the more extensive its false advertising was in state, the greater number of affected consumers and, concomitantly, the greater need for injunctive relief. McDonald v North Shore Yacht Sales, Inc., 134 Misc. 2d 910, 513 N.Y.S.2d 590, 1987 N.Y. Misc. LEXIS 2128 (N.Y. Sup. Ct. 1987).

In action for false advertising against yacht manufacturer, purchaser's motion for injunctive relief would be granted to extent that if manufacturer intended to or anticipated that it might make changes in equipment or accessories in reasonably foreseeable future, then it would be enjoined from any advertising in state which failed to state that equipment or accessories on its boats might be subject to change by manufacturer without notice. McDonald v North Shore Yacht Sales, Inc., 134 Misc. 2d 910, 513 N.Y.S.2d 590, 1987 N.Y. Misc. LEXIS 2128 (N.Y. Sup. Ct. 1987).

Preliminary injunction against false advertising by yacht manufacturer was reasonable regulation of commercial expression and thus not protected by federal and state constitutions since advertising at issue was purely commercial in purpose and order simply enjoined manufacturer from any advertising in state which failed to state that equipment or accessories on its boats might be subject to change by manufacturer without notice. McDonald v North Shore Yacht Sales, Inc., 134 Misc. 2d 910, 513 N.Y.S.2d 590, 1987 N.Y. Misc. LEXIS 2128 (N.Y. Sup. Ct. 1987).

Criteria which private party must meet to obtain preliminary injunction for false advertising under CLS Gen Bus Art 22-A are those criteria traditionally required for such relief, since CLS Gen Bus § 350-d states that Art 22-A "neither enlarges nor diminishes the rights of parties in private litigation except as provided in this section." McDonald v North Shore Yacht Sales, Inc., 134 Misc. 2d 910, 513 N.Y.S.2d 590, 1987 N.Y. Misc. LEXIS 2128 (N.Y. Sup. Ct. 1987).

Purchaser of yacht was likely to succeed on merits in his private action for false advertising, so as to support preliminary injunction against manufacturer that would enjoin it from advertising any of its products within state, where (1) average person would be unable to determine, from arrangement of advertising copy, that statement regarding specifications being subject to change without notice applied to equipment listed under "Cruise Pac" package, (2) facts that advertisement did not state price and that manufacturer's dealers were independent did not negate impression given by advertisement that product sold would be exactly as advertised, (3) purchaser's particular contract did not negate fact that advertisement appeared to be

misleading, (4) manufacturer made “grave admission” that final prototype of yacht was not even completed at time advertisement was submitted to magazine, and (5) nowhere except in statement that specifications were subject to change without notice was consumer advised that advertisement dealt only with prototype which was yet to undergo major revision before sale. McDonald v North Shore Yacht Sales, Inc., 134 Misc. 2d 910, 513 N.Y.S.2d 590, 1987 N.Y. Misc. LEXIS 2128 (N.Y. Sup. Ct. 1987).

Injunction against false and deceptive advertising was available remedy for established violation of federal and state truth in lending laws, without showing of irreparable damage, since traditional concepts of irreparable damage which apply to private parties do not govern public interest field. State v Terry Buick, Inc., 137 Misc. 2d 290, 520 N.Y.S.2d 497, 1987 N.Y. Misc. LEXIS 2688 (N.Y. Sup. Ct. 1987).

Court would grant preliminary injunction pursuant to CLS CPLR § 6301 and NYC Admin Code § 20-703 prohibiting attorney from running newspaper advertisements claiming that he could obtain divorce within 10 days, unless attorney eliminated “possible 10 days” from ad or provided appropriate limitations such as “in emergency situations,” since (1) it was likely that commissioner of New York City Department of Consumer Affairs could prove that statement “possible 10 days” was deceptive and misleading, (2) commissioner did not have to establish actual injury, and (3) need to protect consuming public outweighed attorney’s private economic interests. Aponte v Raychuk, 140 Misc. 2d 864, 531 N.Y.S.2d 689, 1988 N.Y. Misc. LEXIS 497 (N.Y. Sup. Ct. 1988), aff'd, 160 A.D.2d 636, 559 N.Y.S.2d 255, 1990 N.Y. App. Div. LEXIS 4714 (N.Y. App. Div. 1st Dep't 1990).

54. —Insurance

Reinsurance company was entitled to preliminary injunction against its former director to prevent him from misappropriating proprietary “finite risk catastrophe reinsurance” product that he had helped to create where (1) considerable effort was expended in developing product, (2) whether or not product was true innovation or just marketing scheme, there was significant evidence of

company's efforts to maintain confidentiality, (3) there was evidence that product was known and recognized throughout industry, and (4) director was heard to boast at convention that he would take $1 million worth of business away from company. U. S. Reinsurance Corp. v Humphreys, 205 A.D.2d 187, 618 N.Y.S.2d 270, 1994 N.Y. App. Div. LEXIS 10884 (N.Y. App. Div. 1st Dep't 1994).

Court erred in enjoining municipal reciprocal insurer from declining assignments made by New York Automobile Insurance Plan pursuant to CLS Ins § 5301(a), since injunction effectively granted plaintiff ultimate relief sought, no irreparable injury would result from absence of injunction as plaintiff could reassign applicants to other insurers, and injunction dramatically altered, rather than maintained, status quo established by past practice between parties. New York Auto. Ins. Plan v New York Sch. Ins. Reciprocal, 241 A.D.2d 313, 659 N.Y.S.2d 881, 1997 N.Y. App. Div. LEXIS 7020 (N.Y. App. Div. 1st Dep't 1997).

Insured, who was seeking a preliminary injunction, demonstrated a probability of success on the merits because the insured's submissions contradicted the conclusion of the insurer's expert that the damage to the property was caused by soil movement, which was a policy exclusion; the insured's submissions indicated that the damage to the property was caused by impacts and vibrations from a large backhoe operated at a construction site on an adjacent lot, which would be a covered loss. Jones v State Farm Fire & Cas. Co., 189 A.D.3d 1565, 138 N.Y.S.3d 609, 2020 N.Y. App. Div. LEXIS 8229 (N.Y. App. Div. 2d Dep't 2020).

Insured, who was seeking a preliminary injunction, established the element of irreparable injury in the absence of an injunction because the insured stated in an affidavit that she, her two daughters, and her four grandchildren would be rendered homeless in the absence of an injunction directing the insurer to continue paying for temporary housing. Jones v State Farm Fire & Cas. Co., 189 A.D.3d 1565, 138 N.Y.S.3d 609, 2020 N.Y. App. Div. LEXIS 8229 (N.Y. App. Div. 2d Dep't 2020).

State was entitled to preliminary injunction enjoining several interrelated unlicensed foreign insurance companies from selling dental malpractice insurance in New York, pursuant to CLS

Gen Bus § 349 and CLS Exec § 63, on showing that (1) companies were subject to regulation and state was likely to succeed on its charge that companies sent deceptive and misleading letters to present and potential policyholders, (2) irreparable injury existed due to serious risk that companies were misleading public, made no financial disclosure, and posed serious and substantial threat to policyholders and their patients, and (3) balance of equities favored state. People v British & American Casualty Co., 133 Misc. 2d 352, 505 N.Y.S.2d 759, 1986 N.Y. Misc. LEXIS 2865 (N.Y. Sup. Ct. 1986).

55. —Law firms

Former clients who demonstrated clear right to such relief were entitled to order requiring former attorney to deposit with county clerk funds allegedly converted by attorney, to prevent dissipation of funds pending trial. Berichi v Allan Sloan, P. C., 121 A.D.2d 884, 503 N.Y.S.2d 578, 1986 N.Y. App. Div. LEXIS 59016 (N.Y. App. Div. 1st Dep't 1986).

Partners of law firm were not entitled to preliminary injunction preventing former partners, who had formed new firm, from soliciting old firm's clients where (1) old firm did not demonstrate likelihood of success on merits, since not only could new firm lawfully induce termination of at will retainer agreements with clients, but new firm's direct mail solicitation of clients constituted constitutionally protected commercial speech, and (2) old firm lacked standing to obtain equitable relief, since both firms never came to agreement as to which clients new firm was not to disturb by solicitation, and since old firm had acknowledged that solicitation efforts by both firms would continue and had acquiesced in that solicitation by executing substantial number of substitution forms at request of clients who had moved to new firm. Koeppel v Schroder, 122 A.D.2d 780, 505 N.Y.S.2d 666, 1986 N.Y. App. Div. LEXIS 59297 (N.Y. App. Div. 2d Dep't 1986).

In action by residential cooperative corporation (plaintiff) to enjoin law firm (defendant) from prosecuting earlier action purportedly brought on plaintiff's behalf against its sponsors seeking rescission of cooperative conversion, court properly granted defendant's summary judgment

motion, despite plaintiff's contention that it never validly retained defendant, or, if it did, that it validly discharged defendant in subsequent resolution adopted by its 5-person board of directors, where there was no evidence rebutting plaintiff's then-president's presumptive authority to have instituted action on plaintiff's behalf and engage counsel therefor without formal authorization from plaintiff's board, and evidence showed that resolution to terminate retainer was not supported by majority of plaintiff's disinterested directors (CLS Bus Corp § 713(a)(1)). Park River Owners Corp. v Bangser Klein Rocca & Blum, LLP, 269 A.D.2d 313, 703 N.Y.S.2d 465, 2000 N.Y. App. Div. LEXIS 2031 (N.Y. App. Div. 1st Dep't 2000).

56. —Letters of credit, loans

In an action to recover damages for moneys had and received, unjust enrichment and conspiracy to defraud, for replevin of certain chattels, and for an accounting, based on plaintiff having turned possession of the chattel over to defendants and having loaned defendants money in return for which plaintiff was to receive a secured promissory note covering the aggregate amount of the amount spent for the chattels together with the loan, with plaintiff receiving no such note, and based on defendants' own admission of its minimal working capital and that the chattels were its only tangible asset, Special Term erred in denying plaintiff's motion for preliminary injunction to enjoin defendants from selling, pledging, transferring or otherwise disposing of the subject chattels where the chattels were the subject of the action, and where plaintiff had met its burden of proving a likelihood of ultimate success on the merits, irreparable injury absent the granting of a preliminary injunction, and that a balancing of the equities favored its position, in that the uncontrolled sale and disposition by defendants of the chattels would threaten to render ineffectual any judgment which plaintiff might receive. Robjudi Corp. v Quality Controlled Products, Ltd., 111 A.D.2d 156, 488 N.Y.S.2d 787, 1985 N.Y. App. Div. LEXIS 51295 (N.Y. App. Div. 2d Dep't 1985).

Retailer was not entitled to preliminary injunction enjoining wholesaler from collecting, or bank from paying, letter of credit used to obtain merchandise where letter of credit was valid on its

face, retailer's fraud claim lacked merit, it's breach of contract claim did not bar payment, and it demonstrated no irreparable harm or inbalance of equities requiring issuance of injunction. PGA Marketing, Ltd. v Windsor Plumbing Supply, Inc., 124 A.D.2d 577, 507 N.Y.S.2d 722, 1986 N.Y. App. Div. LEXIS 61886 (N.Y. App. Div. 2d Dep't 1986).

In fraud action, court properly denied plaintiff's motion for preliminary injunction enjoining bank from making payment on certain letter of credit established by plaintiff in favor of defendant, since plaintiff's conclusory allegations of defendant's potential insolvency were insufficient to satisfy plaintiff's burden of demonstrating irreparable injury, especially since proceeds of letter of credit paid to defendant were to be held in constructive trust pending outcome of action or further order of court. Wurttembergische Fire Ins. Co. v Pan Atlantic Underwriters, Ltd., 133 A.D.2d 268, 519 N.Y.S.2d 57, 1987 N.Y. App. Div. LEXIS 49757 (N.Y. App. Div. 2d Dep't 1987).

Court had power to enjoin payment pursuant to letter of credit, and to enjoin issuing bank from allowing payment, where seller committed active fraud in underlying transaction, and holder of letter of credit did not take it as holder in due course. Takeo Co. v Mead Paper, 204 A.D.2d 123, 611 N.Y.S.2d 543, 1994 N.Y. App. Div. LEXIS 5118 (N.Y. App. Div. 1st Dep't 1994).

Plaintiffs were entitled to preliminary injunction barring defendant from obtaining payment on letter of credit where defendant committed active international fraud in underlying transaction, and corresponding documentation established that non-conforming and virtually worthless goods were shipped by defendant. Takeo Co. v Mead Paper, 204 A.D.2d 123, 611 N.Y.S.2d 543, 1994 N.Y. App. Div. LEXIS 5118 (N.Y. App. Div. 1st Dep't 1994).

Irrespective of contention by issuer of letter of credit that beneficiary of such letter had engaged in fraudulent conduct, bank could not be restrained from paying out on such letter of credit, and beneficiary could not be restrained from demanding or receiving proceeds thereof, where, prior to service of temporary restraining order, issuing bank had determined that beneficiary had complied with terms of letter of credit and had issued its check in compliance therewith. Tranarg, C. A. v Banca Commerciale Italiana, 90 Misc. 2d 829, 396 N.Y.S.2d 761, 1977 N.Y. Misc. LEXIS 2165 (N.Y. Sup. Ct. 1977).

57. —Musical compositions

Application for preliminary injunction to enjoin defendant from continued distribution and sale of song folio would be denied where applicant failed to show irreparable injury from such continued distribution. Simon v Edward B. Marks Music Corp., 41 A.D.2d 730, 341 N.Y.S.2d 866, 1973 N.Y. App. Div. LEXIS 4867 (N.Y. App. Div. 1st Dep't 1973).

In action involving disputed ownership of renewal rights in certain musical compositions under contracts for sale of such rights, sellers were not entitled to preliminary injunction enjoining buyers from interfering with sellers' rights in songs where conduct of sellers' controlling principal raised issues of possible misrepresentation and where there was no indication that sellers were suffering irreparable injury since third parties had merely declined to pay moneys due, pending determination of dispute. Eden Music Corp. v Times Square Music Publications Co., 127 A.D.2d 161, 514 N.Y.S.2d 3, 1987 N.Y. App. Div. LEXIS 41496 (N.Y. App. Div. 1st Dep't 1987).

58. —Patents

A temporary injunction would be issued to protect the holder of a patent from the marketing of a similar product by a corporation whose principal stockholder was the sole stockholder of a corporation which had been given a license to market the patented article and had allowed the agreement to lapse and forfeited a sum deposited in escrow. Baron v Walco Corp., 32 A.D.2d 523, 299 N.Y.S.2d 357, 1969 N.Y. App. Div. LEXIS 4157 (N.Y. App. Div. 1st Dep't 1969).

59. —Publishing

Court would vacate temporary restraining order against defendant book publishers since claim asserted by plaintiff State of Israel—that safety of Israeli intelligence agents would be endangered by defendants' further acts of publication and dissemination of book entitled "By Way of Deception"—was not sufficiently supported to demonstrate threat of irreparable injury

and overcome heavy presumption against prior restraint on publication; furthermore, any grant of injunctive relief would be ineffective in view of distribution of book to approximately 1,500 wholesalers and book reviewers. State of Israel v St. Martin's Press, Inc., 166 A.D.2d 251, 560 N.Y.S.2d 450, 1990 N.Y. App. Div. LEXIS 11858 (N.Y. App. Div. 1st Dep't 1990).

In action brought against publisher and distributor for improper use of plaintiff's name for advertising and trade purposes in violation of CLS Civ R §§ 50 and 51 in connection with publication of novel, plaintiff was not entitled to preliminary injunction requiring recall and destruction of all copies of book and any advertisements or promotions referring to plaintiff, and prohibiting use of plaintiff's name in flap jacket, since (1) no violation of statutes had been established, (2) book contained express disclaimer to effect that actions and motivations portrayed were entirely fictitious and should not be considered real or factual, (3) defendants asserted that they would suffer great monetary loss if forced to recall books, and (4) defendants represented that they no longer intended to run advertisements involving plaintiff, which plaintiff did not contradict. Marcinkus v NAL Pub., Inc., 138 Misc. 2d 256, 522 N.Y.S.2d 1009, 1987 N.Y. Misc. LEXIS 2794 (N.Y. Sup. Ct. 1987).

60. —Shareholders

Pledgeor's subassignee of stock not entitled to injunctive relief against corporate pledgee's proposed public sale of said stock in absence of showing of prejudice to subassignee. Westbury Electronic Corp. v Anglo-American Totalisator Co., 28 A.D.2d 683, 280 N.Y.S.2d 762, 1967 N.Y. App. Div. LEXIS 4000 (N.Y. App. Div. 2d Dep't 1967).

There was no violation of restrictive shareholders' agreement, which prohibited immediate acceptance of offer to purchase shares of corporation from "a third party exclusive of a spouse or children of a shareholder" without first giving corporation and remaining shareholders right to match offer, where shareholder sold all of his shares to sons of deceased shareholder, who had inherited their father's shares, without first offering to sell shares to remaining shareholder, since transaction was consistent with clearly enunciated purpose of agreement to prevent sales to

outsiders and fell within express exception for family members of shareholders; thus, remaining shareholder was not entitled to injunction to prohibit sons' power to exercise right of shares and to register them in their names, or to prohibit his removal as president. Rockowitz v Raab, 132 A.D.2d 916, 518 N.Y.S.2d 251, 1987 N.Y. App. Div. LEXIS 49369 (N.Y. App. Div. 3d Dep't 1987).

Purchasers were not entitled to preliminary injunction compelling board of directors of cooperative apartment corporation to sign lending institution's recognition agreement where it had not been shown that stockholders had adopted position of refusing to accept recognition agreements or that, in event board's procedure were shown to be invalid, purchasers could not be made whole with damages. Dubro v Kerner, 140 A.D.2d 234, 528 N.Y.S.2d 78, 1988 N.Y. App. Div. LEXIS 5280 (N.Y. App. Div. 1st Dep't 1988).

In action for judgment declaring interests of parties in corporation formed by plaintiff to purchase real property, putative shareholders were not entitled to preliminary injunction to restrain plaintiff from acting on behalf of corporation since (1) interests of shareholders in corporation and value thereof could be fixed at trial, and thus could be compensated for by damages, and (2) it was not shown that harm that would be suffered by shareholders in absence of preliminary injunction was greater than harm that would be suffered by plaintiff if preliminary injunction were granted. Fischer v Deitsch, 168 A.D.2d 599, 563 N.Y.S.2d 839, 1990 N.Y. App. Div. LEXIS 16018 (N.Y. App. Div. 2d Dep't 1990).

Court properly enjoined majority shareholders from removing corporate president where their request, one year earlier, to remove president had been denied without appeal, they failed to advance any additional facts warranting removal, maintenance of status quo was sensible disposition because other significant aspects of parties' dispute remained to be litigated, and there was no showing of irreparable harm. Walker & Zanger v Zanger, 245 A.D.2d 144, 666 N.Y.S.2d 152, 1997 N.Y. App. Div. LEXIS 13028 (N.Y. App. Div. 1st Dep't 1997).

Court did not abuse its discretion in refusing to modify preliminary injunction against transfers of stock in family business, although necessity for blocking transfers to descendants for estate

planning purposes was debatable, where injunction served purpose of preserving status quo pending resolution of contract dispute. Vanerminden v Vanderminden, 265 A.D.2d 660, 696 N.Y.S.2d 294, 1999 N.Y. App. Div. LEXIS 10335 (N.Y. App. Div. 3d Dep't 1999).

Plaintiff, minority shareholder who alleged that remaining shareholders voted for dissolution in furtherance of conspiracy to "take the accounts, good will and assets" of corporation and otherwise "freeze (him) out" of value of his stock, was properly denied preliminary injunction to enjoin dissolution pending arbitration he was contemplating since plaintiff was not so much challenging defendants' right to dissolve corporation as manner they intended to go about winding up its affairs and distributing its assets, plaintiff did not even describe award to which he might be entitled or otherwise identify particular, ripe controversies, shareholders agreement provided that on dissolution, corporate debts were to be paid and each shareholder given his pro rata share of value of remaining assets, as valued by independent appraiser, and plaintiff offered no evidence for suspecting that such would not occur or why award of money would not make him whole were defendants to divert physical assets. Karnavat v Jesse Bands, Inc., 284 A.D.2d 266, 726 N.Y.S.2d 848, 2001 N.Y. App. Div. LEXIS 6720 (N.Y. App. Div. 1st Dep't 2001).

Minority stockholder will be protected against the threatened acts of a board of directors or managing stockholders if those acts violate fiduciary obligations and cause the minority shareholder to sustain damage, even though corporation follows statutory mandates to the letter. Clark v Pattern Analysis & Recognition Corp., 87 Misc. 2d 385, 384 N.Y.S.2d 660, 1976 N.Y. Misc. LEXIS 2220 (N.Y. Sup. Ct. 1976).

Minority shareholders (plaintiffs) were not entitled to preliminary injunction prohibiting majority shareholder (defendant) from proceeding with tender offer to acquire plaintiffs' shares where (1) plaintiffs failed to demonstrate any likelihood that defendant breached any duty of reasonableness and fairness, that it failed to disclose material information regarding its offer, or that offer was so coercive as to be improper, (2) money damages were available to compensate plaintiffs if offering price were found to be inadequate or unfair, especially since plaintiffs never controlled corporation, and (3) injunction might be interpreted by shareholders as finding of

wrongdoing by defendant, which could in turn substantially diminish possibility of offer's success, even if it were ultimately upheld in all respects. Abbey v Montedison S.p.A., 143 Misc. 2d 72, 539 N.Y.S.2d 862, 1989 N.Y. Misc. LEXIS 179 (N.Y. Sup. Ct. 1989).

61. —Trademarks and tradenames

Penal L § 964 is directed against obvious "palming off" of one's product as that of another or the intentional misleading of the public by a defendant identifying his business with that of another. Charles F. Ryan & Son, Inc. v Lancaster Homes, Inc., 22 A.D.2d 186, 254 N.Y.S.2d 473, 1964 N.Y. App. Div. LEXIS 2590 (N.Y. App. Div. 4th Dep't 1964), aff'd, 15 N.Y.2d 812, 257 N.Y.S.2d 934, 205 N.E.2d 859, 1965 N.Y. LEXIS 1588 (N.Y. 1965).

Plaintiffs, corporations which had acquired defendant's real estate brokerage business, were not entitled to preliminary injunction prohibiting defendant from using certain names that had been utilized as part of brokerage business' corporate name, even though defendant had contractually agreed to refrain from using those names in connection with any future real estate ventures, since there were sharply disputed factual issues as to whether plaintiffs had subsequently agreed to allow defendant to use disputed names and whether plaintiffs had abandoned use of such names, especially considering that plaintiffs had apparently sold their real estate business. Merrill Lynch Realty Associates, Inc. v Burr, 140 A.D.2d 589, 528 N.Y.S.2d 857, 1988 N.Y. App. Div. LEXIS 5601 (N.Y. App. Div. 2d Dep't 1988).

Plaintiffs were not entitled to preliminary injunction prohibiting defendants from using certain name where affidavits in support of application merely established that some confusion existed in mind of one person, rather than any significant confusion among members of public at large. Sung v Paolucci, 170 A.D.2d 596, 566 N.Y.S.2d 371, 1991 N.Y. App. Div. LEXIS 2252 (N.Y. App. Div. 2d Dep't 1991).

62. — —Illustrative cases

In action, inter alia, for fraud and breach of contract in connection with plaintiff's purchase of trademark rights, it was not improper for court to grant plaintiff's motion to enjoin executors of seller's estate from distributing purchase price to seller's beneficiaries, pending resolution of parties' dispute, inasmuch as (1) plaintiff established that seller had agreed to transfer ownership of trademark, despite being cognizant of his inability to do so, (2) distribution of purchase price to seller's beneficiaries would tend to render judgment for plaintiff ineffectual, and (3) court rejected executors' claimed inability to effectively administer seller's estate and pay taxes thereon, and thus balance of equities favored plaintiff; however, court should not have issued preliminary injunction without requiring plaintiff to furnish security as prerequisite. Burmax Co. v B & S Industries, Inc., 135 A.D.2d 599, 522 N.Y.S.2d 177, 1987 N.Y. App. Div. LEXIS 52540 (N.Y. App. Div. 2d Dep't 1987).

In action for trademark infringement, unfair competition, and dilution of and injury to business's reputation, plaintiff appliance repair shop was entitled to preliminary injunction enjoining defendant appliance repair shop from using corporate name similar to plaintiff's where (1) it was undisputed that plaintiff had been established for several years prior to defendant's incorporation under new name, extensive confusion had resulted among plaintiff's customers, suppliers and wholesalers due to defendant's choice of name, and plaintiff alleged that it had received numerous complaints from customers concerning poor service which plaintiff later learned was actually performed by defendant, and (2) defendant's name change apparently allowed it to capitalize on and dilute good will and reputation enjoyed by plaintiff, which could constitute irreparable harm. Adirondack Appliance Repair, Inc. v Adirondack Appliance Parts, Inc., 148 A.D.2d 796, 538 N.Y.S.2d 118, 1989 N.Y. App. Div. LEXIS 2148 (N.Y. App. Div. 3d Dep't 1989).

Court should have denied plaintiff's motion for preliminary injunction enjoining defendants from use of name "John's Flaming Hearth" in connection with restaurant and hotel they purchased from plaintiff since (1) purchase agreement provided that "business and goodwill associated with the operation of the Property as a hotel and restaurant" were included in sale, (2) it would have been difficult, if not impossible, to effectively transfer goodwill of business without transferring its

name, and (3) had plaintiff intended to exclude use of name, he should have expressly so provided; plaintiff failed to demonstrate likelihood of ultimate success on merits. Prozeralik v DiCienzo, 170 A.D.2d 1034, 566 N.Y.S.2d 182, 1991 N.Y. App. Div. LEXIS 1781 (N.Y. App. Div. 4th Dep't 1991).

Action under CLS Gen Bus § 133 by Frank’s Restaurant, Inc. for preliminary injunction, on theories of trademark infringement and unfair competition, against defendant’s use of words “Frank’s Steaks” in name of its restaurant was properly dismissed, absent conclusive evidence of defendant’s intent to deceive or mislead. Frank's Rest., Inc. v Lauramar Enters., 273 A.D.2d 349, 711 N.Y.S.2d 433, 2000 N.Y. App. Div. LEXIS 7054 (N.Y. App. Div. 2d Dep't 2000).

To the extent that the trial court denied a preliminary injunction under N.Y. C.P.L.R. 6301 to the plaintiffs and granted injunctive relief to the defendants regarding a trade name, there was no basis, on the record, to disturb the trial court’s determination. Wiener v Life Style Futon, Inc., 48 A.D.3d 458, 851 N.Y.S.2d 355, 2008 N.Y. App. Div. LEXIS 1105 (N.Y. App. Div. 2d Dep't 2008).

New York City hotel operator (plaintiff) was not entitled to preliminary injunction restraining operator and manager of 36-hotel chain with same name as plaintiff’s hotel from using that name on hotel to be opened in area of plaintiff’s hotel where it was shown that hotel chain had operated under that name for more than 7 years, maintained sales office in Manhattan, and redirected to plaintiff’s hotel any misdirected inquiries received by their sales office. Wyndham Co. v Wyndham Hotel Co., 157 Misc. 2d 307, 596 N.Y.S.2d 655, 1992 N.Y. Misc. LEXIS 656 (N.Y. Sup. Ct. 1992), aff'd, 202 A.D.2d 159, 608 N.Y.S.2d 182, 1994 N.Y. App. Div. LEXIS 1784 (N.Y. App. Div. 1st Dep't 1994).

63. — — —Preliminary injunction appropriate

Manufacturer was entitled to injunction pendente lite in action pursuant to Fair Trade Law (General Business Law §§ 369-a et seq.) where retailer admitted sales at less than fair trade prices. Westinghouse Electric Corp. v Jamaica Gas & Electric Co., 44 A.D.2d 515, 353 N.Y.S.2d

745, 1974 N.Y. App. Div. LEXIS 5549 (N.Y. App. Div. 1st Dep't), app. dismissed, 35 N.Y.2d 716, 361 N.Y.S.2d 646, 320 N.E.2d 277, 1974 N.Y. LEXIS 1282 (N.Y. 1974).

Trial court properly entered preliminary injunction requiring former employee to return to employer all business records acquired while working for the employer and precluding the former employee, who had agreed not to work for a competitor for one year after leaving employment, from divulging any of the former employer's trade secrets or any information relating to suppliers and customers even though the former employee alleged that he was not a key employee and that he had acquired no trade secrets or key information and had not revealed any information to any competitor; if former employee's contentions were true, the injunction could do him no harm. Benco International Importing Corp. v Krooks, 53 A.D.2d 536, 384 N.Y.S.2d 460, 1976 N.Y. App. Div. LEXIS 13144 (N.Y. App. Div. 1st Dep't 1976).

Apart from CLS Gen Bus § 133, Frank's Restaurant, Inc. was entitled to preliminary injunction against defendant's use of words "Frank's Steaks" in name of its restaurant where plaintiff showed that defendant had adopted and was using name similar to plaintiff's name and registered service mark and that such use had resulted in deception and confusion. Frank's Rest., Inc. v Lauramar Enters., 273 A.D.2d 349, 711 N.Y.S.2d 433, 2000 N.Y. App. Div. LEXIS 7054 (N.Y. App. Div. 2d Dep't 2000).

Where the licensors established a secondary meaning and sufficient quality control over the trademarks, they were entitled to summary judgment under N.Y. Gen. Bus. Law § 360-l and 15 U.S.C.S. § 1125(a); the trial court erred in vacating the preliminary injunction relating to the licensee's use of one of the licensor's likeness since it was not requested and did not relate to the relief requested. Alexander Ave. Kosher Rest. Corp. v Dragoon, 306 A.D.2d 298, 762 N.Y.S.2d 101, 2003 N.Y. App. Div. LEXIS 6518 (N.Y. App. Div. 2d Dep't), app. dismissed, 1 N.Y.3d 546, 775 N.Y.S.2d 242, 807 N.E.2d 292, 2003 N.Y. LEXIS 3972 (N.Y. 2003).

Defendant was entitled to preliminary injunction to prevent plaintiffs' use of name "The Fireflies" for their musical group where defendant had been founding member of group with same name in 1959, had written group's 2 most famous songs (which plaintiffs' own publicity described as

“Smash Hits”), and had accepted royalty payments for group’s recordings for more than 30 years, whereas plaintiffs did not form their group until 1992, expropriated “The Fireflies” name, and attempted to mislead public into believing that they were original group; assertion that defendant had abandoned name was refuted by facts that he received royalty payments and continually threatened plaintiffs and their concert promoters with litigation. Gallina v Giacalone, 171 Misc. 2d 645, 655 N.Y.S.2d 317, 1997 N.Y. Misc. LEXIS 36 (N.Y. Sup. Ct. 1997).

Plaintiff “Blaich Associates, Inc.” was granted preliminary injunction enjoining defendant from using name “Blaich Associates” in any capacity where name was linked with plaintiff in local community for almost 40 years, name was uncommon and had appeared to have distinctive quality, defendant was only authorized to use name “Coach/Blaich Real Estate of Manhasset Inc.” (not “Blaich Associates”) as name of its business, and its visual display and advertisement of name “Blaich Associates” instead of “Blaich Real Estate” coupled with its nearby location was likely to confuse public and dilute plaintiff’s trade name by giving public misleading impression that defendant was affiliated with or approved by plaintiff. Blaich Assocs. v Coach/Blaich Real Estate of Manhasset, Inc., 186 Misc. 2d 594, 719 N.Y.S.2d 820, 2000 N.Y. Misc. LEXIS 548 (N.Y. Sup. Ct. 2000).

64. — — —Preliminary injunction not appropriate

Injunction against use of dissolved corporation’s trade name was properly denied where no agreement was made among corporate shareholders not to use name or artwork of corporation after dissolution. Warren v Summit, 23 A.D.2d 896, 260 N.Y.S.2d 354, 1965 N.Y. App. Div. LEXIS 4088 (N.Y. App. Div. 2d Dep't 1965).

Plaintiffs were not entitled to a preliminary injunction restraining defendants from using defendants’ trade and corporate names where plaintiffs failed to establish that the certificate of doing business which they filed gave them the sole right to use the corporate trade names, given defendants’ claim that the certificate was filed on behalf of a partnership among all the

parties to the action. McDermott v Edwards, 106 A.D.2d 819, 484 N.Y.S.2d 208, 1984 N.Y. App. Div. LEXIS 21729 (N.Y. App. Div. 3d Dep't 1984).

Plaintiff, which had filed certificate of assumed name for name “Extended Care” and which conducted business under name “Extended Care Health Services,” was improperly granted permanent injunction enjoining defendant from conducting business under name “Extended Family Care” since words “extended” and “care” are generic terms in common domain which lack any special qualities and merely describe services provided by both parties. Telford Home Assistance v TPC Home Care Servs., 211 A.D.2d 674, 621 N.Y.S.2d 636, 1995 N.Y. App. Div. LEXIS 317 (N.Y. App. Div. 2d Dep't), app. denied, 85 N.Y.2d 810, 629 N.Y.S.2d 724, 653 N.E.2d 620, 1995 N.Y. LEXIS 1484 (N.Y. 1995).

Court improperly granted defendants’ summary judgment motion in action to permanently enjoin them from using trade secrets and confidential information where fact issues existed, inter alia, as to whether plaintiff’s suppliers in China were not known in trade or were discoverable only by extraordinary efforts, and whether plaintiff’s relationship with those suppliers was secured by years of effort and advertising effected by expenditure of substantial time and money, such that lists at issue constituted trade secret. Howard Berger Co. v Ye, 272 A.D.2d 445, 708 N.Y.S.2d 310, 2000 N.Y. App. Div. LEXIS 5611 (N.Y. App. Div. 2d Dep't 2000).

Manufacturer of “Excedrin PM” was not entitled to injunctive relief under theory of common law unfair competition for rival’s use of “Tylenol PM” trade dress, even though rival had copied manufacturer’s trade dress during design process, where there were strong distinctions between prominence of words “Excedrin” and “Tylenol,” each of which was nationally prominent name, and thus there was no likelihood of consumer confusion. Bristol-Myers Squibb Co. v McNeil-P.P.C., Inc., 973 F.2d 1033, 1992 U.S. App. LEXIS 19622 (2d Cir. N.Y. 1992).

65. —Unfair competition

Normal competition will not be enjoined. Charles F. Ryan & Son, Inc. v Lancaster Homes, Inc., 22 A.D.2d 186, 254 N.Y.S.2d 473, 1964 N.Y. App. Div. LEXIS 2590 (N.Y. App. Div. 4th Dep't

1964), aff'd, 15 N.Y.2d 812, 257 N.Y.S.2d 934, 205 N.E.2d 859, 1965 N.Y. LEXIS 1588 (N.Y. 1965).

In granting plaintiff's motion for preliminary injunction to enforce covenant not to compete in parties' agreements, court properly exempted 6 of plaintiff's former clients who had voluntarily and without solicitation sought out defendants after they left plaintiff's employ. Deloitte & Touche LLP v Chiampou, 222 A.D.2d 1026, 636 N.Y.S.2d 679, 1995 N.Y. App. Div. LEXIS 14074 (N.Y. App. Div. 4th Dep't 1995).

Motion for preliminary injunction to prevent alleged use of client database was properly denied for failure to establish likelihood of success on merits where plaintiff failed to present evidence that defendants misappropriated database or that database was being used to compete against it, and allegations that database contained publicly unavailable information were conclusory. Business Networks of N.Y., Inc. v Complete Network Solutions, Inc., 265 A.D.2d 194, 696 N.Y.S.2d 433, 1999 N.Y. App. Div. LEXIS 10168 (N.Y. App. Div. 1st Dep't 1999).

Action under CLS Gen Bus § 133 by Frank's Restaurant, Inc. for preliminary injunction, on theories of trademark infringement and unfair competition, against defendant's use of words "Frank's Steaks" in name of its restaurant was properly dismissed, absent conclusive evidence of defendant's intent to deceive or mislead. Frank's Rest., Inc. v Lauramar Enters., 273 A.D.2d 349, 711 N.Y.S.2d 433, 2000 N.Y. App. Div. LEXIS 7054 (N.Y. App. Div. 2d Dep't 2000).

66. — —Illustrative cases

Preliminary injunction obtained by former employer would be modified on appeal to delete provisions freezing bank accounts of former employee's new employment agency where employee formed agency on his own behalf similar to company he had created on employer's behalf, and allegedly misappropriated to his own agency's use name, good will, equipment and various assets of employer's company, and where temporary injunction restrained employee from removing equipment, assets, funds, income, documents and records of either entity and froze bank accounts of both; injunction was over-broad in freezing new company's bank

accounts since such provision would force employee to cease business, which result would be more burdensome to employee than was harm allegedly being caused to employer. Interfaith Medical Center v Shahzad, 124 A.D.2d 557, 507 N.Y.S.2d 702, 1986 N.Y. App. Div. LEXIS 61873 (N.Y. App. Div. 2d Dep't 1986).

Cleaning service was not entitled to preliminary injunction against former employee in action for wrongful appropriation of clients, although likelihood of success on merits was demonstrated by fact that vast majority of former employee's current clients were prior customers of cleaning service, and former employee's customer list contained information not otherwise available, where plaintiff could be fully recompensed with monetary award should it prevail in action, and injunction would virtually put former employee out of business. Busters Cleaning Corp. v Frati, 180 A.D.2d 705, 580 N.Y.S.2d 363, 1992 N.Y. App. Div. LEXIS 2633 (N.Y. App. Div. 2d Dep't 1992), app. dismissed, 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 an action alleging that defendants had conspired to restrain trade and maintain noncompetitive milk prices, where the defendants appeared to control less than 25 percent of the state milk market, the Attorney General was not entitled to a temporary injunction and restraining order, where, from the affidavits and exhibits alone, the court was unable to arrive at the conclusion that defendants' acts fixed prices that were noncompetitive. State v Milk Handlers & Processors Ass'n, 52 Misc. 2d 658, 276 N.Y.S.2d 803, 1967 N.Y. Misc. LEXIS 1878 (N.Y. Sup. Ct.), aff'd, 28 A.D.2d 971, 283 N.Y.S.2d 566, 1967 N.Y. App. Div. LEXIS 3372 (N.Y. App. Div. 1st Dep't 1967).

67. — — —Preliminary injunction appropriate

In a former employee's action to recover damages for breach-of-contract, the employer's crossmotion for a preliminary injunction against the employee's solicitation of persons on the employer's customer list was properly granted where the employer's allegations of unfair practices were denied only by the employee's suggesting that some of the names on the list

could be obtained through sources other than the list. Walter Rubin, Inc. v First Coinvesters, Inc., 91 A.D.2d 630, 456 N.Y.S.2d 813, 1982 N.Y. App. Div. LEXIS 19486 (N.Y. App. Div. 2d Dep't 1982).

Tax service was entitled to preliminary injunction against competitor where service made prima facie case that competitor had misappropriated its customer lists in violation of contractual and fiduciary obligations, and seasonal nature of tax business created particular need for immediate provisional relief; moreover, preliminary injunction would not be vacated merely because court failed to require suitable undertaking, although competitor would be free to apply to court to remedy omission nunc pro tunc. Gilman & Ciocia, Inc. v Reid, 153 A.D.2d 878, 545 N.Y.S.2d 387, 1989 N.Y. App. Div. LEXIS 11825 (N.Y. App. Div. 2d Dep't 1989).

Plaintiffs were entitled to preliminary injunctive relief, enjoining defendant from unfairly competing with them in sale and manufacture of products made from “Fimo” clay utilizing plaintiffs’ designs and methods of production, in light of competent evidence of active solicitation, conversion and unfair competition by defendant; defendant’s resignation as officer and director of corporate plaintiff did not necessarily relieve him of fiduciary obligations or liability for acts of misappropriation. 7th Sense v Liu, 220 A.D.2d 215, 631 N.Y.S.2d 835, 1995 N.Y. App. Div. LEXIS 9669 (N.Y. App. Div. 1st Dep't 1995).

Defendants’ former employers were entitled to preliminary injunction prohibiting defendants from contacting or soliciting certain customers of plaintiffs pending resolution of action where there was strong evidence that defendants misappropriated and used proprietary information and trade secrets in competing with plaintiffs and that continued improper solicitation of their clients would cause irreparable harm greater than injury to defendants from imposition of injunction, and injunction was reasonably limited in scope in that it temporarily prohibited defendants from contacting or soliciting those customers of plaintiffs who previously were served by defendants when they were employed by plaintiffs. Laro Maintenance Corp. v Culkin, 255 A.D.2d 560, 681 N.Y.S.2d 79, 1998 N.Y. App. Div. LEXIS 12931 (N.Y. App. Div. 2d Dep't 1998), aff'd, 267 A.D.2d 431, 700 N.Y.S.2d 490, 1999 N.Y. App. Div. LEXIS 13341 (N.Y. App. Div. 2d Dep't 1999).

Brokerage firm was entitled to preliminary injunction to enjoin former employees and their new employer from using any trade blotters and computer printouts containing "off dates" for repurchase agreement (repo) transactions since (1) compilation of off date information gave clear advantage to broker to renegotiate repo repurchase trades and constituted trade secret, (2) before leaving brokerage firm, former employees took their trade blotters and computer printouts regarding off dates for up to one year into future, and (3) if former employees were permitted to use compilation of off dates, they could decimate brokerage firm's repo business. Garvin GuyButler Corp. v Cowen & Co., 155 Misc. 2d 39, 588 N.Y.S.2d 56, 1992 N.Y. Misc. LEXIS 354 (N.Y. Sup. Ct. 1992).

68. — — —Preliminary injunction not appropriate

An injunction will not lie against a self-employed window cleaner for apparently soliciting several of his former employer's customers as the nature of the work was neither unique nor extraordinary in character nor did it involve any element of secret information concerning the janitorial services business and an injunction only to protect plaintiff's business against competition has been proscribed as against public policy. Janitor Service Management Co. v Provo, 34 A.D.2d 1098, 312 N.Y.S.2d 580, 1970 N.Y. App. Div. LEXIS 4274 (N.Y. App. Div. 4th Dep't 1970).

Defendant automobile dealership's alleged "raiding" of employees of plaintiff automobile dealership did not constitute breach of fiduciary duty, warranting injunctive relief, since (1) all defendants who were former employees of plaintiff were employees at will, and none of them was bound by contract or covenant not to compete, (2) defendants did not take any confidential data from plaintiff, (3) plaintiff failed to rebut defendants' showing that its dealership, located 10 miles away, was not plaintiff's competitor, (4) plaintiff failed to show that any business was diverted to defendants or that defendants who previously worked for plaintiff were "key" employees, and (5) defendants had no motive to harm plaintiff. Headquarters Buick-Nissan, Inc.

v Michael Oldsmobile, 149 A.D.2d 302, 539 N.Y.S.2d 355, 1989 N.Y. App. Div. LEXIS 4254 (N.Y. App. Div. 1st Dep't 1989).

Insurance broker was not entitled to preliminary injunction in action against former employee for alleged misappropriation of customer list since (1) insurance broker failed to establish that former employee pirated list by means of physical taking or studied memorization, and evidence supported finding that former employee (who had serviced accounts for some 15 years) contacted clients based on his recollection, rather than misappropriated list, and (2) insurance broker failed to establish irreparable injury as former employee contacted only 44 of 560 accounts which made up about ¼ of broker's business, and only 6 accounts had left broker. Arnold K. Davis & Co. v Ludemann, 160 A.D.2d 614, 559 N.Y.S.2d 240, 1990 N.Y. App. Div. LEXIS 4763 (N.Y. App. Div. 1st Dep't 1990).

In action alleging that defendants, former officers and employees of plaintiff company which sold European-style handbags, breached their duty of loyalty and their fiduciary duties by secretly forming competing company and diverting customer orders while still employed by plaintiff, court erred in granting preliminary injunction enjoining defendants from soliciting or engaging in any business activity with individuals who were plaintiff's customers at time defendants were still employed by plaintiff since (1) case did not involve confidential customer list, proprietary business information or covenant not to compete, and thus defendants were free to engage in competing business and solicit plaintiff's customers as soon as their employment with plaintiff was terminated, making injunctive relief inappropriate with respect to conduct of defendants thereafter, and (2) record did not establish that European-style shopping bag market was such that defendants' diversion of one order would give them unfair competitive advantage in connection with subsequent orders from same customer. Elpac, Ltd. v Keenpac North America, Ltd., 186 A.D.2d 893, 588 N.Y.S.2d 667, 1992 N.Y. App. Div. LEXIS 12134 (N.Y. App. Div. 3d Dep't 1992).

No liability for breach of fiduciary duty and no right to injunctive relief arose from defendants' use of their former employer's customer information to compete with former employer where (1) bulk

of former employer's departing clients were corporations whose identities and contact information were easily ascertainable, (2) individual clients were not identified by defendants from confidential client lists, (3) plaintiff's client information was scattered throughout its office in unlocked files and was not protected by any confidentiality agreements or protocols, and (4) there was no covenant between parties restricting defendants' solicitation of plaintiff's former clients. Fredric M. Reed & Co. v Irvine Realty Group, Inc., 281 A.D.2d 352, 723 N.Y.S.2d 19, 2001 N.Y. App. Div. LEXIS 3144 (N.Y. App. Div. 1st Dep't), app. denied, 96 N.Y.2d 720, 733 N.Y.S.2d 372, 759 N.E.2d 371, 2001 N.Y. LEXIS 3092 (N.Y. 2001).

A preliminary injunction restraining the defendant from publishing an alleged secret customer list would not be issued, where the pleadings and motion papers raised issues of fact as to the existence of such a list, and the plaintiff failed to demonstrate that such a list was presently being used or threatened to be used with resultant irreparable harm to plaintiff. Eldre Components, Inc. v Kliman, 47 Misc. 2d 463, 262 N.Y.S.2d 732, 1965 N.Y. Misc. LEXIS 1536 (N.Y. Sup. Ct. 1965).

In an action by insurance agents against a competitor for alleged interference with contractual relations, plaintiffs' motion for a preliminary injunction, grounded upon an Insurance Department regulation that established certain procedures in connection with the replacement of life insurance policies, would be denied where plaintiffs had not shown a likelihood of success on the merits of their claim in that it was not clear that defendant had done anything more than compete with plaintiffs for life insurance business among certain potential clients. Lidogoster v Krasnerman, 119 Misc. 2d 678, 463 N.Y.S.2d 1019, 1983 N.Y. Misc. LEXIS 3576 (N.Y. Sup. Ct. 1983).

69. Constitutionality of statute

In an action to declare county and town laws unconstitutional, a preliminary injunction would be granted based on allegations of financial hardship and the need to avoid forcing individuals to speculate on the scope of a criminal statute, and based on the fact that arguments similar to

those raised in the case had been found to be meritorious by a federal court. Dougal v County of Suffolk, 87 A.D.2d 897, 449 N.Y.S.2d 752, 1982 N.Y. App. Div. LEXIS 16417 (N.Y. App. Div. 2d Dep't 1982).

Where constitutionality of statute is challenged in declaratory judgment action, injunction prohibiting statute's implementation pending litigation is appropriate; to withhold relief while illegal enforcement of unconstitutional statute strips litigant of constitutionally protected right would defeat purpose of declaratory action. Med. Malpractice Ins. Ass'n v Cuomo, 138 A.D.2d 177, 531 N.Y.S.2d 231, 1988 N.Y. App. Div. LEXIS 7242 (N.Y. App. Div. 1st Dep't 1988), rev'd, 74 N.Y.2d 651, 543 N.Y.S.2d 364, 541 N.E.2d 393, 1989 N.Y. LEXIS 463 (N.Y. 1989).

70. Covenants

A restrictive covenant which declared that it was subject to any amendments of the zoning ordinance of the town was unenforceable and a recent amendment by the Town Board lifted the restriction on the low-income housing project premises and an injunction would not be a proper remedy as the covenant, by its terms, was to expire shortly and the benefit to plaintiff of injunctive relief would be small while the detriment to the defendants would be great. Amon v Greenburgh, 34 A.D.2d 1004, 312 N.Y.S.2d 986, 1970 N.Y. App. Div. LEXIS 4294 (N.Y. App. Div. 2d Dep't 1970).

Court did not abuse its discretion in denying employer's motion for preliminary injunction in action to enforce provisions of nondisclosure and nonsolicitation covenant contained in parties' employment agreement since employer failed to demonstrate that it was likely to prevail on merits in absence of showing that customer lists (which were available from public sources) and fabric samples taken by former employee were information deserving "trade secret" protection. Norman Weil Textiles, Inc. v Zaretzky, 166 A.D.2d 380, 561 N.Y.S.2d 186, 1990 N.Y. App. Div. LEXIS 12977 (N.Y. App. Div. 1st Dep't 1990).

Court properly denied employer's motion for preliminary injunctive relief in action to enforce provisions of nondisclosure and nonsolicitation covenant contained in parties' employment

agreement, since nonsolicitation covenant specifically provided that it was not applicable if employee was involuntarily terminated other than for legal cause, and conflicting affidavits raised triable issue of fact as to whether employer breached agreement in eliminating employee's position as chief executive officer. Norman Weil Textiles, Inc. v Zaretzky, 166 A.D.2d 380, 561 N.Y.S.2d 186, 1990 N.Y. App. Div. LEXIS 12977 (N.Y. App. Div. 1st Dep't 1990).

Defendant property owners were properly ordered to cease violating setback requirement contained in restrictive covenant running with land located in residential development area, and to remove houses erected in violation thereof, since covenant was imposed by common grantor and was intended to carry out general development scheme, virtually all 320 homes in area were subject to and complied with covenant, defendants knew that at least part of their property was subject to covenant, and there was no showing that defendants acted in good faith or that plaintiffs acted with unclean hands. Westmoreland Ass'n v West Cutter Estates, Ltd., 174 A.D.2d 144, 579 N.Y.S.2d 413, 1992 N.Y. App. Div. LEXIS 227 (N.Y. App. Div. 2d Dep't 1992).

71. —Covenants not to compete

Supreme Court erred in granting preliminary injunction enforcing restrictive covenants in former employee's employment contract where employee, who left his employment with waste disposal company to start similar company of his own, had been chief operating officer of one of his former employer's wholly owned subsidiaries and vice-president of another, and was highly paid and extremely valuable corporate officer, but as key member of team whose decisions were reviewed by others still higher in corporate structure, his services could not be deemed special or unique; injunction could not be based on mere showing that former employee might have confidential information where there were questions of what use, if any, former employee had made of such information. Newco Waste Systems, Inc. v Swartzenberg, 125 A.D.2d 1004, 510 N.Y.S.2d 399, 1986 N.Y. App. Div. LEXIS 63202 (N.Y. App. Div. 4th Dep't 1986).

Purchaser of circuit board subsidiary was entitled to preliminary injunction restraining former owner from entering into joint venture with competing company where (1) noncompetition agreement between purchaser and former owner forbade former owner from engaging in line of business, “directly or indirectly,” which was “substantially similar” to purchaser’s line of business, (2) competitor’s “multi-wire” circuit boards performed same function and were used by consumers in same manner as purchaser’s “multi-layer” boards, and (3) former owner’s $50 million investment to obtain major interest in partnerships with competitor could be construed as indirect significant interest which was prohibited by agreement. Brintec Corp. v Akzo, N. V., 129 A.D.2d 447, 514 N.Y.S.2d 18, 1987 N.Y. App. Div. LEXIS 45155 (N.Y. App. Div. 1st Dep't 1987).

Corporation engaged in business of providing tutorial services to students was not entitled to preliminary injunction to prevent its former licensees from violating restrictive covenant by forming competing businesses and soliciting corporation’s clients where corporation failed to show enforceability of its broadly-framed restrictive covenant by proving that it was warranted by considerations of uniqueness, trade secrets, confidentiality, or unfair competition, and thus failed to demonstrate likelihood of ultimate success on merits. Up-Grade Educational Services, Inc. v Rappaport, 136 A.D.2d 628, 523 N.Y.S.2d 872, 1988 N.Y. App. Div. LEXIS 397 (N.Y. App. Div. 2d Dep't 1988).

72. — —Employment contracts

Restrictive covenant in salesman’s employment contract which provided that he would not for a period of two years after the end or termination of his employment directly or indirectly solicit or serve any customers served by the company during his employment was reasonable, essentially because of its narrowness and short duration, and was enforceable by injunction, particularly in light of the salesman’s soliciting, shortly before he notified his employer of his resignation, one of his employer’s major accounts. Uniform Rental Div., Inc. v Moreno, 83 A.D.2d 629, 441 N.Y.S.2d 538, 1981 N.Y. App. Div. LEXIS 14923 (N.Y. App. Div. 2d Dep't 1981).

Former employer failed to establish likelihood of success on merits, and thus was not entitled to preliminary injunction in action for alleged breach of covenant not to compete, where terms of employment contract provided that employee would be paid sum of $250,000 in monthly installments over period of time for his services, that employee would not compete during such period of payment, and that payments would cease if employee should enter competing business; by terms of contract, covenant not to compete was operable only during term of payment, and employee was not prohibited from forfeiting his right to further payments by opting to enter competing business. Dianetics Medical Laboratories, Inc. v Traunfeld, 121 A.D.2d 594, 504 N.Y.S.2d 35, 1986 N.Y. App. Div. LEXIS 58577 (N.Y. App. Div. 2d Dep't 1986).

Insurance agency was not entitled to preliminarily enjoin its former employee from violating restrictive covenants in employment contract where (1) generalities asserted by agency as to covenants' enforceability, even if sufficient to make out prima facie case for injunction, were sharply contested and presented factual questions which could be decided only on trial, (2) agency's attempt to show likelihood of success on merits by demonstrating former employee's actual or threatened use of its trade secrets consisted of conjecture, and in any event there was contested issue of fact as to whether any legitimate trade secrets existed, and (3) agency failed to demonstrate balance of equities in its favor since covenants were overbroad and former employee had been terminated after only 7 months' employment, for unexplained reasons, after bringing substantial business to agency. Cool Insuring Agency, Inc. v Rogers, 125 A.D.2d 758, 509 N.Y.S.2d 180, 1986 N.Y. App. Div. LEXIS 62988 (N.Y. App. Div. 3d Dep't 1986), app. dismissed, 69 N.Y.2d 1037, 517 N.Y.S.2d 1030, 511 N.E.2d 89, 1987 N.Y. LEXIS 17255 (N.Y. 1987).

Employer was not entitled to preliminary injunction prohibiting former employee from soliciting, servicing or doing business with employer's customers in violation of terms of employment agreement, since validity of agreement was highly disputed fact issue and, as such, could not form basis for injunctive relief. Walter Karl, Inc. v Wood, 137 A.D.2d 22, 528 N.Y.S.2d 94, 1988 N.Y. App. Div. LEXIS 4972 (N.Y. App. Div. 2d Dep't 1988).

73. — —Expiration of covenant

Plaintiff was not entitled to preliminary injunction enjoining defendants from competing with its business for 6 months where parties' covenant of non-competition was expressly limited to 6 months following termination of defendant's employment with plaintiff, and relevant time period had already expired; similarly, plaintiff was also not entitled to preliminary injunction enjoining defendants from soliciting their former customers since parties' contract limited nonsolicitation of customers to 3 years following sale of business, which period also had already elapsed. Mitel Telecommunications Sys. v Napolitano, 226 A.D.2d 165, 640 N.Y.S.2d 113, 1996 N.Y. App. Div. LEXIS 3661 (N.Y. App. Div. 1st Dep't 1996).

Plaintiff's request for preliminary injunctive relief was moot where (1) plaintiff alleged that defendants were in breach of restrictive covenant that prohibited them from operating retail optical store within defined area for 2 years after expiration of parties' franchise agreement, (2) franchise agreement expired on January 31, 1999, and (3) defendants were no longer bound by terms of restrictive covenant. Sterling Vision, Inc. v Rieger, 281 A.D.2d 537, 721 N.Y.S.2d 809, 2001 N.Y. App. Div. LEXIS 2597 (N.Y. App. Div. 2d Dep't 2001).

Because the prohibition against a former employee soliciting or doing work for any of an employer's customers for two years had expired, and because the employer failed to show either that it would likely succeed on the merits of its action or that it was in danger of suffering irreparable harm unless the injunction were granted, the employer was not entitled to a N.Y. C.P.L.R 6301 preliminary injunction enjoining a former employee and the former employee's company from disclosing the employer's proprietary and confidential information. Master Mech. Corp. v Macaluso, 51 A.D.3d 739, 858 N.Y.S.2d 696, 2008 N.Y. App. Div. LEXIS 4204 (N.Y. App. Div. 2d Dep't 2008).

74. — —Modification

In holding that restrictive covenant was unreasonably broad, Appellate Division would not modify it so as to restrict employee only from working for employer's primary North American competitor

and to provide for employer's continuing payment of employee's base salary during period of restriction; although such modifications might render covenant enforceable, they would alter original contract so drastically as to preclude finding that employee would have accepted it under those terms. Crippen v United Petroleum Feedstocks, 245 A.D.2d 152, 666 N.Y.S.2d 156, 1997 N.Y. App. Div. LEXIS 13044 (N.Y. App. Div. 1st Dep't 1997).

Order granting employee's motion for preliminary injunction against enforcement of unduly restrictive covenant not to compete would be modified to require employee to post $10,000 bond. Crippen v United Petroleum Feedstocks, 245 A.D.2d 152, 666 N.Y.S.2d 156, 1997 N.Y. App. Div. LEXIS 13044 (N.Y. App. Div. 1st Dep't 1997).

75. — —Sale of business

A preliminary injunction enjoining defendants from opening a new restaurant which would allegedly violate a restrictive covenant agreed to when plaintiffs purchased defendants' former restaurant would be denied plaintiffs failed to show that they would sustain irreparable injury if defendants were allowed to operate the restaurant pending the determination of the action, where plaintiffs' restaurant was closed and there was no showing that a reopening was imminent; damages would compensate plaintiffs for any loss suffered as a result of defendants' new restaurant making it more difficult for plaintiffs to sell the property for restaurant purposes. Kugler v Noble, 94 A.D.2d 954, 464 N.Y.S.2d 79, 1983 N.Y. App. Div. LEXIS 18432 (N.Y. App. Div. 4th Dep't 1983).

76. — —Leases

Tenant was entitled to preliminary injunction to enjoin defendants from competing with its restaurant in violation of restrictive covenant in lease where (1) tenant operated restaurant pursuant to lease which provided that landlord would not rent any other stores on block to party that would maintain eating establishment in competition therewith, (2) defendants purchased property subject to tenant's rights, and (3) defendants then constructed Chinese restaurant on

premises. Arista Donut Corp. v United New York Lands Realty, Inc., 168 A.D.2d 588, 563 N.Y.S.2d 427, 1990 N.Y. App. Div. LEXIS 16063 (N.Y. App. Div. 2d Dep't 1990).

In action by tenant in shopping mall for breach of lease covenant not to permit competition in selling of certain items by other stores in mall, court properly granted summary judgment to tenant's former landlord, dismissing causes of action for specific performance and injunctive relief, since former landlord was no longer landlord under tenant's lease; moreover, such relief was not available as to current landlord, since provision of competing tenant's lease, concerning its use of premises, permitted it to sell items covered by exclusive use provision of plaintiff tenant's lease. Won's Cards, Inc. v Samsondale/Haverstraw Equities, Ltd., 165 A.D.2d 157, 566 N.Y.S.2d 412, 1991 N.Y. App. Div. LEXIS 1940 (N.Y. App. Div. 3d Dep't 1991).

In action by tenant in shopping mall for breach of lease covenant not to permit competition in selling of certain items by other stores in mall, it was error for court to grant summary judgment dismissing cause of action for injunctive relief against store which had begun competing with plaintiff tenant, since question of whether store could be affected by injunctive order sought by plaintiff depended on whether it had knowledge of existence of exclusive use covenant in plaintiff's lease when it executed its own lease, and record was insufficient to enable court to determine issue inasmuch as store did not move for summary judgment. Won's Cards, Inc. v Samsondale/Haverstraw Equities, Ltd., 165 A.D.2d 157, 566 N.Y.S.2d 412, 1991 N.Y. App. Div. LEXIS 1940 (N.Y. App. Div. 3d Dep't 1991).

Court properly granted plaintiff lessee's motion for preliminary injunction precluding defendant lessee from selling certain type of fast food at its establishment, based on finding that selling of such food contravened restrictive covenant in plaintiff's lease with defendant lessor (although it was permitted by lessee's lease with same lessor) since revenues that would be lost by plaintiff's business to lessee's newly-opened establishment were difficult to determine and might be wholly speculative, making legal remedy inadequate. L.I.R. Management Corp. v Mid-City Assoc., 184 A.D.2d 235, 584 N.Y.S.2d 559, 1992 N.Y. App. Div. LEXIS 7718 (N.Y. App. Div. 1st Dep't 1992).

Plaintiff, who leased laundromat from defendant development company, was not entitled to preliminary injunction in action in which she alleged that defendant violated lease by installing coin operated laundry machines in apartment complex which it constructed near laundromat, since lease only prohibited defendant from operating coin-operated laundry which was open to public. Chrys v D.C.G. Dev. Co., 187 A.D.2d 923, 590 N.Y.S.2d 564, 1992 N.Y. App. Div. LEXIS 13447 (N.Y. App. Div. 3d Dep't 1992).

77. — —Illustrative cases

The mere inclusion in a covenant not to compete of a liquidated damages provision does not automatically bar the grant of an injunction; but where an injunction is granted the amount of damages awarded should be limited to that actually suffered during the period of the breach of the covenant. Karpinski v Ingrasci, 28 N.Y.2d 45, 320 N.Y.S.2d 1, 268 N.E.2d 751, 1971 N.Y. LEXIS 1496 (N.Y. 1971).

Employer was not entitled to preliminary injunction to enforce restrictive covenants executed by 2 former employees prohibiting them from performing any services in competition with employer’s business for any of employer’s customers, and from soliciting any such customers for their new firm, since (1) work involved specialized field of video production, where every firm involved therein, including former employer, promoted itself by publicizing its work and clients, (2) employees’ skills were not unique, (3) neither of them had divulged any trade secrets or confidential customer lists, (4) employees’ equipment was readily available on open market, (5) there was no evidence that their techniques were secret, and (6) no irreparable injury was shown. Modern Telecommunications, Inc. v Zimmerman, 140 A.D.2d 217, 528 N.Y.S.2d 68, 1988 N.Y. App. Div. LEXIS 5134 (N.Y. App. Div. 1st Dep't 1988).

In action which alleged breach of various agreements, including restrictive covenant which barred defendant from working for competitor for period of 2 years after leaving consulting company sold by defendant and others to plaintiff, plaintiff’s request for preliminary injunction was not barred by laches where (1) after defendant left company, he accepted employment with

another consulting company, (2) plaintiff initially thought that defendant's work with other company consisted solely of in house matters, but later discovered that defendant was actively dealing with clients in competition with plaintiff, (3) plaintiff immediately notified defendant of violation of agreement and its intention to seek remedies, and (4) when violation was not corrected, plaintiff commenced action. Hay Group, Inc. v Nadel, 170 A.D.2d 398, 566 N.Y.S.2d 616, 1991 N.Y. App. Div. LEXIS 2414 (N.Y. App. Div. 1st Dep't 1991).

Dentist was entitled to summary judgment dismissing action for breach of covenant not to compete and for injunction against his practice of dentistry within agreed 25-mile radius of his former employer's practice where parties later executed another agreement designating dentist as independent contractor and providing that he would not be restricted from rendering dental care to persons other than plaintiff's patients and was free to work in other dental offices if he so desired; later agreement was valid novation reflecting parties' intent to nullify prior contract. Moskowitz v Rajadhyax, 263 A.D.2d 858, 693 N.Y.S.2d 741, 1999 N.Y. App. Div. LEXIS 8260 (N.Y. App. Div. 3d Dep't 1999).

In action for breach of covenant not to compete, plaintiff was entitled to preliminary injunction barring further breaches during pendency of action where (1) defendants did not contest reasonableness of covenant, as to either geographic scope or time, and thus plaintiff proved likelihood of success on merits, (2) because covenant was part of consideration for sale of existing business with its good will, element of irreparable injury was proved, (3) equities favored plaintiff because, within one month after individual defendant joined competing firm, plaintiff's 2 largest customers, representing nearly ? of business's income before its sale to plaintiff, transferred their business to competing firm, and (4) in light of CLS CPLR § 6312(c), existence of triable issues of fact no longer defeats application for preliminary injunction. Frank May Assocs. v Boughton, 281 A.D.2d 673, 721 N.Y.S.2d 154, 2001 N.Y. App. Div. LEXIS 2029 (N.Y. App. Div. 3d Dep't 2001).

Certain members of "Citizen's Party," unincorporated association in Village and Town of Waterford, were not entitled to order under CLS Gen Bus § 133 enjoining rival faction within

party from using name “Waterford Citizen’s Party, Inc.” since it was not shown that rival faction intended to mislead or deceive public by forming disputed corporation (evidently in response to loss of ballot line after unsuccessful run for public office as independent group called “Village People’s Party”); at worst, act of incorporation was Machiavellian attempt to usurp position of opposition to regain control of party, and since members who brought suit were not officially recognized as party leadership, they were not proper parties to seek injunctive relief nor was it clear that they had any more right to name than rival faction. Mullahey v Waterford Citizen's Party, Inc., 136 Misc. 2d 784, 519 N.Y.S.2d 333, 1987 N.Y. Misc. LEXIS 2498 (N.Y. Sup. Ct. 1987).

Television newscaster, who had fulfilled terms of her 2-year contract with defendant and allegedly was offered job from another television station for twice salary that defendant offered to keep her, was entitled to preliminary injunction prohibiting defendant from enforcing restrictive covenant in her employment contract, and from in any way interfering with her contractual relations with other stations, because, inter alia, her “unique services” could not serve as sole basis for judicial enforcement of anti-competition clause of employment contract. Nigra v Young Broad. of Albany, Inc., 177 Misc. 2d 664, 676 N.Y.S.2d 848, 1998 N.Y. Misc. LEXIS 337 (N.Y. Sup. Ct. 1998).

78. — — —Confidential information or trade secrets

In a proceeding to enjoin defendants from soliciting and doing work for plaintiffs’ former customers and to recover damages for lost profits related thereto, the trial court properly found that plaintiffs’ customer list constituted a trade secret, in that those customers could not be readily ascertained by reference to directories, and also properly found that plaintiffs were entitled to recover damages for loss of profits resulting from the loss of those customers whom defendants had improperly enticed away from them, but the trial court failed correctly to calculate the amount of plaintiffs’ damages, where it assessed the proportion of plaintiffs’ lost profit attributable to the loss of customers over the time period at issue, but failed to subtract

gross revenues brought in by those customers who had left for reasons not related to defendants' solicitations. Barone v Marcisak, 96 A.D.2d 816, 465 N.Y.S.2d 561, 1983 N.Y. App. Div. LEXIS 19402 (N.Y. App. Div. 2d Dep't), app. dismissed, 60 N.Y.2d 557, 1983 N.Y. LEXIS 5674 (N.Y. 1983), app. dismissed, 60 N.Y.2d 860, 1983 N.Y. LEXIS 6528 (N.Y. 1983).

Employer was not entitled to preliminary injunction barring former employee from using proprietary information he obtained while employed as managing officer where employer's moving papers failed to show that its customer lists were of such nature that they were entitled to trade-secret protection, and employer failed to clearly show that defendants were utilizing protected proprietary information or that employee had misappropriated employer's property or copied employer's customer lists. NCN Co. v Cavanagh, 215 A.D.2d 737, 627 N.Y.S.2d 446, 1995 N.Y. App. Div. LEXIS 5767 (N.Y. App. Div. 2d Dep't 1995).

In action based on restrictive covenant in employment contract, insurance agency was not entitled to preliminary injunction against its former agent on basis of conclusory statements and copies of 2 innocuous advertisements placed by agent in local newspaper, which merely indicated that agent was now working for another agency, where no proof had been offered showing any breach of employment agreement by agent, or use by him of any of agency's customer lists, trade secrets, or other confidential information, and where agent's answering affidavit categorically denied any such use. Rick J. Jarvis Assocs. v Stotler, 216 A.D.2d 649, 627 N.Y.S.2d 810, 1995 N.Y. App. Div. LEXIS 6078 (N.Y. App. Div. 3d Dep't 1995).

In action, inter alia, for breach of restrictive covenant contained in employment contract, court properly denied former employer's motion to preliminarily enjoin its former employees from soliciting, servicing, diverting, enticing, or interfering with any of its customers in county, where employer did not show that enforcement of covenant was necessary to protect trade secrets, customer lists, or goodwill of employer's business, or that employer was exposed to special harm because of unique nature of employees' services. Skaggs-Walsh, Inc. v Chmiel, 224 A.D.2d 680, 638 N.Y.S.2d 698, 1996 N.Y. App. Div. LEXIS 1920 (N.Y. App. Div. 2d Dep't 1996).

Court improperly granted preliminary injunction to enforce restrictive covenant against former employee where there was fact issue as to whether employee made use of confidential client information, and employers offered nothing more than conclusory allegations as to their claim that employee was actively soliciting their clients. Merrell Benco Agency, Inc. v Safrin, 231 A.D.2d 614, 647 N.Y.S.2d 952, 1996 N.Y. App. Div. LEXIS 9461 (N.Y. App. Div. 2d Dep't 1996).

Former employer of licensed beautician was not entitled to preliminary injunction to prevent her from breaching terms of restrictive covenants in her employment contract, even though she opened hair salon specializing in hair loss treatment within 50 miles of employer's operation of similar business, where employer did not show that enforcement of covenants was necessary to protect trade secrets, confidential customer lists, or good will, or that its services were unique or extraordinary, and its allegation that beautician was attempting to solicit its customers was conclusory without evidentiary detail. Genesis II Hair Replacement Studio v Vallar, 251 A.D.2d 1082, 674 N.Y.S.2d 207, 1998 N.Y. App. Div. LEXIS 7205 (N.Y. App. Div. 4th Dep't 1998).

Restrictive covenant against soliciting of plaintiff's customers by former employee did not warrant injunctive relief where there was no showing of probable existence of trade secrets or confidential information, and it was not alleged that employee's services were unique or extraordinary. Business Networks of N.Y., Inc. v Complete Network Solutions, Inc., 265 A.D.2d 194, 696 N.Y.S.2d 433, 1999 N.Y. App. Div. LEXIS 10168 (N.Y. App. Div. 1st Dep't 1999).

Court properly denied plaintiff's motion for preliminary injunction, despite its conclusory assertion that enforcement of non-competition agreement was both reasonable and necessary to protect its interest, where there was no indication that individual defendant had access to, much less, misappropriated any customer lists, trade secrets, business plans, or other confidential information, or that his services at plaintiff company were of unique or extraordinary nature. TMP Worldwide Inc. v Franzino, 269 A.D.2d 332, 703 N.Y.S.2d 183, 2000 N.Y. App. Div. LEXIS 2215 (N.Y. App. Div. 1st Dep't 2000).

79. — — —Irreparable injury

A preliminary injunction restraining defendant, a former partner in plaintiff accounting firm, from competing with it for the business of clients serviced by defendant while in plaintiff's employ, would be limited to those of plaintiff's clients who had never been former clients of defendant or his father, where the noncompetition clause in the employment contract which plaintiff sought to have enforced contained an agreement by defendant not to compete upon withdrawal from the partnership, where defendant alleged that he had been fired and did not "withdraw," where there was no allegation that defendant was privy to trade secrets or insider information or that his services as an accountant were special, unique, or extraordinary, where it was not at all clear that plaintiff would probably succeed on the merits, where the alleged potential loss to plaintiff of $36,500 worth of business from its $800 million of revenues hardly showed the "immediate and irreparable injury" required by CPLR § 6301, and where the balance of equities showed that defendant was the party who would be seriously burdened by such a decree. Arthur Young & Co. v Black, 97 A.D.2d 369, 466 N.Y.S.2d 10, 1983 N.Y. App. Div. LEXIS 19920 (N.Y. App. Div. 1st Dep't 1983).

Medical group was not entitled to preliminary injunction to restrain psychologist from violating noncompetition agreement and providing services to patients within prohibited radius where (1) psychologist submitted affidavit stating, inter alia, that she had merely informed her patients that she was leaving medical group and that they were free to continue treatment with her if they so desired and that her patients would suffer if treatment was discontinued, (2) psychologist also submitted letters from several patients which stated that they had themselves decided to continue treatment with her, and (3) medical group failed to show that it would suffer irreparable injury absent injunctive relief, as psychologist could respond in monetary damages if medical group ultimately prevailed. Metropolitan Medical Group, P. C. v Eaton, 154 A.D.2d 252, 546 N.Y.S.2d 90, 1989 N.Y. App. Div. LEXIS 12402 (N.Y. App. Div. 1st Dep't 1989).

It was abuse of discretion to grant plaintiffs' motion for preliminary injunction to enforce non-competition provision in their employment agreement with defendant where plaintiffs failed to show irreparable injury in absence of injunctive relief. Twin City Physicians Group, P.C. v

Kaushal, 225 A.D.2d 1041, 639 N.Y.S.2d 228, 1996 N.Y. App. Div. LEXIS 2864 (N.Y. App. Div. 4th Dep't 1996).

80. — — —Reasonableness of geographic scope and duration

In an action to enforce a covenant not to compete in which Special Term denied the application for injunctive relief solely on the ground that the covenant could not be enforced in that it did not contain a time limit, a hearing should have been held on the issue of what is a reasonable time in view of the particulars of the business of an automobile repair shop, circumstances underlying the contract of sale and of the limitations contained in the covenant. Town Line Repairs, Inc. v Anderson, 90 A.D.2d 517, 455 N.Y.S.2d 28, 1982 N.Y. App. Div. LEXIS 18562 (N.Y. App. Div. 2d Dep't 1982).

In action for breach of exclusive sales region contract between pool dealer and manufacturer of wavemaking equipment, it was not error to limit geographic scope of preliminary injunction (restraining dealer from constructing wave pools using another company’s wavemaking equipment) to dealer’s exclusive sales region, despite absence of such restriction in language of contractual posttermination clause, since geographical scope of dealer’s posttermination responsibilities was not clear. Paddock Constr., Ltd. v Automated Swimpools, Inc., 130 A.D.2d 894, 515 N.Y.S.2d 662, 1987 N.Y. App. Div. LEXIS 46888 (N.Y. App. Div. 3d Dep't 1987).

That portion of covenant prohibiting neurologist from practicing within 5-mile radius of any hospital where he had worked on behalf of professional corporation was overly broad and oppressive and thus unenforceable since covenant would preclude neurologist from practicing at or near majority of local hospitals and would effectively bar him from having professional contact with physicians in those hospitals which generally produce referrals of patients; accordingly, in absence of evidence to indicate that professional corporation’s legitimate business concerns were implicated by neurologist’s alleged breach of restrictive covenant, corporation’s motion for preliminary injunction was properly denied. Michael I. Weintraub, M. D., P. C. v Schwartz, 131

A.D.2d 663, 516 N.Y.S.2d 946, 1987 N.Y. App. Div. LEXIS 48126 (N.Y. App. Div. 2d Dep't 1987).

In action by horse riding stable to enforce covenant not to compete contained in trainer's employment contract, court properly denied stable's motion for preliminary injunction enjoining trainer from soliciting stable's customers, from servicing stable's customers, and from conducting business of riding stable within 5-mile radius, even though restrictive covenant may have been reasonable in geographic scope and duration, since stable failed to show likelihood of ultimate success on merits in that it failed to establish that trainer misappropriated trade secrets or confidential customer lists, or that trainer's services were extraordinary or unique, and there was sharp dispute as to whether stable had breached its own obligations under trainer's contract. Shannon Stables Holding Co. v Bacon, 135 A.D.2d 804, 522 N.Y.S.2d 908, 1987 N.Y. App. Div. LEXIS 52735 (N.Y. App. Div. 2d Dep't 1987).

Defendants were entitled to preliminary injunction prohibiting plaintiff from directly or indirectly competing with defendants within 30-mile radius set forth in noncompetition agreement where defendants showed open, competitive solicitation within restricted area in direct contravention of agreement, in form of advertisements in local newspapers, direct mail, and telephone solicitations to defendants' customers, resulting in injuries of type not readily assessable in liquid damages. Conlon v Concord Pools, Ltd., 170 A.D.2d 754, 565 N.Y.S.2d 860, 1991 N.Y. App. Div. LEXIS 1418 (N.Y. App. Div. 3d Dep't 1991).

Former employer demonstrated reasonable likelihood of success on contention that restrictive covenant was reasonable, even though it restricted former employee from owning or accepting employment in any capacity with business similar to that of defendant for period of 3 years and contained no geographic limitation, since employer engaged in narrow industry with limited number of competitors, and agreement included employee's acknowledgement that nature of defendant's business reasonably required protection which was national in scope; however, scope of preliminary injunction would be limited to those businesses within United States that

competed directly with employer's business enterprise. Magness v ESM II, Inc., 191 A.D.2d 966, 594 N.Y.S.2d 504, 1993 N.Y. App. Div. LEXIS 2913 (N.Y. App. Div. 4th Dep't 1993).

Defendant, board certified surgeon and professional principal in professional corporations, was entitled to preliminary injunction enforcing noncompetition clause where clause was confined to particular county and was limited to 2 years, there was another vascular surgeon, besides defendant, practicing in county, several other such surgeons had expressed interest in joining defendant's practice, defendant's 29-year investment developing his practice could be imperiled if plaintiff, board certified cardiovascular and thoracic surgeon, were allowed to compete with defendant, and plaintiff practiced in county less than one year and was free to practice anywhere outside county, including nearby well-regarded university medical center. Bollengier v Gulati, 233 A.D.2d 721, 650 N.Y.S.2d 56, 1996 N.Y. App. Div. LEXIS 12090 (N.Y. App. Div. 3d Dep't 1996).

Noncompetition agreement, entered into by parties in connection with defendant's partnership in plaintiff's insurance business after extensive negotiations in which defendant was represented by counsel, was not unenforceable, and defendant was preliminarily enjoined from soliciting plaintiff's clients for remainder of 2-year term of agreement where, inter alia, restriction imposed was relatively limited in scope, neither its duration nor scope was unduly burdensome, and it did not prohibit defendant from pursuing his profession or limit him geographically. Chernoff Diamond & Co. v Fitzmaurice, Inc., 234 A.D.2d 200, 651 N.Y.S.2d 504, 1996 N.Y. App. Div. LEXIS 12837 (N.Y. App. Div. 1st Dep't 1996).

Restrictive covenant was unreasonably broad on its face, both geographically and with respect to types of positions that employee was prohibited from accepting, where it provided that employee "shall not...become or be interested in or associated with...any individual or entity...engaged in the oil brokerage business in...any country in which [defendant] or an affiliate thereof is then engaged in such business." Crippen v United Petroleum Feedstocks, 245 A.D.2d 152, 666 N.Y.S.2d 156, 1997 N.Y. App. Div. LEXIS 13044 (N.Y. App. Div. 1st Dep't 1997).

Preliminary injunction against enforcement of restrictive covenant in plaintiff's employment contract was properly denied where 12-month duration of limitation placed on plaintiff and geographic restriction to New York and New Jersey were reasonable, enforcement of covenant would not harm public, and compliance would not unduly burden plaintiff. Asness v Nelson, 273 A.D.2d 165, 711 N.Y.S.2d 717, 2000 N.Y. App. Div. LEXIS 7518 (N.Y. App. Div. 1st Dep't 2000).

Although the trial court improperly found that the former employee could not provide services to the former employer's former clients outside 35 miles of the employer's equine veterinary clinic, the trial court properly granted the employer's request for a preliminary injunction to enforce the covenant not to compete within 35 miles of the clinic because the employee was bound by the covenant, the three year and 35 miles conditions in the covenant were reasonable, and a preliminary injunction was necessary to protect the employer's interests as it had spent over 20 years building its business. Battenkill Veterinary Equine P.C. v Cangelosi, 1 A.D.3d 856, 768 N.Y.S.2d 504, 2003 N.Y. App. Div. LEXIS 12607 (N.Y. App. Div. 3d Dep't 2003).

Enforcement, by injunction, of two-year restrictive employment covenant was justified where employee was executive officer of former employer which was engaged in manufacturing electrostatic copying machines and, contrary to restrictive covenant, had been employed by competitor as its president. Xerox Corp v Neises, 57 Misc. 2d 780, 293 N.Y.S.2d 574, 1968 N.Y. Misc. LEXIS 1236 (N.Y. Sup. Ct.), modified, 31 A.D.2d 195, 295 N.Y.S.2d 717, 1968 N.Y. App. Div. LEXIS 2648 (N.Y. App. Div. 1st Dep't 1968).

81. — — —Preliminary injunction appropriate

Where competitive activities of corporate defendants appeared to have enabled former officer of plaintiff corporation to circumvent covenant restricting competition with plaintiff and where specific descriptions of such violations had been submitted in affidavit form and were substantially undisputed, it was an improvident exercise of discretion to deny preliminary injunctive relief to plaintiffs, but defendants should not, in absence of judgment, be subject to

restraint for undue period of time. Hudson Chromium Co. v Pollack, 50 A.D.2d 771, 377 N.Y.S.2d 49, 1975 N.Y. App. Div. LEXIS 11569 (N.Y. App. Div. 1st Dep't 1975).

Plaintiffs were properly granted a preliminary injunction in an action against a former employee and a competitor for whom the former employee worked, based on an alleged breach of a nonsolicitation covenant contained in an employment agreement, where there was a likelihood of plaintiffs' ultimate success on the merits and a danger of irreparable injury to plaintiffs, and the equities balanced in plaintiffs' favor, due to (1) the nature of the employment agreement, which contained a covenant restricting the employee from soliciting plaintiffs' customers, and in which he agreed that their customer list was a valuable and unique asset, that irreparable harm would result from a breach of the covenant, and that a violation would be a proper subject for injunctive relief, (2) the nature of plaintiff's customer list, which could properly be treated as a trade secret, (3) statements made by the former employee in an affidavit made while employed by plaintiff in support of a contempt motion against defendant competitor in a similar action against another former employee, (4) the high position attained by the former employee while working for plaintiff, and (5) actions taken by defendant. Giffords Oil Co. v Wild, 106 A.D.2d 610, 483 N.Y.S.2d 104, 1984 N.Y. App. Div. LEXIS 21596 (N.Y. App. Div. 2d Dep't 1984).

In action by pool dealer to rescind exclusive sales region contract with manufacturer of wavemaking equipment, court properly granted manufacturer's request for preliminary injunction restraining dealer from constructing wave pools using another company's wavemaking equipment, despite existence of questions of law or fact as to whether manufacturer breached contract, since (1) dealer's conduct violated posttermination provision of parties' contract, (2) denial of injunction would abrogate posttermination provision, to manufacturer's detriment, before parties' claims were litigated, and (3) even if manufacturer breached contract, rescission was not necessarily proper. Paddock Constr., Ltd. v Automated Swimpools, Inc., 130 A.D.2d 894, 515 N.Y.S.2d 662, 1987 N.Y. App. Div. LEXIS 46888 (N.Y. App. Div. 3d Dep't 1987).

Accounting firm was entitled to preliminary injunction in action against former staff accountant to enforce noncompetition agreement as to clients that were referred to and serviced by

accounting firm during accountant's tenure there; however, preliminary injunction would not apply to clients serviced by accountant prior to his joining firm. Jerry Kindman & Co., P.C. v Stollar, 151 A.D.2d 393, 543 N.Y.S.2d 81, 1989 N.Y. App. Div. LEXIS 8022 (N.Y. App. Div. 1st Dep't 1989).

Employer, engaged in sale of bull semen and artificial insemination of cattle, was entitled to preliminary injunction enjoining former employee from selling bull semen and providing artificial insemination services for one year from date he resigned where (1) employee had signed noncompetition agreement covering one-year period after termination of his employment in geographic area in which he had been employed, (2) shortly before his resignation, employee came into possession of certain information as to employer's financial outlook, marketing strategies, future plans for genetic evaluation of cattle, and new methods of technician training and development, and (3) employee was aware of employer's new pricing system and was privy to information concerning effect of new system on sales and profit margins. Eastern Artificial Insemination Coop. v La Bare, 210 A.D.2d 609, 619 N.Y.S.2d 858, 1994 N.Y. App. Div. LEXIS 12417 (N.Y. App. Div. 3d Dep't 1994).

Employer was entitled to preliminary injunction to prevent employees from engaging in any competitive business for 6 months where employees had been given choice of signing new contract containing restrictive covenant or continuing with their old employment contract, which did not contain anticompetitive provision but also did not provide them with job security or high salaries that new contract afforded them, and after consulting with counsel, they signed new agreement that contained 6-month restrictive covenant and also required employer to pay their full base salaries during restrictive period, and where testimony at hearing on motion also established that employees' services were unique. Maltby v Harlow Meyer Savage, Inc., 223 A.D.2d 516, 637 N.Y.S.2d 110, 1996 N.Y. App. Div. LEXIS 755 (N.Y. App. Div. 1st Dep't), app. dismissed, 88 N.Y.2d 874, 645 N.Y.S.2d 448, 668 N.E.2d 419, 1996 N.Y. LEXIS 1060 (N.Y. 1996).

82. — — —Preliminary injunction not appropriate

Insurance company could not enjoin its former salesman from soliciting its accounts since language of employment contract applied only to life and health insurance and not to disputed casualty accounts and, in any event, company failed to show that noncompetition covenant was reasonable in scope and duration or that it was necessary to protect its legitimate needs while not unduly burdening former employee; moreover, company failed to show that alleged customer list constituted trade secret or that salesman's services were unique, thus casting doubt on covenant's enforceability. Brewster-Allen-Wichert, Inc. v Kiepler, 131 A.D.2d 620, 516 N.Y.S.2d 949, 1987 N.Y. App. Div. LEXIS 48089 (N.Y. App. Div. 2d Dep't 1987).

Apparel manufacturer was not entitled to preliminary injunction restraining former employee from further solicitation of manufacturer's customers, or disclosure of names and addresses of customers to third parties, allegedly in violation of agreement which employee had signed during his employment, where manufacturer could not prevail on merits in underlying breach of contract action against employee, in that (1) identities of customers were readily obtainable through publicly available industry publication, and thus customer list could not be deemed tradesecret, and (2) employee's services as salesman were neither unique nor extraordinary. Primo Enterprise v Bachner, 148 A.D.2d 350, 539 N.Y.S.2d 320, 1989 N.Y. App. Div. LEXIS 2794 (N.Y. App. Div. 1st Dep't 1989).

In action alleging that defendant breached his employment contract with plaintiff ambulance service by unlawfully conspiring with others to divert business to competing ambulance service, plaintiffs were not entitled to injunction restraining defendant from violating restrictive covenant contained in employment contract since (1) they failed to establish that equities were balanced in their favor, that defendant mispropriated trade secrets or confidential customer lists, or that defendant's services were unique or extraordinary, and (2) there was sharp dispute as to whether defendant committed wrongful acts attributed to him by plaintiffs. BR Ambulance Service, Inc. v Nationwide Nassau Ambulance, 150 A.D.2d 745, 542 N.Y.S.2d 21, 1989 N.Y. App. Div. LEXIS 7267 (N.Y. App. Div. 2d Dep't 1989).

Court properly denied plaintiff's motion for preliminary injunction in action to enforce "Secrecy, Noncompetition and Invention Agreement" entered into between plaintiff and defendant, its former employee, since defendant's position as epoxy rig operator was not highly compensated and required no unique skills or specialized training, and defendant thus was not "unique" or "irreplaceable" employee whose departure caused plaintiff special harm, and he was not shown to have knowledge of trade secrets or to have threatened disclosure of such secrets to his new employer to plaintiff's disadvantage. Accent Stripe v Taylor, 204 A.D.2d 1054, 612 N.Y.S.2d 533, 1994 N.Y. App. Div. LEXIS 6911 (N.Y. App. Div. 4th Dep't 1994).

Plaintiff was not entitled to preliminary injunction, enjoining former owner of bond brokerage business and his current employer from soliciting plaintiff's former customers, since (1) plaintiff failed to proffer sufficient competent evidence of active solicitation by defendants to demonstrate clear right to relief sought, (2) implied covenant imposed on seller of business, to permanently refrain from soliciting former customers after sale of business and its goodwill, was inapplicable because parties had specifically negotiated and expressly agreed to impose less onerous restriction, and (3) granting of injunction would be equivalent to improperly forcing former owner to leave municipal bond brokerage business, given unique nature of municipal securities brokerage field. Titus & Donnelly v Poto, 205 A.D.2d 475, 614 N.Y.S.2d 10, 1994 N.Y. App. Div. LEXIS 7021 (N.Y. App. Div. 1st Dep't 1994).

Pharmacy, as lessee of premises in shopping center, was improperly granted preliminary injunction enjoining another tenant in shopping center from dispensing prescription drugs on premises and enjoining landlord from renting premises to that tenant for purpose of dispensing prescription drugs where restrictive covenant in pharmacy's lease, by it express terms, did not apply to tenants, such as tenant in question, that were already tenants in shopping center when pharmacy began its tenancy. Key Drug Co. v Luna Park Realty Assocs., 221 A.D.2d 598, 634 N.Y.S.2d 502, 1995 N.Y. App. Div. LEXIS 12444 (N.Y. App. Div. 2d Dep't 1995).

Court erred in enjoining corporate defendants from soliciting physicians who had entered into written employment agreements with plaintiff where there was no proof that those physicians

were subject to covenants not to compete. Twin City Physicians Group, P.C. v Kaushal, 225 A.D.2d 1041, 639 N.Y.S.2d 228, 1996 N.Y. App. Div. LEXIS 2864 (N.Y. App. Div. 4th Dep't 1996).

Court erred in granting plaintiffs' motion for preliminary injunction where they made no evidentiary showing to support restraint on defendant's right to communicate with manufacturers represented by unrelated corporation, and they submitted no proof that defendant, following termination of his relationship with plaintiffs, represented himself as agent, employee, officer, director, or servant of that corporation, attempted to collect any commissions owed thereto, or made any purchases or commitments on corporation's behalf. Holdsworth v Doherty, 231 A.D.2d 930, 647 N.Y.S.2d 633, 1996 N.Y. App. Div. LEXIS 10835 (N.Y. App. Div. 4th Dep't 1996).

Court properly denied motion to enforce restrictive covenant by enjoining physician from practicing medicine in county for 2 years where (1) in order to resolve proceeding to dissolve professional corporation, physician entered into stipulation of settlement by which he agreed that if he violated any of its terms, restrictive covenant would become effective, (2) physician's violation of stipulation was by his default in making payments on car leases, and (3) there was no evidence that such violation put professional corporation or its members at risk of unfair competition sufficient to justify restricting physician's practice of medicine. In re Long Island Gastrointestinal Disease Group, P.C., 251 A.D.2d 330, 673 N.Y.S.2d 738, 1998 N.Y. App. Div. LEXIS 6305 (N.Y. App. Div. 2d Dep't 1998).

Court erred in granting preliminary injunction enjoining defendants from violating restrictive employment covenants where, under applicable Pennsylvania law, subject restrictive covenants were not supported by adequate consideration. Sysco Corp. v Maines Paper & Food Serv., 254 A.D.2d 611, 679 N.Y.S.2d 175, 1998 N.Y. App. Div. LEXIS 11194 (N.Y. App. Div. 3d Dep't 1998).

83. Criminal proceedings

Petitioner was not entitled to a preliminary injunction staying his parole revocation proceeding while a criminal action against him remained pending, on the asserted ground that the hearing would threaten the exercise of his privilege against self-incrimination, since the criminal action and the parole revocation proceeding were distinctly legal proceedings and a decision to testify or remain silent had to be separately made in each matter and, although the choice might be influenced by the order in which they were reached for disposition, the outcome was not compelled in violation of due process standards; additionally, requests for adjournments would afford the desired tactical benefit and denials would be subject to later judicial review. Fiacco v Carey, 80 A.D.2d 673, 436 N.Y.S.2d 384, 1981 N.Y. App. Div. LEXIS 10375 (N.Y. App. Div. 3d Dep't 1981).

Petition for mandamus, prohibition, injunctive relief and declaratory judgment with respect to implementation of Executive Order No. 27 (9 NYCRR § 5.27), which required Attorney-General to appear and supersede Bronx District Attorney in potential death penalty case because of district attorney’s previously expressed intention not to utilize death penalty provisions of CLS Penal § 125.27, was properly dismissed for lack of justiciability, as petitioners failed to show that governor acted without constitutional or statutory authority; governor’s apparent objective was to assure that state laws were applied in uniform fashion throughout state’s 62 counties, and emergent nature of his intervention was justified by possibility that Bronx District Attorney might take action foreclosing appropriate consideration of death penalty pursuant to CLS CPL § 250.40. Johnson v Pataki, 229 A.D.2d 242, 655 N.Y.S.2d 463, 1997 N.Y. App. Div. LEXIS 5952 (N.Y. App. Div. 1st Dep't), app. denied, 90 N.Y.2d 900, 662 N.Y.S.2d 430, 685 N.E.2d 211, 1997 N.Y. LEXIS 2686 (N.Y. 1997), aff'd, 91 N.Y.2d 214, 668 N.Y.S.2d 978, 691 N.E.2d 1002, 1997 N.Y. LEXIS 3703 (N.Y. 1997).

Criminal defendant’s motion to enjoin state from seeking death penalty was not ripe for judicial review where he was arraigned on indictment charging him with second degree murder and other crimes, and People reserved right to file capital murder indictment should evidence become available supporting such charges; harm to defendant was contingent on filing first

degree murder indictment against him and filing notice of intent to seek death penalty, both of which events might never occur. People v Attawwab, 182 Misc. 2d 824, 700 N.Y.S.2d 395, 1999 N.Y. Misc. LEXIS 530 (N.Y. Sup. Ct. 1999).

84. Elections, political parties and the like

Plaintiff, a designee for the nomination as the Republican candidate for the assembly, was entitled to a permanent injunction prohibiting another designee from circulating campaign literature which created a false impression in the minds of its readers that the defendant had been chosen and was supported by the County Republican Committee and endorsed by several town Republican organizations, where this in fact was not true. Rook v Skuse, 47 Misc. 2d 715, 262 N.Y.S.2d 968, 1965 N.Y. Misc. LEXIS 1530 (N.Y. Sup. Ct. 1965).

In considering whether a preliminary mandatory order should issue to require the Board of Supervisors and the Board of Elections to prepare a valid apportionment plan and the machinery for a special election of Supervisors, the court must take into account the adequacy of other remedies, the utility of an injunction, the preservation of the status quo, the fact that preliminary relief may grant the same as ultimate relief, whether the plaintiff shows a clear right to relief, whether irreparable injury will occur unless immediate relief is granted, and whether the public interest is affected by the Court’s action. Graham v Board of Supervisors, 49 Misc. 2d 459, 267 N.Y.S.2d 383, 1966 N.Y. Misc. LEXIS 2282 (N.Y. Sup. Ct.), modified, 25 A.D.2d 250, 269 N.Y.S.2d 477, 1966 N.Y. App. Div. LEXIS 4590 (N.Y. App. Div. 4th Dep't 1966).

Treating a request for injunctive relief as consolidated petitions for the purpose of orderly disposition the court denied them on the basis that there were no vacancies that could properly be filled by committee action as there was no legally constituted committee at the close of the primary election and the minimum number of committeemen were not elected as required by statute. Moore v Pikul, 64 Misc. 2d 650, 315 N.Y.S.2d 593, 1970 N.Y. Misc. LEXIS 1168 (N.Y. Sup. Ct. 1970).

The county committee was not legally constituted pursuant to statute as there were but 62 committeemen duly elected, 36 short of the minimum requirement and therefore the proceedings held by both the so called county committees to elect a slate of officers representing it were of necessity null and void; the county committee is a creature of statute and to come into being must comply with statutory requirements. Moore v Pikul, 64 Misc. 2d 650, 315 N.Y.S.2d 593, 1970 N.Y. Misc. LEXIS 1168 (N.Y. Sup. Ct. 1970).

85. —Illustrative cases

The 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).

Plaintiffs were not entitled to preliminary injunction barring defendants from submitting proposed charter revisions to voters which, under CLS Mun H R § 36(5)(e), would "bump" voter referendum designed by plaintiffs to block mayor's plan to spend public funds for new baseball stadium, although mayor's decision to create new charter revision committee was admittedly motivated in part by desire to "bump" plaintiffs' referendum, as (1) plaintiffs' challenge to completeness of commission's review of charter lacked merit, and (2) plaintiffs failed to demonstrate irreparable injury in that, even if their referendum was bumped, mayor could not unilaterally decree that public funds be spent on new stadium. Council of the City of New York v Giuliani, 248 A.D.2d 1, 679 N.Y.S.2d 14, 1998 N.Y. App. Div. LEXIS 11001 (N.Y. App. Div. 1st Dep't), app. dismissed in part, app. denied, 92 N.Y.2d 938, 680 N.Y.S.2d 902, 703 N.E.2d 760, 1998 N.Y. LEXIS 3714 (N.Y. 1998).

86. Governmental affairs

Injunction was properly granted pursuant to § 193 of the agriculture and markets law to prevent sale other than by net weight, of certain designated food products, cooked chicken and loin ribs in buckets and from selling such food products when packaged or wrapped for sale by defendant in advance of sale, unless an accurate computing scale could be maintained so as to be easily available to customers. Wickham v Levine, 24 A.D.2d 1035, 264 N.Y.S.2d 785, 1965 N.Y. App. Div. LEXIS 2860 (N.Y. App. Div. 3d Dep't 1965), aff'd, 23 N.Y.2d 923, 298 N.Y.S.2d 507, 246 N.E.2d 357, 1969 N.Y. LEXIS 1591 (N.Y. 1969).

Pending appeal of decision which declared town's "excavation law" invalid, town was entitled to preliminary injunction against the excavation of so much of subject premises as was not devoted to a prior existing non-conforming use where town made requisite showing of irreparable injury, etc., and also established a reasonable probability of a successful appeal. Pittsford Gravel Corp. v Zoning Board of Perinton, 42 A.D.2d 924, 348 N.Y.S.2d 403, 1973 N.Y. App. Div. LEXIS 3521 (N.Y. App. Div. 4th Dep't 1973), app. denied, 34 N.Y.2d 514, 1974 N.Y. LEXIS 2797 (N.Y. 1974).

Civic association and its president had standing to bring action under CLS St Fin Art 7A seeking preliminary injunction to compel New York City Transit Authority to enforce prior resolution of City Board of Estimate withdrawing approval of bus depot in neighborhood, where (1) president qualified as citizen-taxpayer, (2) action involved disposition of city or state property, (3) both plaintiffs represented neighborhood's real and substantial interest in construction of depot, and (4) plaintiffs were able to establish potential harm to them of possible negative environmental impact of project. Chester Civic Improv. Asso. v New York City Transit Authority, 122 A.D.2d 715, 505 N.Y.S.2d 638, 1986 N.Y. App. Div. LEXIS 59256 (N.Y. App. Div. 1st Dep't 1986).

City's plan to demolish old planetarium and build new planetarium on site was properly reviewed as city-owned, rather than city-aided, project for purpose of taxpayers' action seeking injunction to stop demolition, even though planetarium was not on city-owned land, where much of proposed construction would be on such land, including new garage, restaurant, visitors'

entrance, and public terrace; it was not arbitrary for commission to view project as whole. Beresford Apts. v City of New York, 238 A.D.2d 218, 656 N.Y.S.2d 607, 1997 N.Y. App. Div. LEXIS 4052 (N.Y. App. Div. 1st Dep't), app. denied, 89 N.Y.2d 815, 659 N.Y.S.2d 855, 681 N.E.2d 1302, 1997 N.Y. LEXIS 1220 (N.Y. 1997).

Nothing in relevant provisions of enabling statute (CLS Gen Mun § 96-a; CLS Gen Mun Art 5-K) or NYC Admin Code (§ 5-305(a)(2); § 25-318(a), (b); § 25-302(d)) requires that demolition project be exclusively on city-owned land in order to be reviewed as city-owned, rather than city-aided, project for purpose of taxpayers' action seeking injunction to stop demolition. Beresford Apts. v City of New York, 238 A.D.2d 218, 656 N.Y.S.2d 607, 1997 N.Y. App. Div. LEXIS 4052 (N.Y. App. Div. 1st Dep't), app. denied, 89 N.Y.2d 815, 659 N.Y.S.2d 855, 681 N.E.2d 1302, 1997 N.Y. LEXIS 1220 (N.Y. 1997).

Plaintiff, secured party having perfected security interest in 2 dump trucks seized by City of New York for alleged violations of antidumping statute (NYC Admin Code § 16-119), was not entitled to preliminary injunction directing city to return trucks since (1) forfeiture serves public interest by preventing return of impounded vehicles to guilty parties, (2) releasing vehicles to plaintiff would prevent forfeiture action from proceeding since court would lose jurisdiction over res, (3) preforfeiture release might interfere with city's right to any surplus in value in excess of secured debt, and (4) forfeiture statute had mechanism for plaintiff's rights to be asserted, and forfeiture proceeding was appropriate forum for those rights to be noted and protected. Frank Santora Equipment Corp. v New York, 138 Misc. 2d 631, 524 N.Y.S.2d 663, 1988 N.Y. Misc. LEXIS 49 (N.Y. Sup. Ct. 1988).

Court would not enjoin Division of Housing and Community Renewal (DHCR) from enforcing order decreasing legal regulated rent on petitioner's premises pending final determination by DHCR since pendency of application before administrative agency is not "action" within contemplation of CLS CPLR Art 63 so as to provide basis for preliminary relief; moreover, (1) payment of higher rent by tenants pending DHCR's determination would be just as burdensome as petitioner's collection of lower rent if no injunction issued, (2) petitioner failed to show

likelihood of success on merits where pleadings reflected conflict as to level of services provided to affected tenants, (3) petitioner did not demonstrate unconstitutional or ultra vires acts, irreparable injury or futility of further agency proceedings, (4) if successful before DHCR, petitioner could be fully recompensed by monetary award, and (5) DHCR was empowered to grant stay on such notice to affected parties and reasonable opportunity to be heard as it deemed appropriate. Wyndham Realty Co. v New York State Div. of Housing & Community Renewal, 139 Misc. 2d 418, 527 N.Y.S.2d 698, 1988 N.Y. Misc. LEXIS 171 (N.Y. Sup. Ct. 1988).

Preliminary injunctive relief was appropriate where (1) New York City Health and Hospitals Corporation (HHC) failed to obtain city council's consent before constructively surrendering HHC facility to New York City, allegedly because HHC lacked funds to make necessary repairs, and (2) city apparently precluded structural engineer retained by city council from conducting on-site inspection of facility buildings, thereby preventing city council from gathering facts sufficient to prepare for unsafe building proceeding under NYC Admin Code § 26-239(b). Council of City of New York v Giuliani, 183 Misc. 2d 799, 705 N.Y.S.2d 801, 1999 N.Y. Misc. LEXIS 639 (N.Y. Sup. Ct. 1999).

Jail inmates were entitled to preliminarily enjoin New York City hospitals and jails from violating CLS Men Hyg § 29.15 and 14 NYCRR 587.1 et seq. as to discharge planning for mentally ill inmates, and enjoining them to provide inmates with adequate discharge planning in compliance with statute and regulations. Brad H. v City of New York, 185 Misc. 2d 420, 712 N.Y.S.2d 336, 2000 N.Y. Misc. LEXIS 305 (N.Y. Sup. Ct.), aff'd, 276 A.D.2d 440, 716 N.Y.S.2d 852, 2000 N.Y. App. Div. LEXIS 11046 (N.Y. App. Div. 1st Dep't 2000).

Since taxpayers properly asserted claims against Town Trustees for misuse and waste of public funds, preliminary injunctive relief was warranted to impose fiscal and procedural oversight over the Trustees' financial actions by re-establishing the audit function of the Town Comptroller over the expenditures of the Trustees. Gessin v Throne-Holst, 979 N.Y.S.2d 776,

43 Misc. 3d 517, 2014 N.Y. Misc. LEXIS 518 (N.Y. Sup. Ct. 2014), rev'd in part, dismissed, 134 A.D.3d 31, 20 N.Y.S.3d 367, 2015 N.Y. App. Div. LEXIS 6799 (N.Y. App. Div. 2d Dep't 2015).

87. —Bidding

City agency would not be enjoined from commencing rebidding, or required to accept corporation's bid for collection services, since request for qualifications and city charter permitted city agency to reject any or all bids, and city agency rationally determined to reject all bids for purpose of reaching larger pool of applicants and to reduce cost of commissions after new bidding process. International Recovery Systems, Ltd. v New York City Dep't of Environmental Protection, 156 A.D.2d 312, 549 N.Y.S.2d 20, 1989 N.Y. App. Div. LEXIS 16380 (N.Y. App. Div. 1st Dep't 1989).

It was error to enjoin Department of Transportation (DOT) from awarding contracts for towing operations to highest bidders during pendency of Article 78 proceeding where conflicting evidence offered at preliminary injunctions hearing did not show that DOT acted arbitrarily and capriciously in determining that successful bidders met contract requirements, petitioners, second highest bidders, merely offered conclusory assertions that loss of towing contracts would cause them harm. Gandolfo v White, 224 A.D.2d 526, 638 N.Y.S.2d 160, 1996 N.Y. App. Div. LEXIS 1202 (N.Y. App. Div. 2d Dep't 1996).

Court properly dismissed Article 78 proceeding challenging New York City's decision to sell 2 public radio stations, and properly denied petitioner's motion for preliminary injunction, as (1) competitive bidding requirements of NYC Charter § 384 did not apply, (2) city's decision not to sell radio stations to highest bidder was not arbitrary and capricious given, inter alia, purchaser's irrefutable assurances that it would perpetuate unique character and value of radio stations by providing same non-commercial mix of programming as had been done for many years, and (3) city was not estopped from finalizing sale even if it had initially represented to petitioner that it would engage in competitive bidding and conduct public hearings. Creole Enters. v Giuliani, 236

A.D.2d 272, 653 N.Y.S.2d 576, 1997 N.Y. App. Div. LEXIS 1274 (N.Y. App. Div. 1st Dep't), app. denied, 90 N.Y.2d 802, 660 N.Y.S.2d 712, 683 N.E.2d 335, 1997 N.Y. LEXIS 1612 (N.Y. 1997).

88. —Emergency shelters

Court properly granted preliminary injunction directing city to develop plan to meet obligation of CLS Soc Serv § 409 et seq. to provide preventive services to families whose children were determined to be at risk of foster care, and enjoining state from imposing 90-day limit on emergency shelter as preventive service, where (1) legislature had imposed unequivocal duty on child welfare officials to preserve family integrity, and to further that goal social service officials were required to provide assistance to maintain children together with their parents, (2) plaintiffs sought only to insure compliance with nondiscretionary statutory requirements that plan be developed within certain mandatory timetables, not judicial intervention with respect to content of plan, (3) issue was justiciable, (4) relief was limited in scope and protected plaintiffs from irreparable injury of separation of families, and (5) relief gave social service agency administrative latitude; injunction would be limited, however, to direct that plans be promulgated only for specific plaintiffs before court. Martin A. v Gross, 153 A.D.2d 812, 546 N.Y.S.2d 75, 1989 N.Y. App. Div. LEXIS 11926 (N.Y. App. Div. 1st Dep't 1989), app. dismissed, 75 N.Y.2d 808, 552 N.Y.S.2d 110, 551 N.E.2d 603, 1990 N.Y. LEXIS 31 (N.Y. 1990).

New York City is obligated to provide emergency shelter meeting minimum standards of sanitation and safety for homeless families, and a preliminary injunction would issue compelling the city to provide homeless families with shelter and to assure the procedural rights of homeless families by implementing a system to review determinations and resolve problems. McCain v Koch, 127 Misc. 2d 23, 484 N.Y.S.2d 985, 1984 N.Y. Misc. LEXIS 3722 (N.Y. Sup. Ct. 1984), modified, 117 A.D.2d 198, 502 N.Y.S.2d 720, 1986 N.Y. App. Div. LEXIS 52475 (N.Y. App. Div. 1st Dep't 1986), aff'd, 136 A.D.2d 473, 523 N.Y.S.2d 112, 1988 N.Y. App. Div. LEXIS 245 (N.Y. App. Div. 1st Dep't 1988).

89. —Eminent domain

In granting preliminary injunction in favor of Power Authority of State of New York, permitting it to enter privately owned property to pursue preconstruction activities related to its exercise of eminent domain, trial court erred in imposing limitations upon size of trees that could be cut by authority, authority's use of track vehicles, and its location of test borings, since power authority had established likelihood of successfully establishing its right of entry and any damage caused by its entry would be fully compensable. Power Authority of New York v Potocnik, 124 A.D.2d 914, 508 N.Y.S.2d 665, 1986 N.Y. App. Div. LEXIS 62235 (N.Y. App. Div. 3d Dep't 1986).

90. —Employees

Court improperly granted preliminary injunction prohibiting New York City Transit Authority from deploying transit police officers at 2 of its facilities on ground that dangerous conditions existed in violation of right to safe workplace under CLS Labor § 27-a, since matter involved political question beyond scope of judicial review and plaintiffs did not demonstrate that specific conditions, ranging in severity from lack of emergency exits to insufficient locker space, were "extraordinary or emergency circumstances" warranting judicial intervention. McKechnie v New York City Transit Police Dep't of New York City Transit Authority, 130 A.D.2d 466, 515 N.Y.S.2d 48, 1987 N.Y. App. Div. LEXIS 46437 (N.Y. App. Div. 2d Dep't 1987).

In action for judgment declaring appointment of county clerk to be invalid, court properly exercised its discretion in granting preliminary injunction which barred county clerk from terminating employment of 3 named employees, especially in light of fact that preliminary injunction served salutary purpose of maintaining status quo pending resolution of controversy. Blass v Cuomo, 154 A.D.2d 416, 547 N.Y.S.2d 237, 1989 N.Y. App. Div. LEXIS 12437 (N.Y. App. Div. 2d Dep't 1989).

Police officers association was entitled to injunction to enjoin police department from compelling officers to undergo polygraph examinations in regard to money missing from vice and intelligence unit of police department pending outcome of improper practice charge filed with

Public Employment Relations Board. Schenectady Police Benevolent Ass'n v Schenectady, 158 A.D.2d 849, 551 N.Y.S.2d 643, 1990 N.Y. App. Div. LEXIS 8975 (N.Y. App. Div. 3d Dep't 1990).

Association of municipal employees was not entitled to preliminary injunction in action to challenge proposal by county executive to unilaterally implement personnel reductions affecting municipal positions during budget crisis since affected workers would be entitled to reinstatement and back pay if they prevailed; under circumstances, no irreparable injury was shown. Suffolk County Ass'n of Municipal Employees, Inc. v County of Suffolk, 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).

Court properly enjoined Port Authority of New York and New Jersey Police Benevolent Association from soliciting funds from port authority tenants and patrons for yearbook or any other cause, pursuant to port authority regulation which banned solicitation by port authority employees of port authority tenants and patrons, since regulation clearly served port authority's interest in preventing appearance of coercive conduct and overreaching by its employees. Port Authority of New York v Grillo, 186 A.D.2d 416, 589 N.Y.S.2d 4, 1992 N.Y. App. Div. LEXIS 11343 (N.Y. App. Div. 1st Dep't 1992).

Plaintiffs, challenging validity of legislation (L 1995 ch 119 §§ 13 and 16) affecting retirement benefits to be paid to former public employees under CLS Retire & S S §§ 78 and 378, were not entitled to preliminary injunction on basis of their contention that legislation improperly conditioned receipt of benefits on wavier of their constitutional right to petition courts for redress, since legislation merely required, as condition of plaintiffs' exercise of right to bring suit, that they forfeit certain monetary benefits, and such detriment could be fully redressed by monetary award. McCall v State, 215 A.D.2d 1, 632 N.Y.S.2d 725, 1995 N.Y. App. Div. LEXIS 10677 (N.Y. App. Div. 3d Dep't 1995).

Court abused its discretion in granting preliminary injunction to Article 78 petitioners in proceeding brought to challenge New York City's announcement that it would give extra credit to residents of city on firefighter civil service exam, since (1) petitioners failed to show irreparable injury where record revealed that they were aware of city-residency deadline at least 5 months

in advance, and thus had ample time to decide whether to move to city, (2) petitioners' claim that thousands of nonresident candidates would uproot themselves and move to city in absence of injunction was unsubstantiated and conclusory, and (3) equities balanced in favor of respondents, who established that injunction would disrupt their plans to establish eligible list, would require additional expenditure for overtime and training of provisional employees, and would put public safety at risk. McGuinn v City of New York, 219 A.D.2d 489, 645 N.Y.S.2d 770, 1995 N.Y. App. Div. LEXIS 9276 (N.Y. App. Div. 1st Dep't 1995), app. dismissed in part, app. denied, 87 N.Y.2d 966, 642 N.Y.S.2d 193, 664 N.E.2d 1256, 1996 N.Y. LEXIS 274 (N.Y. 1996).

Plaintiff seeking preliminary injunction prohibiting her continued suspension from employment failed to show that balance of equities favored her where she would be fully compensated for her loss of back pay if she prevailed on merits of underlying claim against employer, but it was much less certain that employer would be able to recoup its payments if it were required to pay plaintiff's salary pending outcome of litigation, and plaintiff had not articulated any severe consequence that would result if injunction were denied. Winkler v Kingston Hous. Auth., 238 A.D.2d 711, 656 N.Y.S.2d 421, 1997 N.Y. App. Div. LEXIS 3736 (N.Y. App. Div. 3d Dep't 1997).

CLS Men Hyg § 7.17(e)(3) does not bar issuance of preliminary injunction where defendants are implementing "significant service reduction" without providing 12-month notice mandated by that statute. Civil Serv. Emples. Ass'n, Local 1000 v New York State Office of Mental Health, 245 A.D.2d 836, 666 N.Y.S.2d 351, 1997 N.Y. App. Div. LEXIS 13203 (N.Y. App. Div. 3d Dep't 1997).

Police commissioner would not be enjoined from appointing nonuniformed members of New York City Police Department as investigators for Civilian Complaint Review Board since New York City Charter § 440, which provides that "commissioner shall assign personnel of the police department to assist the board and conduct investigations on its behalf," does not require commissioner to assign only uniformed personnel to investigate civilian complaints. Caruso v Ward, 135 Misc. 2d 793, 516 N.Y.S.2d 881, 1987 N.Y. Misc. LEXIS 2307 (N.Y. Sup. Ct. 1987),

aff'd, 144 A.D.2d 1046, 535 N.Y.S.2d 288, 1988 N.Y. App. Div. LEXIS 12569 (N.Y. App. Div. 1st Dep't 1988).

Fire alarm dispatcher (FAD) was not entitled to preliminary injunction enjoining City of New York and municipal officials from continuing to implement pilot program reducing minimum staffing levels for FADs at all borough fire headquarters where (1) dispatcher conceded that no one knew whether reduced staff would allow for effective dispatching, (2) fire department took “hard look” at possible obstacles facing program and made “reasoned elaboration” of basis for its determinations, (3) dispatcher neither advanced any specific data to warrant cancelling program, nor controverted positive results presented by fire department which resulted from 2-week simulation of pilot program prior to its implementation, and (4) remedy sought—to mandate certain staffing levels of FADs—did not lie since responsibility of Fire Department involved exercise of discretion by its commissioner, under New York City Charter, and not performance of act required by law. Pedalino v Giuliani, 165 Misc. 2d 324, 629 N.Y.S.2d 643, 1995 N.Y. Misc. LEXIS 292 (N.Y. Sup. Ct. 1995).

Firefighters who were out of work for extended periods while receiving their salaries under CLS Gen Mun § 207-a, and subsequently filed labor grievance challenging employment terms stated in employer’s order to return to light-duty work under § 207-a(3), were not entitled to preliminary injunction staying enforcement of return-to-work order pending arbitration decision on their labor grievance because they failed to establish likelihood of success on merits of their grievance or their objections to light-duty work where, inter alia, their labor grievance contradicted their claim that they were too disabled to perform any work by claiming that they, like their able-bodied colleagues, were entitled (and presumably fit enough) to work for 24 hours straight rather than mere 8-hour shifts; § 207-a(3) does not give employees on light duty any right to increase or select their hours of employment. Uniform Firefighters, Local 2562 v City of Cohoes, 175 Misc. 2d 726, 669 N.Y.S.2d 492, 1998 N.Y. Misc. LEXIS 33 (N.Y. Sup. Ct. 1998).

91. — —Disciplinary actions

Corrections officer was not entitled to temporary restraining order barring implementation of disciplinary proceedings based on directive aimed at curbing sick leave abuses since he would be entitled to backpay and reinstatement if he were terminated for sick leave abuses and such termination was later annulled; furthermore, allegation that possible loss of health benefits constituted showing of irreparable harm was speculative and not supported. Valentine v Schembri, 212 A.D.2d 371, 622 N.Y.S.2d 257, 1995 N.Y. App. Div. LEXIS 1247 (N.Y. App. Div. 1st Dep't 1995).

Preliminary injunction restraining enforcement of a department regulation against the wearing of a beard granted where the plaintiff supported his wife and six children and the suspension for refusal to shave his beard would cause him irreparable injury. Burlingame v Milone, 62 Misc. 2d 853, 310 N.Y.S.2d 407, 1970 N.Y. Misc. LEXIS 1681 (N.Y. Sup. Ct. 1970).

92. — —Unions

Sanitation workers' union was not entitled to preliminary injunction restraining municipality from terminating or laying off sanitation workers, in view of fact that sanitation men had been unable to demonstrate that they had clear legal right to such extraordinary remedy because of issues of fact presented by record and fact that sanitation men could be fully compensated by payment of back salaries and restoration of their old positions if they were found to have been illegally discharged. De Lury v New York, 48 A.D.2d 595, 378 N.Y.S.2d 49, 1975 N.Y. App. Div. LEXIS 9947 (N.Y. App. Div. 1st Dep't 1975).

93. — —Personnel transfers

Police officer was entitled to preliminary injunction pending arbitration to prevent county from transferring him to new squad assignment since record showed that, absent preliminary injunction, it was possible, if not likely, that his effectiveness in fulfilling his duties as sole trustee of patrolmen's benevolent association for his precinct would be undermined, rendering any subsequent award ineffectual. Suffolk County Patrolmen's Benevolent Ass'n v County of Suffolk,

150 A.D.2d 361, 540 N.Y.S.2d 882, 1989 N.Y. App. Div. LEXIS 5667 (N.Y. App. Div. 2d Dep't 1989).

Section 807 of the Labor Law has no application to employees of the Manhattan and Bronx Surface Transit Operating Authority, and those employees are “public employees,” who could properly be enjoined from participating in a strike. Manhattan & Bronx Surface Transit Operating Authority v Quill, 48 Misc. 2d 1021, 266 N.Y.S.2d 423, 1966 N.Y. Misc. LEXIS 2338 (N.Y. Sup. Ct. 1966).

94. —Environmental issues

Public authorities responsible for operation of Verrazano Narrows Bridge should have prepared Environmental Impact Statement under provisions of State Environmental Quality Review Act (SEQRA) prior to suspending collection of tolls from vehicles exiting bridge in each direction and charging doubled toll from vehicles exiting bridge in Manhattan, even though authorities’ decision to make change was in compliance with new federal law which required one-way collection of tolls on penalty of state loss of federal revenue, since public authorities retained discretion to forfeit federal funds and refuse to implement one-way toll system and thus they were not exempt from compliance with SEQRA; however, authorities would not be ordered to revert to old system until SEQRA procedures were completed where decision to make change was widely announced in advance, legal challenge was not made until after change had already been effected at cost of $430,000, additional cost and confusion would result from ordering reversion to old system, and state had not been joined as party to action. Golden v Metropolitan Transp. Authority, 126 A.D.2d 128, 512 N.Y.S.2d 710, 1987 N.Y. App. Div. LEXIS 41134 (N.Y. App. Div. 2d Dep't 1987).

In proceeding to compel mayor to comply with Uniform Land Use Review Procedure (ULURP), State Environmental Quality Review Act (SEQRA) and City Environmental Quality Review (CEQR) procedures with respect to his selection of city pier for temporary mooring of prison barge to alleviate jail overcrowding, it was error for court to grant petitioners’ motion for

preliminary injunction since (1) use of pier for temporary mooring of prison barge did not constitute disposition of city property or site selection for capital project under city charter, and thus ULURP review was not required, (2) under SEQRA and CEQR, emergency actions are exempt from environmental review, and (3) declaration of emergency issued by Commissioner of Correctional Services, to ameliorate urgent need for additional prison beds in compliance with federal court order, was not irrational, arbitrary or capricious. Silver v Koch, 137 A.D.2d 467, 525 N.Y.S.2d 186, 1988 N.Y. App. Div. LEXIS 1949 (N.Y. App. Div. 1st Dep't), app. denied, 73 N.Y.2d 702, 536 N.Y.S.2d 743, 533 N.E.2d 673, 1988 N.Y. LEXIS 3431 (N.Y. 1988).

Court properly granted preliminary injunction to enjoin plaintiffs from interfering with entry of Low-Level Radioactive Waste Siting Commission on plaintiffs' property for purpose of making tests and surveys pursuant to CLS ECL § 29-0305; condemnation was not required prior to entry. Blades v New York State Low-Level Radioactive Waste Siting Com., 166 A.D.2d 895, 560 N.Y.S.2d 555, 1990 N.Y. App. Div. LEXIS 12145 (N.Y. App. Div. 4th Dep't 1990).

Dispute between property owner and Department of Environmental Conservation as to viability of various alternate locations for well to monitor potential ground water contamination should be submitted to administrative law judge (ALJ) for evidentiary hearing in accord with parties' stipulation, and thus department would be enjoined from constructing well pending determination of issue, despite department's broad statutory powers to enter any inactive hazardous waste disposal site and to inspect and take samples of ground water, and despite fact that need for well had already been resolved by ALJ, where stipulation called for submission to ALJ of any issue regarding remediation of waste site on which parties could not agree. Kohilakis v New York State Dep't of Environmental Conservation, 171 A.D.2d 870, 567 N.Y.S.2d 796, 1991 N.Y. App. Div. LEXIS 3945 (N.Y. App. Div. 2d Dep't 1991).

In city's action for preliminary injunction against village's construction of multiuse bicycle trail on land located within city's watershed, city's claim that village neglected to submit Stormwater Pollution Prevention Plan required by 15 RCNY § 18-39(b)(3)(iv) was unavailing, because that regulation did not apply to trail, where § 39(b)(3)(iv) requires such plan for "[a] land clearing or

land grading project, involving two or more acres, located at least in part within the limiting distance of 100 feet of a watercourse or wetland," and that language shows intent to protect watercourses and wetlands from harmful effects of clearing and grading projects involving contiguous 2-acre parcels; it did not matter that Department of Environmental Protection might have adopted different interpretation, because issue was one of purely legal interpretation, for which agency expertise was not required. City of New York v Village of Tannersville, 263 A.D.2d 877, 694 N.Y.S.2d 801, 1999 N.Y. App. Div. LEXIS 8475 (N.Y. App. Div. 3d Dep't 1999).

City was not entitled to preliminary injunction against village's construction of multiuse bicycle trail on land located within city's watershed, even though city was empowered by CLS Pub Health § 1102(3) to seek injunctive relief to prevent violations of its rules and regulations without having to show irreparable harm, where Supreme Court was justified in finding, on conflicting affidavits of project managers, that area to be graded and cleared for trail encompassed less than 2 acres, and thus that city did not prove prima facie violation of 15 RCNY § 18-39(b)(3)(iv), which requires submission of Stormwater Pollution Prevention Plan for "[a] land clearing or land grading project, involving two or more acres, located at least in part within the limiting distance of 100 feet of a watercourse or wetland"; however, complaint stated cause of action and would not be dismissed where, assuming truth of allegations and according city every favorable inference, cognizable legal theory was alleged. City of New York v Village of Tannersville, 263 A.D.2d 877, 694 N.Y.S.2d 801, 1999 N.Y. App. Div. LEXIS 8475 (N.Y. App. Div. 3d Dep't 1999).

State was entitled to order temporarily restraining city from selling or physically altering about 750 community gardens, pending decision in state's action for permanent injunction against such sale or alteration without conducting full environmental review under State Environmental Quality Review Act, where imminent sale of those gardens would cause irreparable harm, denial of temporary injunction would render final judgment ineffectual, and thus required degree of proof of likelihood of success on merits would be reduced. State v City of New York, 275 A.D.2d 740, 713 N.Y.S.2d 360, 2000 N.Y. App. Div. LEXIS 9253 (N.Y. App. Div. 2d Dep't 2000).

95. —Fireworks

City rule requiring fire department escorts for transportation of fireworks within city was invalid where city's administrative code contained separate provisions for transportation of explosives and transportation of fireworks, and code required fire department escort for all vehicles transporting explosives but contained no such requirement regarding fireworks; thus, fireworks company was entitled to preliminary injunction compelling return of fireworks confiscated for lack of fire department escort. Bay Fireworks, Inc. v City of New York, 251 A.D.2d 359, 674 N.Y.S.2d 392, 1998 N.Y. App. Div. LEXIS 6621 (N.Y. App. Div. 2d Dep't 1998).

Petitioners, who contended that they were transporting "fireworks" to be used for legitimate fireworks displays and not "explosives," were entitled to preliminary injunctive relief in action challenging city's detention and seizure of their property pursuant to 3 RCNY § 40-07(e)(i), requiring fire department escort, as city's administrative code provisions relating to fireworks and explosives did not require escort, requiring escort resulted in charge for passing through city and thus impinged on intrastate and interstate commerce, and no rational basis was shown for fire department rule. Bay Fireworks v City of New York, 173 Misc. 2d 396, 661 N.Y.S.2d 731, 1997 N.Y. Misc. LEXIS 308 (N.Y. Sup. Ct. 1997), aff'd, 251 A.D.2d 359, 674 N.Y.S.2d 392, 1998 N.Y. App. Div. LEXIS 6621 (N.Y. App. Div. 2d Dep't 1998).

96. —Licenses

The Special Term did not abuse its discretion in granting an injunction pending litigation of a complaint to enjoin the defendant from performing plumbing work within the town limits, where it was alleged the defendant did not have in its employ a licensed master plumber pursuant to the town's plumbing code and ordinance. Poughkeepsie v Hopper Plumbing & Heating Corp., 23 A.D.2d 884, 259 N.Y.S.2d 992, 1965 N.Y. App. Div. LEXIS 4181 (N.Y. App. Div. 2d Dep't 1965).

Where there was presented a serious question as to the constitutionality of provision of New York City Administrative Code vesting apparent unbridled discretion in commission to define and determine the standards for granting a license for a place of public amusement, there was no

clear right to issuance of temporary injunction against operation of such establishment without license. New York v S & H Book Shop, Inc., 41 A.D.2d 637, 341 N.Y.S.2d 292, 1973 N.Y. App. Div. LEXIS 5025 (N.Y. App. Div. 1st Dep't 1973).

A temporary restraining order was issued to enjoin an unlicensed plumber from proceeding with work on a public school. Kingston v Bank, 45 Misc. 2d 176, 256 N.Y.S.2d 276, 1962 N.Y. Misc. LEXIS 3645 (N.Y. Sup. Ct. 1962).

97. —Permits and the like

A motion for temporary injunction, as modified, granted to enjoin defendant, his agents, servants, employees and attorneys, during pendency of action from further erecting, constructing or reconstructing any structure or building on premises owned by defendant without first securing a building permit as required by village ordinance. Catskill v Winter, 35 A.D.2d 854, 315 N.Y.S.2d 149, 1970 N.Y. App. Div. LEXIS 3572 (N.Y. App. Div. 3d Dep't 1970).

In an action for a declaratory judgment attacking the constitutionality of a local law dealing with solid waste management recycling and land fill, Special Term abused its discretion in denying plaintiffs' application for preliminary injunction where a substantial likelihood existed that a local law which mandated the licensing of existing solid waste operations could be unconstitutional in its effect upon plaintiffs particularly with respect to power given the Town Board to compel a cessation of plaintiffs' businesses by denying their permit applications. Furthermore, once a holder of a building permit for a nonconforming use enters into construction and incurs substantial liabilities in reliance thereon, he has a vested right in the permit which may not be destroyed by revocation thereof. Moreover, plaintiffs' affidavits and those of its customers pertaining to the anticipated consequences from stoppage of plaintiffs' activities met fully the requirement of a showing of irreparable injury. Niagara Recycling, Inc. v Niagara, 83 A.D.2d 316, 443 N.Y.S.2d 939, 1981 N.Y. App. Div. LEXIS 15135 (N.Y. App. Div. 4th Dep't 1981).

In town's action to enjoin defendant from performing certain construction without permit, defendant was not entitled to vacatur of preliminary injunction based on existence of building

permit where construction actually commenced far exceeded construction authorized by permit, and town code relating to permit amendments did not provide that original permit could be relied on to authorize substantial alteration of construction plan submitted with original application. Stanford v Donnelly, 131 A.D.2d 465, 516 N.Y.S.2d 96, 1987 N.Y. App. Div. LEXIS 47919 (N.Y. App. Div. 2d Dep't 1987).

Supreme Court was not required to enjoin county from taking further action on construction of proposed complex after county's negative declaration had been annulled by Appellate Division since State Environmental Quality Review Act (CLS ECL Art 8) mandates that required Environmental Impact Statement be completed before county could act, and thus injunction was unnecessary. Dickinson v County of Broome, 183 A.D.2d 1013, 583 N.Y.S.2d 637, 1992 N.Y. App. Div. LEXIS 7166 (N.Y. App. Div. 3d Dep't 1992).

In view of local plumbing inspector's futile pleas for compliance, fact that town permitted plumbing contractor to complete substantial portion of work on public school building before taking action to enjoin further work thereon, did not constitute laches sufficient to bar injunctive relief. Poughkeepsie v Hopper Plumbing & Heating Corp., 45 Misc. 2d 23, 255 N.Y.S.2d 932, 1965 N.Y. Misc. LEXIS 2328 (N.Y. Sup. Ct.), aff'd, 23 A.D.2d 884, 259 N.Y.S.2d 992, 1965 N.Y. App. Div. LEXIS 4181 (N.Y. App. Div. 2d Dep't 1965).

Where the plaintiff sought a preliminary injunction enjoining defendant from renting premises without securing a certificate of occupancy, summary judgment for alleged violations of the Municipal Code, and civil penalties for failure to obey an order to repair or vacate the premises, and defendant's answer raised questions of fact as to the condition of the premises, alleged bias on the part of city officials, and the moving papers did not disclose a dire emergency, no preliminary injunction would be ordered and summary judgment with respect to the alleged violations of the Code was refused, as a matter of discretion, although judgment was granted summarily for the assessment of civil penalties in order to prevent the defendant from gaining rent and time by inaction. Rochester v Diksu Corp., 47 Misc. 2d 407, 262 N.Y.S.2d 690, 1965 N.Y. Misc. LEXIS 1768 (N.Y. Sup. Ct. 1965).

County sheriff was not entitled to writ of mandamus compelling county clerk to deliver him copies of all records on file with clerk relating to pistol permit applications and gun dealer license applications, and sheriff was also not entitled to permanent injunction preventing clerk from participating in pistol permit process, since county court judge, as designated “licensing officer” under CLS Penal § 265.00(10), had exclusive authority under CLS Penal § 400.00(4-a) to determine clerical requirements necessary for application process. McGreevy v Casale, 147 Misc. 2d 534, 558 N.Y.S.2d 442, 1990 N.Y. Misc. LEXIS 303 (N.Y. Sup. Ct. 1990).

In Article 78 proceeding to annul New York City Landmarks Preservation Commission’s decision not to consider certain brownstone buildings for landmark status, residents of neighboring buildings were not entitled to preliminarily enjoin demolition of subject buildings and construction of 17-story tower by respondent developers, as they were not likely to succeed on merits, and developers stood to lose great deal of money (and their window of opportunity to build tower) if injunction issued whereas all neighbors stood to lose was some sunlight and charm. Deane v City of New York Dep't of Bldgs., 177 Misc. 2d 687, 677 N.Y.S.2d 416, 1998 N.Y. Misc. LEXIS 328 (N.Y. Sup. Ct. 1998).

98. — —Illustrative cases

Village was entitled to judgment directing hotel to remove all portions of exterior deck erected adjacent to hotel, and permanently enjoining it from constructing deck, where (1) village had denied hotel’s application to construct deck, (2) despite denial of application, hotel built deck, and (3) during pendency of instant action, hotel commenced Article 78 proceeding in which it was held that village did not act in arbitrary or capricious manner in denying application and that hotel could not build deck without authorization from village; all claims raised by hotel were decided in Article 78 proceeding, which had res judicata effect. Ocean Beach v Artrol Corp., 184 A.D.2d 681, 585 N.Y.S.2d 458, 1992 N.Y. App. Div. LEXIS 8476 (N.Y. App. Div. 2d Dep't 1992).

Court properly enjoined city from implementing prepaid residential parking permit plan since plan discriminated against nonresidents by requiring them to pay annual fee of more than 50

times that charged to residents. New York State Pub. Emples. Fedn v City of Albany, 269 A.D.2d 707, 703 N.Y.S.2d 573, 2000 N.Y. App. Div. LEXIS 2083 (N.Y. App. Div. 3d Dep't 2000).

Plaintiffs were not entitled to injunction preventing operation of emergency shelter in their community pending city's completion of environmental review under State Environmental Quality Review Act (SEQRA) and City Environmental Quality Review (CEQR) in view of city's assertion that emergency existed with respect to use of facility in question within meaning of 6 NYCRR § 617.2 and CEQR. Spring-Gar Community Civic Ass'n v Homes for Homeless, Inc., 135 Misc. 2d 689, 516 N.Y.S.2d 399, 1987 N.Y. Misc. LEXIS 2291 (N.Y. Sup. Ct. 1987).

Property owners were not entitled to preliminary injunction or to summary judgment declaring as void village's approval of plans for paper road on subdivision map filed over 30 years previous since (1) there had been no revocation of dedication of road by all abutting landowners, (2) map submitted on motion did not establish departure from earlier filed map, and (3) village had power to approve submitted plan which did not purport to alter or amend ancient filed map. Nager v Saddle Rock, 140 Misc. 2d 644, 530 N.Y.S.2d 966, 1988 N.Y. Misc. LEXIS 423 (N.Y. Sup. Ct. 1988), aff'd, 160 A.D.2d 785, 555 N.Y.S.2d 614, 1990 N.Y. App. Div. LEXIS 4195 (N.Y. App. Div. 2d Dep't 1990).

Court would not enjoin implementation of contract between New York City Health and Hospitals Corporation (HHC) and private entity to provide supplementary emergency ambulance services where no irreparable harm had been demonstrated, and injunction would result in deprivation to public of such ambulance service pending resolution of labor dispute between HHC and public employees' union. Hill v Boufford, 141 Misc. 2d 654, 533 N.Y.S.2d 843, 1988 N.Y. Misc. LEXIS 665 (N.Y. Sup. Ct. 1988).

Cellular telephone company was entitled to preliminary injunction in its action to enjoin enforcement of town's moratorium on wireless telecommunication facilities, where town failed to comply with section of Telecommunications Act of 1966 providing, inter alia, that state or local government may not enact regulations which have effect of prohibiting personal wireless

services. Sprint Spectrum, L.P. v Town of W. Seneca, 172 Misc. 2d 287, 659 N.Y.S.2d 687, 1997 N.Y. Misc. LEXIS 43 (N.Y. Sup. Ct. 1997).

99. —Public officers

Provisions of CLS Pub O § 73(14) which permit criminal prosecutions for violation of that section's conflict of interest restrictions only on referral by Ethic Commission are "highly troublesome" since they encroach on power of executive branch, as represented by state's prosecutors, to ensure "that the laws are faithfully executed," and invade power of grand juries to inquire into wilful misconduct of public officers; however, former executive branch employees would not be entitled to preliminary injunctive relief based on provisions' alleged unconstitutionality since such relief was unnecessary in light of absence of imminent threat of prosecution. Forti v New York State Ethics Com., 75 N.Y.2d 596, 555 N.Y.S.2d 235, 554 N.E.2d 876, 1990 N.Y. LEXIS 754 (N.Y. 1990).

Whether order reinstating petitioners to their employment with civil defense commission was incident to the Article 78 proceeding or a preliminary injunction made little difference, as irreparable damage must be shown for either and loss of employment does not constitute irreparable damage. Stewart v Parker, 41 A.D.2d 785, 341 N.Y.S.2d 189, 1973 N.Y. App. Div. LEXIS 5000 (N.Y. App. Div. 3d Dep't 1973).

The trial court erred in denying plaintiff's motion to punish defendants for contempt of court, and the matter would be remanded for an evidentiary hearing, where plaintiffs contended that defendants had violated the injunction previously granted by the court both directly and by a wilful and calculated course of conduct designed to evade the provisions of that injunction. Seven Hanover Square Corp. v Kaufman, 81 A.D.2d 789, 439 N.Y.S.2d 36, 1981 N.Y. App. Div. LEXIS 11434 (N.Y. App. Div. 1st Dep't 1981).

It was abuse of discretion to enjoin State Ethics Commission from enforcing its advisory opinion which held that plaintiffs, former state officers or employees who left service before January 1, 1989, were subject to "revolving door" provisions of Ethics in Government Act (L 1987, ch 813),

which, inter alia, prohibits former state officers and employees from appearing before their former agencies for 2 years, since (1) it was unlikely that plaintiffs would prevail on their claims that CLS Pub O § 73(8), which codified 2-year prohibition, was not applicable to state officers and employees who left state service prior to January 1, 1989, or that § 73(8) involves improper delegation of legislative function by allowing state agencies to adopt more restrictive revolving door standard regulating practice before them, or that § 73(8) violates equal protection and is ex post facto in nature, (2) although plaintiffs would likely prevail on their claim that CLS Pub O § 73(14) violates separation of powers by granting commission authority to determine when violations of Act are to be criminally prosecuted, such offending provision could be severed from remaining provisions of Act to avoid any irreparable harm to plaintiffs, and (3) equities did not favor issuance of injunction since it was likely that only § 73(14) would be affected by any ultimate success on merits by plaintiffs, while substantive provisions governing plaintiffs' conduct would likely remain intact. Kuttner v Cuomo, 147 A.D.2d 215, 543 N.Y.S.2d 172, 1989 N.Y. App. Div. LEXIS 7543 (N.Y. App. Div. 3d Dep't 1989), aff'd, 75 N.Y.2d 596, 555 N.Y.S.2d 235, 554 N.E.2d 876, 1990 N.Y. LEXIS 754 (N.Y. 1990).

In action against Nassau County legislator, alleging that he should recuse himself from voting on appointment to board of directors of Nassau off-track betting (OTB) corporation due to conflict of interest arising from his employment as branch manager of New York City OTB and his membership in union representing employees of Nassau OTB employees and New York City OTB branch managers, plaintiff's conclusory affidavit and hearsay testimony were insufficient to establish likelihood of success on merits, and thus preliminary injunction should have been denied; plaintiff, as president of Nassau OTB, also failed in his burden to show that he would suffer irreparable harm, or that balance of equities favored preliminary injunctive relief. Peterson v Corbin, 275 A.D.2d 35, 713 N.Y.S.2d 361, 2000 N.Y. App. Div. LEXIS 9440 (N.Y. App. Div. 2d Dep't), app. dismissed, 95 N.Y.2d 919, 719 N.Y.S.2d 646, 742 N.E.2d 121, 2000 N.Y. LEXIS 3539 (N.Y. 2000).

Low bidder on dormitory project was not entitled to injunction since dormitory authority is not required to accept lowest bid and dormitory authority's motion for summary judgment would be granted. Thompson Constr. Corp. v Dormitory Authority, 48 Misc. 2d 296, 264 N.Y.S.2d 842, 1965 N.Y. Misc. LEXIS 1459 (N.Y. Sup. Ct. 1965).

An injunction will not be summarily issued against public officials, since the court cannot presume that they will fail or refuse to perform their duties. 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).

A taxpayer's motion for a preliminary injunction, enjoining certain state officials from appointing certain provisional court officers as provisional senior court officers, would be denied where no candidates were available for appointment as permanent senior court officers, where Civ S Law § 65(1) did not require that a provisional appointee be fully qualified for permanent appointment or that she be eligible to take the civil service test for the position to which she was being appointed, where the challenged appointments were for terms of less than nine months and where the equities clearly favored the state officials. O'Reilly v Evans, 106 Misc. 2d 959, 436 N.Y.S.2d 795, 1980 N.Y. Misc. LEXIS 2805 (N.Y. Sup. Ct. 1980).

Commissioner of New York City Department of Transportation exceeded his authority by prohibiting bicycles from designated midtown Manhattan streets during certain hours by mere posting of signs since commissioner may regulate traffic in such manner only through enactment of formal rules and regulations (NY City Charter § 2903), and bicycle ban was not enacted in form of regulation with mandated publication and notice (NY City Charter § 1105); provision of CLS Veh & Tr § 1642 that city may regulate traffic by "order" does not relieve commissioner from requirements of New York City Charter. Association of Messenger Services, Inc. v New York, 136 Misc. 2d 869, 519 N.Y.S.2d 506, 1987 N.Y. Misc. LEXIS 2523 (N.Y. Sup. Ct. 1987).

Public officials could not be enjoined from making public statements about ballot proposition; public officials have not only right of free speech but responsibility to express their views on any issue which affects electorate they serve. Schulz v State, 148 Misc. 2d 677, 561 N.Y.S.2d 377,

1990 N.Y. Misc. LEXIS 516 (N.Y. Sup. Ct. 1990), app. dismissed, aff'd, 175 A.D.2d 356, 572 N.Y.S.2d 434, 1991 N.Y. App. Div. LEXIS 9518 (N.Y. App. Div. 3d Dep't 1991).

Since taxpayers properly asserted claims against Town Trustees for misuse and waste of public funds, preliminary injunctive relief was warranted to impose fiscal and procedural oversight over the Trustees' financial actions by re-establishing the audit function of the Town Comptroller over the expenditures of the Trustees. Gessin v Throne-Holst, 979 N.Y.S.2d 776, 43 Misc. 3d 517, 2014 N.Y. Misc. LEXIS 518 (N.Y. Sup. Ct. 2014), rev'd in part, dismissed, 134 A.D.3d 31, 20 N.Y.S.3d 367, 2015 N.Y. App. Div. LEXIS 6799 (N.Y. App. Div. 2d Dep't 2015).

100. —Public welfare

Supreme Court had power to issue preliminary injunction requiring New York City Departments of Social Services and of Housing, Preservation and Development to provide housing which satisfied minimum standards of sanitation, safety and decency when such agencies had undertaken to provide emergency housing for families with children; remittal to Appellate Division would be necessary, however, to consider other questions presented, including whether there was abuse of discretion by Supreme Court or whether Appellate Division should make different disposition in exercise of its discretion. McCain v Koch, 70 N.Y.2d 109, 517 N.Y.S.2d 918, 511 N.E.2d 62, 1987 N.Y. LEXIS 16832 (N.Y. 1987), aff'd, 136 A.D.2d 473, 523 N.Y.S.2d 112, 1988 N.Y. App. Div. LEXIS 245 (N.Y. App. Div. 1st Dep't 1988).

Issue of Supreme Court’s power to grant preliminary injunction sought by homeless families against New York City agencies to enforce certain minimum housing standards was not rendered moot when Department of Social Services adopted substance of standards in promulgating its own more detailed and stringent minimum standards since (1) it was not words of standards, whether in injunction or regulations, but compliance with them which would produce minimally adequate housing to which families sought entitlement and (2) Appellate Division, in concluding as matter of law that Supreme Court lacked power to establish such standards, did not pass on issues pertaining to city’s alleged noncompliance with standards or to

need for and propriety of court's injunction compelling such compliance. McCain v Koch, 70 N.Y.2d 109, 517 N.Y.S.2d 918, 511 N.E.2d 62, 1987 N.Y. LEXIS 16832 (N.Y. 1987), aff'd, 136 A.D.2d 473, 523 N.Y.S.2d 112, 1988 N.Y. App. Div. LEXIS 245 (N.Y. App. Div. 1st Dep't 1988).

In action commenced on behalf of homeless persons who suffer from HIV-related illness, seeking declaratory judgment and injunction requiring city to provide plaintiffs with medically appropriate housing, lower courts improperly concluded that city's program for assisting plaintiffs was inadequate based on holding of McCain v Koch, 70 NY2d 109, which delineated court's equitable powers to craft standards of minimal habitability for homeless, where city had implemented comprehensive program for housing HIV-ill and other medically frail individuals with input from public health experts; plaintiffs were not entitled to plenary judicial review of merits of city's special needs housing program embodied in departmental guidelines. Mixon v Grinker, 88 N.Y.2d 907, 646 N.Y.S.2d 661, 669 N.E.2d 819, 1996 N.Y. LEXIS 1524 (N.Y.), reh'g denied, 88 N.Y.2d 1018, 649 N.Y.S.2d 384, 672 N.E.2d 610, 1996 N.Y. LEXIS 3124 (N.Y. 1996).

Social service agencies do not have unconditional, nondiscretionary duty to find that child is in need of preventive services under circumstances set forth in regulations under CLS Soc Serv § 409-a, and court lacked authority to grant preliminary injunction requiring agencies to prepare service plans as to such children within 30 days, since injunction would impermissibly direct agency officials to exercise their discretion in particular way; if children were denied preventive services to which they were entitled because agencies failed to make statutorily prescribed findings, appropriate remedy was administrative hearing followed by Article 78 review. Grant v Cuomo, 130 A.D.2d 154, 518 N.Y.S.2d 105, 1987 N.Y. App. Div. LEXIS 45076 (N.Y. App. Div. 1st Dep't 1987), app. dismissed, 70 N.Y.2d 899, 524 N.Y.S.2d 428, 519 N.E.2d 339, 1987 N.Y. LEXIS 19943 (N.Y. 1987), aff'd, 73 N.Y.2d 820, 537 N.Y.S.2d 115, 534 N.E.2d 32, 1988 N.Y. LEXIS 3514 (N.Y. 1988).

Court would dismiss, without prejudice to further proceedings, class action seeking preliminary injunction to enjoin Department of Social Services from cutting off shelter allowance under Aid to

Families for Dependent Children program for children in foster care without plans for adoption, since plaintiffs were not representative of class of persons allegedly kept apart as family because of denial or termination of shelter benefits where mother had been fighting alcohol, drug addiction and psychological problems which led to her parental rights being terminated. Campfield v Perales, 169 A.D.2d 267, 573 N.Y.S.2d 80, 1991 N.Y. App. Div. LEXIS 9545 (N.Y. App. Div. 1st Dep't 1991).

Plaintiffs who challenged implementation of New York City's mandatory Work Experience Program for public assistance recipients classified as "employable with limitations" due to medical problems sufficiently demonstrated probability of success on their claim that notices sent by city violated due process by failing to inform them how to decline improper assignments without losing benefits while their grievances were pending, and thus they were entitled to preliminary injunctive relief, suspending sanctions against them during pendency of action and directing city to give them adequate and timely notice of their right to contest medically inappropriate assignments. Mitchell v Barrios-Paoli, 253 A.D.2d 281, 687 N.Y.S.2d 319, 1999 N.Y. App. Div. LEXIS 2998 (N.Y. App. Div. 1st Dep't 1999).

Class of homeless families with special medical needs was entitled to preliminary injunctive relief as against New York City in order to bar families' referral to mass shelters where class showed that (1) it would prevail on merits in action seeking referral to facilities with private accommodations appropriate for their medical needs, given facts that numerous administrative hearing decisions had explicitly found mass shelters to be inappropriate to families with young infants, pregnant women and medically vulnerable members and therefore such placement was inconsistent with Social Services Law, State Administrative Directive 83 ADM-47 and State Family Shelter Regulation 18 NYCRR § 900.6, and (2) placement of pregnant mothers and tiny babies in mass shelters would cause irreparable harm; since city did not dispute importance of private accommodations for such families, no balancing of equities would be necessary. Slade v Koch, 135 Misc. 2d 283, 514 N.Y.S.2d 847, 1987 N.Y. Misc. LEXIS 2212 (N.Y. Sup. Ct.),

modified, 136 Misc. 2d 119, 517 N.Y.S.2d 389, 1987 N.Y. Misc. LEXIS 2393 (N.Y. Sup. Ct. 1987).

City was not entitled to dismissal of request for preliminary injunction brought by children and families who were denied protective and preventive services to avert need for foster care, on ground that issue was moot because plaintiffs were currently being provided with preventive services, where virtually no such services were provided until plaintiffs became parties to litigation, city was unable to comply with preliminary relief which had already been granted because of far-reaching problems in preventive services system, issues raised were of public importance, and, though likely to recur, they would evade review. Martin A. v Gross, 138 Misc. 2d 212, 524 N.Y.S.2d 121, 1987 N.Y. Misc. LEXIS 2792 (N.Y. Sup. Ct. 1987), aff'd, 153 A.D.2d 812, 546 N.Y.S.2d 75, 1989 N.Y. App. Div. LEXIS 11926 (N.Y. App. Div. 1st Dep't 1989).

Public assistance recipients with employability limitations, who were given Work Experience Program (WEP) assignments that were allegedly inconsistent with their limitations, were entitled to preliminary injunction staying enforcement of their WEP obligations because it was clear that they were subject to irreparable harm while there was no apparent harm to defendants, and they were likely to succeed on merits of their claims that notices of employability were inadequate and improper. Santana v Hammons, 177 Misc. 2d 223, 673 N.Y.S.2d 882, 1998 N.Y. Misc. LEXIS 183 (N.Y. Sup. Ct. 1998).

Nineteen-year-old high school students whose families relied on public assistance to meet their basic needs were entitled to preliminary injunctive relief, enjoining state and city defendants from enforcing their Work Experience Program (WEP) obligations, pending determination of whether their WEP assignments interfered with their high school studies in violation of CLS NY Const Art XI § 1 and state law. Matthews v Barrios-Paoli, 178 Misc. 2d 602, 676 N.Y.S.2d 757, 1998 N.Y. Misc. LEXIS 325 (N.Y. Sup. Ct. 1998).

101. — —Preliminary injunction appropriate

In action for declaratory and injunctive relief to restrain city agencies' failure to achieve full compliance with statutory directive to investigate reports of suspected child abuse or neglect within 24 hours, preliminary injunction was appropriate despite agencies' contention that their failure was attributable to human error, which could not be corrected by injunctive relief, and to various administrative and budgetary constraints inappropriate for judicial intervention; court could find that injunction would serve valid purpose in view of (1) persistence of unacceptable degree of noncompliance with specific statutory directive affecting welfare of abused children, and (2) fact that lawsuit itself brought about increased government concern and attention. Grant v Cuomo, 130 A.D.2d 154, 518 N.Y.S.2d 105, 1987 N.Y. App. Div. LEXIS 45076 (N.Y. App. Div. 1st Dep't 1987), app. dismissed, 70 N.Y.2d 899, 524 N.Y.S.2d 428, 519 N.E.2d 339, 1987 N.Y. LEXIS 19943 (N.Y. 1987), aff'd, 73 N.Y.2d 820, 537 N.Y.S.2d 115, 534 N.E.2d 32, 1988 N.Y. LEXIS 3514 (N.Y. 1988).

In issuing injunction pendente lite, requiring New York City Department of Housing Preservation and Development (HPD) to provide emergency shelter to certain homeless families, Supreme Court did not abuse its discretion in also directing HPD to comply with court-imposed minimum standards governing nature of housing to be provided, since emergency housing regulations adopted by State Department of Social Services (DSS) were binding only on DSS officials, and thus court-ordered standards incorporated in preliminary injunction constituted the only such standards which were binding on HPD. McCain v Koch, 136 A.D.2d 473, 523 N.Y.S.2d 112, 1988 N.Y. App. Div. LEXIS 245 (N.Y. App. Div. 1st Dep't 1988).

Supreme Court did not abuse its discretion in granting motion for preliminary injunction directing New York City defendants to comply with their obligations under CLS NY Const Art XVII § 1 to aid, care for and support needy by reducing population of 2 homeless shelters to 200 beds each, as required by 18 NYCRR § 491.3(g)(1)(i), enforcing 30-bed limit in dormitory room of one shelter, as required 18 NYCRR § 491.10(o)(9)(iv), and curing existing fire code violations, notwithstanding City's claimed lack of resources, where City had been aware of overcrowded conditions for more than decade and had been specifically informed by Department of Social

Services that its application for waiver of 200-bed requirement was denied due to numerous code violations and that no future applications would be considered in absence of specific plan for occupancy reduction. Doe v Dinkins, 192 A.D.2d 270, 600 N.Y.S.2d 939, 1993 N.Y. App. Div. LEXIS 7609 (N.Y. App. Div. 1st Dep't 1993).

In action for declaratory and injunctive relief challenging adequacy of shelter allowance schedule for recipients of Aid to Dependent Children residing in New York City, court properly granted preliminary injunctive relief compelling Commissioner of Social Services to pay rent arrears to plaintiff's landlord where plaintiff demonstrated irreparable harm of possible eviction if relief were not granted, likelihood of success on merits on claim that challenged shelter schedule was inadequate to obtain housing in New York City, and that balance of equities was in her favor so as to maintain status quo while awaiting final determination of claim. Jiggetts v Perales, 202 A.D.2d 341, 609 N.Y.S.2d 222, 1994 N.Y. App. Div. LEXIS 3027 (N.Y. App. Div. 1st Dep't 1994).

Residents of emergency shelters were entitled to preliminary injunction to extent that they would be provided with Medicaid and cash Home Relief grants exclusive of shelter allowance, and that state and New York City Departments of Social Services would be directed to develop plan which would permit shelter residents to choose to receive goods and services formerly provided "in kind" and to pay for them out of their Home Relief grants; residents established that they would prevail on merits of their claim that denial of grants violated Social Service Law, that denial would cause irreparable harm in form of physical deprivation and psychological hardship, and that their suffering was far more compelling than possibility of administrative inconvenience or monetary loss to government. Thrower v Perales, 138 Misc. 2d 172, 523 N.Y.S.2d 933, 1987 N.Y. Misc. LEXIS 2788 (N.Y. Sup. Ct. 1987).

Children and their families were likely to succeed on merits of their claims that they were entitled to protective and preventive services either to avert need for foster care placement or to shorten duration of foster care, so as to entitle them to preliminary injunction, where, even after plaintiffs were granted preliminary relief, state and New York City Departments of Social Services were unable to evaluate families adequately or to provide services which comported with applicable

statutes and regulations, such as emergency shelter, housing assistance, psychotherapeutic services, and homemaker services. Martin A. v Gross, 138 Misc. 2d 212, 524 N.Y.S.2d 121, 1987 N.Y. Misc. LEXIS 2792 (N.Y. Sup. Ct. 1987), aff'd, 153 A.D.2d 812, 546 N.Y.S.2d 75, 1989 N.Y. App. Div. LEXIS 11926 (N.Y. App. Div. 1st Dep't 1989).

Office of Mental Health was enjoined under CLS CPLR §§ 6301 and 6311 from implementing "significant service reductions" at community-based state psychiatric facility until 12 months from such time as proper notification of proposed reductions was made to all persons and groups delineated by CLS Men Hyg § 7.17. Grant v New York State Office of Mental Health, 169 Misc. 2d 896, 646 N.Y.S.2d 1018, 1996 N.Y. Misc. LEXIS 293 (N.Y. Sup. Ct. 1996).

Village was granted preliminary injunction prohibiting sheriff from conducting evictions in manner that violated anti-littering ordinance as it was likely to prevail on merits, injunction would not prevent sheriff from carrying out his statutory duties, longstanding practice by which sheriff physically removed evicted tenant's possessions from premises and placed them at curb adjacent to premises posed danger of irreparable harm to village even if sheriff placed property at curb in orderly fashion, village was within its right to promote general welfare of community, and village had no remedy at law. Inc. Vill. of Hempstead v Jablonsky, 187 Misc. 2d 792, 724 N.Y.S.2d 808, 2001 N.Y. Misc. LEXIS 87 (N.Y. Sup. Ct. 2001).

City residents who were affected by a police department's security plan surrounding its headquarters based on an increased security risk after September 11, 2001, were not entitled to a preliminary injunction lifting the plan given the security risk. Matter of Chatham Towers Inc. v Bloomberg, 793 N.Y.S.2d 670, 6 Misc. 3d 814, 2004 N.Y. Misc. LEXIS 2693 (N.Y. Sup. Ct. 2004), aff'd in part, modified, 18 A.D.3d 395, 795 N.Y.S.2d 577, 2005 N.Y. App. Div. LEXIS 5713 (N.Y. App. Div. 1st Dep't 2005).

102. — —Preliminary injunction not appropriate

It was error to enjoin New York City from using or altering building located within city hospital complex for purpose of sheltering homeless men prior to filing of environmental impact

statement under State Environmental Quality Review Act (SEQRA) and before complying with Uniform Land Use Review Procedure (ULURP) (New York City Charter § 197-c), since 6 NYCRR § 617.2, implementing SEQRA, and City Environmental Quality Review (CEQR) § 4(h) exempt from environmental laws "actions which are immediately necessary on limited emergency basis "for protection of life and health, and city could reasonably conclude that use of building for homeless shelter was emergency action; although there were no exceptional provisions for emergency situations in ULURP, petitioners could participate in ULURP review while city continued to utilize premises. Greenpoint Renaissance Enterprise Corp. v New York, 137 A.D.2d 597, 524 N.Y.S.2d 488, 1988 N.Y. App. Div. LEXIS 990 (N.Y. App. Div. 2d Dep't), app. denied, 72 N.Y.2d 810, 534 N.Y.S.2d 938, 531 N.E.2d 658, 1988 N.Y. LEXIS 2909 (N.Y. 1988).

Foster parents were properly denied preliminary injunction under CLS CPLR § 6301, to enjoin removal of foster child from their home so that she could be placed with adoptive family with whom her 2 siblings resided, since respondent social services agency acted in child's best interest and did not abuse its broad discretion under CLS Soc Serv § 383 in ordering removal in light of psychiatrist's opinion that joining child with her siblings would not be detrimental, and strong policy in favor of joining siblings where practical. Ferri v County of Broome, 154 A.D.2d 771, 546 N.Y.S.2d 223, 1989 N.Y. App. Div. LEXIS 12394 (N.Y. App. Div. 3d Dep't 1989).

Mother and her children, who had been placed in foster care, were not entitled to preliminary injunction directing Department of Social Services not to cut off shelter benefits for children under Aid to Families With Dependent Children program, and directing reinstatement of such benefits, since there was no adequate showing of insufficiency of current policy of continuing shelter benefits for up to 180 days after placement of child in foster care, and reinstatement of benefits for up to 2 months prior to return of child from foster care. Campfield v Perales, 169 A.D.2d 267, 573 N.Y.S.2d 80, 1991 N.Y. App. Div. LEXIS 9545 (N.Y. App. Div. 1st Dep't 1991).

Court improperly enjoined municipal respondents from taking any adverse action as to petitioner's application for public assistance for his failure to appear for Eligibility Verification

Review (EVR), and directing respondents to issue directives eliminating EVRs as requirement for establishing or maintaining benefits and services provided through Division of AIDS Services Income Support (DASIS); contrary to petitioner's contention, use of non-DASIS staff for EVR process does not violate NYC Local Law No. 49. Hernandez v Barrios-Paoli, 253 A.D.2d 585, 677 N.Y.S.2d 535, 1998 N.Y. App. Div. LEXIS 9244 (N.Y. App. Div. 1st Dep't 1998), rev'd, 93 N.Y.2d 781, 698 N.Y.S.2d 590, 720 N.E.2d 866, 1999 N.Y. LEXIS 3430 (N.Y. 1999).

It was error to grant plaintiffs' motion for preliminary injunction enjoining defendants from assigning them to Work Experience Program before creating employability plans insuring that their assignments would not interfere with their high school education, where plaintiffs had not yet been notified of any loss of benefits, they had not used conciliation and fair hearing procedures which were available to challenge defendants' action, and they had not yet been forced to sacrifice school for benefits. Matthews v Barrios-Paoli, 270 A.D.2d 152, 704 N.Y.S.2d 259, 2000 N.Y. App. Div. LEXIS 3055 (N.Y. App. Div. 1st Dep't), app. dismissed, 95 N.Y.2d 930, 721 N.Y.S.2d 604, 744 N.E.2d 139, 2000 N.Y. LEXIS 3580 (N.Y. 2000).

Hospital, as long-term health care facility, was not entitled to preliminary injunction barring patient, despite assertion that it had administratively discharged patient for refusing to cooperate in his own discharge planning, overstaying his leave of absence, and having history of deviant sexual and other dangerous acts, where "administrative discharge" was fiction created by hospital that was not permitted by department of health (in that hospital never complied with evaluation and notice procedures required to effect proper discharge) or by Medicaid reimbursement regulations of Department of Social Services (which entitles patient to next available bed, not discharge, if leave of absence is overstayed) and charges of deviant acts, although serious, were not corroborated; furthermore, hospital could show neither irreparable harm if patient were allowed to remain nor balance of equities in its favor, since alleged deviant acts were uncorroborated and patient, as homeless, wheelchair-bound paraplegic, would more likely be irreparably harmed. Kaufman v Axelrod, 135 Misc. 2d 293, 515 N.Y.S.2d 202, 1987 N.Y. Misc. LEXIS 2213 (N.Y. Sup. Ct. 1987).

103. —Regulations

Plaintiffs (physicians, patient, pharmacist, pharmaceutical manufacturers, and State Medical Society) had not demonstrated likelihood of success on merits, and thus were not entitled to preliminary injunction temporarily restraining State Commissioner of Health from putting into immediate effect regulation requiring that benzodiazepines (frequently prescribed tranquilizing medications) be subjected to strict prescription control reserved for drugs of greatest abuse under provisions of Controlled Substances Act, CLS Pub Health §§ 3300-3397; plaintiffs could succeed on merits of their claim only if they showed that commissioner had acted outside authority constitutionally delegated to him under Public Health Law, or that regulation was so lacking in reason for its promulgation that it was essentially arbitrary, and likelihood of success had not been shown at early stage in litigation in which record consisted only of plaintiffs' complaint and papers submitted on motion for preliminary injunction. Doe v Axelrod, 73 N.Y.2d 748, 536 N.Y.S.2d 44, 532 N.E.2d 1272, 1988 N.Y. LEXIS 3328 (N.Y. 1988).

Owners of tavern and owners and distributors of video poker machines were not entitled to preliminary injunction to stay enforcement of regulation of Department of Consumer Affairs of New York City, rescinding its approval of certain video poker games, where they failed to submit financial records or other evidence showing that regulation prevented them from recouping their investment in machines, that machines constituted important source of revenue, and that popularity of games was in danger of declining during pendency of their declaratory judgment action. L & J Roost, Ltd. v Department of Consumer Affairs, 128 A.D.2d 677, 513 N.Y.S.2d 177, 1987 N.Y. App. Div. LEXIS 44369 (N.Y. App. Div. 2d Dep't 1987).

Order granting an association representing pawnbrokers a preliminary injunction enjoining the enforcement of .Y. Gen. Bus. Law § 45 and other local regulations was reversed because the statutory and regulatory scheme challenged was not created solely to uncover evidence of criminality or designed simply to give the police an expedient means of enforcing penal sanctions, but rather to ensure that proper protections are in place to avoid criminality and the need for penal sanctions. Collateral Loanbrokers Assn. of N.Y., Inc. v City of New York, 148

A.D.3d 133, 46 N.Y.S.3d 600, 2017 N.Y. App. Div. LEXIS 949 (N.Y. App. Div. 1st Dep't), app. dismissed, 29 N.Y.3d 974, 74 N.E.3d 667, 52 N.Y.S.3d 283, 2017 N.Y. LEXIS 1193 (N.Y. 2017).

104. —Roads and bridges

Town was not entitled to summary judgment in property owner's action seeking injunction to compel town to rebuild abandoned bridge where factual issues existed as to (1) whether owner should be estopped because town justifiably relied on owner's prior suggestion (made when he was member of town board) to abandon bridge and access road, (2) whether owner had insisted for years that bridge be maintained, (3) whether suggestion to abandon was made only to have state pay for repairing bridge, and (4) which party's version of use and maintenance of road should be credited. Van Nostrand v Town of Denning, 132 A.D.2d 93, 521 N.Y.S.2d 896, 1987 N.Y. App. Div. LEXIS 49550 (N.Y. App. Div. 3d Dep't 1987).

It was error (1) to order town to remove barriers from 2 town highways which provided additional access to plaintiff's commercial parking lot, and (2) to permanently enjoin town from blocking those highways in future, since town had taken such action out of concern for safety of residents, which was valid basis to exercise its power to regulate use of its highways. Aero Drive-In, Inc. v Cheektowaga, 140 A.D.2d 932, 529 N.Y.S.2d 613, 1988 N.Y. App. Div. LEXIS 5786 (N.Y. App. Div. 4th Dep't), app. denied, 72 N.Y.2d 809, 534 N.Y.S.2d 666, 531 N.E.2d 298, 1988 N.Y. LEXIS 2721 (N.Y. 1988).

In action by developer to challenge village's discontinuance of road that led to area being developed with residences, developer was entitled to preliminary injunction where (1) developer showed good probability of succeeding on merits since village had not established or even attempted to establish, at public meeting, that discontinued portion of road had become useless to general public, (2) developer showed risk of irreparable harm since village remained at liberty to alter or alienate road so that, if developer succeeded on merits, its victory would be meaningless, and (3) equities balanced in favor of developer since issuance of preliminary injunction would preserve status quo and protect developer's rights without damaging village's

ability to transform property at later date if it succeeded at trial. Bass Bldg. Corp. v Pomona, 142 A.D.2d 657, 530 N.Y.S.2d 595, 1988 N.Y. App. Div. LEXIS 7949 (N.Y. App. Div. 2d Dep't 1988).

105. —Schools

In a student's action against a university for a permanent injunction against his dismissal after a physical altercation with another student, alleging that the university's decision to dismiss him was arbitrary and capricious, and that the punishment was cruel and overly severe, the student's action would be converted to an Article 78 proceeding since Article 78 relief would be available to review the decision of the university, and since injunctive relief will not lie if there is an adequate remedy at law. Grogan v St. Bonaventure University, 91 A.D.2d 855, 458 N.Y.S.2d 410, 1982 N.Y. App. Div. LEXIS 19766 (N.Y. App. Div. 4th Dep't 1982).

Assistant superintendent was not entitled to enjoin city school district from withholding his salary, pursuant to CLS Gen Mun § 77-b(1), pending decision in disciplinary proceeding, where withholding was based on excess advances allegedly due to inappropriate and wasteful purchases made by assistant superintendent on behalf of district, as well as personal purchases made on district's credit cards, but charges in disciplinary proceeding did not include issue of excess advances, and such issue would therefore not be determined in disciplinary proceeding; thus, final determination in disciplinary action was not necessary to resolve injunction issue. Duffy v Poughkeepsie City School Dist., 183 A.D.2d 1047, 583 N.Y.S.2d 658, 1992 N.Y. App. Div. LEXIS 7143 (N.Y. App. Div. 3d Dep't 1992).

In combined Article 78 proceeding and declaratory judgment action challenging enrollment of out-of-state students in local school district, petitioners were not entitled to preliminary injunction on ground that CLS NY Const Art XI § 1 created affirmative duty to educate only children from New York, as legislature contemplated and authorized education of out-of-state students on limited basis under, e.g., CLS Educ §§ 2040, 2045, 3202 and 3602. Schulz v State, 217 A.D.2d 393, 634 N.Y.S.2d 780, 1995 N.Y. App. Div. LEXIS 12301 (N.Y. App. Div. 3d Dep't 1995),

transferred, 87 N.Y.2d 954, 641 N.Y.S.2d 828, 664 N.E.2d 893, 1996 N.Y. LEXIS 244 (N.Y. 1996).

In combined Article 78 proceeding and declaratory judgment action challenging proposal to enroll out-of-state students in local school district, petitioners were not entitled to preliminary injunction on basis that proposed practice would amount to illegal gift of state funds; funds used for educational purposes are excluded from general proscription contemplated by CLS NY Const Art VII § 8, and CLS Educ § 3202 clearly provides for education of out-of-state students. Schulz v State, 217 A.D.2d 393, 634 N.Y.S.2d 780, 1995 N.Y. App. Div. LEXIS 12301 (N.Y. App. Div. 3d Dep't 1995), transferred, 87 N.Y.2d 954, 641 N.Y.S.2d 828, 664 N.E.2d 893, 1996 N.Y. LEXIS 244 (N.Y. 1996).

Residents who challenged enrollment of out-of-state students in local school district were not entitled to preliminary injunction, as loss to out-of-state students, should they be prohibited from attending designated schools, would far outweigh cost to local residents (which, in any event, did not constitute type of irreparable injury warranting issuance of preliminary injunction). Schulz v State, 217 A.D.2d 393, 634 N.Y.S.2d 780, 1995 N.Y. App. Div. LEXIS 12301 (N.Y. App. Div. 3d Dep't 1995), transferred, 87 N.Y.2d 954, 641 N.Y.S.2d 828, 664 N.E.2d 893, 1996 N.Y. LEXIS 244 (N.Y. 1996).

Petitioner college students are not entitled to a preliminary injunction and order of prohibition barring respondents from denying or deferring the granting of degrees to any student who did not pass the City University of New York (CUNY) Writing Assessment Test (CWAT) but fulfilled all other requirements for graduation from respondent community college for the spring 1997 term, even though petitioners might have justifiably relied upon the faculty and administration’s representations that the CWAT was no longer a prerequisite for entrance into an English course, successful completion of which was a requirement for graduation. Respondent CUNY Board of Trustees did not act arbitrarily and capriciously or in violation of petitioners’ civil rights action in passing a resolution, less than a week before graduation, requiring a passing grade on the

CWAT in order to graduate in conformance with long-standing policy. Mendez v Reynolds, 248 A.D.2d 62, 681 N.Y.S.2d 494, 1998 N.Y. App. Div. LEXIS 13220 (N.Y. App. Div. 1st Dep't 1998).

Threat by city and city school district to refuse enrollment of pupils of annexed towns unless they paid tuition, contrary to a previously established practice, was deemed sufficient to warrant the exercise of the court's discretion to issue a preliminary injunction to maintain status quo until final determination of action to have local law prescribing such fees declared invalid. Swarts v Board of Education, 42 Misc. 2d 761, 249 N.Y.S.2d 44, 1964 N.Y. Misc. LEXIS 1835 (N.Y. Sup. Ct. 1964).

Voter was not entitled to injunctive relief on his complaint contesting school board's scheduled meeting concerning spending on school improvements following defeat of bond issue, despite claim that voter's equal protection rights would be violated by second chance that bond issue's supporters would have to resolve matter in their favor, since proposed board vote was concerned with narrower questions than bond issue, voter would have right to vote at meeting, and CLS Educ § 416 expressly provides for potential rescission or modification of vote to raise money. Neuman v Cornwall Cent. School Dist., 138 Misc. 2d 429, 524 N.Y.S.2d 1005, 1988 N.Y. Misc. LEXIS 42 (N.Y. Sup. Ct. 1988).

It was improper for chancellor of City University of New York (CUNY) to reject tenure applications of law school faculty members, to refuse to transmit committee recommendations to board of trustees, and to unilaterally terminate faculty members' employment, since CUNY's tenure screening process limited chancellor's role to reviewing committee recommendations and submitting those recommendations, along with his own personal views, to board of trustees, which had ultimate authority over appointments, promotion and tenure; thus, faculty members would be reappointed to additional one-year period without tenure, during which time board could make its determination as to their applications for tenure. Faculty of City University of New York School at Queen's College v Murphy, 140 Misc. 2d 525, 531 N.Y.S.2d 665, 1988 N.Y. Misc. LEXIS 424 (N.Y. Sup. Ct. 1988), modified, dismissed in part, 149 A.D.2d 315, 539 N.Y.S.2d 367, 1989 N.Y. App. Div. LEXIS 4387 (N.Y. App. Div. 1st Dep't 1989).

High school junior would be granted mandatory temporary injunction requiring Educational Testing Service to give her special makeup Scholastic Aptitude Test by deadline needed for her to take advantage of early decision procedures at selected colleges since action of proctor in taking plaintiff's test booklet during test to resolve inquiry from another student, inter alia, constituted irregularity in procedures sufficient to mandate cancellation of plaintiff's test scores and establish entitlement to retesting. Mindel v Educational Testing Service, 147 Misc. 2d 968, 559 N.Y.S.2d 95, 1990 N.Y. Misc. LEXIS 340 (N.Y. Sup. Ct. 1990).

Resident taxpayer was not entitled to preliminary injunction enjoining, inter alia, charter school from operating within school district since likelihood of taxpayer overcoming strong presumption of constitutionality of Charter Schools Act was not readily apparent, his success on merits with respect to Article 78 proceeding was far from certain, school district did not face actual and imminent harm from loss of funding since district could offset any loss with cost savings, and disruption caused to pupils and staff if charter school were forced to close greatly outweighed taxpayer's speculative and conclusory claims of financial harm. Board of Educ. v Board of Trustees of the State Univ., 185 Misc. 2d 704, 713 N.Y.S.2d 908, 2000 N.Y. Misc. LEXIS 395 (N.Y. Sup. Ct. 2000), aff'd in part and rev'd in part, 282 A.D.2d 166, 723 N.Y.S.2d 262, 2001 N.Y. App. Div. LEXIS 3958 (N.Y. App. Div. 3d Dep't 2001).

106. — —Illustrative cases

Complaint praying for an injunction requiring defendants to allow the plaintiff's child to continue her education in the fourth grade in defendants' school without disruption failed to set forth essential facts showing a cause of action for such relief. Menon v Kennedy, 24 A.D.2d 849, 264 N.Y.S.2d 775, 1965 N.Y. App. Div. LEXIS 2948 (N.Y. App. Div. 1st Dep't 1965).

Plaintiffs' constitutional challenge to law abolishing certain common and union free school districts in Rochester area, adding their territory to that of another district, providing for assessment of school tax on real property within the abolished districts and limiting right of students in those districts to attend Rochester public schools without paying tuition raised factual

issues and failed to prove likelihood of ultimate success on merits, irreparable injury and balancing of equities in their favor, for purposes of preliminary injunction. Camardo v Board of Education, 50 A.D.2d 1073, 376 N.Y.S.2d 344, 1975 N.Y. App. Div. LEXIS 12095 (N.Y. App. Div. 4th Dep't 1975).

In action brought by private medical center against Accreditation Council for Graduate Medical Education (ACGME), nonprofit, private association which surveys, evaluates and accredits medical and surgical residency programs, challenging ACGME's decision to withdraw accreditation from center's surgical residency program, Supreme Court erred by granting center's motion for preliminary injunction prohibiting ACGME from withdrawing its accreditation and by denying ACGME's cross motion to dismiss complaint, where (1) center took full advantage of ACGME's review procedure, (2) center had been offered opportunity and encouragement to submit proposal for new residency program that would comply with ACGME requirements, (3) ACGME acted within its jurisdiction and exercised honest discretion based on facts within its knowledge, and (4) although center had right to appeal to Commissioner of Education under CLS Educ § 310, it had failed to do so. Interfaith Medical Center v Sabiston, 136 A.D.2d 238, 527 N.Y.S.2d 48, 1988 N.Y. App. Div. LEXIS 3847 (N.Y. App. Div. 2d Dep't), vacated in part, sub. op., 143 A.D.2d 173, 1988 N.Y. App. Div. LEXIS 8465 (N.Y. App. Div. 2d Dep't 1988).

College student was entitled to preliminary injunction to enjoin college from placing her on academic suspension for 2 semesters after she was found guilty of academic dishonesty where (1) there was factual dispute as to whether college conformed to guidelines set forth in student handbook, (2) student showed that she would be irreparably harmed by suspension, and (3) college did not show that it would suffer any harm as result of student continuing her studies during pendency of matter. Melvin v Union College, 195 A.D.2d 447, 600 N.Y.S.2d 141, 1993 N.Y. App. Div. LEXIS 7015 (N.Y. App. Div. 2d Dep't 1993).

On plaintiff's motion to stay enforcement of administrative order which revoked his teaching certificate pursuant to CLS Educ § 305(7) after he was found to have sexually molested his 2

young nieces, plaintiff was unable to show that equities balanced in his favor in that his occupation involved contact with children and, based on his past conduct, he could be found to pose threat to health, safety or welfare of children. Welcher v Sobol, 222 A.D.2d 1001, 636 N.Y.S.2d 421, 1995 N.Y. App. Div. LEXIS 13754 (N.Y. App. Div. 3d Dep't 1995).

Court properly granted preliminary injunction to plaintiffs, members of “Temple of the Healing Spirit” whose request for religious exemption from immunization requirements of CLS Pub Health § 2164 was rejected by parochial school on ground that they were not members of recognized religious organization, where school disregarded statutory criteria and applied standard set forth in former version of CLS Pub Health § 2164(9) which was held to be unconstitutional and was subsequently eliminated by Legislature when it amended statute to substitute requirements of genuine and sincere religious beliefs for that of bona fide membership in recognized religious organization, and plaintiffs’ opposition to immunization stemmed from genuinely-held religious beliefs. Bowden v Iona Grammar Sch., 284 A.D.2d 357, 726 N.Y.S.2d 685, 2001 N.Y. App. Div. LEXIS 6124 (N.Y. App. Div. 2d Dep't 2001).

Plaintiffs, taxpayers and parents of pupils attending the West Irondequoit School District, could not enjoin the school board from initiating a plan whereby Negro pupils from Rochester schools could voluntarily transfer to West Irondequoit Schools in order to correct an alleged condition of racial imbalance, where plaintiffs failed to establish a clear legal right to such an injunction and failed to make any showing of irreparable injury. Etter v Littwitz, 47 Misc. 2d 473, 262 N.Y.S.2d 924, 1965 N.Y. Misc. LEXIS 1534 (N.Y. Sup. Ct. 1965).

Preliminary injunction granted restraining parents from setting up a “complaint table” in the public hallway of the high school where the parents insisted upon maintaining the table without any supervision or interference by the school authorities. Board of Education v McCord, 62 Misc. 2d 934, 310 N.Y.S.2d 445, 1970 N.Y. Misc. LEXIS 1701 (N.Y. Sup. Ct. 1970).

Plaintiffs, parents of infant who resided within school district but who attended private school, were not entitled to preliminary injunction directing school district to allow infant to attend district school’s Halloween party; fact that party might fall within one or more of listed categories under

CLS Educ § 414 for which school property may be used did not preclude gathering from being held exclusively as school function or program limited to students of district or to students of particular district school. Jacobson by Jacobson v East Williston Union Free Sch. Dist., 170 Misc. 2d 93, 649 N.Y.S.2d 1002, 1996 N.Y. Misc. LEXIS 405 (N.Y. Sup. Ct. 1996).

107. —Transportation

Regulation enacted by village which provided for traffic control device in form of barricade on public street at or near village boundary with second village discriminated against residents of second village, and thus was invalid and entitled second village to injunction. Bd. of Trs. of Mineola v Inc. Vill. of E. Williston, 648 N.Y.S.2d 170, 1996 N.Y. App. Div. LEXIS 14628 (N.Y. App. Div. 2d Dep't 1996).

A metropolitan transit authority would be enjoined from eliminating elevators from planned modernizations of ten transit stations on the asserted ground that such modernization was not substantial renovation because the cost was small in proportion to the value of the stations and that wheelchair-bound persons were unlikely to use the stations, where the provisions for access and use of public buildings by the physically handicapped in Pub B Law §§ 50, 51, and 52 were applicable to the type of modernization planned, where a cost-threshold provision in the State Building Construction Code, applicable to alterations to buildings to provide access for the handicapped, was not a conclusive definition requiring compliance solely for alterations above the threshold, where basing a decision of whether or not to provide access on a cost analysis, a definition of the work involved, or on statistics violated the Public Building Law, in that such bases resulted in virtual automatic exemption from compliance with the State Building Construction Code, and where basing the decision on the argument that the stations were not public buildings because statistically wheelchair-bound persons were unlikely to use them contravened the intent of Pub B Law §§ 50, 51, and 52. Eastern Paralyzed Veterans Ass'n v Metropolitan Transp. Authority, 117 Misc. 2d 343, 458 N.Y.S.2d 815, 1982 N.Y. Misc. LEXIS 4058 (N.Y. Sup. Ct. 1982).

Plaintiffs were not entitled to order preliminarily enjoining transit authority and Department of Transportation from proceeding with conversion of 2 avenues from one-way streets to 2-way streets, since decisions concerning where to route buses, or whether streets should be one-way or 2-way, raise issues which are inherently governmental and political, and not judicial in nature. Jamaica Chamber of Commerce v Metropolitan Transp. Auth., 159 Misc. 2d 601, 608 N.Y.S.2d 758, 1993 N.Y. Misc. LEXIS 501 (N.Y. Sup. Ct. 1993).

108. —Utilities

In proceeding challenging erection of microwave transmission facility by New York Power Authority, court properly denied petitioners' request for injunctive relief where there was no likelihood of success inasmuch as alleged violations of State Environmental Quality Review Act were time-barred; moreover, it was undisputed that facility was removable. Dreves v New York Power Authority, 131 A.D.2d 182, 520 N.Y.S.2d 956, 1987 N.Y. App. Div. LEXIS 49517 (N.Y. App. Div. 3d Dep't 1987), app. dismissed, 71 N.Y.2d 889, 527 N.Y.S.2d 770, 522 N.E.2d 1068, 1988 N.Y. LEXIS 209 (N.Y. 1988).

109. —Taxes

Wholesale distributor of motor oil was entitled to preliminary injunction restraining state from collecting motor fuel taxes and sales taxes on its sales to Indians on Indian reservation and from otherwise regulating such sales, since such regulation is preempted by federal Indian trader laws, and thus distributor had established clear likelihood of success on merits. Herzog Bros. Trucking, Inc. v State Tax Com., 69 N.Y.2d 536, 516 N.Y.S.2d 179, 508 N.E.2d 914, 1987 N.Y. LEXIS 16349 (N.Y. 1987), vacated, 487 U.S. 1212, 108 S. Ct. 2861, 101 L. Ed. 2d 898, 1988 U.S. LEXIS 2888 (U.S. 1988).

In action by cemetery for declaration that its property was exempt from real property taxes, trial court, in granting cemetery's motion for preliminary injunction, erred in enjoining cemetery pendente lite from further development for cemetery purposes of certain of its property where

taxing authorities failed formally to move or cross move for such relief. Pinelawn Cemetery v Cesare, 49 A.D.2d 584, 370 N.Y.S.2d 153, 1975 N.Y. App. Div. LEXIS 10423 (N.Y. App. Div. 2d Dep't 1975).

A party seeking the issuance of a preliminary injunction must demonstrate that he will suffer irreparable harm in the absence of the injunction, and that such harm is greater than the harm which the opposing party will suffer if the injunction is granted. Thus, the trial court erred in issuing a preliminary injunction enjoining the enforcement of a New York City local law imposing an excise tax and a floor tax on certain distributors and importers of alcoholic beverages where the record did not support the conclusory allegations of plaintiffs, two liquor dealers and a trade association of retail liquor dealers, that many establishments liable for the taxes would be forced out of business, and where the taxes collected under the local law would be refunded if plaintiffs succeeded on the merits. Metropolitan Package Store Ass'n v Koch, 80 A.D.2d 940, 437 N.Y.S.2d 760, 1981 N.Y. App. Div. LEXIS 10840 (N.Y. App. Div. 3d Dep't 1981).

Plaintiffs were not entitled to preliminary injunction, preventing New York City from foreclosing in rem on 9 properties pending completion of discovery, where (1) properties were encumbered by liens for unpaid taxes, emergency repairs, and health protective work, which city maintained had been performed by its agencies, (2) parties entered into agreement whereby foreclosures on properties were suspended and plaintiffs agreed to pay in installments, (3) agreement provided that properties would again be subject to foreclosure in event of default by plaintiffs, (4) plaintiffs defaulted and city notified them that foreclosure proceedings would resume, and (5) although plaintiffs disputed basis of certain liens, they concededly owed significant amounts in back real estate, sewer taxes, and sidewalk taxes. Singer v Department of Finance, 191 A.D.2d 320, 594 N.Y.S.2d 774, 1993 N.Y. App. Div. LEXIS 2698 (N.Y. App. Div. 1st Dep't 1993).

Given plaintiff’s right to prompt hearing, court properly granted plaintiff’s motion for preliminary injunction vacating state’s tax warrants and levies. Raval v New York State Dep't of Taxation & Fin., 246 A.D.2d 399, 666 N.Y.S.2d 431, 1998 N.Y. App. Div. LEXIS 283 (N.Y. App. Div. 1st Dep't 1998).

Injunction against collection of unincorporated business tax from self-employed professional would be denied despite contention that local law imposing such tax made an improper classification as between self-employed and salaried professionals. Fliegler v New York, 72 Misc. 2d 896, 341 N.Y.S.2d 869, 1972 N.Y. Misc. LEXIS 2178 (N.Y. Sup. Ct. 1972).

The general rule is that, once a criminal action has been initiated, a criminal defendant may not bring a declaratory judgment action to raise a statutory interpretation or other issue that can be adjudicated in the criminal prosecution; before a criminal action is commenced, however, a declaratory judgment action may be entertained in the discretion of the court if the constitutionality or legality of a statute or regulation is in question and no question of fact is involved. Cayuga Indian Nation of N.Y. v Gould, 14 N.Y.3d 614, 904 N.Y.S.2d 312, 930 N.E.2d 233, 2010 N.Y. LEXIS 981 (N.Y.), cert. denied, 562 U.S. 953, 131 S. Ct. 353, 178 L. Ed. 2d 251, 2010 U.S. LEXIS 7668 (U.S. 2010).

110. —Zoning

Town Zoning Enforcement Officer was properly denied preliminary injunction requiring resident to end her occupancy of mobile home she had installed on her own property where resident raised triable issue of fact with claim that town’s mobile home district was sham designed to keep all mobile homes out of community, and where granting such preliminary injunction would have obtained for Enforcement Officer all relief he sought on final judgment. Longfield v Ronk, 122 A.D.2d 409, 505 N.Y.S.2d 224, 1986 N.Y. App. Div. LEXIS 59721 (N.Y. App. Div. 3d Dep't 1986).

Action to enjoin town from enforcing residential zoning requirements against plaintiff was properly dismissed since (1) various zoning maps submitted by plaintiff, indicating that building out of which he operated his business was not zoned residential, were unofficial, and (2) official zoning map revealed that building was located in residential zone; for zoning map to be official, it must be adopted by ordinance or resolution and executed and filed with county clerk or register, along with certification verifying that it has been adopted as official map. Hull v Ithaca,

139 A.D.2d 887, 527 N.Y.S.2d 617, 1988 N.Y. App. Div. LEXIS 4558 (N.Y. App. Div. 3d Dep't 1988).

Extraordinary circumstances sufficient to justify preliminary injunction against town board's adoption of zoning ordinance were not shown by plaintiffs' assertion that proposed ordinance would render moot their companion proceeding seeking default approval certificate for final subdivision plat under CLS Town § 276, since plaintiffs had already prevailed in their companion proceeding, and right to default approval certificate is not contingent on compliance with zoning ordinances. Pospisil v Anderson, 140 A.D.2d 317, 527 N.Y.S.2d 819, 1988 N.Y. App. Div. LEXIS 4616 (N.Y. App. Div. 2d Dep't 1988).

Town was entitled to preliminary injunction to prohibit construction and maintenance of road without proper permits, despite contention that road was located on abandoned public highway which was used as driveway to access property, since (1) regardless of defendants' characterization of abandoned roadbed prior to their construction activities, it was at best limited use driveway to undeveloped property, (2) project commenced by defendants was clearly road construction, and (3) defendants acted without land use and development permit or approved modification of existing subdivision. Town of Lake George v Dehaan, 192 A.D.2d 820, 596 N.Y.S.2d 512, 1993 N.Y. App. Div. LEXIS 3724 (N.Y. App. Div. 3d Dep't 1993).

Plaintiff was not entitled to preliminary injunction against state's removal of billboard on plaintiff's property where (1) plaintiff owned property on which nonconforming billboard had been maintained since 1975, (2) in 1991, plaintiff's tenant, who apparently owned and maintained billboard, removed sign and signposts without plaintiff's permission, and (3) plaintiff re-erected billboard, but state demanded that billboard be removed pursuant to 17 NYCRR § 150.12(b)(5) since it no longer had status as nonconforming use; billboard changed within meaning of regulation when it was taken down, and plaintiff failed to demonstrate that cost of re-erection was less than 60 percent of original fair market value of sign. Zanghi v State, 204 A.D.2d 313, 611 N.Y.S.2d 263, 1994 N.Y. App. Div. LEXIS 4596 (N.Y. App. Div. 2d Dep't 1994).

Landowners were entitled to summary judgment dismissing village's complaint regarding alleged zoning violation, insofar as it sought injunctive relief and penalties with respect to 20-foot high shamrock and 6-foot high personal name painted on enormous boulder on their property, since boulder was not "structure" and shamrock was not "sign" under zoning ordinance. Incorporated Village of Old Field v Hickey, 225 A.D.2d 666, 639 N.Y.S.2d 480, 1996 N.Y. App. Div. LEXIS 2610 (N.Y. App. Div. 2d Dep't 1996).

Court properly granted town's motion to preliminarily enjoin alleged zoning violation where it was undisputed that defendants never applied for or received permit for alterations they made to site despite requirement of town code. Town of Thompson v Braunstein, 247 A.D.2d 753, 669 N.Y.S.2d 387, 1998 N.Y. App. Div. LEXIS 1557 (N.Y. App. Div. 3d Dep't 1998).

In enforcement proceeding under CLS Town § 268(2) to enjoin mining operations by defendants in alleged violation of town's zoning law and moratorium on commercial and industrial development, court properly determined that moratorium was invalid because town did not comply with CLS Gen Mun § 239-m, but court erred in denying town's motion for preliminary injunction where it was uncontroverted that defendants were violating town zoning law by proceeding without zoning permit. Town of Throop v Leema Gravel Beds, Inc., 249 A.D.2d 970, 672 N.Y.S.2d 212, 1998 N.Y. App. Div. LEXIS 5108 (N.Y. App. Div. 4th Dep't 1998).

In action by adjoining property owners to permanently enjoin defendants from maintaining and operating dog kennel in violation of town zoning ordinance, plaintiffs were entitled to preliminary injunction during pendency of action where (1) defendants allowed dogs, which they bred, to move freely between kennel building and outdoor runs, (2) whenever person or animal ventured within sight or hearing, numerous dogs would bark incessantly, preventing plaintiffs from enjoying peace and quiet of their home, (3) plaintiffs made strong showing that they would prevail on merits of action, (4) plaintiffs would suffer irreparable injury absent preliminary injunctive relief, and (5) balance of equities favored plaintiffs. Williams v Hertzwig, 251 A.D.2d 655, 675 N.Y.S.2d 113, 1998 N.Y. App. Div. LEXIS 7950 (N.Y. App. Div. 2d Dep't 1998).

In action by chiropractor who leased offices in residential building owned and managed by defendants, alleging that defendants precipitated Department of Buildings (DOB) violations which resulted in Padlock Enforcement Action under NYC Admin Code § 26-127.2, defendants were not entitled to temporary injunction staying Padlock Enforcement Action pending determination of their claim that DOB's failure to cite them violated their due process rights, and that zoning resolution allowing premises to be used for "medical office" but not for professional offices such as plaintiff's was arbitrary and capricious and violated their constitutional rights, as prerequisites for preliminary injunction were not shown, and defendants failed to exhaust their administration remedies; although defendants challenged DOB's action as unconstitutional, issues of fact were present, as well as questions of pure law, and matter was more appropriately reviewed at administrative level. Koultukis v Phillips, 285 A.D.2d 433, 728 N.Y.S.2d 440, 2001 N.Y. App. Div. LEXIS 7657 (N.Y. App. Div. 1st Dep't 2001).

111. — —Adult entertainment

New York City was entitled to preliminary injunction and partial summary judgment on issue of whether defendant cabaret, which featured topless entertainment and lap dancing by female performers, was "adult establishment" as defined by city zoning resolution § 12-10 and thus constituted public nuisance, notwithstanding defendant's purported policy of admitting previously banned minors when accompanied by parent or guardian; it could not be said that defendant "customarily" admitted minors as that term is ordinarily used. City of New York v Stringfellow's of N.Y., Ltd., 253 A.D.2d 110, 684 N.Y.S.2d 544, 1999 N.Y. App. Div. LEXIS 935 (N.Y. App. Div. 1st Dep't), app. dismissed, 93 N.Y.2d 916, 691 N.Y.S.2d 379, 713 N.E.2d 413, 1999 N.Y. LEXIS 1238 (N.Y. 1999).

In city's action to restrain operation of adult establishment in special purpose district, city was not judicially estopped from asserting position that adult establishments could not be operated in that district, even though defendant's adult establishment had operated there for 25 years. 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).

Court erred in denying motion for preliminary injunction to close down operation of “adult establishment” at defendants’ premises as violation of New York City zoning resolution where resolution prohibited location of such establishment within 500 feet of“ another adult establishment,” defendants application for building permit failed to disclose their intention to use property as adult bookstore, and another business entity had applied for and been approved to open adult establishment within 500 feet of defendants’ property prior to defendants’ application. City of New York v Love Shack, 286 A.D.2d 240, 729 N.Y.S.2d 37, 2001 N.Y. App. Div. LEXIS 7931 (N.Y. App. Div. 1st Dep't 2001).

On motion to preliminarily enjoin defendants’ operation of topless bar within 500 feet from residence district, plaintiff municipality established that premises was “adult establishment” under local zoning ordinance where bar featured live performances on regular basis with emphasis on naked female breasts and additional emphasis on fondling or erotic touching of genitals and breasts, age restriction sign was posted at point of entry to bar area, drinks were served at bar surrounding circular stage, and dancers could be seen from almost any point within premises. City of New York v Scandals, 178 Misc. 2d 267, 678 N.Y.S.2d 876, 1998 N.Y. Misc. LEXIS 463 (N.Y. Sup. Ct. 1998).

In action to abate nuisance under New York City zoning resolutions regulating adult establishments, city was not entitled to preliminary injunctive relief on ground that respondents continued to fall within definition of “adult establishment” and did not make sufficient abatement efforts, where respondents had reduced area of their premises devoted to adult uses to less than 40 percent; under Zoning Resolution § 12-10, “60:40 ratio” is singular factor in determining whether “substantial portion” of premises is devoted to adult use, although respondents were not thereby deemed automatically in compliance with zoning resolutions. City of New York v Show World, Inc., 178 Misc. 2d 812, 683 N.Y.S.2d 376, 1998 N.Y. Misc. LEXIS 552 (N.Y. Sup. Ct.

1998), aff'd sub nom. City of New York v Hommes, 258 A.D.2d 284, 685 N.Y.S.2d 49, 1999 N.Y. App. Div. LEXIS 891 (N.Y. App. Div. 1st Dep't 1999).

In action to enjoin defendants from operating their establishment (“Naked City”) in residential zone on ground that it was adult establishment under Zoning Resolution § 12-10, New York City established its entitlement to preliminary injunctive relief, where almost every defined sex activity was openly conducted and displayed publicly to customers and, even if restaurant area (which was separated merely by double curtain) could be considered as separate use from live entertainment, stage and individual viewing areas constituted more than 40 percent of premises accessible to patrons. City of New York v J & J Tummy Yummies, Inc., 179 Misc. 2d 527, 679 N.Y.S.2d 807, 1998 N.Y. Misc. LEXIS 529 (N.Y. Sup. Ct. 1998).

Where defendant’s adult establishment complied with New York City’s zoning code as interpreted by administrative guidelines in existence when nuisance abatement action was commenced, city was not entitled to preliminary injunction and temporary closing order based on additional factors not specifically set forth in prior guidelines which established that defendant’s literal compliance with then-existing guidelines was “sham” which would undermine adult use provisions of zoning code; court dimsissed action, without prejudice to future applications related to zoning code as interpreted by revised administrative guidelines. City of New York v Warehouse on the Block, Ltd., 183 Misc. 2d 489, 703 N.Y.S.2d 900, 2000 N.Y. Misc. LEXIS 18 (N.Y. Sup. Ct. 2000).

112. — —Cemeteries

Roman Catholic Diocese was not entitled to preliminary injunctive relief after village denied change of zoning request to allow it to establish cemetery in village, on ground that it was faced with emergency because it was running out of burial space, as there were sufficient number of gravesites to satisfy needs for several years, there were existing cemeteries in county that could accommodate Catholics, and there were other properties available already zoned for cemetery

use. McGann v Incorporated Village of Old Westbury, 170 Misc. 2d 314, 647 N.Y.S.2d 934, 1996 N.Y. Misc. LEXIS 348 (N.Y. Sup. Ct. 1996).

Roman Catholic Diocese was not entitled to preliminary injunctive relief after village denied its request for change of zoning to allow it to establish cemetery in village, as balancing of equities did not favor diocese in that, if it lost case after trial, anyone buried in cemetery would have to be disinterred. McGann v Incorporated Village of Old Westbury, 170 Misc. 2d 314, 647 N.Y.S.2d 934, 1996 N.Y. Misc. LEXIS 348 (N.Y. Sup. Ct. 1996).

Cemetery is basically secular use of land, even if land is owned by religious institution; thus, in action claiming that village practiced exclusionary zoning in denying request to permit Roman Catholic diocese to establish cemetery in village, plaintiffs failed to establish likelihood of success on merits for purpose of obtaining preliminary injunction, as proposed use of property was more commercial than religious, especially judging by fact that Catholics are not required to be buried in Catholic cemeteries. McGann v Incorporated Village of Old Westbury, 170 Misc. 2d 314, 647 N.Y.S.2d 934, 1996 N.Y. Misc. LEXIS 348 (N.Y. Sup. Ct. 1996).

113. — —Procedure

City, as municipality, was not required to demonstrate special damage or compliance with traditional 3-pronged test for injunctive relief before obtaining preliminary injunction based on violation of zoning ordinance. Vanno v River Market Commodities, Inc., 168 A.D.2d 979, 564 N.Y.S.2d 924, 1990 N.Y. App. Div. LEXIS 16541 (N.Y. App. Div. 4th Dep't 1990).

As the burden of proof for an injunction rested with the city and having failed to establish the validity of the zoning ordinance insofar as it affects defendants' property, the city's complaint must be dismissed even though defendants may not have exhausted their administrative remedies by not applying to the Zoning Board of Appeals from the city's determination. Utica v Paternoster, 64 Misc. 2d 749, 315 N.Y.S.2d 418, 1970 N.Y. Misc. LEXIS 1179 (N.Y. Sup. Ct. 1970).

114. — —Illustrative cases

Town was properly granted preliminary injunction in its suit to permanently enjoin alleged violation of zoning ordinance, even though defendants sought to be enjoined had filed appeal with town zoning board from denial of their permit applications and such appeal acted as stay of all further proceedings pursuant to CLS Town § 267, since defendants were proposing to use property in manner in which it had not previously been used and in nonconformance to its zoned use, and preliminary injunction insured that status quo would be maintained. Blooming Grove v Blooming Farms Joint Venture, 128 A.D.2d 772, 513 N.Y.S.2d 255, 1987 N.Y. App. Div. LEXIS 44458 (N.Y. App. Div. 2d Dep't 1987).

In action to permanently enjoin village from enforcing ordinance prohibiting automobile body repair work in industrial districts, plaintiff was properly granted preliminary injunction since (1) he made prima facie showing of likelihood of success on merits on ground of legal nonconforming use, since he had conducted automobile body repair business in industrial district since 1948, (2) he showed irreparable injury in that enforcement of provision would prohibit him from continuing integral part of his business which had been built up over many years, and (3) balance of equities was in his favor, inasmuch as village did not seek to enforce prohibitory provision from its enactment in 1977 until September 1985. Florio v Lynbrook, 138 A.D.2d 672, 526 N.Y.S.2d 486, 1988 N.Y. App. Div. LEXIS 3235 (N.Y. App. Div. 2d Dep't 1988).

In Article 78 proceeding to challenge validity of residential cluster development ordinance and city planning board’s approval of particular subdivision, and for judicial enforcement of automatic stay provided by CLS Gen City § 38 during pendency of proceeding, where court conditioned stay on posting of $125,000 bond and, after bond was not posted, construction in excess of $5,000,000 was undertaken, petitioner neighborhood association lost any entitlement to injunctive relief since injunction will not issue to prohibit fait accompli. New Scotland Ave. Neighborhood Asso. v Planning Bd. of Albany, 142 A.D.2d 257, 535 N.Y.S.2d 645, 1988 N.Y. App. Div. LEXIS 12967 (N.Y. App. Div. 3d Dep't 1988).

In action to enjoin defendants' continuing violation of village zoning ordinance, court should have granted motion by village board of trustees to dismiss those affirmative defenses asserted by defendants which claimed that ordinance was never properly enacted into law because minutes of board meeting at which it was voted on did not indicate which trustees, if any, voted to adopt it since (1) minutes of meeting in question contained notation that zoning report had been read and that village attorney had submitted affidavit based on personal knowledge attesting to fact that all trustees were in favor of adopting ordinance, and (2) any conceivable irregularity which might have existed respecting adoption of ordinance was cured by subsequent legislative enactment. New Hyde Park v Nuzzi, 143 A.D.2d 396, 532 N.Y.S.2d 566, 1988 N.Y. App. Div. LEXIS 9213 (N.Y. App. Div. 2d Dep't 1988).

Town was not relegated to proceeding under Article 78 where it sought to permanently enjoin builder from maintaining modular home constructed on 3 undersized lots pursuant to permit granted by town's building inspector on ground that lots on which home was erected lacked sufficient frontage under town's zoning laws, since such action was contemplated by CLS Town § 268(2); issue was whether equity demanded imposition of injunction, not whether building inspector exceeded his authority in granting building permit. Esopus v Fausto Simoes & Associates, 145 A.D.2d 840, 535 N.Y.S.2d 827, 1988 N.Y. App. Div. LEXIS 13441 (N.Y. App. Div. 3d Dep't 1988).

In action to compel owners to demolish their beach house after it was renovated on ground that it was not "vested" nonconforming use of their property, and to compel town officer to revoke certificate of occupancy and building permit, court properly granted summary judgment to defendants since (1) plaintiffs failed to appeal challenged determination to zoning board of appeals pursuant to town's zoning ordinance, and (2) it would be inequitable to compel destruction of beach house because of renovations which plaintiffs knew about but did not challenge until months after work was complete. Engert v Phillips, 150 A.D.2d 752, 542 N.Y.S.2d 202, 1989 N.Y. App. Div. LEXIS 7224 (N.Y. App. Div. 2d Dep't 1989).

Town was properly granted preliminary injunction against occupation of building by landowner who erected improvements to building (including free-standing sign, gable roof, and raised walkway) without obtaining building permit and in contravention of building inspector's cease and desist order, since conduct sought to be enjoined was continuous violation of zoning ordinance which town had authority under CLS Town § 268(2) to enforce by "any action" without first establishing traditional injunction elements of damage, injury to public, or nonexistence of adequate legal remedy. East Hampton v Buffa, 157 A.D.2d 714, 549 N.Y.S.2d 813, 1990 N.Y. App. Div. LEXIS 501 (N.Y. App. Div. 2d Dep't 1990).

Historic preservation foundation was entitled to injunctive relief barring county from demolition of county-owned historic building until it complied with valid and unchallenged provision of city preservation ordinance which prohibited demolition unless county showed that building was "non-contributing structure in the district" or that preservation would constitute hardship, where county never processed application in compliance with ordinance. Historic Albany Foundation, Inc. v Coyne, 159 A.D.2d 73, 558 N.Y.S.2d 986, 1990 N.Y. App. Div. LEXIS 8415 (N.Y. App. Div. 3d Dep't 1990).

City had authority to obtain preliminary injunction strictly enforcing its zoning ordinances without resort to 3-pronged test for injunctive relief, based on commission of prohibited act, where operation of "juice bar" offering entertainment by nude dancers presumptively satisfied new definition of "adult entertainment use" contained in city's zoning ordinance, which was strictly prohibited in zoning district; however, Appellate Division would stay preliminary injunction on condition that defendants promptly proceed with appropriate application to municipal authority in light of fact that determination of whether particular use was continuation of or change in nonconforming use was factual one that should be decided by zoning board. City of Albany v Feigenbaum, 204 A.D.2d 842, 611 N.Y.S.2d 719, 1994 N.Y. App. Div. LEXIS 5191 (N.Y. App. Div. 3d Dep't), app. dismissed, 84 N.Y.2d 850, 617 N.Y.S.2d 139, 641 N.E.2d 160, 1994 N.Y. LEXIS 2712 (N.Y. 1994).

Motion to amend judgment declaring zoning ordinance unconstitutional by enjoining Village from enacting substitute ordinance was denied where substitute ordinance was substantially different and proper remedy would be to seek declaration of invalidity, although there may be a case in which legislative purposes may clearly be to frustrate court's mandate and injunction might there be proper. Udell v McFadyen, 46 Misc. 2d 804, 260 N.Y.S.2d 576, 1965 N.Y. Misc. LEXIS 1951 (N.Y. Sup. Ct. 1965).

In action for declaratory and injunctive relief wherein New York City Lawyers' Association challenged statutory compensation levels and limits for assigned private counsel set by CLS County § 722-b, CLS Family Ct Act § 245 and CLS Jud § 35(3), court denied motion to dismiss causes of action alleging that state's failure to provide sufficient compensation to private counsel resulted in systematic deficiencies in assigned counsel system in Supreme, Criminal and Family Courts in New York City, and "risk" that indigent adults and children would be denied meaningful and effective assistance of counsel under CLS NY Const Art I §§ 5 and 6 and Sixth, Eighth and Fourteenth Amendments. N.Y. County Lawyers' Ass'n v Pataki, 188 Misc. 2d 776, 727 N.Y.S.2d 851, 2001 N.Y. Misc. LEXIS 205 (N.Y. Sup. Ct. 2001), aff'd, 294 A.D.2d 69, 742 N.Y.S.2d 16, 2002 N.Y. App. Div. LEXIS 4822 (N.Y. App. Div. 1st Dep't 2002).

115. — — —Preliminary injunction appropriate

Town was entitled to injunction ordering property owners to remove temporary storage building constructed without permit on premises zoned for laboratory-office use, since storage was not permitted use within zone; even assuming that structure was constructed as accessory to other building for which town had issued permit, that permit would not give owners right to construct storage facility in violation of zoning ordinance. Orangetown v Magee, 128 A.D.2d 773, 513 N.Y.S.2d 473, 1987 N.Y. App. Div. LEXIS 44459 (N.Y. App. Div. 2d Dep't), app. denied, 70 N.Y.2d 602, 518 N.Y.S.2d 1024, 512 N.E.2d 550, 1987 N.Y. LEXIS 17398 (N.Y. 1987).

Village was properly granted preliminary injunction preventing restaurant from permitting more than specified number of people onto second floor of premises, and forcing removal of certain

structures, where structures were added after certificate of occupancy was issued, certificate was subsequently revoked, and village's code enforcement officer and building inspector testified as to overoccupancy of premises and hazardous conditions posed by structures, which violated village code. Babylon v John Anthony's Water Cafe, Inc., 137 A.D.2d 791, 525 N.Y.S.2d 341, 1988 N.Y. App. Div. LEXIS 1957 (N.Y. App. Div. 2d Dep't 1988).

Village was entitled to summary judgment in its action to enjoin use of certain building for residential purposes where (1) building was situated on lakefront property and was originally used as boathouse, (2) in 1946, previous owner commenced renovation of building into single family residence but ceased work in same year, (3) in 1953, previous owner unsuccessfully petitioned zoning board of appeals for permission to continue conversion or for determination that conversion was ongoing on date of enactment of zoning ordinance and could be resumed under grandfather clause, and (4) in 1984, defendant landlord leased building as residence to defendant tenants; village established as matter of law that building was boathouse which could not be used for residential purposes under zoning ordinance, and defendants failed to raise triable issue of fact on that issue or on issue of whether zoning ordinance was inapplicable to them under grandfather clause. Board of Trustees v Romano, 142 A.D.2d 659, 531 N.Y.S.2d 16, 1988 N.Y. App. Div. LEXIS 7952 (N.Y. App. Div. 2d Dep't 1988).

116. — — —Preliminary injunction not appropriate

Upon appeal from an order enjoining defendants' use of their property during litigation involving an alleged violation of zoning ordinance, it was held the injunction could not be maintained in the absence of a clear right to relief and should not have been granted until the issues were fully explored and the entire matter resolved after plenary trial. Southeast v Gonnella, 26 A.D.2d 550, 270 N.Y.S.2d 863, 1966 N.Y. App. Div. LEXIS 4060 (N.Y. App. Div. 2d Dep't), app. dismissed, 18 N.Y.2d 579, 1966 N.Y. LEXIS 2122 (N.Y. 1966).

In an action to enjoin the use of a certain property as a community residence for the mentally disabled, a preliminary injunction would be denied where plaintiff-town had failed to demonstrate

either the likelihood of its ultimate success on the merits or that it would suffer irreparable injury absent the injunction, where the issue of overconcentration of facilities, based on the state's proposed purchase of a former school to establish a series of cottages, could not be considered under Men Hyg Law § 41.34(b) which allowed consideration only of existing facilities, and where budgetary uncertainties had made it unclear whether the purchase would be effected. Roberts v Selzak, 89 A.D.2d 559, 452 N.Y.S.2d 113, 1982 N.Y. App. Div. LEXIS 17615 (N.Y. App. Div. 2d Dep't 1982).

A judgment which dismissed a proceeding to enjoin respondents from harboring equines on their premises would be affirmed where the petitoner failed to submit evidence to support its right to injunctive relief in that the documentary evidence clearly supported respondent's contention that she had validly obtained permits from the town to harbor the animals in question on her property and that she had made every effort to comply with the town's zoning regulations despite petitioner's claim that the permits were fraudulently obtained from the town as it submitted no evidence whatsoever to sustain that claim. Islip v Clark, 90 A.D.2d 500, 454 N.Y.S.2d 893, 1982 N.Y. App. Div. LEXIS 18529 (N.Y. App. Div. 2d Dep't 1982).

In action by town to require builder to remove modular home constructed on 3 undersized lots pursuant to permit granted by town's building inspector, on ground that lots lacked sufficient frontage under town's zoning laws, town was not entitled to preliminary injunction requiring builder to dismantle its structure, even though town was likely to succeed on merits, since town would not be prejudiced by waiting for adjudication on merits whereas requiring builder to dismantle structure would be wasteful incursion into status quo should builder prove successful on merits, and would remove town's incentive to vigorously prosecute action. Esopus v Fausto Simoes & Associates, 145 A.D.2d 840, 535 N.Y.S.2d 827, 1988 N.Y. App. Div. LEXIS 13441 (N.Y. App. Div. 3d Dep't 1988).

Employer was not entitled to preliminary injunction of administrative proceedings before Division of Human Rights (DHR), since DHR maintains jurisdiction to investigate and pass on claims of discrimination, including claim raised by employee herein regarding employment discrimination

based on disability; employer's argument as to effect of arbitration award (i.e., alleged error of law) lay first in administrative review and, following exhaustion of that remedy, in subsequent judicial review under CLS Exec § 298. Anker Management Corp. v State Div. of Human Rights, 215 A.D.2d 706, 627 N.Y.S.2d 73, 1995 N.Y. App. Div. LEXIS 5741 (N.Y. App. Div. 2d Dep't 1995).

Denying a preliminary injunction enjoining a criminal prosecution for violation of a town ordinance regulating the disposal of garbage, the Supreme Court held that where plaintiff's action did not challenge the ordinance on constitutional grounds but rather sought a declaration as to whether the dumping or plowing underground of pomace constituted a violation, the issues were factual in nature and better left for the determination of the already commenced criminal prosecution. Toomey v Neenan, 59 Misc. 2d 787, 300 N.Y.S.2d 388, 1969 N.Y. Misc. LEXIS 1871 (N.Y. Sup. Ct. 1969).

117. Landlord and tenant

Court would dismiss, as academic, tenant's appeal from order which granted preliminary injunction to plaintiff in his capacity as receiver for building in disclosure, as there was no benefit which tenants would gain if they were to succeed on appeal where property had been sold in interim and plaintiff had not operated building since that time. George v Guevarra, 222 A.D.2d 552, 635 N.Y.S.2d 83, 1995 N.Y. App. Div. LEXIS 12903 (N.Y. App. Div. 2d Dep't 1995).

Order denying an owner's motion for a temporary restraining order and a preliminary injunction pursuant to N.Y. C.P.L.R. 6301 was proper because the owner failed to demonstrate a likelihood of success on the merits of its claims relating to an agreement between the owner and a limited liability company (LLC); the owner's attempt to enjoin a law firm from further representing the LLC in matters in opposition to the owner because of an alleged conflict of interest resulting from their prior representation of entities related to the owner was in effect an attempt to disqualify the law firm from representing the LLC. Even if owner could have proved that it was a former client of the law firm, it could not have shown that the prior representation was either substantially

related or materially adverse to the present representation of the LLC. Purvi Enters., LLC v City of New York, 62 A.D.3d 508, 879 N.Y.S.2d 410, 2009 N.Y. App. Div. LEXIS 3692 (N.Y. App. Div. 1st Dep't 2009).

Supreme Court has power under this section to reinstate into possession a tenant wrongfully evicted. Marluted Realty Corp. v Decker, 46 Misc. 2d 736, 260 N.Y.S.2d 988, 1965 N.Y. Misc. LEXIS 1749 (N.Y. Civ. Ct. 1965).

118. —Purpose

In a proceeding brought by a tenant alleging constructive eviction due to the landlord's breach of the warranty of habitability, which action was brought after the landlord served upon plaintiff a notice of default based upon plaintiff's failure to pay maintenance and other charges, the trial court erred in denying plaintiff's application for a temporary restraining order where it was necessary to preserve the status quo so that plaintiff did not face the risk of forfeiture of his proprietary lease while his underlying claims against defendant, including that of breach of the warranty of habitability, remained outstanding, and therefore the reviewing court would grant the application on the condition that plaintiff pay to defendant all future monthly maintenance as it accrues. Caspi v Madison 79 Associates, Inc., 85 A.D.2d 583, 445 N.Y.S.2d 459, 1981 N.Y. App. Div. LEXIS 16375 (N.Y. App. Div. 1st Dep't 1981).

Commercial lessee was entitled to preliminary injunction prohibiting landlord from terminating electrical and other services to lessee's premises in light of obvious and irreparable harm that lessee would suffer without electrical power supply; in such circumstance, status quo would be preserved pending full trial as to merits of lessee's action seeking declaration of its rights under lease, especially where termination of electrical power would result in lease forfeiture. Classic Bookshops v 48th Americas Co., 140 A.D.2d 201, 528 N.Y.S.2d 54, 1988 N.Y. App. Div. LEXIS 5033 (N.Y. App. Div. 1st Dep't 1988).

119. —Lessee's peaceful possession

Landlord was temporarily enjoined from interfering with lessee's peaceful possession of service station premises, where lessee had at all times tendered payment of rent to landlord, kept premises insured, and had commenced a summary proceeding against a sublessee, who had abandoned the premises, in order to obtain physical possession of the station. Humble Oil & Refining Co. v 3825 Broadway Corp., 23 A.D.2d 540, 256 N.Y.S.2d 61, 1965 N.Y. App. Div. LEXIS 4941 (N.Y. App. Div. 1st Dep't 1965).

120. —Yellowstone injunctions

Continuation of Yellowstone injunction to toll cure period did not automatically also extend tenant's option to renew commercial lease until cure was completed, since injunction only served to forestall landlord from prematurely cancelling lease during its initial term, in order to afford opportunity for tenant to obtain judicial determination of its breach and what would be required to cure it, and bring tenant in compliance with lease; injunction could not, in and of itself, relieve tenant of necessity of complying with condition precedent to renewal—i.e., that it not be in default. Waldbaum Inc. v Fifth Ave. of Long Island Realty Assocs., 85 N.Y.2d 600, 627 N.Y.S.2d 298, 650 N.E.2d 1299, 1995 N.Y. LEXIS 1044 (N.Y. 1995).

In commercial tenant's action for judgment declaring that its duty to pay rent was suspended due to partial eviction resulting from landlord's failure to repair and maintain building elevators, wherein landlord prevailed and tenant secured Yellowstone injunction protecting it from eviction, condition of injunction requiring tenant to deposit accrued arrears and monthly rent into jointly held escrow account did not nullify lease provision requiring timely payment of rent and accrual of interest on late payments. Graubard Mollen Horowitz Pomeranz & Shapiro v 600 Third Ave. Assocs., 93 N.Y.2d 508, 693 N.Y.S.2d 91, 715 N.E.2d 117, 1999 N.Y. LEXIS 1298 (N.Y. 1999).

Where a tenant denies any default and demonstrates that the landlord has given notice of default, and where a period of time remains within which to cure, the tenant is entitled to a grant of preliminary relief in the form of a Yellowstone injunction; since the law does not favor forfeitures, the tenant need not, as a prerequisite to such relief, demonstrate a likelihood of

success on the merits or an ability to cure, and the proper inquiry instead is whether a basis exists for believing that the tenant desires to cure and has the ability to do so through any means short of vacating the premises. Accordingly, in a declaratory judgment action brought by a tenant who faced eviction based on its allegedly improper sublease, the trial court erred in denying the tenant's motion for a Yellowstone injunction where it was not clear that the legal relationship between plaintiff and the sublessees could not be changed in order to bring the sublease within a provision of the lease that permitted the tenant to sublease the premises to any of its affiliates or subsidiaries. Herzfeld & Stern v Ironwood Realty Corp., 102 A.D.2d 737, 477 N.Y.S.2d 7, 1984 N.Y. App. Div. LEXIS 18906 (N.Y. App. Div. 1st Dep't 1984).

Purpose of Yellowstone injunction is to toll running of cure period in landlord's notice to cure so that, after determination of merits, tenant may cure defect and avoid forfeiture of leasehold. Hollymount Corp. v Modern Business Associates, Inc., 140 A.D.2d 410, 528 N.Y.S.2d 113, 1988 N.Y. App. Div. LEXIS 4907 (N.Y. App. Div. 2d Dep't 1988).

Yellowstone injunction is not required with respect to violations in landlord's notice to cure which are for nonpayment or late payment of rent, since rent nonpayment proceedings carry their own distinct cure provisions under CLS RPAPL § 751(1), enabling tenant found to be in default to pay within 10 days of judgment and thereby stay issuance of warrant of removal. Hollymount Corp. v Modern Business Associates, Inc., 140 A.D.2d 410, 528 N.Y.S.2d 113, 1988 N.Y. App. Div. LEXIS 4907 (N.Y. App. Div. 2d Dep't 1988).

Tenants were entitled to Yellowstone injunction where it was demonstrated that (1) they held valuable commercial lease, (2) they received notice to cure, (3) they requested injunctive relief prior to termination of lease, and (4) they were prepared and maintained ability to cure alleged default by any means short of vacating premises. Garland v Titan West Assoc., 147 A.D.2d 304, 543 N.Y.S.2d 56, 1989 N.Y. App. Div. LEXIS 8029 (N.Y. App. Div. 1st Dep't 1989).

Leaseholder seeking Yellowstone injunction must demonstrate (1) that it holds commercial lease, (2) that it has received from landlord notice of default, notice to cure default, or threat of termination of lease, and (3) that it has desire and ability to cure alleged default by any means

short of vacating premises. Suarez v El Daro Realty, Inc., 156 A.D.2d 356, 548 N.Y.S.2d 313, 1989 N.Y. App. Div. LEXIS 15408 (N.Y. App. Div. 2d Dep't 1989).

Plaintiff met test for Yellowstone relief by demonstrating that it held valuable commercial lease, that it received notice to cure, that it requested and received injunctive relief prior to termination of lease, and that it had taken steps to cure certain alleged defaults and stood ready to cure others. Sloan's Supermarkets, Inc. v Barbellen Properties Corp., 184 A.D.2d 337, 585 N.Y.S.2d 208, 1992 N.Y. App. Div. LEXIS 8119 (N.Y. App. Div. 1st Dep't 1992).

Plaintiff's motion for Yellowstone injunction was properly denied where it was not made within period to cure alleged defaults. Newtech Video & Computer v 350 Seventh Ave. Assocs., 207 A.D.2d 730, 616 N.Y.S.2d 952, 1994 N.Y. App. Div. LEXIS 8974 (N.Y. App. Div. 1st Dep't 1994).

In tenant's action for declaration of rights under lease and for Yellowstone injunction to toll cure period, Supreme Court properly stayed landlords' summary nonpayment proceeding against tenant in District Court; judicial economy dictated that 2 actions seeking same relief should not proceed simultaneously in different forums, and Supreme Court could provide all relief requested while District Court could not. Bennigan's of New York v Great Neck Plaza, L.P., 223 A.D.2d 615, 636 N.Y.S.2d 835, 1996 N.Y. App. Div. LEXIS 429 (N.Y. App. Div. 2d Dep't 1996).

Tenant was entitled to Yellowstone injunction preliminarily enjoining landlords from terminating its lease where (1) it proved that it held commercial lease, received notice of default, timely requested injunctive relief, and was able and willing to cure alleged defaults, (2) landlords improperly served notice of termination before serving notice of default, in violation of terms of lease, and (3) landlords did not show that tenant sought judicial intervention with "unclean hands." Chai & Tantrakoon, Inc. v Royal Realty Corp., 246 A.D.2d 398, 666 N.Y.S.2d 428, 1998 N.Y. App. Div. LEXIS 284 (N.Y. App. Div. 1st Dep't 1998).

Tenant demonstrated entitlement to Yellowstone injunction where it established that (1) it held commercial lease on premises, (2) it was served by landlord with notice to cure lengthy list of conditions, (3) it timely moved for injunction before expiration of cure period and before

termination of lease, and (4) it had desire and ability to cure its default by any means short of vacating premises. Terosal Props. v Bellino, 257 A.D.2d 568, 683 N.Y.S.2d 581, 1999 N.Y. App. Div. LEXIS 112 (N.Y. App. Div. 2d Dep't 1999).

Nothing in First Natl. Stores v. Yellowstone Shopping Ctr., 21 NY2d 630, limits grant of temporary injunctive relief solely to instances of commercial tenants seeking to stay running of period to cure. Syndicom Corp. v Shoichi Takaya, 275 A.D.2d 676, 714 N.Y.S.2d 256, 2000 N.Y. App. Div. LEXIS 10032 (N.Y. App. Div. 1st Dep't 2000), app. denied, 96 N.Y.2d 792, 725 N.Y.S.2d 642, 749 N.E.2d 211, 2001 N.Y. LEXIS 679 (N.Y. 2001).

Commercial tenants were not entitled to a Yellowstone injunction because the mall did not interfere with the tenants' ability to proceed with construction and open their businesses, the force majeure clause in the leases did not excuse the tenants' obligation to pay rent from the "Commencement Date," and the tenants did not have sufficient funds to cure the rent default; the tenants were not entitled to a preliminary injunction because they failed to show a likelihood of success on the merits. LIDC I, LLC v Sunrise Mall, LLC, 996 N.Y.S.2d 875, 46 Misc. 3d 885, 2014 N.Y. Misc. LEXIS 4711 (N.Y. Sup. Ct. 2014).

121. — —Purpose to preserve status quo

It was error to order 60-day preliminary injunction so that landlord and tenants might resolve lease dispute on their own where tenants had made prima facie showing that they were not in violation of lease and of their entitlement to opportunity to cure if any violation did exist, for had tenants not sought relief on appeal (apparently due to absence of any prospect of disposition by parties), parties would have waited for expiration of 60-day period and inevitable renewal motion for Yellowstone relief; in interests of justice and judicial economy, court should have granted requested Yellowstone injunction pending judicial determination of issues. Garland v Titan West Assoc., 147 A.D.2d 304, 543 N.Y.S.2d 56, 1989 N.Y. App. Div. LEXIS 8029 (N.Y. App. Div. 1st Dep't 1989).

In declaratory judgment action concerning whether alleged subtenancies were in violation of proprietary lease, inter alia, Yellowstone injunction was warranted to preserve status quo pending resolution of issue whether purported subtenant was plaintiff's employee to whom plaintiff could provide space without defendant's prior written consent. Gage v 103 E. 75th St. Apts., 235 A.D.2d 376, 652 N.Y.S.2d 972, 1997 N.Y. App. Div. LEXIS 708 (N.Y. App. Div. 1st Dep't 1997).

There was no merit in landlord's argument that tenant's motion for Yellowstone injunction had to be denied because lease was terminated before tenant moved for injunctive relief where notice of termination was ineffective because it was served before expiration of applicable cure period and was vague and ambiguous; it would not serve purposes underlying Yellowstone injunction to allow landlord to cut short cure period by prematurely serving notice of termination. Empire State Bldg. Assocs. v Trump Empire State Partners, 245 A.D.2d 225, 667 N.Y.S.2d 31, 1997 N.Y. App. Div. LEXIS 13422 (N.Y. App. Div. 1st Dep't 1997).

Yellowstone injunction would be issued preserving status quo and prohibiting defendant cooperative from taking possession and disposing of plaintiff tenants' shares in apartment to satisfy claim for arrears in payment of maintenance, where defendant breached warranty of habitability, and proprietary lease contained conditional limitation which was contrary to public policy in relation to residential tenancies; however, plaintiffs would be required to pay 50 percent of maintenance as condition of continuation of injunction. Saada v Master Apts., Inc., 152 Misc. 2d 861, 579 N.Y.S.2d 536, 1991 N.Y. Misc. LEXIS 735 (N.Y. Sup. Ct. 1991).

122. — —Jurisdiction

Trial court erred in denying a tenant's motion for a Yellowstone injunction pursuant to N.Y. C.P.L.R. 5301 against a city; in light of the tenant's substantial investment in a pier from which the city evicted the tenant following the Sept. 11, 2001 terrorist attacks, the denial of relief was an improvident exercise of jurisdiction. WPA/Partners LLC v Port Imperial Ferry Corp., 307 A.D.2d 234, 763 N.Y.S.2d 266, 2003 N.Y. App. Div. LEXIS 8544 (N.Y. App. Div. 1st Dep't 2003).

In lessee's action for judgment declaring that his failure to pay defendant cooperative's yearly "sublet fee" for subletting his apartment did not constitute default that would permit termination of proprietary lease, failure to secure immediate "Yellowstone" injunction during 30-day cure period provided by lease did not divest court of jurisdiction to enjoin termination of lease or otherwise consider relief sought by lessee, as Yellowstone does not create provisional remedy statute of limitations, and lessee met his burden of demonstrating irreparable harm, that equities were in his favor by threat of foreclosure of his share interest as well as need to maintain status quo, and that he was entitled to permanent injunction based on defendant's failure to comply with notice provisions of proprietary lease. Troiano v 55 Ehrbar Tenants Corp., 168 Misc. 2d 906, 645 N.Y.S.2d 975, 1996 N.Y. Misc. LEXIS 236 (N.Y. Sup. Ct. 1996).

123. — —Requirements

With enactment of CLS RPAPL § 753(4), residential tenant served with notice to cure is no longer constrained to commence declaratory action in Supreme Court or apply for Yellowstone injunction. Killington Investors v Leino, 148 A.D.2d 334, 538 N.Y.S.2d 812, 1989 N.Y. App. Div. LEXIS 2488 (N.Y. App. Div. 1st Dep't 1989).

Tenant seeking Yellowstone injunction must show that it holds commercial lease, that it has received from landlord notice of default, notice to cure, or threat of termination of lease, that application for temporary restraining order was made prior to lease termination, and that it has desire and ability to cure alleged default by any means short of vacating premises. Long Island Gynecological Servs., P.C. v 1103 Stewart Ave. Assocs. Ltd. Pshp., 224 A.D.2d 591, 638 N.Y.S.2d 959, 1996 N.Y. App. Div. LEXIS 1443 (N.Y. App. Div. 2d Dep't 1996).

Tenant divests court of its power to grant Yellowstone injunction by failing to seek retraining order before period has expired and before landlord acted to terminate lease, even though such order was obtained between time notice of termination was served and its expiration date. Long Island Gynecological Servs., P.C. v 1103 Stewart Ave. Assocs. Ltd. Pshp., 224 A.D.2d 591, 638 N.Y.S.2d 959, 1996 N.Y. App. Div. LEXIS 1443 (N.Y. App. Div. 2d Dep't 1996).

Sublessee was not entitled to Yellowstone injunction where it was unable to demonstrate its ability to cure its default of sublease, and its action did not involve termination of lease but solely rental abatement. Dunwoodie Communs. v Noto, 225 A.D.2d 484, 639 N.Y.S.2d 376, 1996 N.Y. App. Div. LEXIS 3172 (N.Y. App. Div. 1st Dep't 1996).

Plaintiff's request for Yellowstone injunction was properly denied where it admittedly could not bond or pay mechanic's liens specified in defendant's notice to cure. Gyncor, Inc. v Ironwood Realty Corp., 259 A.D.2d 363, 687 N.Y.S.2d 57, 1999 N.Y. App. Div. LEXIS 2790 (N.Y. App. Div. 1st Dep't 1999).

Commercial tenant was entitled to Yellowstone injunction where it showed that it would be able to pay alleged rent arrears if landlord ultimately prevailed on merits. Kuo Po Trading Co. v Tsung Tsin Ass'n, 273 A.D.2d 111, 709 N.Y.S.2d 89, 2000 N.Y. App. Div. LEXIS 6595 (N.Y. App. Div. 1st Dep't 2000).

Tenant was entitled to partial summary judgment declaring that its exercise of option to buy condominium apartment was valid and timely where (1) about 9 hours before option was due to expire, IAS Court issued temporary restraining order stating that "the expiration of the option to purchase the Condo Unit...is hereby tolled and stayed," (2) IAS Court's vacatur of that order 6 days later did not affect validity of its original order or deprive tenant of its right to rely on original order and to forego compliance with terms of option pending determination of its summary judgment motion, (3) validity of original order was not affected by IAS Court later statement that it had not intended to grant extension of time to exercise option by "tacking on" time remaining on option, and (4) tenant properly exercised option within time remaining for such exercise after vacatur of temporary restraining order. Syndicom Corp. v Shoichi Takaya, 275 A.D.2d 676, 714 N.Y.S.2d 256, 2000 N.Y. App. Div. LEXIS 10032 (N.Y. App. Div. 1st Dep't 2000), app. denied, 96 N.Y.2d 792, 725 N.Y.S.2d 642, 749 N.E.2d 211, 2001 N.Y. LEXIS 679 (N.Y. 2001).

124. — — —Period to cure

It was error to grant plaintiff's motion for Yellowstone injunction where injunction was sought after period to cure and after service of notice of termination. Daashur Assocs. v December Artists Apartment Corp., 226 A.D.2d 114, 640 N.Y.S.2d 65, 1996 N.Y. App. Div. LEXIS 3302 (N.Y. App. Div. 1st Dep't 1996).

Court should have granted commercial tenants' motion for Yellowstone injunction, even though they did not exercise option to renew lease in timely manner, where substantial improvements were made to premises and considerable forfeiture would result if tenants were not allowed to renew, landlords did not show that they had prospective tenant or that they were otherwise prejudiced from tenants' 2-month delay in giving notice, and delay was result of inadvertence and confusion which existed following death of tenants' business manager. Beltrone v Danker, 228 A.D.2d 763, 643 N.Y.S.2d 720, 1996 N.Y. App. Div. LEXIS 6425 (N.Y. App. Div. 3d Dep't 1996).

In action for breach of warranty of habitability, court properly denied plaintiff's request for Yellowstone injunction enjoining defendant cooperative corporation from terminating her proprietary lease, as Yellowstone injunction was unnecessary in view of 10-day cure period available under CLS RPAPL § 753(4) if defendant commenced summary proceeding based on plaintiff's failure to pay assessments. Kanner v West 15th St. Owners, 236 A.D.2d 341, 653 N.Y.S.2d 600, 1997 N.Y. App. Div. LEXIS 1680 (N.Y. App. Div. 1st Dep't 1997).

There was no merit in landlord's argument that tenant's motion for Yellowstone injunction had to be denied because notice of tenant's default did not set forth specific period in which tenant could cure alleged violation of lease; existence of period in which lease violation may be cured does not depend on contents of notice of default but on terms of lease, and although failure to state cure period may render notice defective, it does not vitiate cure period. Empire State Bldg. Assocs. v Trump Empire State Partners, 245 A.D.2d 225, 667 N.Y.S.2d 31, 1997 N.Y. App. Div. LEXIS 13422 (N.Y. App. Div. 1st Dep't 1997).

There was no merit in landlord's argument that tenant's motion for Yellowstone injunction had to be denied because 60-day cure period set forth in lease did not apply for reason that alleged

breach—tenant's filing of purportedly false information—exposed landlord to potential criminal liability under CLS Penal §§ 175 et seq., prohibiting filing of false instruments, where (1) landlord did not even attempt to set forth rationale under which it could be held criminally liable for tenant's supposed violation, which occurred, if at all, years before landlord had any connection with subject building, (2) even if alleged default could subject landlord to criminal liability, that would not mean that there was no opportunity to cure, (3) although lease gave landlord right to terminate lease if default subjected it to criminal liability, lease merely required tenant to act promptly and contained no specific period in which to cure, thus presumptively affording tenant reasonable period in which to do so, (4) 7 days that landlord waited between serving notice of default and notice of termination was not reasonable period to address particular alleged violation, and (5) tenant responded promptly to notice of default by taking immediate action to try to ascertain precisely what landlord was referring to as allegedly false representation and in what document it was made. Empire State Bldg. Assocs. v Trump Empire State Partners, 245 A.D.2d 225, 667 N.Y.S.2d 31, 1997 N.Y. App. Div. LEXIS 13422 (N.Y. App. Div. 1st Dep't 1997).

Tenant was properly granted Yellowstone injunction, even though it did not make application therefor until after its time to cure had expired and lease was terminated, where defaults described in landlord's notice to cure were such as not to be capable of complete cure within time provided in notice, even as extended by parties' subsequent agreements, all that lease terms required from tenant was commencement of diligent efforts to cure defaults within allotted time, and tenant complied therewith by retaining architects, engineers, and contractors, and submitting plans to landlord for approval. Becker Parkin Dental Supply Co. v 450 Westside Partners, LLC, 284 A.D.2d 112, 725 N.Y.S.2d 547, 2001 N.Y. App. Div. LEXIS 5657 (N.Y. App. Div. 1st Dep't 2001).

Court improperly granted motion for Yellowstone injunction where tenant did not move for injunctive relief until after expiration of cure period specified in landlord's notice to cure, and after notice of termination of lease had been served. King Party Ctr. of Pitkin Ave., Inc. v Minco

Realty, LLC, 286 A.D.2d 373, 729 N.Y.S.2d 183, 2001 N.Y. App. Div. LEXIS 8024 (N.Y. App. Div. 2d Dep't 2001).

125. — —Conditions

In connection with tenant's application for Yellowstone injunction, court did not err in awarding landlord interest on escrow payments; conditions placed upon the grant of a Yellowstone injunction do not alter the rights and obligations of the parties. The point of reference for defining the rights of the parties is not the court order; rather, it is the lease itself. The Yellowstone injunction did not supersede the lease provision calling for interest on rent arrears in the event of a default. The Yellowstone injunction protected the firm from eviction; it did not rewrite the lease. Graubard Mollen Horowitz Pomeranz & Shapiro v 600 Third Ave. Assocs., 93 N.Y.2d 508, 693 N.Y.S.2d 91, 715 N.E.2d 117, 1999 N.Y. LEXIS 1298 (N.Y. 1999).

In granting Yellowstone relief, court may impose reasonable conditions including posting of bond in amount rationally related to damages nonmoving party might suffer if court later determines that relief should not have been granted; conditions imposed will not be disturbed on appeal absent showing that court acted improvidently in exercising its discretion. Bennigan's of New York v Great Neck Plaza, L.P., 223 A.D.2d 615, 636 N.Y.S.2d 835, 1996 N.Y. App. Div. LEXIS 429 (N.Y. App. Div. 2d Dep't 1996).

In granting tenants' motion for Yellowstone injunction, court did not abuse its discretion in failing to place more stringent conditions on that relief where grant was on conditions that plaintiffs pay certain sums for past due and future use and occupancy, post $2,000 bond, and tender proof of insurance, all within deadlines set by court. 37th St. Enters. v 500-512 Seventh Ave. Assocs., 266 A.D.2d 28, 697 N.Y.S.2d 601, 1999 N.Y. App. Div. LEXIS 11188 (N.Y. App. Div. 1st Dep't 1999).

In commercial tenant's action for declaratory judgment as to amount of rent due, court's Yellowstone injunction properly ordered tenant to continue paying rent at same rate that it had been paying since December 1987 where court gave proper consideration to long-term status

quo. Kuo Po Trading Co. v Tsung Tsin Ass'n, 273 A.D.2d 111, 709 N.Y.S.2d 89, 2000 N.Y. App. Div. LEXIS 6595 (N.Y. App. Div. 1st Dep't 2000).

126. — —Dismissal of injunction

In action by corporate tenant seeking declaratory judgment that it did not assign lease when it transferred 25 percent of its outstanding capital stock without former 90 percent shareholder continuing to retain and exercise operational control, landlord was entitled to dismissal of tenant's Yellowstone injunction and declaration that tenant had violated lease where (1) lease provided that "transfer or other disposition of in excess of 25 percent . . . of the beneficial ownership of Tenant . . . shall constitute an assignment" requiring landlord's written consent, (2) lease represented that certain person held 90 percent of tenant's outstanding stock, (3) landlord asserted that this person had been in control of tenant and was central to lease, and (4) it was uncontroverted that this person no longer owned any shares of tenant. Zona, Inc. v Soho Centrale LLC, 270 A.D.2d 12, 704 N.Y.S.2d 38, 2000 N.Y. App. Div. LEXIS 2260 (N.Y. App. Div. 1st Dep't 2000).

127. — —Illustrative cases

In action by tenant for judgment declaring that landlord was not entitled to terminate lease, "Yellowstone" injunction (tolling tenant's period to cure alleged breach) could not be obtained nunc pro tunc by tenant by order to show cause obtained on June 29 since (1) temporary restraining order obtained by tenant on June 16 was void for improper service and thus landlord's notices to cure and to terminate lease were validly issued on June 18, (2) landlord was not bound to honor temporary restraining order, notwithstanding improper service, on ground that he was aware of its content, (3) landlord's notices to tenant, to cure and to terminate lease, were not ineffective on ground that they were not signed by landlord, where they were issued by landlord and were in proper form, and (4) once lease was validly terminated, it could

not be revived. Norlee Wholesale Corp. v 4111 Hempstead Turnpike Corp., 138 A.D.2d 466, 525 N.Y.S.2d 873, 1988 N.Y. App. Div. LEXIS 2825 (N.Y. App. Div. 2d Dep't 1988).

In action for judgment declaring, inter alia, that landlords were not entitled to terminate lease, court properly denied tenant's motion for Yellowstone injunction where, having previously moved for preliminary injunction and having been granted temporary restraining order (TRO), which tolled period to cure default under lease pending hearing of motion, tenant's counsel failed to appear and obtain extension of TRO on return date of motion, thereby causing cure period to lapse and allowing landlords to serve termination notice; lapse of first TRO was not mere technicality, and failure to toll curative period under lease divested court of its power to grant Yellowstone injunction. T.W. Dress Corp. v Kaufman, 143 A.D.2d 900, 533 N.Y.S.2d 548, 1988 N.Y. App. Div. LEXIS 10317 (N.Y. App. Div. 2d Dep't 1988).

In action by commercial tenants seeking preliminary injunction tolling period for curing purported breach of lease and staying prosecution of summary proceeding for eviction, commenced on January 21, 1989, Supreme Court erred in denying requested Yellowstone injunction where all threshold conditions for issuance thereof were met—in particular, continued existence of lease due to tenants' payment of rent for entire month of January. Suarez v El Daro Realty, Inc., 156 A.D.2d 356, 548 N.Y.S.2d 313, 1989 N.Y. App. Div. LEXIS 15408 (N.Y. App. Div. 2d Dep't 1989).

In action for judgment declaring the parties' rights under commercial lease, court should have denied tenant's motion for Yellowstone injunction, preliminarily enjoining owner from terminating lease in order to enable tenant to cure default, since tenant conceded that it had no intention of investing money into timely repair of existing structure because it planned to sublease and extensively renovate entire premises. Metropolis Westchester Lanes, Inc. v Colonial Park Homes, Inc., 187 A.D.2d 492, 589 N.Y.S.2d 570, 1992 N.Y. App. Div. LEXIS 12776 (N.Y. App. Div. 2d Dep't 1992).

Granting of Yellowstone injunction to tenant did not preclude landlord from drawing on irrevocable letter of credit obtained by tenant which provided that landlord could draw on letter of

credit for payment of rent after default by tenant. Titleserv, Inc. v Zenobio, 210 A.D.2d 311, 619 N.Y.S.2d 765, 1994 N.Y. App. Div. LEXIS 12567 (N.Y. App. Div. 2d Dep't 1994).

In action arising from landlord's attempt to evict tenant due to tenant's violation of certificate of occupancy, court erred in enjoining landlord from terminating lease under CLS CPLR § 6301 because Yellowstone injunction was available to tenant under "cure" provision of parties' lease, where tenant acted in timely fashion to obtain amendment of certificate of occupancy by contacting expediter to assist in processing application to department of buildings. Manhattan Parking System-Service Corp. v Murray House Owners Corp., 211 A.D.2d 534, 621 N.Y.S.2d 68, 1995 N.Y. App. Div. LEXIS 534 (N.Y. App. Div. 1st Dep't 1995).

In granting Yellowstone relief, court may impose reasonable conditions, including posting of undertaking by party seeking relief in amount rationally related to quantum of damages which nonmoving party would sustain in event moving party is later determined not to have been entitled to injunction; requirement that movant also pay outstanding and prospective use and occupancy fees in addition to bond may not be excessive. Sportsplex of Middletown v Catskill Regional Off-Track Betting Corp., 221 A.D.2d 428, 633 N.Y.S.2d 588, 1995 N.Y. App. Div. LEXIS 12007 (N.Y. App. Div. 2d Dep't 1995).

Tenant's motion for Yellowstone injunction was timely and should have been granted where it showed that it could not completely cure its alleged defaults within 30-day cure period given by landlord in its notice of default. Long Island Gynecological Servs., P.C. v 1103 Stewart Ave. Assocs. Ltd. Pshp., 224 A.D.2d 591, 638 N.Y.S.2d 959, 1996 N.Y. App. Div. LEXIS 1443 (N.Y. App. Div. 2d Dep't 1996).

On motion for Yellowstone injunction, tenant satisfied its burden of showing its desire and ability to cure its alleged default by repeatedly indicating in its motion papers that it was willing to repair any defective condition found by court and by providing proof of efforts it had already made; fact that it also challenged necessity of making further repairs did not negate showing. Terosal Props. v Bellino, 257 A.D.2d 568, 683 N.Y.S.2d 581, 1999 N.Y. App. Div. LEXIS 112 (N.Y. App. Div. 2d Dep't 1999).

Summary judgment should not have been granted to defendant landlord, and plaintiff tenant should have been granted Yellowstone injunction, where rent increase provision of parties' lease was ambiguous, both as to extent of development necessary to constitute contemplated "redevelopment," and as to intended location and placement of building contemplated by words "entire blockfront," and plaintiff's parole evidence tended to support its position that provision at issue was drafted with eye to proposed construction of block-length hotel that would include construction of multiple commercial spaces. Blue Jeans U.S.A., Inc. v Basciano, 286 A.D.2d 274, 729 N.Y.S.2d 703, 2001 N.Y. App. Div. LEXIS 8152 (N.Y. App. Div. 1st Dep't 2001).

Trial court properly granted a company's motion to enjoin a landlord from terminating a lease pursuant to N.Y. C.P.L.R. 6301, because the company presented sufficient evidence to satisfy the Yellowstone test, as the company shoed that it possessed a commercial leasehold interest, that it had received two notices of default threatening termination, that the time for cure of any default had not expired, and that it had the ability to cure any default. Gihon, LLC v 501 Second St., LLC, 306 A.D.2d 376, 761 N.Y.S.2d 276, 2003 N.Y. App. Div. LEXIS 7010 (N.Y. App. Div. 2d Dep't 2003).

Plaintiff, which entered into lease whereby it agreed to build and operate movie theater, but whose terms had not yet begun because no construction had occurred and disagreements existed as to preliminary matters, was entitled to Yellowstone injunction where it held commercial lease, it had received purported notice of termination but lease had not yet terminated, and, if found to be in default, which it disputed, it had desire and ability to cure default. RKO Century Warner Theatres v Morris Indus. Builders, 174 Misc. 2d 954, 667 N.Y.S.2d 217, 1997 N.Y. Misc. LEXIS 588 (N.Y. Sup. Ct. 1997).

128. — — —Preliminary injunction appropriate

Yellowstone injunction was appropriate to maintain status quo pending determination on merits in tenant's action for judgment declaring that landlord's notice to cure was nullity where landlord contended that tenant's rubbish storage was fire hazard and tenant asserted that landlord's

notice was part of numerous incidents of harassment by landlord. Hollymount Corp. v Modern Business Associates, Inc., 140 A.D.2d 410, 528 N.Y.S.2d 113, 1988 N.Y. App. Div. LEXIS 4907 (N.Y. App. Div. 2d Dep't 1988).

Commercial tenant was entitled to Yellowstone injunction in landlord's summary holdover proceeding involving parking garage where tenant held commercial lease, tenant had received various threats of termination of lease, tenant's application for temporary restraining order was made prior to termination of lease, and tenant had desire and ability to cure alleged default by means short of vacating premises. Continental Towers Garage Corp. v Contowers Associates Ltd. Partnership, 141 A.D.2d 390, 529 N.Y.S.2d 322, 1988 N.Y. App. Div. LEXIS 6919 (N.Y. App. Div. 1st Dep't 1988).

Restaurant was entitled to Yellowstone injunction enjoining shopping mall management from permitting second restaurant to sell pizza in food court of shopping mall where (1) restaurant lease prohibited restaurant from selling pizza and prohibited changes to lease for 8 years, (2) restaurant was operated by franchisee for 8 years and shopping mall management then suggested that franchise be terminated and that restaurant be operated directly, and (3) shopping mall management also agreed that restaurant would be permitted to sell pizza, but dispute existed as to whether permission to sell pizza was unconditional on termination of franchise or at sufferance of shopping mall management. T & N West Galla Pizzeria, Inc. v CF White Plains Assoc., 185 A.D.2d 270, 586 N.Y.S.2d 266, 1992 N.Y. App. Div. LEXIS 8932 (N.Y. App. Div. 2d Dep't 1992).

In declaratory judgment action brought by lease assignee seeking determination that landlord unreasonably withheld its consent to assignment in violation of covenant in primary lease, after having accepted rent payments from assignee, court erred in denying assignee's motion for Yellowstone preliminary injunction prohibiting landlord from evicting it during pendency of action, on ground that assignee lacked standing to invoke primary lease covenant against unreasonable refusal of consent, for in making such determination, court impliedly ruled that assignment was invalid, thereby reaching merits of assignee's claim. Golub Corp. v

Northeastern Indus. Park, Inc., 188 A.D.2d 729, 590 N.Y.S.2d 579, 1992 N.Y. App. Div. LEXIS 13555 (N.Y. App. Div. 3d Dep't 1992).

Commercial tenant was entitled to Yellowstone injunction to preserve status quo where landlord, rather than commencing nonpayment proceeding under CLS RPAPL § 711(2), which would have allowed tenant to cure at any time prior to issuance of warrant of eviction, instead chose to serve notice to cure (predicate notice to holdover proceeding) alleging that nonpayment was breach of substantial lease obligation, which would allow termination of lease, thus effectively eradicating tenant's interest in leasehold prior to full adjudication of parties' rights. Lexington Ave. & 42nd St. Corp. v 380 Lexchamp Operating, 205 A.D.2d 421, 613 N.Y.S.2d 402, 1994 N.Y. App. Div. LEXIS 6496 (N.Y. App. Div. 1st Dep't 1994).

In action by tenant for judgment declaring that sale and rental of videos would not constitute breach of lease, tenant was entitled to preliminary "Yellowstone" injunction enjoining landlord from taking any action to terminate lease, to preserve status quo, where lease did not place absolute unambiguous restriction on use of premises, and issue of fact existed as to whether landlord had reasonable basis to refuse to consent to additional retail use of selling and renting videos. Kem Cleaners v Shaker Pine, 217 A.D.2d 787, 629 N.Y.S.2d 492, 1995 N.Y. App. Div. LEXIS 7774 (N.Y. App. Div. 3d Dep't 1995).

It was error to deny application by net-lessee and subtenant for Yellowstone injunction where court's determination as to validity of assignment of net lease was premature, and minimal prima facie requirements for Yellowstone injunction were met. BRT Realty Trust v Preferred Entity Advancement, 233 A.D.2d 200, 649 N.Y.S.2d 699, 1996 N.Y. App. Div. LEXIS 11781 (N.Y. App. Div. 1st Dep't 1996).

Plaintiffs were entitled to Yellowstone injunction by evidence as to threat of forfeiture and ability to cure by means short of vacatur of occupancy agreement in event they were found to be in default of their obligations thereunder; however, it was improper for court not to direct plaintiffs to file suitable undertaking. Cohn v White Oak Coop. Hous. Corp., 243 A.D.2d 440, 663 N.Y.S.2d 62, 1997 N.Y. App. Div. LEXIS 9623 (N.Y. App. Div. 2d Dep't 1997).

Court erred in denying tenant's motion for Yellowstone relief without hearing where landlord did not suggest that breaches alleged in its default notice were incurable, tenant had clearly stated its willingness to restore premises to their prior condition should court find that landlord's permission was required, and even though someone apparently forged signature purporting to be that of owner's managing agent on tenant's permit application, it was premature to conclude that tenant either committed or was chargeable with forgery, so as to precluded it from seeking judicial intervention. ERS Enters. v Empire Holdings, LLC, 286 A.D.2d 206, 729 N.Y.S.2d 23, 2001 N.Y. App. Div. LEXIS 7747 (N.Y. App. Div. 1st Dep't 2001).

In commercial tenant's action for judgment declaring that it was not in breach of lease, tenant was entitled to Yellowstone injunction enjoining landlord from terminating lease pending resolution of action, and case would be remitted for fixing of proper undertaking under CLS CPLR § 6312, where tenant showed desire and ability to cure alleged defaults listed in landlord' notice to cure. Lee v TT & PP Main St. Realty Corp., 286 A.D.2d 665, 729 N.Y.S.2d 775, 2001 N.Y. App. Div. LEXIS 8427 (N.Y. App. Div. 2d Dep't 2001).

129. — — —Preliminary injunction not appropriate

Tenant restaurant was not entitled to Yellowstone injunction in dispute with landlord over compliance with lease where tenant failed to make requisite showing of its willingness to cure lease violations, which it denied existed, and landlord, on other hand, demonstrated grounds for obtaining its own injunction under lease with evidence of lease violations in form of permitting loud music, operating bar when restaurant was closed, and using premises for business other than as restaurant. Cemco Restaurants, Inc. v Ten Park Ave. Tenants Corp., 135 A.D.2d 461, 522 N.Y.S.2d 151, 1987 N.Y. App. Div. LEXIS 52422 (N.Y. App. Div. 1st Dep't 1987), app. dismissed, 72 N.Y.2d 840, 530 N.Y.S.2d 555, 526 N.E.2d 47, 1988 N.Y. LEXIS 1025 (N.Y. 1988).

Supreme Court properly dismissed tenant's action seeking declaration that tenant was not in default under lease, and properly denied tenant's motion for preliminary injunction against

landlord's prosecution of summary nonpayment proceeding in District Court, since (1) tenant's request for Yellowstone injunction was misplaced where landlord had served no notice to cure and had not sought to terminate lease, and (2) tenant could seek its relief by counterclaim in District Court, which had jurisdiction under CLS UDCA § 208. Sal De Enterprises, Inc. v Stobar Realty, Inc., 143 A.D.2d 180, 531 N.Y.S.2d 628, 1988 N.Y. App. Div. LEXIS 8440 (N.Y. App. Div. 2d Dep't 1988).

Commercial tenant was not entitled to Yellowstone injunction to prevent landlord from terminating lease where tenant failed to demonstrate that it had desire and ability to cure defects but instead alleged that many of alleged defaults in notice of termination were not its responsibility, that various conditions did not exist as claimed by landlord, and that remainder of defaults had been waived by landlord's acceptance of rent with knowledge of their existence. Linmont Realty, Inc. v Vitocarl, Inc., 147 A.D.2d 618, 538 N.Y.S.2d 277, 1989 N.Y. App. Div. LEXIS 2015 (N.Y. App. Div. 2d Dep't 1989).

Tenant was not entitled to Yellowstone injunction where (1) tenant operated toy and sporting goods store in shopping center and store leased by tenant did not have separate water meter, (2) following increase in semiannual water bill from landlord, tenant requested additional information on water bill and landlord responded by increasing water bill by about 600 percent, and (3) landlord then served notice demanding payment of water bill or surrender of premises within 3 days; there was no need for injunctive relief given that demand for payment was statutory prerequisite to summary nonpayment proceeding, rather than notice of default and notice to cure default within specified period. Top-All Varieties, Inc. v Raj Dev. Co., 151 A.D.2d 470, 542 N.Y.S.2d 259, 1989 N.Y. App. Div. LEXIS 7458 (N.Y. App. Div. 2d Dep't 1989).

Lessee was not entitled to Yellowstone injunction where its request for injunctive relief was made long after expiration of cure period, subtenant continued conduct complained of in default notice long after notice to cure and notice of termination were served, and lessee never made any attempt to make subtenant cease its conduct other than mailing letter which demanded

cessation. American Airlines, Inc. v Rolex Realty Co., 165 A.D.2d 701, 560 N.Y.S.2d 146, 1990 N.Y. App. Div. LEXIS 11047 (N.Y. App. Div. 1st Dep't 1990).

Court properly denied commercial tenant's motion for Yellowstone injunction enjoining landlord from terminating lease on basis of tenant's failure to cure defaults under lease where motion was not brought until 5 months after lease expired pursuant to landlord's notice of termination for failure to cure, 4 days after lease expired by its own terms; untimeliness was not excused by fact that settlement negotiations were being conducted, since negotiations did not contemplate that tenant would cure defaults but were premised on tenant assigning lease to third party. Ritz Entertainment Organization, Inc. v Unity Gallega of United States, Inc., 166 A.D.2d 186, 560 N.Y.S.2d 298, 1990 N.Y. App. Div. LEXIS 11624 (N.Y. App. Div. 1st Dep't 1990).

Subtenant's application for Yellowstone injunction, made after expiration of cure period and after mailing of termination notice, was untimely. B. Bowman & Co. v Professional Data Mgmt., 218 A.D.2d 637, 631 N.Y.S.2d 19, 1995 N.Y. App. Div. LEXIS 9195 (N.Y. App. Div. 1st Dep't 1995).

Supreme court erred in granting a commercial tenant's motion for a Yellowstone injunction and in denying a landlord's cross-motion under N.Y. C.P.L.R. 3211(a)(1), (7) to dismiss the tenant's complaint seeking a declaration of waiver as to a lease requirement of prior written consent to subletting because, in addition to two general non-waiver clauses, the lease specifically included provisions addressing the conduct complained of, namely, a provision that the listing on the building directory of the names of the subtenants should not be deemed consent to sublet and a provision that the landlord's acceptance of rent with knowledge of the tenant's breach should not be deemed a waiver of such breach. Excel Graphics Techs., Inc. v CFG/AGSCB 75 Ninth Ave., L.L.C., 1 A.D.3d 65, 767 N.Y.S.2d 99, 2003 N.Y. App. Div. LEXIS 11933 (N.Y. App. Div. 1st Dep't 2003), app. dismissed, 2 N.Y.3d 794, 781 N.Y.S.2d 292, 814 N.E.2d 464, 2004 N.Y. LEXIS 1067 (N.Y. 2004).

130. —Residential landlords

In an action by a tenant who alleged that his landlord had waived a lease provision limiting use of the demised premises to residential purposes, the tenant would be entitled to a preliminary injunction enjoining the landlord from terminating or otherwise interfering with his right to the apartment. Wilen v Harridge House Associates, 94 A.D.2d 123, 463 N.Y.S.2d 453, 1983 N.Y. App. Div. LEXIS 17959 (N.Y. App. Div. 1st Dep't 1983).

Court erred in dismissing without prejudice plaintiff landlord's complaint seeking declaratory and injunctive relief relating to defendant tenant's violation of no-pet provision of her lease, finding that appropriate course for plaintiff to pursue was to bring proceeding in Civil Court for possession of defendant's apartment, since Civil Court could not afford "complete relief" to plaintiff, which sought equitable relief available only in Supreme Court; further, lease provision at issue specified that plaintiff could seek precisely remedy it sought in Supreme Court, and NYC Admin Code § 27-2009.1(b) expressly provided plaintiff with option of pursuing "action to enforce a lease provision prohibiting the keeping of ... pets." North Waterside Redevelopment Co., L.P. v Febbraro, 256 A.D.2d 261, 682 N.Y.S.2d 202, 1998 N.Y. App. Div. LEXIS 13939 (N.Y. App. Div. 1st Dep't 1998), app. dismissed, 93 N.Y.2d 888, 689 N.Y.S.2d 430, 711 N.E.2d 644, 1999 N.Y. LEXIS 730 (N.Y. 1999).

Where there was no evidence that a condominium would be harmed if the tenants' dogs remained pending the resolution of the management board's underlying action seeking a declaration invalidating an extension of the tenants' lease and a judgment of ejectment, the trial court abused its discretion in granting the board's N.Y. C.P.L.R. art. 63 motion for a preliminary injunction ordering the dogs' removal. Olympic Tower Condo. v Cocoziello, 306 A.D.2d 159, 761 N.Y.S.2d 179, 2003 N.Y. App. Div. LEXIS 7215 (N.Y. App. Div. 1st Dep't 2003).

Landlord was not entitled to preliminary injunction to prevent tenant association from holding meetings in lobby of parties' building, since CLS Real P § 230(2) gave association right to meet in any location on premises devoted to common use, and there was no evidence that meetings were unpeaceful, unsafe, or obstructed access. Jemrock Realty Co. v 210 West 101st St.

Tenants Ass'n, 257 A.D.2d 477, 684 N.Y.S.2d 202, 1999 N.Y. App. Div. LEXIS 458 (N.Y. App. Div. 1st Dep't 1999).

131. — —Preliminary injunction appropriate

Tenants were entitled to preliminary injunction to enforce valid 1967 order of Division of Housing and Community Renewal (DHCR) requiring “manned” elevator service in landlord’s building, until such time as DHCR relieved landlord from its terms, where landlord had unilaterally discontinued such service without DHCR approval. Nasaw v Jemrock Realty Co., 225 A.D.2d 385, 639 N.Y.S.2d 37, 1996 N.Y. App. Div. LEXIS 2252 (N.Y. App. Div. 1st Dep't 1996).

Court properly granted preliminary injunction which required, inter alia, that defendant be accompanied by suitable person who could restrain her where it was shown that her presence in building constituted danger and threat to health and safety of building’s other residents and its employees due to her continuous verbal harassment, including threats to harm others, and threats to set fire to her own apartment. Phoenix Owners Corp. v Weitzner, 231 A.D.2d 427, 648 N.Y.S.2d 2, 1996 N.Y. App. Div. LEXIS 9341 (N.Y. App. Div. 1st Dep't 1996).

Landlord’s petition for a temporary injunction restraining tenants from picketing landlord’s garden apartment management office for the purpose of urging prospective tenants not to rent and otherwise interfering with the business operation was granted, since the tenants had recourse to other remedies and three other corporations which rented apartments from the management office might well be damaged as a result of defendants’ activities. Springfield, Bayside Corp. v Hochman, 44 Misc. 2d 882, 255 N.Y.S.2d 140, 1964 N.Y. Misc. LEXIS 1190 (N.Y. Sup. Ct. 1964).

132. — —Preliminary injunction not appropriate

In an action by the tenants of a residential apartment, seeking to enjoin the termination of their tenancy by the landlord for violation of the tenancy by use of the apartment for commercial

purposes as a child care center, a preliminary injunction, tolling the period in which to cure the violation, would be denied since Real P Actions & Pr Law § 753(4) had eliminated the need for a separate injunction action in the trial court, in that the tenants still had a ten-day period to cure the violation even if the landlord succeeded in a summary proceeding to recover possession of the apartment. Nunez v 164 Prospect Park West Corp., 92 A.D.2d 540, 459 N.Y.S.2d 105, 1983 N.Y. App. Div. LEXIS 16762 (N.Y. App. Div. 2d Dep't 1983).

It was error to grant landlords' motion for preliminary injunction against implementation of regulations which broadened definition of "family" under state and local rent control and rent stabilization systems with respect to tenants' succession rights and antieviction protections, to include "2 adult lifetime partners" whose relationship is long-term and "characterized by emotional and financial commitment," since it was unlikely that landlords' challenge would succeed on merits; regulations were response to recognized public need to protect tenants, they were grafted on provisions which were remedial in nature, and they should beliberally construed. Rent Stabilization Ass'n v Higgins, 164 A.D.2d 283, 562 N.Y.S.2d 962, 1990 N.Y. App. Div. LEXIS 14744 (N.Y. App. Div. 1st Dep't 1990), transferred, 79 N.Y.2d 849, 580 N.Y.S.2d 196, 588 N.E.2d 94, 1992 N.Y. LEXIS 193 (N.Y. 1992), transferred, 80 N.Y.2d 788, 587 N.Y.S.2d 284, 599 N.E.2d 688, 1992 N.Y. LEXIS 1576 (N.Y. 1992).

Plaintiff's "fear and anxiety that another flood would occur while no one was on hand to summon help," and his unsupported claim that his upstairs neighbor's sinks and bathtub had inadequate overflow drains, were insufficient to show his claim for injunctive or declaratory relief for alleged breach of statutory warranty of habitability or to defeat defendant residential cooperative's summary judgment motion where plaintiff admitted in his deposition testimony that complained-of leaks had not rendered his apartment uninhabitable, and further admitted that he had not experienced any subsequent leaks. Silverman v 145 Tenants Corp., 248 A.D.2d 261, 670 N.Y.S.2d 434, 1998 N.Y. App. Div. LEXIS 2660 (N.Y. App. Div. 1st Dep't 1998).

Nonpurchasing tenants in building that had been converted to condominium ownership were not entitled to preliminary injunction prohibiting landlords from denying them access to roof and its

use for recreational purposes since, apart from whether tenants showed likelihood of success, money damages are adequate remedy for reduction in landlord services. Schleissner v 325 W. 45 Equities Group, 210 A.D.2d 13, 618 N.Y.S.2d 804, 1994 N.Y. App. Div. LEXIS 11894 (N.Y. App. Div. 1st Dep't 1994).

133. —Commercial landlords

Tenant was not entitled to preliminary injunction to prevent landlord from terminating lease since tenant could not demonstrate likelihood of success on merits of dispute over lease permitting tenant to use premises for sale of "comic books, toys, posters, books solely," whereas tenant sought to also sell and rent video cassettes; sale and rental of video cassettes was not incidental to sale of items permitted by lease, and tenant should not be permitted to engage in use which it failed to include in lease. Qwakazi, Ltd. v 107 West 86th Street Owners Corp., 123 A.D.2d 253, 506 N.Y.S.2d 162, 1986 N.Y. App. Div. LEXIS 60019 (N.Y. App. Div. 1st Dep't), app. denied, 68 N.Y.2d 609, 508 N.Y.S.2d 1025, 500 N.E.2d 874, 1986 N.Y. LEXIS 21223 (N.Y. 1986).

Commercial landlord was entitled to preliminary injunction prohibiting subtenants from using certain window display practices, and prohibiting tenants' sale of luggage, briefcases and sunglasses, where sublease provided that premises were to be used as audio and photographic equipment store, and that window displays should be similar to standards set by certain major department store which advised against type of window displays used by subtenants. Mostazafan Foundation of New York v Rodeo Plaza Associates, 151 A.D.2d 347, 542 N.Y.S.2d 599, 1989 N.Y. App. Div. LEXIS 8012 (N.Y. App. Div. 1st Dep't 1989).

Landlord's requested preliminary injunction prohibiting specified window displays, and enforcing lease terms regarding types of items which tenant stores could sell, was enforceable despite tenants' contention it was too vague, where it prohibited specific practices such as fluorescent lighting, slot walls, and prices on window items. Mostazafan Foundation of New York v Rodeo

Plaza Associates, 151 A.D.2d 347, 542 N.Y.S.2d 599, 1989 N.Y. App. Div. LEXIS 8012 (N.Y. App. Div. 1st Dep't 1989).

Adequate finding of irreparable injury existed to support issuance of preliminary injunction in favor of landlord, based on lease provisions prohibiting specified types of window displays and sale of specified items, where violation of lease provisions would result in “lower image” of Fifth Avenue building and, due to highly competitive market, it would be difficult to replace tenants who threatened to leave if building image were lowered. Mostazafan Foundation of New York v Rodeo Plaza Associates, 151 A.D.2d 347, 542 N.Y.S.2d 599, 1989 N.Y. App. Div. LEXIS 8012 (N.Y. App. Div. 1st Dep't 1989).

Balancing of equities favored issuance of preliminary injunction enforcing lease provisions which limited kinds of window displays and types of merchandise sold by tenant stores where (1) landlord stated its objections to proposed window displays and types of merchandise before stores opened for business, (2) tenants used prohibited window displays and sold unapproved merchandise after opening, and (3) purpose of injunction was to ensure compliance with lease restrictions, not to terminate lease. Mostazafan Foundation of New York v Rodeo Plaza Associates, 151 A.D.2d 347, 542 N.Y.S.2d 599, 1989 N.Y. App. Div. LEXIS 8012 (N.Y. App. Div. 1st Dep't 1989).

While lease between tenant and prior landlord, stating that premises were to be used for manufacture of upholstered furniture and providing for elevator service during normal business hours and Saturday mornings, contained nonwaiver and merger clauses, tenant was entitled to preliminary injunction directing new landlord to provide elevator service after normal business hours, for photographic work as well as upholstering, where rules promulgated by prior landlord had offered elevator service at other times conditioned on payment of overtime expenses, it was clear that prior landlord consented to use of premises for photographic studio, and new landlord was aware of ensuing partial conversion. Simon & Son Upholstery, Inc. v 601 West Assocs., LLC, 268 A.D.2d 359, 702 N.Y.S.2d 256, 2000 N.Y. App. Div. LEXIS 733 (N.Y. App. Div. 1st Dep't 2000).

Landlord was entitled to enjoin tenant from conducting business of renting videotapes and cassettes and selling and repairing video equipment on premises leased as drugstore “and for no other purpose” since such activity was more than minimal part of tenant’s business and would injure landlord who owned other stores in area which he could lease for such purposes; however, sale of videotapes and cassettes would not violate lease so long as display and sale of those items remained minimal part of business since such convenience items are commonly found in drugstores along with cigarettes and film which are considered “miscellaneous articles.” Anzalone v Normant Drugs, Inc., 136 Misc. 2d 995, 519 N.Y.S.2d 601, 1987 N.Y. Misc. LEXIS 2561 (N.Y. Sup. Ct. 1987).

In action by shopping center landlord against tenant that received water through its own pipeline with separate metering, landlord was not entitled to preliminary injunction preventing threatened shut-off of water to tenants who were added to defendant’s line by landlord without defendant’s agreement on ground that failure to issue injunction would create fire risk, as sprinkler system was not dependent on single line, and defendant established that it did not intend to create fire risk by terminating water in separate dedicated line; while water shut-off would impact other tenants, it was landlord’s own responsibility, as matter of law and lease obligation, to furnish water to other tenants. Grossman v Pharmhouse Corp., 167 Misc. 2d 654, 633 N.Y.S.2d 713, 1995 N.Y. Misc. LEXIS 543 (N.Y. Sup. Ct. 1995), modified, aff'd, app. dismissed, 234 A.D.2d 918, 651 N.Y.S.2d 797, 1996 N.Y. App. Div. LEXIS 13644 (N.Y. App. Div. 4th Dep't 1996).

134. — —Restrictive covenants

Operator of “supermarket grocery store” under lease from owner of shopping center was not entitled to preliminary injunction against leasing of other space in shopping center for proposed bagel store, on ground of violation of restrictive covenant prohibiting leasing of space in center to any other tenant “engaged in the same or similar business” as that of plaintiff, because plaintiff failed to prove likelihood of success on merits, where there were disputed issues as to (1) language of restrictive covenant, which was partly handwritten, (2) nature of plaintiff’s

business operation, (3) nature of proposed new tenant's business operation, and (4) whether proposed new tenant had notice of covenant when it entered into lease. Blueberries Gourmet, Inc. v Aris Realty Corp., 255 A.D.2d 348, 680 N.Y.S.2d 557, 1998 N.Y. App. Div. LEXIS 11837 (N.Y. App. Div. 2d Dep't 1998).

135. — —Preliminary injunction appropriate

Where a lease contained a provision that demised premises would be used only as a private dwelling apartment but, notwithstanding the provision, the plaintiffs were assured by the then landlord's managing agent that the apartments would be utilized for commercial purposes, where the apartments in question were used, in fact, for office or commercial purposes, where the new landlord served notices that tenants were in substantial default and demanded cure by set date, the cure was a simple conversion from a nonconforming to a conforming use and a temporary injunction would be warranted in order to toll the running of the time to cure. Finley v Park Ten Associates, 83 A.D.2d 537, 441 N.Y.S.2d 475, 1981 N.Y. App. Div. LEXIS 14823 (N.Y. App. Div. 1st Dep't 1981).

In an action by a tenant against a landlord arising out of an agreement in which the parties contemplated that the leased premises would be converted into a restaurant and they were aware that substantial alterations would be required to accomplish this end, and in which the landlord covenanted that it would execute all necessary applications in connection therewith and the tenant was required to use due diligence to obtain all the permits and licenses necessary to perform such work, the mandatory temporary injunction issued by Special Term requiring the landlord to specifically perform all provisions of the lease including execution of the application forms would be modified, where the landlord refused to approve the plans for alterations submitted to him by the tenant, in that the only issue in dispute was the refusal to approve the plans required to secure the permits and licenses, and the temporary injunction should have been tailored to meet this exigency. Tri-Beca Foods, Inc. v Hanover River House, Inc., 92

A.D.2d 777, 459 N.Y.S.2d 615, 1983 N.Y. App. Div. LEXIS 17145 (N.Y. App. Div. 1st Dep't 1983).

Court properly granted preliminary injunction restraining landlord from dispossessing commercial tenants on ground that they failed to serve timely written notice of intent to renew lease, in view of landlord's purported oral waiver of written notice requirement and fact that he did not return additional security deposit and rents proffered by tenants after they were told lease was canceled; landlord was not prejudiced by delay, while tenants, if evicted, stood to lose improvements worth $275,000 and their customers' goodwill. Pepe's Shamrock, Inc. v Vecchio, 128 A.D.2d 599, 512 N.Y.S.2d 858, 1987 N.Y. App. Div. LEXIS 44289 (N.Y. App. Div. 2d Dep't 1987).

In a commercial lease dispute regarding exclusive use and occupancy of leased premises by a tenant, wherein the landlord had locked the tenant out due to allegedly having "lost" its certificate of occupancy, the trial court's grant of a preliminary injunction to the tenant was proper pursuant to N.Y. C.P.L.R. 6301, as the tenant made the requisite showing and the parties' status as of the pre-lockout time was controlling for purposes of maintaining the status quo during the pendency of the proceedings. Coinmach Corp. v Alley Pond Owners Corp., 25 A.D.3d 642, 808 N.Y.S.2d 418, 2006 N.Y. App. Div. LEXIS 724 (N.Y. App. Div. 2d Dep't 2006).

136. — —Preliminary injunction not appropriate

Special Term erred in granting commercial tenant's prayer for preliminary injunction enjoining landlord from commencing summary nonpayment proceeding in Civil Court, so as to permit tenant to obtain pretrial discovery from landlord's consultant to determine basis of his fixing of certain complex rent escalation charges, where Civil Court, as preferred forum for speedy disposition of landlordtenant disputes, could grant appropriate disclosure to tenant. Parksouth Dental Group, P. C. v East River Realty, 122 A.D.2d 708, 505 N.Y.S.2d 633, 1986 N.Y. App. Div. LEXIS 59252 (N.Y. App. Div. 1st Dep't 1986).

In action to permanently enjoin landlord from maintaining barriers across rear parking lot and driveway behind tenant's commercial establishment, tenant was not entitled to preliminary injunction since (1) tenant failed to show irreparable harm since it could make deliveries, accept shipments and dispose of its refuse through front of building, although with less convenience, and (2) tenant failed to show likelihood of success on merits since use of rear parking lot was not included in lease and appeared to constitute license which could be revoked by landlord. Koursiaris v Astoria North Dev., Inc., 143 A.D.2d 639, 532 N.Y.S.2d 916, 1988 N.Y. App. Div. LEXIS 9473 (N.Y. App. Div. 2d Dep't 1988).

In action by commercial tenant of arcade space which operated 2 food take-out kiosks, arising from landlord's renovations of arcade space, it was abuse of discretion for court to grant preliminary injunction to enjoin landlord from interfering with tenant's access to kiosks, to enjoin landlord from demolishing kiosks without consent of tenant, to require landlord to post bond prior to commencement of renovation work, and to require landlord to make interim payments to tenant for diminution of gross receipts, since plaintiff had adequate remedy at law. Made from Scratch v Sony USA, 203 A.D.2d 1, 610 N.Y.S.2d 12, 1994 N.Y. App. Div. LEXIS 3294 (N.Y. App. Div. 1st Dep't 1994).

In action by tenant seeking declaration of parties' rights under commercial lease, tenant was improperly granted statutory preliminary injunction enjoining landlord from prosecuting its previously commenced summary proceeding in local Justice Court, where injunction was sought after expiration of period to cure and service of notice of termination of lease. R.P.S.P. Pasta Corp. v Tor Valley, Inc., 229 A.D.2d 783, 645 N.Y.S.2d 576, 1996 N.Y. App. Div. LEXIS 7834 (N.Y. App. Div. 3d Dep't 1996).

Supreme Court improvidently exercised its discretion in granting that branch of a tenant's motion which was to preliminarily enjoin the landlord from demolishing and/or removing a certain sidewalk café structure, as the record revealed disputed and unresolved issues with regard to whether the tenant would succeed on the merits, including whether the parties intended for their lease to provide for the use of the sidewalk, and whether the use of the sidewalk café was

intended to be temporary. Shake Shack Fulton St. Brooklyn, LLC v Allied Prop. Group, LLC, 177 A.D.3d 924, 112 N.Y.S.3d 196, 2019 N.Y. App. Div. LEXIS 8459 (N.Y. App. Div. 2d Dep't 2019).

Commercial tenant was not entitled to injunction prohibiting landlord from terminating tenant's right of possession due to tenant's withholding of rent since tenant could be adequately compensated for its damages by monetary relief as sought in tenant's underlying action alleging that landlord failed to provide adequate security, and there was no present condition interfering with enjoyment of leasehold given that security problem had been alleviated; granting injunction would be tantamount to giving tenant unauthorized attachment of rent due to landlord as security for tenant's independent damage action. Rainbow Travel, Inc. v Omabuild N. V., 139 Misc. 2d 279, 528 N.Y.S.2d 791, 1988 N.Y. Misc. LEXIS 268 (N.Y. Sup. Ct. 1988).

137. —Procedure

Plaintiff seeking to enjoin defendant operating corporation from terminating tenancy of various tenants of plaintiff was required to submit complaint in support of motion for preliminary injunction. Seplow v Century Operating Co., 56 A.D.2d 515, 391 N.Y.S.2d 124, 1977 N.Y. App. Div. LEXIS 10504 (N.Y. App. Div. 1st Dep't 1977).

Supreme Court had jurisdiction under its general equity power to entertain landlord's action to enjoin tenant from reoccupying premises which had been declared uninhabitable after fire, and from making potentially dangerous self-help electrical repairs; fact that administrative remedy existed through New York City Department of Buildings did not bar Supreme Court's parallel jurisdiction in emergency situation to protect safety of building and tenants where plaintiff had chosen to pursue judicial rather than administrative relief, absent some provision vesting department of buildings with exclusive jurisdiction to determine hazardous condition. Akos Realty Corp. v Vandemark, 157 A.D.2d 632, 550 N.Y.S.2d 650, 1990 N.Y. App. Div. LEXIS 788 (N.Y. App. Div. 1st Dep't 1990).

138. — —Evidence

Tenant was not entitled to preliminary injunction to enforce alleged additional lease agreement to occupy and use premises adjacent to those already leased from landlords, because alleged agreement was void under statute of frauds, where parties' negotiations never resulted in documented agreement on all material lease terms, and there was no evidence of part performance unequivocally referable to alleged agreement. 401 Hotel, L.P. v MTI/The Image Group, Inc., 251 A.D.2d 125, 674 N.Y.S.2d 318, 1998 N.Y. App. Div. LEXIS 6933 (N.Y. App. Div. 1st Dep't 1998).

Occupant of rent-stabilized apartment was not entitled to order preliminarily enjoining landlords from removing him from possession on ground that he was assignee of lease since he had not demonstrated likelihood of success on merits given that there was no evidence that landlords ever gave their written consent to assignment of lease as required by CLS Real ¶ § 226-b. Collins v Next West Management, Inc., 137 Misc. 2d 632, 520 N.Y.S.2d 982, 1987 N.Y. Misc. LEXIS 2638 (N.Y. Sup. Ct. 1987).

139. —Illustrative cases

In tenant's action against landlord for declaratory judgment as to parties' rights under lease, tenant was entitled to preliminary injunction enjoining landlord from taking any action to declare tenant in breach of lease since landlord's recognition of tenant's right to cure was indicated by facts that (1) landlord, with knowledge of tenant's default, continued lease and accepted rental payments for more than 2 years, rather than terminating lease, and (2) parties engaged in extensive settlement negotiations regarding rental payments during renewal term of lease, for which time landlord maintained lease despite tenant's continuing defaults. TSS-Seedman's, Inc. v Elota Realty Co., 134 A.D.2d 492, 521 N.Y.S.2d 277, 1987 N.Y. App. Div. LEXIS 50688 (N.Y. App. Div. 2d Dep't 1987), aff'd, 72 N.Y.2d 1024, 534 N.Y.S.2d 925, 531 N.E.2d 646, 1988 N.Y. LEXIS 2710 (N.Y. 1988).

Court erred in enjoining lessor from evicting lessees and in granting stay of implementation of decontrol order pending determination by Division of Housing and Community Renewal of

lessees' application for reconsideration of decontrol order since lessees' application was not only untimely, but it failed, as previously stated by agency, to offer any legally cognizable ground for reopening administrative proceedings. Linick v Kev Realty Co., 147 A.D.2d 388, 537 N.Y.S.2d 810, 1989 N.Y. App. Div. LEXIS 1555 (N.Y. App. Div. 1st Dep't 1989).

Landlord was not entitled to preliminary injunction against tenant' renovation of leased premises where lease specifically allowed minor alterations, including erection and removal of interior partitions, without landlord's permission and without triggering otherwise applicable notice and insurance requirements, and landlord did not show likelihood that alterations fell outside of lease's grant of permission. 401 Hotel, L.P. v MTI/The Image Group, Inc., 251 A.D.2d 125, 674 N.Y.S.2d 318, 1998 N.Y. App. Div. LEXIS 6933 (N.Y. App. Div. 1st Dep't 1998).

Trial court properly granted a landlord's motion to dismiss four causes of action by a tenant, because the landlord possessed the absolute right to terminate the lease, and the tenant had waived its right to challenge the bona fides of the landlord in a proceeding relating to possession of the premises and failed to meet the requirements for a preliminary injunction pursuant to N.Y. C.P.L.R. 6301. 403 W. 43 St. Rest. Inc. v Ninth Ave. Realty, LLC, 36 A.D.3d 464, 827 N.Y.S.2d 655, 2007 N.Y. App. Div. LEXIS 289 (N.Y. App. Div. 1st Dep't 2007).

140. — —Option to buy

Tenant's exercise of option to buy condominium apartment was proper and timely where (1) about 9 hours before option was due to expire, IAS Court issued temporary restraining order stating that "the expiration of the option to purchase the Condo Unit...is hereby tolled and stayed," (2) 6 days later, at about 12:00 p.m., IAS Court issued its decision denying injunctive relief, and (3) at about 1:57 p.m. of same day, tenant hand delivered check for down payment, drawn on New York State bank, to escrowee as required by option agreement, together with letter giving notice of its exercise of option. Syndicom Corp. v Shoichi Takaya, 275 A.D.2d 676, 714 N.Y.S.2d 256, 2000 N.Y. App. Div. LEXIS 10032 (N.Y. App. Div. 1st Dep't 2000), app. denied, 96 N.Y.2d 792, 725 N.Y.S.2d 642, 749 N.E.2d 211, 2001 N.Y. LEXIS 679 (N.Y. 2001).

141. — —Period to cure

Where the parties entered into a 10-year lease providing for an option to renew on 6 months' written notice but for apparent "negligent failure", notice to exercise the option was not sent by the tenant within the required time period and it was rejected, there is no equitable principle permitting the creation of a new property right in the tenant or the performance by court fiat of a condition precedent as the tenant did not perform and it is not entitled to enjoin the landlord pendente lite from exhibiting its premises to prospective tenants and from reletting the same. Swan Products Co. v 130-30 Bldg. Corp., 35 A.D.2d 789, 315 N.Y.S.2d 223, 1970 N.Y. App. Div. LEXIS 3565 (N.Y. App. Div. 1st Dep't 1970).

In an action by tenants seeking a declaration that under the provisions of the interim Loft Law (L 1980, ch 889, § 6) they were entitled to be offered a renewal lease for a term of at least one year at a monthly rental not to exceed 11 percent above the rent payable during the final month of their existing leases, and for an injunction enjoining the landlord from evicting them, the tenants would be entitled to a preliminary injunction enjoining the landlord from bringing any action to terminate their tenancy, and restraining the landlord from interfering with the tenants' use and occupancy of their loft, where the crucial issue to be determined would be whether the landlord knew or had reason to know at the inception of the term that the tenants would occupy the loft for residential purposes, or, whether the rent had been accepted from tenants who actually occupied the loft for residential use for a period of three successive months, and where the fact that the tenants were photographers, who had not been certified as artists by the city cultural affairs department, would not be dispositive. Pilgreen v 91 Fifth Ave. Corp., 91 A.D.2d 565, 457 N.Y.S.2d 48, 1982 N.Y. App. Div. LEXIS 19393 (N.Y. App. Div. 1st Dep't 1982), app. dismissed, 58 N.Y.2d 1113, 1983 N.Y. LEXIS 4336 (N.Y. 1983).

Because the owners' refusal to renew a tenant's lease based on the tenant's immigration status violated Rent Stabilization Code § 2522.5(g)(1), 2523.5 and Administrative Code of the City of NY § 8-107(5)(a)(1), (2), and because the tenant would likely prevail on the tenant's claims, the

tenant was entitled to a preliminary injunction under N.Y. C.P.L.R. 6301 and 6311. Recalde v Bae Cleaners, Inc., 862 N.Y.S.2d 781, 20 Misc. 3d 827, 240 N.Y.L.J. 20, 2008 N.Y. Misc. LEXIS 4397 (N.Y. Sup. Ct. 2008).

142. — —Renewal of lease

In action, inter alia, to declare that, pursuant to certain agreements, defendant home was precluded from raising rents payable under terms of those agreements, in view of demonstration that if preliminary injunction were not granted to plaintiffs all of whom were senior citizens and could not afford scheduled rent increase and had no alternative residence, any subsequent judgment might be rendered ineffectual, court did not abuse its discretion in granting plaintiffs preliminary injunction restraining increase of rental charges pending outcome of trial. Schlosser v United Presbyterian Home, Inc., 56 A.D.2d 615, 391 N.Y.S.2d 880, 1977 N.Y. App. Div. LEXIS 10703 (N.Y. App. Div. 2d Dep't 1977).

In action seeking declaration of parties' rights under sublease, commenced by sublessee's service of order to show cause seeking temporary restraining order and preliminary injunction tolling 2 30-day cure periods which had commenced upon defendant's service of 2 notices of default under parties' commercial sublease, Supreme Court erred in striking stay of cure period and in subsequently denying motion for preliminary injunction on ground of expiration of cure period since, by timely moving to toll running of cure period so as to maintain status quo, subtenant adhered to accepted procedure. Fratto v Red Barn Farmers Market Corp., 144 A.D.2d 635, 535 N.Y.S.2d 53, 1988 N.Y. App. Div. LEXIS 12411 (N.Y. App. Div. 2d Dep't 1988).

In action seeking declaration of parties' rights under sublease, commenced by sublessee's service of order to show cause seeking temporary restraining order and preliminary injunction tolling 2 30-day cure periods which had commenced upon defendant's service of 2 notices of default under parties' commercial sublease, Supreme Court employed erroneous standard in assessing substantive propriety of subtenant's application for temporary injunction; subtenant's substantial property interest in lease warranted preservation of his right to cure on less than

usual showing required for preliminary injunctive relief in order to ensure, should he ultimately prevail on merits, that victory would not have been nullified by prior termination of lease. Fratto v Red Barn Farmers Market Corp., 144 A.D.2d 635, 535 N.Y.S.2d 53, 1988 N.Y. App. Div. LEXIS 12411 (N.Y. App. Div. 2d Dep't 1988).

Injunctive relief against threatened eviction that would tend to render constructive trust ineffectual was properly granted where plaintiff made strong showing that his relationship with defendants as to original lease was not that of subtenant but rather member in partnership formed to hold and manage leasehold, and that prior to lease's expiration and contrary to parties' express understanding that defendants were to negotiate renewal lease with landlord on partnership's behalf and in parties' joint names, defendants entered into renewal lease that named only individual defendant's corporation as new tenant. Lonninge v Berzak, 262 A.D.2d 212, 692 N.Y.S.2d 330, 1999 N.Y. App. Div. LEXIS 7394 (N.Y. App. Div. 1st Dep't 1999).

143. — —Rent increase

In action by for injunctive relief directing landlords to repair rent-controlled buildings, which were evacuated pursuant to vacate order of city department due to collapse of rear wall, landlords failed to show that such order would constitute unconstitutional taking of property in violation of CLS US Const Amends 5 and 14 where they chose not to present evidence of economic value of property before trial court. Eyedent v Vickers Management, 150 A.D.2d 202, 541 N.Y.S.2d 210, 1989 N.Y. App. Div. LEXIS 6221 (N.Y. App. Div. 1st Dep't 1989).

Tenants of rent controlled apartment buildings in New York City, which were evacuated pursuant to vacate order of city department due to collapse of rear wall, were entitled to injunctive relief directing landlord to repair premises where (1) landlord presented no evidence to support his conclusions as to value of property in relation to cost of repair, but tenants presented credible expert witness testimony on such subject, and (2) any economic hardship sustained by landlord was self-inflicted since landlord was experienced real estate operator who failed to order engineer's report before purchase of buildings less than one year before collapse of rear wall.

Eyedent v Vickers Management, 150 A.D.2d 202, 541 N.Y.S.2d 210, 1989 N.Y. App. Div. LEXIS 6221 (N.Y. App. Div. 1st Dep't 1989).

In action, inter alia, to recover rents due under lease, court properly granted lessor's motion for preliminary injunction enjoining lessees from denying lessor access to leased premises where lease provided lessor with right to enter premises to make repairs. Ho v Choi, 221 A.D.2d 505, 634 N.Y.S.2d 397, 1995 N.Y. App. Div. LEXIS 11993 (N.Y. App. Div. 2d Dep't 1995).

Expiring roof guaranty and deteriorating condition of defendant's apartment justified injunction giving housing cooperative access to apartment. Grinnell Hous. Dev. Fund Corp. v McClain-James, 240 A.D.2d 203, 658 N.Y.S.2d 33, 1997 N.Y. App. Div. LEXIS 6146 (N.Y. App. Div. 1st Dep't 1997).

Court properly denied tenant's motion for preliminary injunction as to landlord's approval of work in question where broad lease provisions required owner's permission before improvements were made to premises, and specifically provided that landlord's decision to grant or deny consent would be in its sole discretion, it was unclear that contemplated work consisted solely of non-structural alterations reasonably necessary to allow tenant to carry on its business, and tenant could be compensated by money damages should landlord's failure to sign off on permit application be found to have been improper. ERS Enters. v Empire Holdings, LLC, 286 A.D.2d 206, 729 N.Y.S.2d 23, 2001 N.Y. App. Div. LEXIS 7747 (N.Y. App. Div. 1st Dep't 2001).

Mandatory preliminary injunction directing a landlord to permit a tenant to install a new vent and a fan on the roof of the landlord's building, as well as the required ductwork, was proper pursuant to N.Y. C.P.L.R. 6301 because, inter alia, the lease gave the tenant the right to operate a kitchen in the demised premises, a vent was needed in order to operate a kitchen, and thus, limited use of parts of the building outside the lease for that purpose was implicit in the lease; further, it was undisputed that the tenant's inability to operate a restaurant in its bar potentially jeopardized its liquor license, and harmed its business. The tenant had installed the kitchen and other improvements to the demised premises at a total cost of about $500,000, and submitted an affidavit by an architect who stated that the only feasible method of venting the kitchen was

through the roof, and that the cost of removing the interior ductwork and air conditioning units and restoring the building would have been approximately $9,000. Second on Second Café v Hing Sing Trading, 66 A.D.3d 255, 884 N.Y.S.2d 353, 2009 N.Y. App. Div. LEXIS 5756 (N.Y. App. Div. 1st Dep't 2009).

Mandatory preliminary injunction directing a landlord to permit a tenant to install an air conditioning unit on the roof of the building was improper because there was no evidence explaining why the existing air conditioning unit could not have been vented through the roof. Second on Second Café v Hing Sing Trading, 66 A.D.3d 255, 884 N.Y.S.2d 353, 2009 N.Y. App. Div. LEXIS 5756 (N.Y. App. Div. 1st Dep't 2009).

That landlord could not afford cost of installing window guards required by ordinance was not a sufficient showing to obtain temporary injunction. Bryant Westchester Realty Corp. v Board of Health, 91 Misc. 2d 56, 397 N.Y.S.2d 322, 1977 N.Y. Misc. LEXIS 2235 (N.Y. Sup. Ct. 1977).

144. — —Repair premises

City of New York was entitled to a preliminary injunction against the New York Jets Football Club and the National Football League, enjoining the Jets from breaching its lease agreement with the city by scheduling home games at a place other than Shea Stadium, as the threat of irreparable injury was self-evident, as the lease agreement itself granted city the right to injunctive relief against a threatened breach, as the performance required of the Jets was not impossible so as to call into play those lease provisions pertaining to excused performance, and as, under all provisions of the lease, “harmonized” with baseball club’s lease, the Jets and the NFL were required to schedule home games around the baseball club instead of deliberately creating a conflict. New York v New York Jets Football Club, Inc., 90 Misc. 2d 311, 394 N.Y.S.2d 799, 1977 N.Y. Misc. LEXIS 2049 (N.Y. Sup. Ct. 1977).

National Football League schedule, insofar as it purported to schedule games for the New York Jets, was null and void since issued in violation of temporary restraining order staying the Jets from breaching lease agreement with New York City by scheduling home football games at a

place other than Shea Stadium. New York v New York Jets Football Club, Inc., 90 Misc. 2d 311, 394 N.Y.S.2d 799, 1977 N.Y. Misc. LEXIS 2049 (N.Y. Sup. Ct. 1977).

145. — —Professional football

Lessee's motion for preliminary injunction enjoining sublessee from negotiating commercial lease or sublease with landlord was properly denied on ground that there was no showing that money damages would be inadequate, even though sublessee had agreed not to compete with lessee and not to negotiate with landlord directly, where (1) lessee and sublessee operated non-competing businesses, (2) sublease had expired and lessee was unable to renegotiate lease with landlord, and (3) so as not to suffer business interruption, sublessee acted on advice of landlord's agent to negotiate directly. Mr. Dees Stores, Inc. v A.J. Parker, Inc., 159 A.D.2d 389, 553 N.Y.S.2d 16, 1990 N.Y. App. Div. LEXIS 3021 (N.Y. App. Div. 1st Dep't 1990).

Plaintiff was not entitled to preliminary injunction in its action for tortious interference with contract and breach of sublease executed between plaintiff and defendant's predecessor-in-interest because, on expiration of lease and sublease, plaintiff retained no rights in underlying real property, and plaintiff had adequate remedy at law. Dairy Barn Stores v Bill's Friendly Auto Serv., 236 A.D.2d 578, 654 N.Y.S.2d 660, 1997 N.Y. App. Div. LEXIS 1519 (N.Y. App. Div. 2d Dep't 1997).

Court properly granted preliminary injunction compelling plaintiff to execute building permit application and any additional related forms where plaintiff was not enjoined from interfering with sublease if facts came to light tending to show that operation of sublease would violate lease agreement, and thus defendants were not awarded ultimate relief sought in their counterclaim. Serota v Mayfair Super Mkts., Inc., 273 A.D.2d 296, 710 N.Y.S.2d 532, 2000 N.Y. App. Div. LEXIS 6494 (N.Y. App. Div. 2d Dep't 2000).

In an action regarding a sublease, a tenant and subtenant would be granted a preliminary injunction and declaratory judgment pursuant to CPLR §§ 6301, 6311, and 3001 restraining the landlord from withholding consent to sublet a rent-stabilized apartment and declaring that the

landlord’s notices to cure and terminate were unreasonable withholding of consent under Real P Law § 226-b, where there would otherwise be irreparable injury, where a balance of the equities favored the tenant, and where the sublease was valid as a matter of law under Real P Law § 226-b. Medina v Brabert Realty Co., 114 Misc. 2d 816, 452 N.Y.S.2d 787, 1982 N.Y. Misc. LEXIS 3571 (N.Y. Sup. Ct. 1982).

146. — —Sub-leases

In an action arising out of a rent strike to enjoin defendants from interfering with contractual relations between plaintiff and its tenant by collecting rent from plaintiff’s tenants, it was an abuse of discretion to deny a preliminary injunction where plaintiff had shown a likelihood that it would succeed in obtaining an injunction and where plaintiff had made a clear showing that it would suffer irreparable harm unless granted the temporary relief in that the loss of rental income would jeopardize plaintiff’s ability to maintain services for the premises. Further, plaintiff’s failure to serve a complaint would not bar the issuance of a preliminary injunction since the action had been properly commenced by service of the summons with notice (CPLR § 305, subd. [b], CPLR § 3012, subd. [b]), and since the notice and affidavit in support of the injunction established the existence of a cause of action for a permanent injunction (CPLR §§ 6301, 6312, subd. [a]). Fairfield Presidential Associates v Pollins, 85 A.D.2d 653, 445 N.Y.S.2d 229, 1981 N.Y. App. Div. LEXIS 16468 (N.Y. App. Div. 2d Dep't 1981).

A motion for a preliminary injunction should have been granted to plaintiff, who was seeking to enjoin defendants from terminating its lease and extending plaintiff’s time to cure its alleged violation of the lease, where plaintiff’s proprietary rights would be forfeited absent a temporary injunction, where the relief had been substantially agreed to by the respondents in writing, and where there had been no problem in the payment of rent. Ameurasia International Corp. v Finch Realty Co., 90 A.D.2d 760, 455 N.Y.S.2d 900, 1982 N.Y. App. Div. LEXIS 18963 (N.Y. App. Div. 1st Dep't 1982).

In litigation between a landlord and a tenant concerning the propriety of a sublease, a preliminary injunction would be entered maintaining the status quo, while permitting the sublessee to continue to occupy the apartment, where “balancing the relative hardships and equities” it would be less hardship to the landlord to permit the sublessee to continue to occupy the apartment than it would be to the original lessee if the apartment were left vacant while the lessee was required to continue to pay rent. Abou-Saif v Berkeley Associates Co., 99 A.D.2d 425, 470 N.Y.S.2d 157, 1984 N.Y. App. Div. LEXIS 16573 (N.Y. App. Div. 1st Dep't 1984).

Commercial lessee was entitled to preliminary injunction prohibiting lessor from interfering with lessee’s right to occupy premises pursuant to terms of lease and from selling, leasing, renting, or otherwise alienating or conveying premises or possession, use or occupancy thereof where lessor had properly executed lease, premises were uniquely suited to lessee’s needs as to size and location, and lessee had negotiated in good faith and was reasonably led to believe that lease was valid and binding. Workbench, Inc. v Syblin Realty Corp., 140 A.D.2d 693, 528 N.Y.S.2d 888, 1988 N.Y. App. Div. LEXIS 6084 (N.Y. App. Div. 2d Dep't 1988).

Tenants were entitled to preliminary injunction prohibiting cotenants from commencing any proceedings to dispossess tenants from demised premises since (1) there was likelihood that tenants would prevail in their action to declare that renewal lease procured by cotenants was for benefit of tenants and cotenants as tenants in common, (2) tenants would suffer loss of clients, business and prestige absent injunction, and (3) balancing of equities favored tenants who, for period of almost 8 years, were unaware of cotenants’ actions in secretly renewing lease for their benefit alone. Rosenthal v Mahler, 141 A.D.2d 625, 529 N.Y.S.2d 365, 1988 N.Y. App. Div. LEXIS 6531 (N.Y. App. Div. 2d Dep't 1988).

Where lessor served notice to cure alleged violations of commercial lease, lessee was entitled to injunction enjoining lessor from terminating lease and tolling running of cure period where lessee established that it held commercial lease, that it had received notice to cure threatening termination of lease, and that it had desire and ability to cure alleged default. Heavy Cream, Inc.

v Kurtz, 146 A.D.2d 672, 537 N.Y.S.2d 183, 1989 N.Y. App. Div. LEXIS 717 (N.Y. App. Div. 2d Dep't 1989).

Equities favored grant, and denial of vacatur, of preliminary injunction under CLS CPLR § 6301 against landlord's termination of lease where tenant showed likelihood of success on merits, notice of default contained significant deficiencies, default was extremely tenuous, there was little likelihood that tenant's application for variance filed with Department of Buildings in 1980 would be found to be material violation of lease, extensive investigations by that department revealed no violations, and harm to tenant from losing lease might well be irreparable because damages probably could not adequately compensate tenant for value of 79 years remaining under lease and its potential renewals in building of such notable character as Empire State Building. Empire State Bldg. Assocs. v Trump Empire State Partners, 245 A.D.2d 225, 667 N.Y.S.2d 31, 1997 N.Y. App. Div. LEXIS 13422 (N.Y. App. Div. 1st Dep't 1997).

147. — —Preliminary injunction appropriate

A motion for a preliminary injunction should have been granted to plaintiff, who was seeking to enjoin defendants from terminating its lease and extending plaintiff's time to cure its alleged violation of the lease, where plaintiff's proprietary rights would be forfeited absent a temporary injunction, where the relief had been substantially agreed to by the respondents in writing, and where there had been no problem in the payment of rent. Ameurasia International Corp. v Finch Realty Co., 90 A.D.2d 760, 455 N.Y.S.2d 900, 1982 N.Y. App. Div. LEXIS 18963 (N.Y. App. Div. 1st Dep't 1982).

148. — —Preliminary injunction not appropriate

A complaint filed in the Supreme Court by a tenant, who had received a notice to cure a breach of lease, seeking to enjoin the landlord from terminating his tenancy, from instituting summary proceedings to dispossess him, and from disturbing his possession of his apartment, would be dismissed, where the relief he sought was available in the Civil Court under RPAPL § 753(4)

(the court noted that the statute was not intended to eliminate completely the availability of relief in the Supreme Court). Mannis v Jillandrea Realty Co., 94 A.D.2d 676, 463 N.Y.S.2d 3, 1983 N.Y. App. Div. LEXIS 18095 (N.Y. App. Div. 1st Dep't 1983).

Tenants (plaintiffs) were not entitled to preliminary injunction directing building owner to remove adjacent tenant's sign where plaintiffs' lease permitted owner to change arrangement and location of "public parts of the building," owner renovated building pursuant to plan approved by town's architectural review board, which required each store to install new sign and remove any old signs, and plaintiffs failed to show how adjacent tenant's sign would irreparably harm their business. Anastasi v Majopon Realty Corp., 181 A.D.2d 706, 581 N.Y.S.2d 223, 1992 N.Y. App. Div. LEXIS 12449 (N.Y. App. Div. 2d Dep't 1992).

Court improperly granted plaintiffs' motion for preliminary injunction directing defendants (plaintiffs' landlord) to provide plaintiffs with unrestricted elevator service where defendants, under parties' commercial lease, agreed to provide elevator service from 8:00 a.m. to 6:00 p.m. Monday through Friday, and from 8:00 a.m. to 10:00 p.m. on weekends, parties evidenced their agreement to such provision by specifically initialing it, and lease, which was negotiated through parties' respective attorneys, also contained broad merger clause providing that lease reflected parties' entire understanding and further provided that any modifications had to be in writing. Paul Pellicoro's Dancesport Int'l v Levy, 286 A.D.2d 305, 729 N.Y.S.2d 389, 2001 N.Y. App. Div. LEXIS 8315 (N.Y. App. Div. 1st Dep't 2001).

149. Co-operative apartments

In action alleging that cooperative corporation improperly prohibited sponsor from voting for more than 3 of 7 proposed board members at annual shareholders' meeting, sponsor was entitled to preliminary injunction barring elected board of directors from acting where (1) more than 5 years had passed since conversion date and sponsor held less than 50 percent of shares in corporation, and thus under 13 NYCRR 18.3(v)(5) sponsor could only nominate 3 directors, but had right to vote for any number, (2) there were no assertions that any board member was

on sponsor's own slate or received remuneration from sponsor, (3) preliminary injunction, as modified by stipulation, allowed elected board to continue to pay ordinary operating expenses of cooperative corporation, and (4) sponsor, which was responsible for 42 percent of expenses incurred, presented evidence to demonstrate that cooperative corporation intended to enter into costly contracts for repairs. Park Briar Assoc. v Park Briar Owners, Inc., 182 A.D.2d 685, 582 N.Y.S.2d 273, 1992 N.Y. App. Div. LEXIS 6024 (N.Y. App. Div. 2d Dep't 1992).

Tenant under proprietary lease was entitled to preliminary injunction against cooperative housing corporation preventing it from foreclosing on tenant's cooperative shares of stock or proprietary lease during pendency of her action seeking permanent injunction to enjoin corporation from effecting nonjudicial foreclosure on her shares or lease under CLS UCC Art 9, since mere existence of proprietary lease did not establish enforceable security agreement to which Uniform Commercial Code applied; preservation of status quo was essential because, otherwise, cooperative corporation or partnership would be able to divest shareholders-lessees of their ownership interest in their apartments without any judicial determination of equitable defenses or counterclaims. McMillan v Park Towers Owners Corp., 225 A.D.2d 742, 640 N.Y.S.2d 144, 1996 N.Y. App. Div. LEXIS 3149 (N.Y. App. Div. 2d Dep't 1996).

In action against defendant cooperative corporation for breach of warranty of habitability, court properly denied plaintiff's request to stay her obligation to pay assessments pending determination of her action for breach of warranty of habitability because withholding assessments would jeopardize funding for construction project that was necessary to save building from sinking, and money adjustment could be made if it were subsequently determined that plaintiff was entitled to abatement. Kanner v West 15th St. Owners, 236 A.D.2d 341, 653 N.Y.S.2d 600, 1997 N.Y. App. Div. LEXIS 1680 (N.Y. App. Div. 1st Dep't 1997).

Court properly denied plaintiffs' request for preliminary injunction to prevent defendant from selling shares appurtenant to plaintiffs' apartment on their default in paying loan obligation where defendant satisfied condition precedent to plaintiffs' repayment of their loan obligation by notifying them that 76 percent of apartments had been purchased, despite plaintiffs' contention

that fewer than 50 percent of shareholders who owned apartments actually occupied apartments, since proprietary leases permitted subleasing, so that percentage of tenantshareholders who actually resided in apartments they owned was irrelevant to plaintiffs' obligation to repay loan. Ostrovsky v Cartier Apts. Owners Corp., 247 A.D.2d 598, 669 N.Y.S.2d 352, 1998 N.Y. App. Div. LEXIS 1777 (N.Y. App. Div. 2d Dep't 1998).

Residential cooperative corporation was properly granted injunction compelling tenants to provide corporation access to their apartment in order to raise terrace doors of tenants' penthouse apartment to make possible installation of flashing for new roof, rather than to leave distance between doors and roof surface unchanged or to lower roof, since first alternative would have resulted in reduced coverage of new roof's warranty, and second alternative would have cost about 14 times as much as raising doors. 78th & Park Corp. v Hochfelder, 262 A.D.2d 204, 693 N.Y.S.2d 527, 1999 N.Y. App. Div. LEXIS 7420 (N.Y. App. Div. 1st Dep't 1999), app. denied, 1999 N.Y. App. Div. LEXIS 9211 (N.Y. App. Div. 1st Dep't Sept. 16, 1999), app. denied, 94 N.Y.2d 757, 703 N.Y.S.2d 74, 724 N.E.2d 770, 1999 N.Y. LEXIS 4016 (N.Y. 1999).

In action alleging that resident shareholders of cooperative apartment building excluded plaintiffs from meetings of cooperative board and deliberations on construction projects, failed to provide adequate notice of meetings and denied access to minutes and corporate records, plaintiffs were improperly granted preliminary injunctive relief where individual plaintiff admitted that he had attended virtually every board meeting since his appointment to board, and parties' affidavits sharply conflicted as to whether access to books and records was ever denied. Rubinstein v Bullard, 285 A.D.2d 366, 726 N.Y.S.2d 660, 2001 N.Y. App. Div. LEXIS 7007 (N.Y. App. Div. 1st Dep't 2001).

Owners of co-operative apartment were not entitled to preliminary injunction to enjoin co-operative corporation and individual director from terminating their proprietary lease and starting action to recover possession of premises where owners proposed to sublet apartment in violation of defendants' unwritten rule prohibiting subletting during first year of tenancy, and although owners demonstrated likelihood that they would ultimately prevail on merits, they failed

to demonstrate irreparable injury which would entitle them to preliminary injunction since CLS RPAPL § 753 grants losing tenant in Civil Court summary proceeding 10 days in which to cure default, and owners failed to set forth any facts to show that their proposed subtenants would be uncooperative in vacating premises within statutory cure period, and thus failed to carry their burden of showing that 10-day period would be too short for terminating subtenancy and curing alleged breach. Weinberg v Norson Realty Corp., 132 Misc. 2d 1055, 506 N.Y.S.2d 504, 1986 N.Y. Misc. LEXIS 2834 (N.Y. Sup. Ct. 1986).

Owner of cooperative apartment, who had withheld monthly maintenance payments from owners corporation in dispute over water leak and resulting damage, prompting his mortgagee to pay his maintenance arrears in order to protect its collateral, was not entitled to preliminary injunction to prevent owners corporation and mortgagee from selling or foreclosing on apartment, since (1) mortgagee had right to pay maintenance arrears under terms of its recognition agreement with owners corporation, confuting likelihood of owner’s ultimate success on merits, and (2) owner had option of paying maintenance arrears and obtaining reimbursement in lawsuit, belying his contention of irreparable harm. Israel v Merrill Lynch Credit Corp., 161 Misc. 2d 489, 614 N.Y.S.2d 684, 1993 N.Y. Misc. LEXIS 609 (N.Y. Sup. Ct. 1993).

Owner of cooperative apartment was improperly granted preliminary injunction restraining defendants from interfering with his use of apartment to provide “bed and breakfast” accommodations, and defendants were entitled to summary judgment dismissing complaint, although proprietary lease permitted owners to have guests, since provision which referred to guests did not extend to business invitees whose occupancy could be characterized as transient and commercial. Hoffman v 345 East 73 Street Owners Corp., 186 A.D.2d 507, 589 N.Y.S.2d 334, 1992 N.Y. App. Div. LEXIS 12367 (N.Y. App. Div. 1st Dep't 1992).

150. Matrimonial actions

In divorce action, Supreme Court, Westchester County, properly denied husband’s motion to enjoin allegedly related New York County action involving parties’ corporate marital property

since it was not duplicative of matrimonial action, and outcome thereof could result in increase in value of marital estate subject to equitable distribution. Silver v Silver, 198 A.D.2d 490, 604 N.Y.S.2d 182, 1993 N.Y. App. Div. LEXIS 11126 (N.Y. App. Div. 2d Dep't 1993).

Preliminary injunction aimed at preservation of marital assets pending equitable distribution is available under CLS Dom Rel § 234 on showing of proper cause; proper cause may be shown to exist by admission of party that there was conversion or dissipation of marital assets, or on showing that money was spent in manner that, to neutral party, may be regarded as improper or questionable. Maillard v Maillard, 211 A.D.2d 963, 621 N.Y.S.2d 715, 1995 N.Y. App. Div. LEXIS 424 (N.Y. App. Div. 3d Dep't 1995).

151. —Due process

Although Supreme Court has power to issue preliminary injunctions aimed at preserving marital assets pending equitable distribution, due process requires that party so enjoined receive notice that court will consider such remedy. Novick v Novick, 251 A.D.2d 385, 674 N.Y.S.2d 87, 1998 N.Y. App. Div. LEXIS 6651 (N.Y. App. Div. 2d Dep't 1998).

Blanket injunction prohibiting parties in divorce action from selling or otherwise disposing of marital assets was improper as violation of due process where no notice that court would consider such remedy was given. Novick v Novick, 251 A.D.2d 385, 674 N.Y.S.2d 87, 1998 N.Y. App. Div. LEXIS 6651 (N.Y. App. Div. 2d Dep't 1998).

152. —Out-of-state spouse

Court properly enjoined wife’s New York divorce action on finding of pre-separation contacts by parties with Connecticut that were not so insubstantial as to indicate that husband’s claim of post-separation residence there was less than bona fide, or that action he brought there was motivated by intent to harass wife or other bad-faith motive; moreover, there was no indication that Connecticut court would not be able to fairly adjudicate all issues before it, including its own

jurisdiction, based on husband's claimed residence there. Boynton v Boynton, 228 A.D.2d 172, 644 N.Y.S.2d 173, 1996 N.Y. App. Div. LEXIS 6291 (N.Y. App. Div. 1st Dep't 1996).

A husband residing in New York was prima facie entitled to a temporary injunction precluding his wife, who lived in Florida, from prosecuting a Florida divorce action pending the determination of issues relating to husband's action for separation instituted in New York prior to the Florida divorce suit. Pines v Pines, 48 Misc. 2d 420, 265 N.Y.S.2d 9, 1965 N.Y. Misc. LEXIS 1996 (N.Y. Sup. Ct. 1965).

153. — —Requirements

The court is not authorized to enjoin a defendant from instituting a marital action in a particular sister state unless the out-of-state spouse has commenced such an action. Rodgers v Rodgers, 30 A.D.2d 548, 290 N.Y.S.2d 608, 1968 N.Y. App. Div. LEXIS 4045 (N.Y. App. Div. 2d Dep't), app. denied, 22 N.Y.2d 644, 1968 N.Y. LEXIS 2048 (N.Y. 1968).

A preliminary injunction enjoining husband from prosecuting a divorce action in Florida should not have been granted to wife in New York because a plenary action for a permanent injunction had not been commenced at the time the wife's motion was granted. Siev v Siev, 34 A.D.2d 1001, 312 N.Y.S.2d 795, 1970 N.Y. App. Div. LEXIS 4440 (N.Y. App. Div. 2d Dep't 1970).

154. — —Jurisdiction

Where husband had been living and working in Florida and maintaining his residence, paying taxes and voting there, intending to remain in Florida, at the time of service of process upon him in Florida, the husband was not a domiciliary of New York, thus the court never acquired jurisdiction in personam over him and the order granting the injunction to enjoin husband from suing for divorce was erroneously granted. Siev v Siev, 34 A.D.2d 1001, 312 N.Y.S.2d 795, 1970 N.Y. App. Div. LEXIS 4440 (N.Y. App. Div. 2d Dep't 1970).

In a divorce proceeding, the trial court abused its discretion by enjoining the defendant from taking any action with respect to a divorce proceeding he had filed in Arkansas but had not been able to serve prior to his being served in the New York proceeding, where there was substantial evidence that defendant had established domicile in Arkansas and there was no evidence of any danger of fraud or perpetration of a gross wrong by the foreign court. Fenaughty v Fenaughty, 105 A.D.2d 942, 482 N.Y.S.2d 125, 1984 N.Y. App. Div. LEXIS 21044 (N.Y. App. Div. 3d Dep't 1984).

155. — —Illustrative cases

Court properly enjoined husband from prosecuting divorce action in Connecticut, which he commenced some 7 months after moving to that state, since divorce judgment in his favor in Connecticut would violate wife's rights as to subject of action and tend to render her New York judgement ineffectual, parties resided in New York throughout marriage, marital residence was located in New York, where wife and parties' children continued to reside, and husband was member of New York State Bar and practiced law in New York. Lafferty v Lafferty, 243 A.D.2d 541, 663 N.Y.S.2d 108, 1997 N.Y. App. Div. LEXIS 9819 (N.Y. App. Div. 2d Dep't 1997).

Proposed intervenors' application to intervene in a matrimonial action, stay the divorce judgment, and preliminarily restrain assets of the husband who had been convicted of abusing the intervenors, was denied because, inter alia, as interpreted in Credit Agricole Indosuez v. Rossiyskiy Kredit Bank, preliminary injunctive relief was not authorized by the statute as there was no specific fund that was the subject of their action. PM v NM, 72 Misc. 3d 179, 147 N.Y.S.3d 871, 2021 N.Y. Misc. LEXIS 1712 (N.Y. Sup. Ct. 2021).

156. —Alimony

Where, even if defendant husband had established Texas domicile, relief he sought in Texas suit was dissolution of marriage, precisely same relief sought by wife in New York, and husband had admitted going to Texas because it was a "non-alimony state," wife, having achieved

personal jurisdiction over husband by service of process in State of Texas, could proceed, in New York suit, not only on merits of matrimonial action, but also upon demands for alimony, counsel fees and custody and support for children of the marriage, and, under circumstances, was entitled to injunctive relief against husband's prosecuting his Texas divorce action. Browne v Browne, 53 A.D.2d 134, 385 N.Y.S.2d 983, 1976 N.Y. App. Div. LEXIS 12490 (N.Y. App. Div. 4th Dep't), dismissed, 40 N.Y.2d 917, 1976 N.Y. LEXIS 5538 (N.Y. 1976).

In an action for money damages for wrongful eviction, the grant of a preliminary injunction pursuant to CPLR 6301 was error since a claim for money damages is neither an action for an injunction nor one which involves a "subject of the action" as referred to in the section. James v Gottlieb, 85 A.D.2d 572, 445 N.Y.S.2d 719, 1981 N.Y. App. Div. LEXIS 16367 (N.Y. App. Div. 1st Dep't 1981).

157. —Child custody

In child custody proceeding under CLS Family Ct Act Art 6, mother was not entitled to vacatur of temporary restraining order awarding custody of parties' minor children to father, pendente lite, after she had unilaterally refused to return children to father (who had physical custody of children pursuant to parties' separation agreement) after one of her specified visitation periods since (1) temporary restraining order restored status quo, (2) there were no controverted allegations, conflicting affidavits, extraordinary circumstances or allegations of unfitness, and (3) temporary restraining order did not constitute final determination of custody issue. Long v Scism, 143 A.D.2d 95, 531 N.Y.S.2d 345, 1988 N.Y. App. Div. LEXIS 8136 (N.Y. App. Div. 2d Dep't 1988).

Court properly denied father's motion to enjoin mother from relocating with parties' children to Pennsylvania where his application merely contained conclusory allegations that mother and her new husband threatened to move to Pennsylvania, and although they at one time contemplated moving there, they had no such plan or intention at time father made his application for

injunction. Corcella v Corcella, 228 A.D.2d 637, 645 N.Y.S.2d 828, 1996 N.Y. App. Div. LEXIS 7520 (N.Y. App. Div. 2d Dep't 1996).

158. —Property

The trial court properly enjoined defendant from making any transfer or other disposition of the mortgage on a marital residence, where defendant, who was attorney for the husband in a divorce action, purchased the mortgage and saved the house from foreclosure, which was threatened due to the husband's failure to make payments, thus righting his principal's wrong; the injunction was a proper means of preserving the status quo ante and protecting the wife's possessory interest. Di Prima v Di Prima, 111 A.D.2d 901, 490 N.Y.S.2d 607, 1984 N.Y. App. Div. LEXIS 21894 (N.Y. App. Div. 2d Dep't 1984).

Court has no power pendente lite, to compel disposition of marital real property and to enjoin third party from exercising rights with respect to property, in absence of proper motion for preliminary injunction pursuant to CLS CPLR article 63. Stewart v Stewart, 118 A.D.2d 455, 499 N.Y.S.2d 945, 1986 N.Y. App. Div. LEXIS 54339 (N.Y. App. Div. 1st Dep't 1986).

Court properly denied father's application to enjoin mother, who was awarded custody of parties' 3 children, from relocating from Long Island to Syracuse since move would not effectively curtail father's visitation rights or deprive him of regular access to children, was not being made to distant jurisdiction but to city within New York State, and provided mother's new husband opportunity to take part in ongoing family business; moreover, mother's proposed visitation schedule with children would afford father regular and meaningful access to children including Easter and Christmas recesses and entire summer vacation period. Zaleski v Zaleski, 128 A.D.2d 865, 513 N.Y.S.2d 784, 1987 N.Y. App. Div. LEXIS 44544 (N.Y. App. Div. 2d Dep't), app. denied, 70 N.Y.2d 603, 518 N.Y.S.2d 1026, 512 N.E.2d 552, 1987 N.Y. LEXIS 17430 (N.Y. 1987).

In divorce action, Supreme Court erred in enjoining parties from conveying, encumbering or otherwise disposing of marital assets pending further court order where husband proposed to

apply separate property of his own to relieve wife of debts for which she was, at least in part, jointly liable, and wife failed either to show or contend that husband was attempting or threatening to dispose of marital assets so as to adversely affect wife's ultimate rights in equitable distribution. Guttman v Guttman, 129 A.D.2d 537, 514 N.Y.S.2d 382, 1987 N.Y. App. Div. LEXIS 45206 (N.Y. App. Div. 1st Dep't 1987).

Wife was not entitled to preliminary injunction restraining husband from selling marital residence where property was primarily his separate property, her interest therein had been more than adequately protected by court's requirement that 50 percent of proceeds from sale be held in escrow pending final determination of divorce, and there was no showing that husband was seeking to dispose of marital assets so as to prejudice wife's equitable distribution rights. Nebot v Nebot, 139 A.D.2d 635, 527 N.Y.S.2d 430, 1988 N.Y. App. Div. LEXIS 4385 (N.Y. App. Div. 2d Dep't 1988).

Court in matrimonial action did not abuse its discretion in enjoining defendant husband from disposing of or removing any of his assets from jurisdiction, where wife alleged that husband had repeatedly threatened to transfer his assets to children borne by his present girlfriend, and that husband owned company which employed his girlfriend, suggesting that he had capacity to transfer assets successfully. Taft v Taft, 156 A.D.2d 444, 548 N.Y.S.2d 726, 1989 N.Y. App. Div. LEXIS 15812 (N.Y. App. Div. 2d Dep't 1989).

It was proper to temporarily restrain husband from, inter alia, transferring or disposing of marital assets except for ordinary and routine living and business expenses where he retained exclusive control over virtually all of parties' assets, and his unilateral decision to transfer, sell, or otherwise encumber such assets would serve to deprive wife of her equitable share thereof under parties' prenuptial agreement. Solomon v Solomon, 224 A.D.2d 331, 637 N.Y.S.2d 728, 1996 N.Y. App. Div. LEXIS 1273 (N.Y. App. Div. 1st Dep't 1996).

Husband was properly enjoined from transferring or disposing of any marital assets, where record showed that he had exclusive control of virtually all family finances throughout marriage and, on or about date of commencement of divorce action, he withdrew $35,000 from

equity/money market account. Nordgren v Nordgren, 237 A.D.2d 498, 655 N.Y.S.2d 585, 1997 N.Y. App. Div. LEXIS 2879 (N.Y. App. Div. 2d Dep't 1997).

Wife in divorce action, who also was executor of deceased friend's estate, was entitled to vacatur of preliminary injunction and to distribution to her of accounts listed in name of that estate where postnuptial agreement providing for spouses' joint ownership of such property was void. Darius v Darius, 245 A.D.2d 663, 665 N.Y.S.2d 447, 1997 N.Y. App. Div. LEXIS 12574 (N.Y. App. Div. 3d Dep't 1997), app. dismissed, 91 N.Y.2d 921, 669 N.Y.S.2d 263, 692 N.E.2d 132, 1998 N.Y. LEXIS 159 (N.Y. 1998).

Court properly denied debtor's motion for order enjoining enforcement of judgment against certain funds in his corporate profit-sharing plan where judgment was entered against him for attorneys' fees, stemming from creditor's representation of plaintiff in various divorce proceedings, he failed to show that plan was properly established as qualified "trust" under CLS CPLR § 5205(c), and his withdrawal from trust, of which he was trustee, funds thereafter applied by him to satisfaction of other debts arising from divorce proceedings, further undermined his claim to statute's protection. Kerzner v Kerzner, 248 A.D.2d 186, 670 N.Y.S.2d 763, 1998 N.Y. App. Div. LEXIS 2398 (N.Y. App. Div. 1st Dep't 1998).

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).

An order restraining a wife from making a voluntary conveyance of her interest in certain real property occupied by her husband pursuant to a court order pending the outcome of a divorce action between the parties does not preclude disposal of the property at a sheriff's sale, since the order restrained the wife from making a voluntary conveyance and did not restrain her judgment creditors. Schurm v Union Nat'l Bank, 116 Misc. 2d 255, 455 N.Y.S.2d 532, 1982 N.Y. Misc. LEXIS 3865 (N.Y. Sup. Ct. 1982).

159. — —Constructive trust

In an action to impose a constructive trust on marital assets, Special Term properly exercised its discretion in denying plaintiff's motion for provisional relief, where plaintiff failed to demonstrate, via a prima facie evidentiary showing, the necessity of the relief she requested; she deliberately chose to seek a constructive trust upon her husband's businesses rather than equitable distribution of marital assets, and consequently was not entitled to the benefits of the more liberal rules concerning preliminary injunctions which would apply in the equitable distribution context. Posman v Posman, 108 A.D.2d 847, 485 N.Y.S.2d 349, 1985 N.Y. App. Div. LEXIS 43171 (N.Y. App. Div. 2d Dep't 1985).

In an action for a constructive trust over property in New York and for a divorce, plaintiff's motion for an injunction restraining defendant from transferring or encumbering the New York property and other property situated outside the State is granted only as to the New York property; in view of the jurisdictional cloud over the divorce cause of action, no injunctive relief will be granted other than with regard to the subject matter of the constructive trust cause of action. Werner v Werner, 101 Misc. 2d 414, 423 N.Y.S.2d 780, 1979 N.Y. Misc. LEXIS 2693 (N.Y. Sup. Ct. 1979), disapproved, Unanue v Unanue, 141 A.D.2d 31, 532 N.Y.S.2d 769, 1988 N.Y. App. Div. LEXIS 9318 (N.Y. App. Div. 2d Dep't 1988).

160. — —Investment assets

In divorce action, preliminary injunction prohibiting husband from "transferring, assigning, selling or hypothecating" his assets (except for business purposes and daily necessities) was unduly restrictive insofar as it applied to trading of securities, since husband's brokerage accounts were speculative and volatile investments, and restricting their transfer might ultimately harm rather than preserve them; husband should be permitted to transact business within those accounts, provided that proceeds were retained therein for equitable distribution. Richter v Richter, 131

A.D.2d 453, 515 N.Y.S.2d 876, 1987 N.Y. App. Div. LEXIS 47910 (N.Y. App. Div. 2d Dep't 1987).

In matrimonial action, court properly denied wife's motion for preliminary injunction restricting disposition or encumbrancing of any marital assets by husband, who was real estate developer and held interest in approximately 18 different real estate entities, since (1) many of assets were nonliquid and subject to control of husband's partners in real estate ventures, (2) wife failed to establish that husband was attempting or threatening to dispose of marital assets so as to adversely affect wife's ultimate rights in equitable distribution, and (3) injunction would have been too restrictive and would ultimately have been detrimental to assets as other business people might have become wary of dealing with husband; court's direction that husband give notice to wife's attorney when marital assets were affected by certain actions was reasonable method of ensuring that marital assets would be ascertainable at time of ultimate distribution. Strong v Strong, 142 A.D.2d 810, 530 N.Y.S.2d 693, 1988 N.Y. App. Div. LEXIS 7830 (N.Y. App. Div. 3d Dep't 1988).

Wife was not entitled to preliminary injunction during pendency of matrimonial action restraining husband, self-employed investor, from divesting marital property in his control and imposing fiduciary obligation on him in dealing with such marital assets, since (1) imposition of statutory "prudent man" fiduciary standard on husband would increase extent of his legal responsibilities as titled spouse without producing discernible economic benefit, (2) assets might be harmed if injunction were placed on his ability to manage them, and (3) wife had not shown that husband had dissipated or threatened to deplete marital assets in past. Kahn v Kahn, 147 Misc. 2d 954, 559 N.Y.S.2d 103, 1990 N.Y. Misc. LEXIS 343 (N.Y. Sup. Ct. 1990).

161. — —Separate property

Absent showing that antenuptial agreement was invalid and that husband was about to dissipate his assets, court should not have enjoined husband from disposing of his separate property since preliminary injunction should not be granted where right to ultimate relief in action is in

doubt. Rupert v Rupert, 190 A.D.2d 1028, 594 N.Y.S.2d 476, 1993 N.Y. App. Div. LEXIS 1232 (N.Y. App. Div. 4th Dep't 1993).

Although a husband did not meet the standard of proof required under N.Y. C.P.L.R. 6301 for obtaining a preliminary injunction over lottery winnings that his wife asserted was her separate property, nor did he file a breach of contract claim in his divorce action that would have justified such relief, he was entitled to have the court fashion a restraining order over a portion of the funds pending the outcome of the divorce action, as the title to the winnings was disputed and was within the court's authority to determine pursuant to N.Y. Dom. Rel. Law § 234; the court restrained a portion of the funds because the degree of proof needed under § 234 was much lesser than that required for a restraint under N.Y. C.P.L.R. 6301. Parker v Parker, 196 Misc. 2d 672, 766 N.Y.S.2d 315, 2003 N.Y. Misc. LEXIS 1148 (N.Y. Sup. Ct. 2003).

162. — —Evidence

Wife was not entitled to order enjoining husband from disposing of marital assets and property where there was no proof that husband was attempting or threatening to dispose of marital assets so as to adversely affect wife's ultimate rights in equitable distribution. Kasner v Kasner, 232 A.D.2d 528, 648 N.Y.S.2d 977, 1996 N.Y. App. Div. LEXIS 10426 (N.Y. App. Div. 2d Dep't 1996).

A wife failed to offer sufficient evidence to entitle her to injunctive relief restraining her husband from selling, transferring, or otherwise disposing of his business interests and real property pending the trial of her divorce action, where the wife's substantiation for her claim consisted only of her allegations upon information and belief that her husband was going to transfer his property to either his brother or his father, that he had ceased payment of "certain bills and expenses" in connection with the parties' home, and that he had surreptitiously switched the wife's diamond ring for an imitation zircon stone, and where the wife failed to advance any argument as to how she would be prejudiced by any such dealings. Franzese v Franzese, 108 Misc. 2d 154, 436 N.Y.S.2d 979, 1981 N.Y. Misc. LEXIS 2173 (N.Y. Sup. Ct. 1981).

In a divorce action, the wife was not entitled to a temporary restraining order, or preliminary injunction, prohibiting the husband from transferring, alienating, hypothecating, or otherwise disposing of or emcumbering assets, where the husband was a man with his business in the community and where there was no substantial evidence that he was about to make transfers which would impair the wife's ability to obtain proper relief in the divorce proceedings, the only evidence being an affidavit by the wife concerning transfers totalling less than two percent of the husband's property. Bisca v Bisca, 108 Misc. 2d 227, 437 N.Y.S.2d 258, 1981 N.Y. Misc. LEXIS 2185 (N.Y. Sup. Ct. 1981).

163. —Illustrative cases

Divorce court properly restrained wife from transferring or using any assets with exception of her paycheck, despite her contention that such restraint rendered her unable to meet her expenses, where she liquidated substantial marital assets and transferred property to her mother, she had annual income of $80,000, she had paid mortgage debt on marital residence in amount of about $160,000, and she had bought new car. Maillard v Maillard, 211 A.D.2d 963, 621 N.Y.S.2d 715, 1995 N.Y. App. Div. LEXIS 424 (N.Y. App. Div. 3d Dep't 1995).

Where wife instituted action for separation in New York prior to time husband instituted action for divorce in California, husband would be enjoined from continued prosecution of divorce action in California while separation action was pending, as California divorce decree, if entered, would be entitled to full faith and credit in New York. Birnkrant v Birnkrant, 77 Misc. 2d 353, 353 N.Y.S.2d 122, 1974 N.Y. Misc. LEXIS 1137 (N.Y. Sup. Ct. 1974).

A Husband's counterclaim in an action in which his wife had obtained a court order permitting her to lock up and safeguard certain coins, books and other valuables stored at the marital home, and to freeze the husband's safe deposit box and business bank accounts, failed to state a cause of action, where documents before the court established nothing more than that the wife utilized the legal process available to her to protect potential equitable rights she may have had in the assets and that the legal process was used precisely for the purpose intended and no

other purpose was shown or alleged. Kramer v Kramer, 111 Misc. 2d 388, 444 N.Y.S.2d 991, 1981 N.Y. Misc. LEXIS 3282 (N.Y. Sup. Ct. 1981).

164. — —Attorney's fees

Temporary restraining order imposed pursuant to an order to show cause remained in effect until the charging liens for attorney's fees were taken by a wife's later attorneys against properties awarded to the wife in the matrimonial action. N.K. v M.K., 862 N.Y.S.2d 816, 19 Misc. 3d 1124(A), 239 N.Y.L.J. 95, 2008 N.Y. Misc. LEXIS 5561 (N.Y. Sup. Ct. 2008).

165. — —Preliminary injunction appropriate

In matrimonial action, husband was properly enjoined from instituting further litigation until all counsel fee awards were paid to wife including awards in earlier proceedings. Schussler v Schussler, 123 A.D.2d 618, 506 N.Y.S.2d 774, 1986 N.Y. App. Div. LEXIS 60766 (N.Y. App. Div. 2d Dep't 1986), app. denied, 69 N.Y.2d 612, 517 N.Y.S.2d 1028, 511 N.E.2d 87, 1987 N.Y. LEXIS 16914 (N.Y. 1987).

166. — —Preliminary injunction not appropriate

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).

167. Money damages

Plaintiff is not entitled to preliminary injunction preventing defendants from using plaintiff's photograph in advertisement as plaintiff's complaint seeks only money damages and provisional remedy is not authorized when money claim is subject of action. Schwartz v Hebrew Nat., Inc., 130 Misc. 2d 942, 497 N.Y.S.2d 1000, 1986 N.Y. Misc. LEXIS 2448 (N.Y. Sup. Ct. 1986).

168. Nuisance

Where a nuisance has been found and where there has been any substantial damage shown by the party complaining, an injunction will be granted. Boomer v Atlantic Cement Co., 26 N.Y.2d 219, 309 N.Y.S.2d 312, 257 N.E.2d 870, 1970 N.Y. LEXIS 1478 (N.Y. 1970), abrogated, Corsello v Verizon N.Y., Inc., 18 N.Y.3d 777, 944 N.Y.S.2d 732, 967 N.E.2d 1177, 2012 N.Y. LEXIS 583 (N.Y. 2012).

A nuisance will be enjoined although marked disparity be shown in economic consequence between the effect of the injunction and the effect of the nuisance. Boomer v Atlantic Cement Co., 26 N.Y.2d 219, 309 N.Y.S.2d 312, 257 N.E.2d 870, 1970 N.Y. LEXIS 1478 (N.Y. 1970), abrogated, Corsello v Verizon N.Y., Inc., 18 N.Y.3d 777, 944 N.Y.S.2d 732, 967 N.E.2d 1177, 2012 N.Y. LEXIS 583 (N.Y. 2012).

The plaintiff had the right to maintain an action for a permanent injunction in his individual capacity to restrain the defendant from continued maintenance of a nuisance created by the exhaust of idling motors of buses in a terminal which he was compelled to use to and from work and also alleging a danger to him because of a diseased lung. Stock v Ronan, 63 Misc. 2d 735, 313 N.Y.S.2d 508, 1970 N.Y. Misc. LEXIS 1521 (N.Y. Sup. Ct. 1970), aff'd, 39 A.D.2d 844, 333 N.Y.S.2d 383, 1972 N.Y. App. Div. LEXIS 8212 (N.Y. App. Div. 2d Dep't 1972).

169. —Constitutionality

Issuance of preliminary injunction under New York City Nuisance Abatement Law, enjoining use and occupancy of first-floor area of building where 6 illegal gambling arrests had been made, did

not result in denial of due process in view of statutory requirement that judicial hearing on merits be held within 3 days and fact that closing order could be vacated on showing of abatement of public nuisance. New York v Castro, 143 Misc. 2d 766, 542 N.Y.S.2d 101, 1989 N.Y. Misc. LEXIS 320 (N.Y. Sup. Ct. 1989), aff'd, 160 A.D.2d 651, 559 N.Y.S.2d 508, 1990 N.Y. App. Div. LEXIS 4759 (N.Y. App. Div. 1st Dep't 1990).

City of New York was entitled to preliminary injunction under City Nuisance Abatement Law, enjoining defendant owner and defendant lessee from use and occupancy of first-floor area of building which was location of 6 illegal gambling arrests, since minimal intrusion on defendants' rights was outweighed by legitimate exercise of police power to protect public. New York v Castro, 143 Misc. 2d 766, 542 N.Y.S.2d 101, 1989 N.Y. Misc. LEXIS 320 (N.Y. Sup. Ct. 1989), aff'd, 160 A.D.2d 651, 559 N.Y.S.2d 508, 1990 N.Y. App. Div. LEXIS 4759 (N.Y. App. Div. 1st Dep't 1990).

Freedom of expression under CLS NY Const Art I § 8 was not violated by granting of preliminary injunction and continuation of temporary closing order of premises housing cinema, based on observations by municipal health inspectors of numerous acts of high-risk sexual activity during 22 visits to premises over 2-month period, where (1) corporation counsel's office was authorized under NYC Admin Code Title 7 Ch 7 to bring action to permanently enjoin public nuisance, (2) city had issued 2 warning letters 2 years apart before moving to close premises, and second letter set forth consequences of failure to comply (action to close premises), and (3) given cinema's past inability to monitor itself, there was no viable course of state action to abate nuisance without closing cinema. City of New York v Dana, 165 Misc. 2d 409, 627 N.Y.S.2d 273, 1995 N.Y. Misc. LEXIS 224 (N.Y. Sup. Ct. 1995).

In action by city to continue temporary closing order pending trial for permanent injunction, which would close movie theater for one year based on ground violations of 10 NYCRR Subpart 24-2 which was promulgated to deal with risks of multiple anonymous sexual acts occurring in certain public establishments, defendants failed to show that regulation lacked support in fact and was unconstitutional exercise of state's police power; New York State Public Health Council

has determined that establishment which makes facilities available for fellatio is threat to public health, sexual act most often observed by public health inspectors in theater was fellatio, and testimony of defendants' expert was equivocal as to whether fellatio was high or low risk in transmitting HIV infection in instances involving multiple anonymous sexual partners. City of New York v Capri Cinema, 169 Misc. 2d 18, 641 N.Y.S.2d 969, 1995 N.Y. Misc. LEXIS 693 (N.Y. Sup. Ct. 1995).

170. —Modification

Preliminary injunction, prohibiting defendants from operating their textile plant until they abated public nuisance created by noxious odors, was modified on appeal to limit operation of plant to early morning hours, which would minimize deleterious effects of emissions on surrounding area, while avoiding likelihood of defendants permanently going out of business if plant were temporarily closed, and would also allow parties to measure efficacy of wet electrostatic precipitator installed by defendants. State v Premier Color of N.Y., Inc., 285 A.D.2d 544, 728 N.Y.S.2d 86, 2001 N.Y. App. Div. LEXIS 7614 (N.Y. App. Div. 2d Dep't 2001).

171. —Illustrative cases

Temporary restraining order and temporary closing order were properly granted under Nuisance Abatement Law (NYC Admin Code §§ 7-701 et seq.) based on clear and convincing evidence that drugs were sold at commercial premises to undercover officers on 5 different occasions in one year. City of New York v 924 Columbus Assocs., L.P., 219 A.D.2d 19, 640 N.Y.S.2d 497, 1996 N.Y. App. Div. LEXIS 2731 (N.Y. App. Div. 1st Dep't, app. dismissed, 88 N.Y.2d 979, 648 N.Y.S.2d 878, 671 N.E.2d 1275, 1996 N.Y. LEXIS 5077 (N.Y. 1996), reh'g denied, 1996 N.Y. App. Div. LEXIS 6472 (N.Y. App. Div. 1st Dep't).

Defendant in action for breach of contract was entitled to preliminary injunction prohibiting plaintiff from issuing obnoxious or offensive odors from its premises where defendant proved likelihood of success on merits, irreparable harm in absence of such relief, and balance of

equities in its favor. Interpharm, Inc. v Fairchild Warehouse Assocs., 251 A.D.2d 546, 673 N.Y.S.2d 927, 1998 N.Y. App. Div. LEXIS 7509 (N.Y. App. Div. 2d Dep't), app. dismissed, 92 N.Y.2d 1002, 684 N.Y.S.2d 188, 706 N.E.2d 1212, 1998 N.Y. LEXIS 4942 (N.Y. 1998).

City was entitled to preliminary injunction under Nuisance Abatement Law (NYC Admin Code §§ 7-701 et seq.), closing commercial dance establishment known as “Naked City” based on proof that its proprietors allowed it to be used for purposes of drug sales, thus constituting public nuisance. City of New York v 56-01 Queens Blvd., 172 Misc. 2d 642, 660 N.Y.S.2d 346, 1997 N.Y. Misc. LEXIS 222 (N.Y. Sup. Ct. 1997).

Despite the availability of money damages and despite well-founded security concerns, a parking garage operator was granted preliminary injunctive relief against the maintenance, by a stock exchange’s private security force, of security blockades that impeded access to the garage and the force’s conduct of vehicle searches in the immediate area; the court’s willingness to grant such relief was grounded in the fact that there was apparently no formal authorization for a private security force to take such drastic measures. Wall St. Garage Parking Corp. v New York Stock Exch., 779 N.Y.S.2d 745, 3 Misc. 3d 1014, 2004 N.Y. Misc. LEXIS 268 (N.Y. Sup. Ct.), rev'd, 10 A.D.3d 223, 781 N.Y.S.2d 324, 2004 N.Y. App. Div. LEXIS 10166 (N.Y. App. Div. 1st Dep't 2004).

172. — —Preliminary injunction appropriate

Permanent injunction against operation of automobile racetrack was properly issued after racetrack was found to be public nuisance where there was irreparable injury to plaintiffs, their property, and community at large, defendants had altered conditions of race during sound test to influence test, and defendants had not abided by terms of preliminary injunction; court properly concluded that any conditions placed on racetrack would be difficult to enforce and that injunction was sole remedy which would ensure cessation of nuisance. Hoover v Durkee, 212 A.D.2d 839, 622 N.Y.S.2d 348, 1995 N.Y. App. Div. LEXIS 935 (N.Y. App. Div. 3d Dep't 1995).

Court properly granted defendant's motion for preliminary injunction prohibiting plaintiff from conducting voice lessons in his apartment only to extent of limiting hours and days during which plaintiff could do so to Monday through Friday from 12:00 p.m. to 5:00 p.m. and Saturday from 11:00 to 5:00 p.m. where, inter alia, fact issues existed as to whether noise emanating from plaintiff's apartment had been of such level as to entitle defendant to what was, in effect, nuisance abatement relief, and, if so, whether forms of relief such as soundproofing or limited hours of use would be more appropriate than blanket injunction. Besser v Beckett, 253 A.D.2d 648, 677 N.Y.S.2d 364, 1998 N.Y. App. Div. LEXIS 9476 (N.Y. App. Div. 1st Dep't 1998).

New York City was entitled to preliminary injunction, closing premises and prohibiting removal of gambling equipment and further use of premises for illegal gambling, where only proof of abatement of previously established nuisance was counsel's conclusory assertion that complained-of activities were no longer taking place because tenant of record had surrendered premises and landlord was back in possession; defendants' protestation that landlord had no knowledge of past illegality was irrelevant because court's jurisdiction was in rem, its orders were enforced against premises, and personal fault of owner was not material consideration. , City of New York v Partnership 91, L.P., 277 A.D.2d 164, 716 N.Y.S.2d 659, 2000 N.Y. App. Div. LEXIS 12458 (N.Y. App. Div. 1st Dep't 2000).

City established existence of common law public nuisance based on numerous instances of disorderly conduct, and was granted preliminary injunction closing defendant night club even though only 2 incidents actually began inside club, where other incidents occurred in nearby streets and sidewalks at closing time, and included shots fired and people injured. City of Rochester v Premises Located at 10-20 South Washington St., 180 Misc. 2d 17, 687 N.Y.S.2d 523, 1998 N.Y. Misc. LEXIS 684 (N.Y. Sup. Ct. 1998).

In public nuisance action involving defendants' operation of liquid asphalt storage facility allegedly in violation of town's commercial zoning ordinance, plaintiffs were entitled to preliminary injunction enjoining defendants from accepting, receiving or storing any additional asphalt, asphalt emulsion or other asphalt product or derivative, and compelling them to remove

any such material within 30 days, where continued emissions of noxious odors and fumes from facility caused deleterious health effects and discomfort to considerable number of people in vicinity of facility and caused public irreparable harm, and defendants failed to show that their proposed remedial measures would effectively rectify problem of noxious odors and fumes. State v Monoco Oil Co., 185 Misc. 2d 742, 713 N.Y.S.2d 440, 2000 N.Y. Misc. LEXIS 357 (N.Y. Sup. Ct. 2000).

173. — —Preliminary injunction not appropriate

Court properly dismissed New York City's action for injunctive relief under City's nuisance abatement provisions (NYC Admin Code §§ 7-707, 7-711), despite City's contention that college's entrance was located less than 500 feet away from adult book and video store, since 500-foot measurement was not made from entrance in question, but from point where international high school was located within campus, which was more than 500 feet from store. City of New York v Loveshack Video, 284 A.D.2d 291, 725 N.Y.S.2d 373, 2001 N.Y. App. Div. LEXIS 5567 (N.Y. App. Div. 2d Dep't 2001).

In a corporation's action against a town for nuisance and trespass, the corporation failed to make the requisite showing for a preliminary injunction with regard to the town's installation of two culverts given that the facts in the case were sharply disputed and the corporation failed to show that it was likely to succeed on the merits of its claims alleging trespass and nuisance; furthermore, the corporation was collaterally estopped from relitigating the issue of the town's installation of the two culverts, as that same issue had been litigated previously in a prior trial court proceeding wherein a motion for a preliminary injunction involving the same culverts was denied, and the corporation had a full and fair opportunity to contest the prior determination. Seven Acre Wood St. Assocs. v Town of Bedford, 302 A.D.2d 511, 755 N.Y.S.2d 257, 2003 N.Y. App. Div. LEXIS 1645 (N.Y. App. Div. 2d Dep't 2003).

Owners of luxury condominiums immediately adjacent to church which was operating homeless shelter were not entitled to preliminary injunction against such operation on theory that shelter

was private nuisance since they failed to allege that interference with right to use and enjoy their property was substantial, that church intended to interfere with such right, and that church's actions were unreasonable. Greentree at Murray Hill Condo. v Good Shepherd Episcopal Church, 146 Misc. 2d 500, 550 N.Y.S.2d 981, 1989 N.Y. Misc. LEXIS 861 (N.Y. Sup. Ct. 1989).

In action by Department of Environmental Conservation and county department of health for injunction and penalties against manufacturer and distributor of herbicide alleged to be nuisance, court would not grant preliminary injunction since (1) there were substantial unresolved questions of fact barring determination that plaintiffs were likely to succeed on merits, (2) defendants had voluntarily changed label to preclude application of herbicide in county, (3) any damage to residents in having to hook up to public water or purchase bottled water was fully compensable monetarily, and (4) it was sheer speculation that ability to respond to fires was threatened by potential loss of water pressure. State v Fermenta ASC Corp., 160 Misc. 2d 187, 608 N.Y.S.2d 980, 1994 N.Y. Misc. LEXIS 40 (N.Y. Sup. Ct. 1994), app. dismissed, 238 A.D.2d 400, 656 N.Y.S.2d 342, 1997 N.Y. App. Div. LEXIS 3875 (N.Y. App. Div. 2d Dep't 1997).

174. Obscenity

In action seeking permanent injunction against showing of obscene film (CPLR 6330), preliminary injunction was granted under CPLR § 301 restraining defendants from continuing to exhibit film where film was found to be obscene by any standard. Vergari v Pierre Productions, Inc., 43 A.D.2d 950, 352 N.Y.S.2d 34, 1974 N.Y. App. Div. LEXIS 6043 (N.Y. App. Div. 2d Dep't 1974).

Plaintiffs, as owners of adult entertainment centers offering enclosed booths for private screening of sexually explicit movies, made prima facie showing of their right to preliminarily enjoin enforcement of municipal ordinance which required that only open booths be used for private viewing of adult entertainment, where defendants failed to show that open booth requirement of amended ordinance was no broader than necessary to accomplish their

legitimate objective of preventing transmission of AIDS and other sexually transmitted diseases, or that less restrictive alternatives (such as newly enacted requirements of solid walls and one person per booth) would be less effective in meeting their objectives. Time Square Books v City of Rochester, 223 A.D.2d 270, 645 N.Y.S.2d 951, 1996 N.Y. App. Div. LEXIS 9026 (N.Y. App. Div. 4th Dep't 1996).

Owners of adult entertainment centers that offered enclosed booths for private screening of sexually explicit movies, who sought to preliminarily enjoin enforcement of municipal ordinance which required that only open booths be used for private viewing of adult entertainment, satisfied their burden of demonstrating that they would suffer irreparable injury from infringement of their constitutionally guaranteed right of free expression if preliminary injunction was not granted and that balance of equities weighed in their favor, in view of evidence that they would sustain significant loss of business if open booth requirement was enforced. Time Square Books v City of Rochester, 223 A.D.2d 270, 645 N.Y.S.2d 951, 1996 N.Y. App. Div. LEXIS 9026 (N.Y. App. Div. 4th Dep't 1996).

Preliminary injunction prohibiting congregant from worshipping at synagogue was warranted by evidence, including common obscenity congregant repeatedly shouted to synagogue’s president in presence of young children, among others, which was hardly innocuous or inoffensive considering context; moreover, if “Beth Din,” religious tribunal chosen to arbitrate dispute, ultimately ruled that congregant’s alleged misconduct warranted expulsion from synagogue, award would have little meaning if, in meantime, continued misconduct drove away synagogue’s other members or otherwise doomed its continued vitality. Congregation Darech Amuno v Blasof, 226 A.D.2d 236, 640 N.Y.S.2d 564, 1996 N.Y. App. Div. LEXIS 3916 (N.Y. App. Div. 1st Dep't 1996).

In an action pursuant to CPLR § 6330 to enjoin the showing of an obscene film, it is not necessary that the district attorney allege “irreparable injury.” Lazarus v Yorkview Theater Corp., 74 Misc. 2d 729, 345 N.Y.S.2d 413, 1973 N.Y. Misc. LEXIS 1810 (N.Y. Sup. Ct. 1973).

175. Picketing and demonstrations

The Supreme Court had the power to and did enjoin university students and an organization called Students for a Democratic Society from conducting a “sit-in” at a university library administration building. Board of Higher Education v Students for A Democratic Soc., 60 Misc. 2d 114, 300 N.Y.S.2d 983, 1969 N.Y. Misc. LEXIS 1463 (N.Y. Sup. Ct. 1969).

176. —Constitutionality

Petitioner was not entitled to preliminary injunction, staying county police department from barring him from coming within 60 feet of private abortion clinic, since removal of person seeking to enter on private property to communicate political message in violation of property owner’s rights does not constitute state action necessary to trigger free speech protections of state constitution. Moore v Suffolk County Police Dep't, 151 Misc. 2d 160, 579 N.Y.S.2d 575, 1991 N.Y. Misc. LEXIS 774 (N.Y. Sup. Ct. 1991).

Protestors’ First Amendment free speech rights are violated by injunction imposing “floating bubble” or “floating buffer zone” limitations on demonstrating within 15 feet of any person or vehicle seeking access to or leaving abortion clinics, because such limitations burden more speech than is necessary to serve relevant governmental interests. Schenck v Pro-Choice Network, 519 U.S. 357, 117 S. Ct. 855, 137 L. Ed. 2d 1, 1997 U.S. LEXIS 1270 (U.S. 1997).

Protestors’ First Amendment free speech rights are not violated by injunction imposing “fixed bubble” or “fixed buffer zone” limitations on demonstrating within 15 feet of abortion clinic doorways, driveways and parking lot entrances, as such buffer zones are necessary to ensure that people and vehicles trying to enter or exit abortion clinics or clinic parking lots can do so. Schenck v Pro-Choice Network, 519 U.S. 357, 117 S. Ct. 855, 137 L. Ed. 2d 1, 1997 U.S. LEXIS 1270 (U.S. 1997).

Abortion protestors’ First Amendment free speech rights were not violated by “cease and desist” provision of injunction, which required protestors who sought to counsel persons entering or

leaving abortion clinics ("sidewalk counselors") to retreat 15 feet from person being counseled once that person indicated desire not to be counseled; challenged provision was not content-based, although it was directed only at abortion protestors, because it was result of abortion protestors' previous harassment and intimidation of clinic patients, and abortion protestors were only ones who had done acts to be enjoined. Schenck v Pro-Choice Network, 519 U.S. 357, 117 S. Ct. 855, 137 L. Ed. 2d 1, 1997 U.S. LEXIS 1270 (U.S. 1997).

177. —Illustrative cases

Labor Management Relations Act (LMRA) (20 USCS §§ 141-187), not state law, governed plaintiff's action to enjoin labor union from distributing handbills outside of its business; handbilling, which was directed at plaintiff on ground that it was connected with another entity employing nonunion labor, was arguably protected under § 7 of LMRA, and question of whether peaceable handbilling came within that section's "for the purpose of...mutual aid and protection" ambit (or whether indeed § 7 was intended to embrace particular types and kinds of activities) was best left in first instance to National Labor Relations Board, absent presence of "compelling precedent applied to essentially undisputed fact," which was not shown here. Delta-Sonic Carwash Sys. v Building Trades Council, 168 Misc. 2d 672, 640 N.Y.S.2d 368, 1995 N.Y. Misc. LEXIS 686 (N.Y. Sup. Ct. 1995).

178. — —Preliminary injunction appropriate

In action brought by tribal bingo commission and Indians who conducted bingo games on Tuscarora Indian Reservation, against individual Indians who allegedly interfered with plaintiffs' businesses by picketing bingo games and adjacent gas station, plaintiffs were properly granted preliminary injunction since (1) defendants failed to establish their defenses of sovereign immunity and lack of subject matter jurisdiction, (2) plaintiffs established that defendants interfered with their businesses by acts of violence, provocation, and intimidation, (3) interference with plaintiffs' businesses could not be adequately compensated by monetary

damages due to difficulty in proving how many patrons were deterred by defendants' conduct, (4) plaintiffs demonstrated immediate threat to their physical safety and that of their employees, and (5) court's order allowing 6 picketers during normal business hours reasonably accommodated parties' interests. People by Abrams v Anderson, 137 A.D.2d 259, 529 N.Y.S.2d 917, 1988 N.Y. App. Div. LEXIS 6044 (N.Y. App. Div. 4th Dep't 1988).

Restaurant-cabaret, which featured topless dancing, was entitled to preliminary injunction to restrain defendants and demonstrators from entering and remaining on its property where defendants admitted that their purpose in picketing was to drive plaintiff out of business, such intended total destruction of plaintiff's enterprise rose to level of imminent irreparable harm, and injury to defendants if they were forced to protest on nearby public sidewalk was far outweighed by financial loss to plaintiff should injunction not issue. Latrieste Restaurant & Cabaret v Village of Port Chester, 212 A.D.2d 668, 622 N.Y.S.2d 765, 1995 N.Y. App. Div. LEXIS 1732 (N.Y. App. Div. 1st Dep't), app. dismissed, 86 N.Y.2d 837, 634 N.Y.S.2d 445, 658 N.E.2d 223, 1995 N.Y. LEXIS 3435 (N.Y. 1995), app. dismissed, 86 N.Y.2d 838, 634 N.Y.S.2d 446, 658 N.E.2d 224, 1995 N.Y. LEXIS 5670 (N.Y. 1995).

Court properly granted injunction limiting teachers' union from picketing annual "Work Appreciation for Youth" dinners where interest in plaintiff organization in protecting its residents, emotionally-disturbed boys, from exposure to conflict which could cause them emotional harm was significant and unrelated to content of speech. Children's Village v Greenburgh Eleven Teachers' Union Fed'n of Teachers, Local 1532, 249 A.D.2d 433, 671 N.Y.S.2d 504, 1998 N.Y. App. Div. LEXIS 4250 (N.Y. App. Div. 2d Dep't 1998).

Landlord's petition for a temporary injunction restraining tenants from picketing landlord's garden apartment management office for the purpose of urging prospective tenants not to rent and otherwise interfering with the business operation was granted, since the tenants had recourse to other remedies and three other corporations which rented apartments from the management office might well be damaged as a result of defendants' activities. Springfield, Bayside Corp. v

Hochman, 44 Misc. 2d 882, 255 N.Y.S.2d 140, 1964 N.Y. Misc. LEXIS 1190 (N.Y. Sup. Ct. 1964).

The establishment and maintenance of picket lines in front of plaintiff's nursing home instituted to subject the plaintiff to economic pressure to compel defendants' unwarranted recognition as the collective bargaining representative of plaintiff's employees was unlawful and would be enjoined, since the controversy involved was not a labor dispute within the contemplation of § 807(10)(c) of the Labor Law. Pavilion Nursing Home v Litto, 48 Misc. 2d 755, 265 N.Y.S.2d 695, 1965 N.Y. Misc. LEXIS 1372 (N.Y. Sup. Ct. 1965).

179. — —Preliminary injunction not appropriate

In an abortion clinic's action for a preliminary injunction enjoining an anti-abortion organization from interfering with the clinic's operation by picketing, demonstrating, and allegedly harassing patients and employees of the clinic, the preliminary injunction would be modified to enjoin "shouting, screaming, engaging in physical and verbal threats, assault, abuse, harassment, intimidation and property damage" where the trial court's injunction, in precluding "demonstrating, picketing and in any way interfering," had been overly broad in restricting peaceful picketing and demonstrating in a quasi-public area. Parkmed Co. v Pro-Life Counselling, Inc., 91 A.D.2d 551, 457 N.Y.S.2d 27, 1982 N.Y. App. Div. LEXIS 19382 (N.Y. App. Div. 1st Dep't 1982).

A tenant, whose request to be released from his lease was denied, would not be enjoined from peacefully picketing outside defendant's apartment building carrying signs reciting that the building was noisy, the service was not good, and that the tenant was paying for his own heat, where there was no denial of the truth or accuracy of the signs and no monetary loss was established by reason of the picketing. Dicta Realty Associates v Shaw, 50 Misc. 2d 267, 270 N.Y.S.2d 342, 1966 N.Y. Misc. LEXIS 1903 (N.Y. Sup. Ct. 1966).

Plaintiff's action for preliminary injunction, to enjoin labor union from distributing handbills outside of its business, was barred by preemption doctrine based in case law even if

defendant's proposed handbilling activity, which was directed at plaintiff on ground that it was connected with another entity employing nonunion labor, was not "protected" under Labor Management Relations Act (20 USCS §§ 141-187), as it could not be said that proposed handbilling was only of peripheral concern to scheme of federal National Labor Relations Act; state law and state causes of action, concerning conduct that Congress intended to be unregulated, are preempted. Delta-Sonic Carwash Sys. v Building Trades Council, 168 Misc. 2d 672, 640 N.Y.S.2d 368, 1995 N.Y. Misc. LEXIS 686 (N.Y. Sup. Ct. 1995).

180. Public utilities

Injunctive relief was not warranted in action in which plaintiff, telephone customer and ratepayer, alleged that defendants secretly and fraudulently followed policy of charging for phone calls in whole-minute increments only since plaintiff did not show that he was in imminent danger of suffering irreparable harm for which legal remedies were inadequate if defendants did not more conspicuously advertise their "rounding up" practice; moreover, courts are not equipped to dictate or police how such defendants advertise their charges, tasks which legislature has expressly assigned to Public Service Commission. Porr v NYNEX Corp., 230 A.D.2d 564, 660 N.Y.S.2d 440, 1997 N.Y. App. Div. LEXIS 7300 (N.Y. App. Div. 2d Dep't 1997), app. denied, 91 N.Y.2d 807, 669 N.Y.S.2d 260, 692 N.E.2d 129, 1998 N.Y. LEXIS 183 (N.Y. 1998).

Court properly denied defendant's motion for preliminary injunction to prevent utility company from terminating gas and electric services to his residence where steps taken by company to terminate service were authorized by and in accordance with CLS Pub Ser § 32(2)(a) and 16 NYCRR § 11.4(a)(1), and although unpaid bills on which termination was premised were more than 12 months old, they were subject of continuing billing disputes between parties during 12-month period preceding termination process. Consolidated Edison Co. v Gallagher, 244 A.D.2d 447, 664 N.Y.S.2d 125, 1997 N.Y. App. Div. LEXIS 11646 (N.Y. App. Div. 2d Dep't 1997).

In homeowners' action for preliminary injunction against sewage disposal company's imposition of de facto rate increase without complying with procedural formalities required by CLS Trans

Corp § 121 and CLS Gen Mun § 452(5)(a), homeowners showed probability of success on merits where (1) company announced that it would no longer continue to "gratuitously" maintain sewage grinder pumps, (2) there was evidence that cost of maintaining entire sewer system, including repair and replacement of grinder pumps, had been borne by company and its predecessor through sewer rents collected from all homeowners connected to system, and (3) injunction sought would merely maintain what appeared to have been status quo for about 24 years. Huff v C.K. Sanitary Sys., 246 A.D.2d 795, 667 N.Y.S.2d 766, 1998 N.Y. App. Div. LEXIS 304 (N.Y. App. Div. 3d Dep't 1998).

Granting the motion for preliminary injunction and continuing the stay heretofore granted, the Article 78 proceeding was transferred to the Appellate Division in order to allow the Commission to reopen the hearings or grant a rehearing to bring the actual experience as shown from the rate of return into consideration as the telephone company does not have a complete and adequate remedy at law by making a new rate filing or by review of the Article 78 proceeding, it appearing that these remedies were inadequate and would cause irreparable injury through loss of revenue. New York Tel. Co. v Public Service Com., 64 Misc. 2d 485, 315 N.Y.S.2d 327, 1970 N.Y. Misc. LEXIS 1204 (N.Y. Sup. Ct. 1970), rev'd, 36 A.D.2d 261, 320 N.Y.S.2d 280, 1971 N.Y. App. Div. LEXIS 4233 (N.Y. App. Div. 3d Dep't 1971).

Law firm which had installed conference call device without telephone company's permission was not entitled to preliminary injunction against phone company's threatened termination of firm's phone service where firm's assertion that conference call device presented no hazard to telecommunications as would require telephone company-installed and maintained coupler was unsupported by any acceptable proof, and where firm had only to disconnect its conference call device in order to avoid the consequence against which injunctive relief was sought. Lotto, Stolowitz & Farr v New York Tel. Co., 75 Misc. 2d 494, 347 N.Y.S.2d 530, 1973 N.Y. Misc. LEXIS 1660 (N.Y. Sup. Ct. 1973).

Permanent injunction could not be obtained against phone company's threatened discontinuance of phone service of law firm which had installed conference call device without

phone company's approval, where complaint failed to allege that phone company's requirement that firm's conference equipment be connected by phone company to phone company's equipment was illegal, and further failed to allege that firm would suffer irreparable harm either from installation of connecting device or from disconnection of its conference equipment, and where law firm had adequate administrative remedy with Public Service Commission pursuant to Public Service Law § 96, subd 1. Lotto, Stolowitz & Farr v New York Tel. Co., 75 Misc. 2d 494, 347 N.Y.S.2d 530, 1973 N.Y. Misc. LEXIS 1660 (N.Y. Sup. Ct. 1973).

In citizen-taxpayer's action commenced by Long Island Lighting Company (LILCO) and its shareholders, challenging validity of Long Island Power Authority Act which established Long Island Power Authority (LIPA) for purpose of acquiring assets and business of LILCO, plaintiffs were not entitled to preliminary injunction restraining LIPA from taking any action, inter alia, to make offer to purchase or exchange LILCO stock, since plaintiffs failed to demonstrate present danger of irreparable harm in that LIPA and other defendants had not taken any steps that would indicate imminence of tender offer so as to create basis for urgent intervention by court, where feasibility study (required by CLS Pub A § 1020-h prior to LIPA's acquisition of LILCO) had not yet been published. Long Island Lighting Co. v Long Island Power Authority, 138 Misc. 2d 745, 525 N.Y.S.2d 497, 1988 N.Y. Misc. LEXIS 163 (N.Y. Sup. Ct. 1988), app. dismissed, 177 A.D.2d 686, 576 N.Y.S.2d 1007, 1991 N.Y. App. Div. LEXIS 15020 (N.Y. App. Div. 2d Dep't 1991).

Plaintiff, provider of purportedly humorous and educational recorded telephone messages regarding condoms, was not entitled to preliminary injunction enjoining telephone company from exercising contractually-reserved right to reassign regular prefixes given to plaintiff to "970" prefixes denoting sexually suggestive adult programming for which blocking devices are available, since (1) plaintiff was not likely to establish breach of contract on merits in view sexually explicit nature of programming, (2) telephone company's failure to have reviewed programming prior to issuing regular prefixes did not result in waiver of its contractual right to reassign prefixes, (3) plaintiff failed to show that contract with telephone company constituted

voidable contract of adhesion, (4) plaintiff could pursue damages if breach of contract claim were to be sustained, and (5) balancing of equities did not favor plaintiff in view of public policy concern of shielding minors from influence of sexually explicit media. Condom Sense, Inc. v New York Tel. Co., 148 Misc. 2d 354, 560 N.Y.S.2d 385, 1990 N.Y. Misc. LEXIS 470 (N.Y. Sup. Ct. 1990).

Plaintiffs were not entitled to preliminary injunction preventing Long Island Power Authority (LIPA) from proceeding under CLS Pub A §§ 1020 et seq. to acquire Long Island Lighting Company (LILCO) because LIPA has sole discretion to purchase all or any part of LILCO assets provided ratepayers thereby benefit from lower rates, LIPA submitted sufficient evidence to show its compliance with broad and flexible mandates, plaintiffs failed to show likelihood of ultimate success on merits or balancing of equities in their favor, and they admittedly were unable to post undertaking under CLS CPLR § 6312. Initiative for Competitive Energy v Long Island Power Auth., 178 Misc. 2d 979, 683 N.Y.S.2d 391, 1998 N.Y. Misc. LEXIS 553 (N.Y. Sup. Ct. 1998).

181. Trespass

The grant of a temporary injunction depends upon a clear showing that the party enjoined has trespassed, or threatened to trespass on the rights of the party seeking injunctive relief. Berlitz Publications, Inc. v Berlitz, 29 A.D.2d 743, 287 N.Y.S.2d 592, 1968 N.Y. App. Div. LEXIS 4692 (N.Y. App. Div. 1st Dep't 1968).

Videotape taken by employees of television network at state licensed institution for care and treatment of dependent and neglected children contained nothing which warranted prior restraint upon its exhibition, notwithstanding fact that such videotape was taken after intrusion upon private property without authorization from those in charge of institution. Quinn v Johnson, 51 A.D.2d 391, 381 N.Y.S.2d 875, 1976 N.Y. App. Div. LEXIS 11088 (N.Y. App. Div. 1st Dep't 1976).

Trial court properly denied a property owner's request for an injunction as a City's project, which diverted stormwater onto the owner's property, was necessary to correct a serious threat to the public health, safety, and welfare, and the jury found that the owner had no quantifiable damages for the City's trespass onto the owner's property. McDermott v City of Albany, 309 A.D.2d 1004, 765 N.Y.S.2d 903, 2003 N.Y. App. Div. LEXIS 10984 (N.Y. App. Div. 3d Dep't 2003), app. denied, 1 N.Y.3d 509, 777 N.Y.S.2d 19, 808 N.E.2d 1278, 2004 N.Y. LEXIS 258 (N.Y. 2004).

The Tuscarora Indian nation was entitled to an injunction enjoining defendants from continuing with the construction of a permanent home upon the Tuscarora Indian Tribal lands, and to a further order ejecting them as intruders from the Tuscarora Indian Reservation, where, although one of the defendants was born and lived all her life on the Tuscarora tribal lands, her rights to her parents' allotment had been extinguished when she married a non-Indian and professed to be a member of the Onondaga Tribe. Tuscarora Nation of Indians v Swanson, 108 Misc. 2d 429, 437 N.Y.S.2d 603, 1981 N.Y. Misc. LEXIS 2218 (N.Y. Sup. Ct. 1981).

182. Use of property

Plaintiffs were entitled to prescriptive easement and to judgment enjoining defendants from interfering with their use of dirt or gravel road over their property where (1) road connected to public highway and ran approximately 1000 feet through defendants' property to property which plaintiffs purchased in 1959, (2) in fall of 1959, plaintiffs began operation of shooting preserve on their property and road was used to provide access to property by hunting parties, and (3) preserve was operated from September to March of every year from 1959 to 1978, and road was used in operation as often as 3 to 5 times per week. Reiss v Maynard, 148 A.D.2d 996, 539 N.Y.S.2d 228, 1989 N.Y. App. Div. LEXIS 2650 (N.Y. App. Div. 4th Dep't 1989).

183. —Elements

Warehouse owner met its burden of establishing likelihood of success on merits, irreparable injury, and favorable balance of equities, and grant of preliminary injunction in its favor was not abuse of discretion, where warehouse owner established that its warehouse property had no means of access except for private railroad crossing which it had utilized as sole means of access for some 29 years until crossing was barricaded by defendant without warning, and where preliminary injunction was sought in connection with warehouse owner's action to establish its right to use crossing. Marlyn Warehousing, Inc. v Long Island R. R. Co., 123 A.D.2d 348, 506 N.Y.S.2d 360, 1986 N.Y. App. Div. LEXIS 60121 (N.Y. App. Div. 2d Dep't 1986).

Court properly granted preliminary injunction restraining defendant shopping mall owner from disconnecting plaintiff shopping mall owner from sewer line defendant had constructed to access county sewer system, since fact that plaintiff would have to close its mall if it could not use sewer line satisfied requirement of irreparable harm. Pyramid Centres & Co. v Sarwill Assoc., 186 A.D.2d 968, 589 N.Y.S.2d 214, 1992 N.Y. App. Div. LEXIS 12388 (N.Y. App. Div. 3d Dep't 1992).

It was error to grant plaintiff preliminary injunction restraining defendant from maintaining addition erected in front of its business premises, and from maintaining 2 automated can redemption machines situated next to plaintiff's business premises, where plaintiff failed to show that it would suffer irreparable injury absent injunction, it could not be determined whether plaintiff would succeed on merits, and circumstances were not of extraordinary nature. Rosa Hair Stylists v Jaber Food Corp., 218 A.D.2d 793, 631 N.Y.S.2d 167, 1995 N.Y. App. Div. LEXIS 8995 (N.Y. App. Div. 2d Dep't 1995).

Court properly denied plaintiff's motion for preliminary injunction to enjoin defendants from maintaining fence along boundary between disputed 20-foot-wide strip of property and her land and occupying disputed land, because her inability to use subject property as she allegedly had used it previously was insufficient to show that she would be injured irreparably during pendency of action to determine ownership of disputed land. Jennings v Fisher, 258 A.D.2d 722, 684 N.Y.S.2d 680, 1999 N.Y. App. Div. LEXIS 950 (N.Y. App. Div. 3d Dep't 1999).

A preliminary restraining order and an injunction pendente lite are available under this section to prevent the demolition of an allegedly uninhabitable dwelling until such time as the court reviews the determination of the bureau of buildings that the structure should be demolished. Janks v Syracuse, 47 Misc. 2d 718, 263 N.Y.S.2d 227, 1965 N.Y. Misc. LEXIS 1535 (N.Y. Sup. Ct. 1965).

In action by Manhattan block association (plaintiff) seeking preliminary injunction prohibiting occupancy of newly renovated, city-funded, charitably-owned, low-income apartment building, although plaintiff pleaded timely cause of action based on violation of city's Uniform Land Use Review Procedure, NYC Charter § 197-c, preliminary injunctive relief would be denied in absence of clear showing of likelihood of plaintiff's success on merits. West 97th-West 98th Sts. Block Ass'n v Volunteers of Am., 153 Misc. 2d 321, 581 N.Y.S.2d 523, 1991 N.Y. Misc. LEXIS 792 (N.Y. Sup. Ct. 1991), aff'd in part, modified, No. 48683 (N.Y. App. Div. 1st Dep't 1993).

184. —Modification

Plaintiffs were entitled to preliminary injunction restraining defendants from mining sand and gravel from 7.2-acre parcel, where they established that defendants removed more than 1,000 tons of sand and gravel within 12 consecutive months without mining permit in violation of CLS ECL § 23-2711 and 6 NYCRR § 421.1, which were intended to prevent pollution and protect public health, safety and general welfare; pendency of defendants' challenge to validity of town zoning ordinance was irrelevant to issues presented. State v Izzo, 216 A.D.2d 456, 628 N.Y.S.2d 391, 1995 N.Y. App. Div. LEXIS 6496 (N.Y. App. Div. 2d Dep't 1995).

185. —Adult entertainment

Court properly granted city's motion for preliminary injunction closing theater exhibiting adult films where premises made its facilities available for prohibited sexual activities and thus constituted threat to public health in violation of 10 NYCRR subpart 24-2 and public nuisance dangerous to public health in violation of NYC Admin Code § 7-701 et seq., and city's efforts to

pursue less restrictive course of action had failed to eliminate prohibited activity. City of New York v 777-779 Eighth Ave. Corp., 226 A.D.2d 216, 640 N.Y.S.2d 546, 1996 N.Y. App. Div. LEXIS 3880 (N.Y. App. Div. 1st Dep't), app. dismissed, 88 N.Y.2d 1016, 649 N.Y.S.2d 381, 672 N.E.2d 607, 1996 N.Y. LEXIS 2707 (N.Y. 1996).

Town was properly granted summary judgment to permanently enjoin defendants from operating adult entertainment establishment where town showed that defendants operated their establishment in J-2 business zoning district, that town board had passed local law limiting such establishments to L1 industrial district locations, and that local law, under which special permit was obtained, allowed defendants to operate such establishment only through certain date, which had already passed. Town of Brookhaven v FPD Tavern Corp., 226 A.D.2d 625, 641 N.Y.S.2d 387, 1996 N.Y. App. Div. LEXIS 4316 (N.Y. App. Div. 2d Dep't 1996).

Town was entitled to enjoin adult entertainment cabaret's continuous violation of town's duly-enacted zoning ordinance requiring permits for certain exterior signs, certificate of permitted use, and public assembly permit. Town of Huntington v Albicocco, 256 A.D.2d 330, 681 N.Y.S.2d 341, 1998 N.Y. App. Div. LEXIS 13152 (N.Y. App. Div. 2d Dep't 1998), app. dismissed, 93 N.Y.2d 965, 694 N.Y.S.2d 635, 716 N.E.2d 700, 1999 N.Y. LEXIS 3726 (N.Y. 1999).

Club owners failed to prove compliance with city zoning resolution's "60-40 rule," which was used to determine whether "substantial portion" of commercial establishment's floor space was devoted to adult entertainment and thus subject to certain zoning restrictions, even though club was modified so that adult entertainment was confined to mezzanine occupying only about 28 percent of total floor space, where downstairs area was mere staging area used to attract customers to upstairs performances, owners' attempt to comply with 60-40 rule was sham, and club was still essentially topless bar and integrated adult enterprise of type intended by zoning resolution to be removed from residential areas. City of New York v Dezer Props., Inc., 259 A.D.2d 116, 697 N.Y.S.2d 41, 1999 N.Y. App. Div. LEXIS 10889 (N.Y. App. Div. 1st Dep't 1999).

It was proper to grant city's motion for preliminary injunction enjoining operation of adult entertainment establishment on basis of court's holding in related proceeding that substantial

evidence supported determination by city board of standards and appeals, after public hearing, that owner had failed to obtain valid construction permits under zoning revolution, and thus that owner was operating establishment in violation of zoning regulations. Century 21 Bigman Realty v Horton, 230 A.D.2d 761, 646 N.Y.S.2d 458, 1996 N.Y. App. Div. LEXIS 8358 (N.Y. App. Div. 2d Dep't 1996).

City was not entitled to injunction under nuisance abatement zoning ordinance on ground that defendant was operating adult establishment within 500 feet of school where school in question was nontraditional high school catering to recently arrived non-English-speaking immigrants, was charter school no longer under direct control of municipal board of education, and was located within buildings of community college, which was not “school” for purposes of zoning ordinance; further, although main entrance to community college was within 500 feet of defendant’s establishment, distance therefrom to high school in question was well beyond 500 feet, main entrance of college was plainly and conspicuously marked as such, and there was nothing showing at college entrance that within its facilities was high school. City of New York v Loveshack Video, 182 Misc. 2d 695, 700 N.Y.S.2d 397, 1999 N.Y. Misc. LEXIS 535 (N.Y. Sup. Ct. 1999), aff'd, 284 A.D.2d 291, 725 N.Y.S.2d 373, 2001 N.Y. App. Div. LEXIS 5567 (N.Y. App. Div. 2d Dep't 2001).

186. —Adverse possession

Preliminary injunction obtained by former employer would be modified on appeal to delete provisions freezing bank accounts of former employee’s new employment agency where employee formed agency on his own behalf similar to company he had created on employer’s behalf, and allegedly misappropriated to his own agency’s use name, good will, equipment and various assets of employer’s company, and where temporary injunction restrained employee from removing equipment, assets, funds, income, documents and records of either entity and froze bank accounts of both; injunction was over-broad in freezing new company’s bank accounts since such provision would force employee to cease business, which result would be

more burdensome to employee than was harm allegedly being caused to employer. Interfaith Medical Center v Shahzad, 124 A.D.2d 557, 507 N.Y.S.2d 702, 1986 N.Y. App. Div. LEXIS 61873 (N.Y. App. Div. 2d Dep't 1986).

In action by plaintiff alleging that he was owner by adverse possession of strip of land claimed by defendant to be part of their parcel, that he and adjoining landowners owned abutting street, and that defendants' use of street was unauthorized, plaintiff was not entitled to preliminary injunction restraining defendants from using street for purpose of gaining access to their parcel pending determination in related lawsuit as to whether plaintiff's easement to use street was exclusive or nonexclusive, since threatened damage to plaintiff and adjoining landowners (destruction of retaining wall and damage to road itself) was speculative and easily compensable, while hardship to defendants (inability to begin construction of large-scale apartment complex) would be far more harmful. Hoppmann v Sargent Stein, Inc., 141 A.D.2d 332, 529 N.Y.S.2d 87, 1988 N.Y. App. Div. LEXIS 6327 (N.Y. App. Div. 1st Dep't 1988).

Apartment building occupants were not entitled to preliminary injunction barring their eviction pending trial on issue of whether legal title to property passed to them through adverse possession, since they were not likely to prove 10 years of actual, continuous, open and notorious possession of buildings where there was no evidence of privity between successive occupants, there was no evidence of any intended transfers, and some apartments were vacant for some period of time, indicating that vacating occupant and new occupant had no contact at all. East 13th St. Homesteaders' Coalition v Lower East Side Coalition Hous. Dev., 230 A.D.2d 622, 646 N.Y.S.2d 324, 1996 N.Y. App. Div. LEXIS 8340 (N.Y. App. Div. 1st Dep't 1996).

Court properly granted preliminary injunction ordering defendant to remove gate and poles, and to allow access along old roadway, where plaintiffs had used roadway across defendant's premises continuously, openly, and under claim of right for well in excess of statutory time period, area defendant had set aside for plaintiffs' use was totally impassable during certain times of year, and defendant did not show that he would be harmed in any material way by

temporary reopening of former passage. Clayton v Whitton, 233 A.D.2d 828, 650 N.Y.S.2d 404, 1996 N.Y. App. Div. LEXIS 12169 (N.Y. App. Div. 3d Dep't 1996).

In action to quiet title to parcel which plaintiff claimed to possess by adverse possession, court properly granted plaintiff's motion for preliminary injunction where it was likely that she would prove that she actually possessed disputed parcel, which was protected by fence, for 10 years and that such possession was open and notorious, exclusive, continuous, hostile, and under claim of right, defendant threatened removal of several large trees and remains of family pets within parcel, and defendant had no immediate need for relatively small portion of cemetery for burial purposes. Walsh v St. Mary's Church, 248 A.D.2d 792, 670 N.Y.S.2d 220, 1998 N.Y. App. Div. LEXIS 2208 (N.Y. App. Div. 3d Dep't 1998).

In action claiming title by adverse possession, court did not enlarge scope of preliminary injunction by ordering defendant to remove obstructions from disputed property; it merely enforced it. Parillo v Prunier, 257 A.D.2d 807, 683 N.Y.S.2d 662, 1999 N.Y. App. Div. LEXIS 252 (N.Y. App. Div. 3d Dep't 1999).

In action to compel determination of claims to real property, court erroneously denied plaintiff's motion for preliminary injunction where she showed that she was likely to prove that she actually possessed disputed parcel, and that possession was open and notorious, exclusive, continuous, hostile, and under claim of right, plaintiff showed that property was cultivated or improved and substantially enclosed for statutory period (CLS RPAPL § 522), threat of destruction of plaintiff's property constituted irreparable harm, and balance of equities weighed in plaintiff's favor. Randisi v Mira Gardens, Inc., 272 A.D.2d 387, 707 N.Y.S.2d 204, 2000 N.Y. App. Div. LEXIS 5088 (N.Y. App. Div. 2d Dep't 2000).

187. —Animals

Defendant committed prohibited taking of threatened species under New York State Endangered Species Act, and plaintiffs were properly granted preliminary injunction directing removal of 4-foot-high snake-proof fence erected by defendant to keep timber rattlesnakes off of

its property, where 2 biologists testified as to behavior of timber rattlesnake and significance of its den to its survival, and stated that there are only limited number of such dens in New York, that each den has been used for generations by same population of snakes, that one such den was located approximately 260 feet from defendant's property line, that defendant's fence would negatively impact well-being of snakes inhabiting that den, that timber rattlesnakes are ecologically important species, and that they are not really dangerous to people. State v Sour Mt. Realty, Inc., 276 A.D.2d 8, 714 N.Y.S.2d 78, 2000 N.Y. App. Div. LEXIS 11344 (N.Y. App. Div. 2d Dep't 2000).

Plaintiffs were not entitled to declaratory judgment enjoining defendants from using their adjoining property as horse farm where defendants had obtained special use permit to do so from town planning board, and proper method to obtain review of board's decision was to commence Article 78 proceeding, which plaintiffs also did. Schneider v Eagan, 281 A.D.2d 408, 721 N.Y.S.2d 287, 2001 N.Y. App. Div. LEXIS 2114 (N.Y. App. Div. 2d Dep't 2001).

In enforcement action alleging that fence, erected by defendant to prevent timber rattlesnakes from coming onto its property, interfered with normal migration pattern of Bald Hill den rattlesnakes and thus constituted prohibited "taking" under CLS ECL § 11-0535, plaintiffs were not entitled to preliminary injunction on ground that defendant violated State Environmental Quality Review Act (SEQRA) and 6 NYCRR § 617.3(a), which prohibits project sponsor from commencing any "physical alteration related to an action" until SEQRA provisions are complied with, in that regulation defines "physical alteration" as "construction of buildings, structures or facilities," and defendant's proposed mining project sought to erect snake-proof fencing around mining site, not around property's boundary. State v Sour Mt. Realty, 183 Misc. 2d 313, 703 N.Y.S.2d 854, 1999 N.Y. Misc. LEXIS 616 (N.Y. Sup. Ct. 1999), aff'd, 276 A.D.2d 8, 714 N.Y.S.2d 78, 2000 N.Y. App. Div. LEXIS 11344 (N.Y. App. Div. 2d Dep't 2000).

188. —Churches

Where two groups were vying for exclusive right to use and occupy a particular church, granting of preliminary injunction was improper, and bodies should have been required to use the property at different times until the matter was resolved. Russian Church of Our Lady of Kazan v Dunkel, 34 A.D.2d 799, 311 N.Y.S.2d 533, 1970 N.Y. App. Div. LEXIS 4934 (N.Y. App. Div. 2d Dep't 1970).

On motion for summary judgment, members of incorporated Protestant Episcopal Church were entitled to judgment declaring that church trustees had no authority, under church bylaws, to spend church funds on real estate development without first obtaining approval of majority of qualified voters, where (1) bylaws forbad trustees to "undertake the sale, mortgage, lease or other disposition of . . . property owned by the Church," (2) trustees nevertheless entered into contract with developer to construct office tower on church property, which was "undertaking" designed to dispose of property due to terms of lease with developer, (3) trustees never submitted terms of contract to parish for consideration and vote, and (4) trustees had already spent over $1,000,000 to date in compliance with contract; furthermore, members were entitled to preliminary injunction enjoining trustees from making further expenditures on real estate development. Morris v Scribner, 121 A.D.2d 912, 505 N.Y.S.2d 121, 1986 N.Y. App. Div. LEXIS 59034 (N.Y. App. Div. 1st Dep't 1986), aff'd, 69 N.Y.2d 418, 515 N.Y.S.2d 424, 508 N.E.2d 136, 1987 N.Y. LEXIS 16336 (N.Y. 1987).

Church members failed to demonstrate their entitlement to preliminary injunction allowing them to continue to use property owned by defendant religious corporation for religious services over defendant's objections, where they failed to show that they had legitimate claims to temporal control over property on which church was located, which was owned and controlled by defendant. Islamic Ctr. v Islamic Science Found., 216 A.D.2d 357, 628 N.Y.S.2d 179, 1995 N.Y. App. Div. LEXIS 6257 (N.Y. App. Div. 2d Dep't 1995).

189. —Commercial leases

In action by commercial tenant for specific performance of agreement to offer lease of adjacent premises, tenant was not entitled to preliminary injunction where there was nothing to indicate uncertainty in estimating measure of damages, and tenant had failed to seek relief on 2 prior occasions when adjacent premises were available and defendant had leased premises to other parties. Straisa Realty Corp. v Woodbury Assoc., 154 A.D.2d 453, 546 N.Y.S.2d 19, 1989 N.Y. App. Div. LEXIS 12518 (N.Y. App. Div. 2d Dep't 1989).

There was no emergency need to resort to drastic remedy of preliminary injunction, given long duration of tenants' allegedly improper commercial use of apartment, speculative nature of landlord's claim that it could be subject to liability in event of accident on premises, and issue of fact as to whether tenants' alleged violation was significant. 91st St. Co. v Robinson, 242 A.D.2d 502, 662 N.Y.S.2d 497, 1997 N.Y. App. Div. LEXIS 9219 (N.Y. App. Div. 1st Dep't 1997).

Court properly enjoined defendants from operating real estate brokerage office from their condominium unit, inter alia, where plaintiff, condominium board, submitted affidavit from building manager showing that defendants conducted substantial business both from apartment in question and in common areas, coupled with defendants' letterhead indicating that condominium was their principal place of business, plaintiff also showed that it would suffer lower quality of life for its residents and decreased property value if defendants continued their business during course of litigation, and defendants would not be burdened by preliminary injunction if it was shown that they were not in violation of lease and other relevant documents. Promenade Condo. by Board of Managers v J. J. & P. Corp., 243 A.D.2d 293, 662 N.Y.S.2d 509, 1997 N.Y. App. Div. LEXIS 9655 (N.Y. App. Div. 1st Dep't 1997).

190. —Condominiums

Plaintiffs established likelihood of success on merits in their action for judgment declaring that they were entitled to operate group family day care home at their condominium unit pursuant to license granted by New York City, and court properly granted preliminary injunction prohibiting condominium board of managers from enforcing residential use restriction contained in

condominium declaration, as CLS Soc Serv § 390(12) which precludes local municipalities from enacting regulations or restrictions that prohibit or make more onerous requirements for operating group family day care homes should be read to encompass broader proposition that private parties cannot prohibit operation of group family day care homes through restrictive use covenant. Quinones v Board of Managers of Regalwalk Condo. I, 242 A.D.2d 52, 673 N.Y.S.2d 450, 1998 N.Y. App. Div. LEXIS 6063 (N.Y. App. Div. 2d Dep't 1998).

Condominium board was properly granted summary judgment enjoining defendants, fee simple owners of condominium unit, from leasing their unit where by-laws of condominium association provided that only homeowners and their immediate families could reside in their homes and that homes could not be leased; total prohibition on leasing was not unreasonable restraint on alienation of property. Four Bros. Homes at Heartland Condo. II v Gerbino, 262 A.D.2d 279, 691 N.Y.S.2d 114, 1999 N.Y. App. Div. LEXIS 5888 (N.Y. App. Div. 2d Dep't 1999).

Court improperly denied plaintiff’s motion for preliminary injunction restraining defendants from selling or otherwise transferring condominium units where referee improperly paid mortgage debt before paying property taxes in violation of CLS RPAPL § 1354(1) and (2), all non-municipal defendants were alter egos of record owner who could simultaneously “disappear” in event property was transferred, thus frustrating plaintiff’s ability to force payment of property tax by defendants to prevent its lien for common charges from being extinguished on transfer, and plaintiff merely sought to maintain status quo with injunctive relief. Board of Managers of the 235 East 22nd St. Condo. v Lavy Corp., 233 A.D.2d 158, 649 N.Y.S.2d 668, 1996 N.Y. App. Div. LEXIS 11700 (N.Y. App. Div. 1st Dep't 1996).

In action by owners of luxury condominiums immediately adjacent to church to temporarily enjoin operation of homeless shelter at church, plaintiffs failed to demonstrate requisite injury for relief since claim of irreparable harm was based solely on speculative fears of crime, drugs and diminution of property values. Greentree at Murray Hill Condo. v Good Shepherd Episcopal Church, 146 Misc. 2d 500, 550 N.Y.S.2d 981, 1989 N.Y. Misc. LEXIS 861 (N.Y. Sup. Ct. 1989).

Absentee condominium unit owner would not be granted preliminary injunction enjoining condominium board of managers from enforcing regulation denying access to units by real estate brokers or other visitors before 9:00 a.m. and after 5:00 p.m. unless unit owner is present, since (1) there was some merit to board's position that promulgation of regulation was in accordance with CLS Real P §§ 339-u, 339-v and condominium bylaws, (2) board had bona fide concern for safety of others in building after 5:00 p.m. when superintendent was not on duty to oversee comings and goings of strangers, and (3) if owner successfully contested regulation she could be made whole by award of money damages measured by loss of rental income. Caruso v Board of Managers of Murray Hill Terrace Condominum, 146 Misc. 2d 405, 550 N.Y.S.2d 548, 1990 N.Y. Misc. LEXIS 22 (N.Y. Sup. Ct. 1990).

191. —Easements

In action to enjoin defendant from interfering with plaintiff's use of right-of-way easement running over portion of defendant's adjoining property, plaintiff was entitled to injunctive relief where (1) plaintiff claimed easement over driveway which ran over defendant's property, (2) driveway was only feasible manner by which plaintiff could gain access to parking lot at rear of his property, (3) plaintiff's use of driveway was open, notorious, uninterrupted and undisputed for well beyond prescriptive period, and (4) plaintiff and defendant's predecessor jointly paid for paving of driveway as well as portions of parking lot at rear of their properties and shared expense of snow removal; existence of neighborly relationship between plaintiff and defendant's predecessor did not create implication that use was permissive rather than hostile and fact that plaintiff shared in cost of maintaining driveway established that his use was not merely neighborly accommodation. Cannon v Sikora, 142 A.D.2d 662, 531 N.Y.S.2d 99, 1988 N.Y. App. Div. LEXIS 7991 (N.Y. App. Div. 2d Dep't 1988), app. denied, 74 N.Y.2d 615, 549 N.Y.S.2d 960, 549 N.E.2d 151, 1989 N.Y. LEXIS 3260 (N.Y. 1989).

In action under CLS RPAPL Art 15 for declaration of easement of way over driveway between plaintiffs' restaurant and adjacent shopping center parking lot, plaintiffs were not entitled to

preliminary injunction, notwithstanding their reliance on presumption that their open, notorious and continuous use of driveway for prescriptive period was adverse, and their contention that defendants therefore had burden of proof, since use of parking lot by general public made presumption inapplicable and plaintiffs would therefore be required to offer proof that their use was adverse. Burcon Properties, Inc. v Dalto, 155 A.D.2d 501, 547 N.Y.S.2d 362, 1989 N.Y. App. Div. LEXIS 14293 (N.Y. App. Div. 2d Dep't 1989).

In action pursuant to CLS RPAPL Art 15 to establish title by adverse possession to easement of way over mapped road leading to public road, court properly granted defendant's cross claim for preliminary mandatory injunction to compel plaintiff to remove row of trees he had placed over portion of mapped road since rights of easement holder are measured by purpose and character of easement, so that if plaintiff established that he enjoyed easement of way over mapped road, he was entitled only to travel, not to place trees, thereon. Solow v Liebman, 175 A.D.2d 120, 572 N.Y.S.2d 19, 1991 N.Y. App. Div. LEXIS 9398 (N.Y. App. Div. 2d Dep't 1991).

Court properly denied plaintiff's motion for summary judgment seeking permanent injunction to require defendants to remove any other encroachments over express easement "for ingress and egress over an existing lane approximately 40 feet in width as the same exists," where fact issue existed as to whether express grant intended to create 40-foot-wide easement approximately following center line of much smaller existing lane or easement over existing 40-foot lane. Hess v Baccarat, 210 A.D.2d 544, 619 N.Y.S.2d 798, 1994 N.Y. App. Div. LEXIS 11885 (N.Y. App. Div. 3d Dep't 1994).

In action for judgment declaring that plaintiffs had prescriptive easement over portion of defendants' adjacent property in order to access piazza on their property, preliminary injunction was improperly granted since plaintiffs' likelihood of success was uncertain, and there was no showing of irreparable harm. Gold v Berkowitz, 235 A.D.2d 455, 652 N.Y.S.2d 992, 1997 N.Y. App. Div. LEXIS 417 (N.Y. App. Div. 2d Dep't 1997).

In action under CLS RPAPL Art 15 to enforce easement over defendants' property, plaintiffs established likelihood of their success on merits, entitling them to preliminary injunction, where

they presented evidence through title expert that they were granted easement by deed, title report prepared when defendants purchased property indicated third-party easement rights with respect to parking and beach areas, defense counsel conceded existence of easement although defendants contested its "nature and use," and claim that plaintiffs abused their easement rights was unsupported by credible testimony. Harbor View Ass'n v Sucher, 237 A.D.2d 488, 655 N.Y.S.2d 97, 1997 N.Y. App. Div. LEXIS 2893 (N.Y. App. Div. 2d Dep't 1997).

Owners and lessees of lakeshore property, over which defendants had easement for egress and ingress between state highway and boathouse, were not entitled to preliminary injunction prohibiting defendants from parking or turning around vehicles on easement where deed granting easement described it as "being for foot travel and vehicles and is to be used for all purposes for which right[s] of way are commonly used," quoted language showed that plaintiffs did not prove likelihood of success on merits, plaintiffs' conclusory assertions that use of easement for parking or turning interfered with rental or development of their property were not sustained by limited record and did not support finding of irreparable harm absent injunction, and balance of equities did not necessarily favor plaintiffs. Bonnieview Holdings Inc. v Allinger, 263 A.D.2d 933, 693 N.Y.S.2d 340, 1999 N.Y. App. Div. LEXIS 8450 (N.Y. App. Div. 3d Dep't 1999).

Owners of easement across plaintiffs' lakeshore property for egress and ingress between state highway and boathouse were not entitled to preliminary injunction prohibiting plaintiffs from erecting additional fencing along easement during pendency of action so long as fencing did not impair defendants' use of easement. Bonnieview Holdings Inc. v Allinger, 263 A.D.2d 933, 693 N.Y.S.2d 340, 1999 N.Y. App. Div. LEXIS 8450 (N.Y. App. Div. 3d Dep't 1999).

Preliminary injunction was properly granted to prevent defendant property owner from continuing to work on a road that was subject to an easement; the deed that created the easement was unequivocal in its language that no work could be done on the road without the consent of plaintiff adjoining property owners, defendant failed to show that maintaining the status quo would be harmful, and as the work being done was irreversible and threatened the structural

integrity of plaintiffs' property, the requisite showing of a danger of irreparable injury had been made. Karabatos v Hagopian, 39 A.D.3d 930, 833 N.Y.S.2d 700, 2007 N.Y. App. Div. LEXIS 4160 (N.Y. App. Div. 3d Dep't 2007).

192. — —Illustrative cases

Preliminary injunction granted to landowner restraining company from use and occupation of property, but which failed to account for existing right-of-way through property, was overly broad and would be vacated and modified to accommodate right-of-way, and case would be remanded to fix precise dimensions thereof. Tulnoy Lumber, Inc. v Bauer, 127 A.D.2d 469, 511 N.Y.S.2d 277, 1987 N.Y. App. Div. LEXIS 42967 (N.Y. App. Div. 1st Dep't 1987).

Court erroneously directed defendant to restore easement to its original condition in absence of any indication that plaintiffs' right-of-way over easement, which ran on northerly 3 feet of plaintiffs' property and southerly 4 feet of defendant's property, was substantially altered by laying concrete over defendant's portion of easement. Vandoros v Hatzimichalis, 131 A.D.2d 752, 517 N.Y.S.2d 51, 1987 N.Y. App. Div. LEXIS 48200 (N.Y. App. Div. 2d Dep't 1987).

In action to enforce and to restrain interference with easement for hunting and fishing over state land, court properly denied injunctive relief to plaintiff where plaintiff's claim was based on contention that 2 employees of Department of Environmental Conservation, on one occasion, fished at invitation of state in violation of plaintiff's easement since, although fishing was admitted, it was doubtful that fishing occurred on land within easement, land was not posted, and fishing was on invitation and on only one occasion. Wechsler v People, 147 A.D.2d 755, 537 N.Y.S.2d 900, 1989 N.Y. App. Div. LEXIS 776 (N.Y. App. Div. 3d Dep't 1989), app. dismissed, 74 N.Y.2d 793, 545 N.Y.S.2d 109, 543 N.E.2d 752, 1989 N.Y. LEXIS 5037 (N.Y. 1989), app. denied, 74 N.Y.2d 610, 546 N.Y.S.2d 554, 545 N.E.2d 868, 1989 N.Y. LEXIS 2751 (N.Y. 1989), app. dismissed, 75 N.Y.2d 808, 552 N.Y.S.2d 107, 551 N.E.2d 600, 1990 N.Y. LEXIS 106 (N.Y. 1990).

Defendant property owner was entitled to summary judgment dismissing action by adjacent property owner who objected to defendant's use of common driveway to park 3 vehicles at rear of house, and sought to permanently enjoin defendant from use of common driveway for any purpose other than ingress and egress of one car, where deeds to both parcels of property contained unambiguous reciprocal easements over common driveway for purpose of ingress and egress for pleasure automobiles to and from garage in rear of premises. Krosky v Hatgipetros, 150 A.D.2d 344, 541 N.Y.S.2d 22, 1989 N.Y. App. Div. LEXIS 5498 (N.Y. App. Div. 2d Dep't 1989).

Plaintiff failed to show irreparable injury resulting from defendants' alleged interference with his boating and bathing rights under easement, and thus he was not entitled to preliminary injunction, even though he possessed easement by express grant over property in question, where (1) he failed to show unreasonable interference with his easement rights, and (2) damages would adequately compensate him should he prevail on trial of action. Schrabal v Holiday Beach Property Owners Ass'n, 150 A.D.2d 670, 541 N.Y.S.2d 543, 1989 N.Y. App. Div. LEXIS 6961 (N.Y. App. Div. 2d Dep't 1989), app. dismissed, 76 N.Y.2d 1017, 565 N.Y.S.2d 767, 566 N.E.2d 1172, 1990 N.Y. LEXIS 4523 (N.Y. 1990).

In action against landowner for infringement of parking easement by construction of deck covering cesspool, which extended some 3 feet over easement, court erred in granting injunction directing removal of encroaching portion of deck since evidence did not adequately demonstrate to what extent deck actually impaired plaintiffs' ability to park on easement area, hardship landowner would experience due to either expense of removal or damage to her cesspool, whether there were alternative dispositions which could have afforded plaintiffs full equitable relief, or whether imposition of monetary damages could have been just and adequate remedy. Mylott v Sisca, 168 A.D.2d 852, 564 N.Y.S.2d 523, 1990 N.Y. App. Div. LEXIS 15799 (N.Y. App. Div. 3d Dep't 1990).

It was abuse of discretion to grant town's application for preliminary injunction restraining property owners from maintenance of chain barrier and "no trespassing sign" across road,

although road had long been used by town personnel in maintaining cemetery, since (1) town was at liberty to use road during pendency of action by merely removing unlocked chain and proceeding into cemetery, (2) town did not establish irreparable injury, (3) likelihood of success by town was questionable, and (4) owners erected chain because use of roadway by all-terrain vehicles endangered their children. Warrensburg v Mollica, 171 A.D.2d 995, 567 N.Y.S.2d 935, 1991 N.Y. App. Div. LEXIS 3869 (N.Y. App. Div. 3d Dep't 1991).

Plaintiffs were not entitled to summary judgment in action to enjoin defendants from utilizing easement over plaintiffs' property for any purpose other than ingress and egress where defendants showed lack of safe alternative parking places for cars driven by visitors to their property and of danger to vehicles exiting their property, thereby raising fact issues as to whether, and to what extent, use of easement as parking area for limited number of visitors' vehicles and for turning vehicles around were necessary concomitants to their enjoyment of their right of passage. Noll v Weinman, 253 A.D.2d 742, 677 N.Y.S.2d 590, 1998 N.Y. App. Div. LEXIS 9394 (N.Y. App. Div. 2d Dep't 1998).

Plaintiffs were entitled to injunction restraining approval of subdivision which would interfere with easement granted by deed which could not be destroyed by alleged abandonment. Sullivan v Tomgil Bldg. Corp., 46 Misc. 2d 613, 260 N.Y.S.2d 465, 1965 N.Y. Misc. LEXIS 1779 (N.Y. Sup. Ct. 1965).

Owner of commercial building located within boundaries of private cooperative residential development was beneficiary of recorded easement granted by homeowners association, for purposes of demonstrating its entitlement to preliminary injunctive relief enjoining defendants from interfering with easement, although recorded easement was slightly broader in scope than information about future easement contained in sponsor's offering plan. Twenty First St. Assocs., L.L.C. v Estates at Hallet's Cove Homeowners Ass'n, 179 Misc. 2d 972, 686 N.Y.S.2d 696, 1999 N.Y. Misc. LEXIS 69 (N.Y. Sup. Ct. 1999).

Owner of commercial building located within boundaries of private residential development (plaintiff) was entitled to preliminary injunction enjoining defendants from interfering with

easement for ingress and egress to extent that defendants were directed to provide keys to plaintiff and all commercial tenants for locked gate blocking access to rear of plaintiff's building; however, defendants would not be directed to remove locked gate until it was determined at trial whether locked gate impaired type of access contemplated in easement. Twenty First St. Assocs., L.L.C. v Estates at Hallet's Cove Homeowners Ass'n, 179 Misc. 2d 972, 686 N.Y.S.2d 696, 1999 N.Y. Misc. LEXIS 69 (N.Y. Sup. Ct. 1999).

Neighbors were properly granted a preliminary injunction enjoining property owners from blocking the neighbors' access to beach, as they showed by clear and convincing evidence that they were likely to succeed on the merits of their claims that they had both an express easement and an easement by prescription to access the beach. Gilliland v Acquafredda Enters., LLC, 92 A.D.3d 19, 936 N.Y.S.2d 125, 2011 N.Y. App. Div. LEXIS 9028 (N.Y. App. Div. 1st Dep't 2011).

193. —Ordinances and regulations

State was entitled to preliminary injunction enjoining sod farm from committing further violations of regulations under 6 NYCRR § 360.1 et seq. where state made threshold showing of farm's violation of department of environmental conservation regulations concerning solid waste management facilities by demonstrating leak in barrier of farm's sludge lagoon and where violation was of public health and safety regulation which attorney general has statutory authority to enforce under CLS ECL §§ 71-2703 and 71-2727. State v Merion Blue Grass Sod Farm, 122 A.D.2d 789, 505 N.Y.S.2d 674, 1986 N.Y. App. Div. LEXIS 59304 (N.Y. App. Div. 2d Dep't 1986).

In combined Article 78 proceeding and action for judgment declaring null and void particular local law of town and any subdivision approval granted under that law, and for injunction against clearing of any land that had received such subdivision approval, all property owners to whom such approval had been granted were necessary and indispensable parties, and thus dismissal was required, where they clearly would be prejudiced if proceeding were allowed to go forward without them, their rights would not be adequately protected by town, and, given nature of relief

sought, no effective judgment could be made in their absence. Llana v Town of Pittstown, 245 A.D.2d 968, 667 N.Y.S.2d 112, 1997 N.Y. App. Div. LEXIS 13631 (N.Y. App. Div. 3d Dep't 1997), app. denied, 91 N.Y.2d 812, 672 N.Y.S.2d 848, 695 N.E.2d 717, 1998 N.Y. LEXIS 1054 (N.Y. 1998).

194. —Radio and television towers

Landowners were not entitled to enjoin construction of 250-foot radio tower on adjoining property since proposed tower was authorized by and conformed to village code, and adjoining landowners failed to establish that tower would result in imminent threat of irreparable injury or diminution of their property values. Sun-Brite Car Wash, Inc. v Board of Zoning & Appeals, 69 N.Y.2d 406, 515 N.Y.S.2d 418, 508 N.E.2d 130, 1987 N.Y. LEXIS 16335 (N.Y. 1987).

Radio communications company was not entitled to preliminary injunction against television station buyer’s interference with its alleged right, under oral barter arrangement with former station owner, to maintain its radio antennae on station’s tower where barter arrangement was void by virtue of statute of frauds, and thus there was no possibility that radio company could prove likelihood of its ultimate success on merits. A-1 Communs. v WTZA-TV Assocs., 245 A.D.2d 940, 666 N.Y.S.2d 810, 1997 N.Y. App. Div. LEXIS 13624 (N.Y. App. Div. 3d Dep't 1997).

195. —Rights of way

Owner of apartment complex was not entitled to preliminary injunction restraining city from interfering in his and his tenants’ use of parcel of property on Gould Street as means of ingress and egress from complex, which was located on East Avenue, where deed to him from city contained restriction that access to apartment complex from Gould Street would be available only if East Avenue entrance to complex were “impaired or impeded”; city’s proposed erection of barricade on East Avenue, preventing residents of East Avenue from proceeding westerly on East Avenue after leaving apartment complex, was inconvenient but did not obstruct or impede

their ingress or egress. Brodsky v Rochester, 142 A.D.2d 1002, 530 N.Y.S.2d 421, 1988 N.Y. App. Div. LEXIS 15062 (N.Y. App. Div. 4th Dep't 1988).

In action for permanent injunction seeking, inter alia, removal of fence blocking plaintiffs' alleged right of way over adjoining property, defendants were not entitled to summary judgment on basis of statute of limitations since it could not yet be ascertained when cause of action accrued for purpose of computing running of period of limitation; if right of way were unopened at time of erection of fence, then action did not accrue until plaintiff demanded removal of fence and opening of right of way, but if right of way were in use, then cause of action accrued at time of erection of fence. Rabinowitz v American Tire Works, 146 A.D.2d 760, 537 N.Y.S.2d 244, 1989 N.Y. App. Div. LEXIS 873 (N.Y. App. Div. 2d Dep't 1989).

In action by business that provided rafting trips on river against utility for declaration that section of road on utility's property had not been abandoned and for injunction to keep utility from interfering with use of road by business, business was not entitled to preliminary injunction since it did not establish likelihood of success on merits where (1) business indicated that it had used road since 1982, but its only proof regarding use of road between 1967 and 1982 was affidavit of its president stating that, on information and belief, road was used by rafters, hunters and general public during that time period, and (2) utility averred that road had not been used or maintained since 1970. Hudson River Rafting Co. v Niagara Mohawk Power Corp., 148 A.D.2d 856, 539 N.Y.S.2d 130, 1989 N.Y. App. Div. LEXIS 2818 (N.Y. App. Div. 3d Dep't 1989).

City was properly granted preliminary injunction, restraining land developer's further demolition and construction activities on city's railroad right-of-way, even though developer had expended considerable sum of money on initial construction, since equities favored city because encroachment would cause permanent and irreparable injury to city, and developer could have avoided costly error by inquiring whether city intended to abandon right-of-way. Rentar Dev. Corp. v New York, 160 A.D.2d 860, 554 N.Y.S.2d 293, 1990 N.Y. App. Div. LEXIS 4501 (N.Y. App. Div. 2d Dep't 1990).

Preliminary injunction was properly granted to plaintiff to forestall defendants from widening and improving right-of-way over plaintiff's property where (1) grant of right-of-way failed to delineate extent of right-of-way, (2) plaintiff showed that defendants had removed large trees and had intent to remove additional large trees, and that such trees could not be replaced, and (3) defendants still had access to land via existing 10- to 12-foot existing road. Wiederspiel v Bernholz, 163 A.D.2d 774, 558 N.Y.S.2d 739, 1990 N.Y. App. Div. LEXIS 8574 (N.Y. App. Div. 3d Dep't 1990).

Defendant was not entitled to summary judgment in action to enjoin it from interfering with plaintiffs' use of parking facilities on defendant's property where (1) plaintiffs purchased their property from defendant's predecessor in interest, and plaintiff and predecessor entered into contemporaneous agreement relating to parking and right-of-way over adjoining property, (2) predecessor signed agreement in individual capacity, even though property was owned by closely held corporation, (3) plaintiff and predecessor never entered into actual conveyance regarding parking and right-of-way, (4) predecessor sold adjoining property to defendant without reference to parking and right-of-way, (5) plaintiff and predecessor submitted affidavits alleging mutual mistake, and (6) predecessor also averred that he had informed defendant of exact location of parking and right-of-way prior to transfer; such evidence established prima facie showing of claim to equitable relief. Flaherty v Broadway Assoc. Ltd. Partnership, 171 A.D.2d 938, 566 N.Y.S.2d 982, 1991 N.Y. App. Div. LEXIS 3317 (N.Y. App. Div. 3d Dep't 1991).

Plaintiff, who conveyed of real property to defendants, was not entitled to injunctive relief prohibiting defendants from obstructing right-of-way over property conveyed where deed reserved right-of-way to plaintiff and his wife "personally" and limited its duration to period when plaintiff and his wife owned benefitted property; under circumstances, plaintiff possessed only license which could be revoked at will. Simmons v Abbondandolo, 184 A.D.2d 878, 585 N.Y.S.2d 535, 1992 N.Y. App. Div. LEXIS 7959 (N.Y. App. Div. 3d Dep't 1992).

Plaintiffs were not entitled to preliminary injunction enjoining interference with their right of way over defendants' property where (1) plaintiffs' property was landlocked, and access to property

was gained over driveway that crossed defendants' property, (2) plaintiffs asserted that they had used driveway for 33 years, (3) defendants asserted that use of driveway was by license and that prescriptive easement could thus not be shown, and (4) trial was imminent. Van Deusen v McManus, 202 A.D.2d 731, 608 N.Y.S.2d 569, 1994 N.Y. App. Div. LEXIS 1812 (N.Y. App. Div. 3d Dep't 1994).

196. —Zoning

City was entitled to preliminary injunction enjoining defendants from operating premises as contractor's establishment, in light of city board of standards and appeals' denial of variance permitting challenged use, and strong prima facie showing that defendants' use and operation of subject premises as contractor's establishment violated city zoning resolutions, building code, and nuisance abatement law. New York v Cincotta, 133 A.D.2d 244, 519 N.Y.S.2d 146, 1987 N.Y. App. Div. LEXIS 49745 (N.Y. App. Div. 2d Dep't 1987).

Action to enjoin village from issuing area variance to defendants, and to enjoin them from continuing to maintain their residence on property adjacent to plaintiff in violation of zoning ordinance, was not rendered moot by completion of construction. Hitchings v Village of Sylvan Beach, 221 A.D.2d 926, 635 N.Y.S.2d 381, 1995 N.Y. App. Div. LEXIS 13410 (N.Y. App. Div. 4th Dep't 1995), abrogated in part, Nemeth v K-Tooling, 100 A.D.3d 1271, 955 N.Y.S.2d 419, 2012 N.Y. App. Div. LEXIS 8162 (N.Y. App. Div. 3d Dep't 2012).

Article 78 proceeding brought by plaintiff's predecessor seeking annulment of determination granting area variance to defendants did not constitute another action pending so as to bar action to enjoin village from issuing variance to defendants, and to enjoin them from continuing to maintain their residence on property adjacent to plaintiff in violation of zoning ordinance, even though defendants were allowed to intervene for purpose of taking appeal from determination, since they were not otherwise parties to Article 78 proceeding. Hitchings v Village of Sylvan Beach, 221 A.D.2d 926, 635 N.Y.S.2d 381, 1995 N.Y. App. Div. LEXIS 13410 (N.Y. App. Div.

4th Dep't 1995), abrogated in part, Nemeth v K-Tooling, 100 A.D.3d 1271, 955 N.Y.S.2d 419, 2012 N.Y. App. Div. LEXIS 8162 (N.Y. App. Div. 3d Dep't 2012).

Court erred in granting plaintiff's motion for summary judgment enjoining village from issuing area variance to defendants, and enjoining them from continuing to maintain their residence on property adjacent to plaintiff in violation of zoning ordinance, where plaintiff submitted no evidence of irreparable harm or decrease in property value. Hitchings v Village of Sylvan Beach, 221 A.D.2d 926, 635 N.Y.S.2d 381, 1995 N.Y. App. Div. LEXIS 13410 (N.Y. App. Div. 4th Dep't 1995), abrogated in part, Nemeth v K-Tooling, 100 A.D.3d 1271, 955 N.Y.S.2d 419, 2012 N.Y. App. Div. LEXIS 8162 (N.Y. App. Div. 3d Dep't 2012).

Plaintiffs were entitled to preliminary injunction enjoining defendants from using certain land for storage and repair of equipment used in contracting business where such use violated town zoning ordinance; fact that town had commenced process to amend its zoning ordinance did not bar plaintiffs from commencing taxpayer's action pursuant to CLS Town § 268(2). Eggert v LeFever, 222 A.D.2d 1043, 635 N.Y.S.2d 857, 1995 N.Y. App. Div. LEXIS 14095 (N.Y. App. Div. 4th Dep't 1995).

Petitioner was not entitled to injunction preventing continued violation of conditions of site plan approval where he had not shown any diminution of value of his property as result of alleged violation, nor did he comply with CLS Town § 268(2). Beaudin v Town of Alexandria Planning Bd., 233 A.D.2d 855, 649 N.Y.S.2d 278, 1996 N.Y. App. Div. LEXIS 13325 (N.Y. App. Div. 4th Dep't 1996).

Town did not establish its entitlement to preliminary injunctive relief with respect to racetrack's violation of noise ordinance, where racetrack was pre-existing non-conforming use under zoning ordinance, and prohibiting violation of noise ordinance would effectively force it to cease all racing operations at track. Town Bd. v 1320 Entertainment, Inc., 236 A.D.2d 387, 653 N.Y.S.2d 364, 1997 N.Y. App. Div. LEXIS 1013 (N.Y. App. Div. 2d Dep't 1997).

197. —Illustrative cases

Allegation by corporation, which occupied floor space in a department store under an agreement with the store, that the store's proposed reduction of the area available to the corporation would severely affect its sales, which, if they were reduced to less than 4 percent of the sales of the store and the corporation, would give the store the right to terminate the contract for occupancy of the space on 60 days' notice, stated a good cause of action for equitable relief, and a preliminary injunction was granted, pending a determination of the rights of the parties. Columbus Cosmetic Corp. v Shoppers Fair of South Bend, Inc., 26 A.D.2d 391, 275 N.Y.S.2d 135, 1966 N.Y. App. Div. LEXIS 3021 (N.Y. App. Div. 1st Dep't 1966).

Condemnor was not required to publish notice of public hearing in Waterville Times (weekly newspaper designated by Town of Marshall as its official newspaper) regarding its proposal to acquire portion of farm located within town limits, since newspaper was not "daily" paper as required by CLS EDPL § 202; however, since Waterville Times was only official newspaper designated in locality where proposed public project would be situated, condemnor was required by CLS EDPL § 204 to publish notice of its determination and findings, and until it did so, it would be enjoined from pursuing condemnation. Green v Oneida-Madison Electric Cooperative, Inc., 134 A.D.2d 897, 522 N.Y.S.2d 36, 1987 N.Y. App. Div. LEXIS 51090 (N.Y. App. Div. 4th Dep't 1987).

In action by property owners for judgment declaring that they had right to use certain property for beach, recreation and swimming purposes, and for injunction enjoining construction of one-family dwelling on such property, property owners were entitled to preliminary injunction since they met their burden to show likelihood of ultimate success where claim was based on clear language in their deeds and defendant's deed and, with respect to irreparable injury and balancing of equities, construction by defendant would interfere with property owners' use of property in question and would lead to unnecessary economic waste in event property owners were to prevail. Moody v Filipowski, 146 A.D.2d 675, 537 N.Y.S.2d 185, 1989 N.Y. App. Div. LEXIS 641 (N.Y. App. Div. 2d Dep't 1989).

In action to declare parties' interests in real property, it was error to grant preliminary injunction prohibiting individual defendant from using, occupying or destroying electrical wiring or plumbing on ground floor of premises pending any interim award of right to occupancy since defendants had produced strong documentary evidence of ownership in form of deed conveying property to them, and plaintiffs failed to submit any documentary evidence establishing conveyance of property to partnership of which they owned 60 percent; moreover, plaintiffs offered only conclusory allegations of irreparable injury. Peldman v Podolsky, 148 A.D.2d 686, 539 N.Y.S.2d 434, 1989 N.Y. App. Div. LEXIS 4196 (N.Y. App. Div. 2d Dep't 1989).

Plaintiffs were not entitled to preliminary injunction against defendant's use of certain premises as 3-family residence, since use of premises as 3-family residence constituted nonconforming use unless abandoned, and defendant's affidavit stating that nonconforming use had not been abandoned was sufficient to rebut plaintiffs' prima facie showing of likelihood of success on merits. Ain v Glazer, 206 A.D.2d 495, 615 N.Y.S.2d 67, 1994 N.Y. App. Div. LEXIS 7653 (N.Y. App. Div. 2d Dep't 1994).

In Article 78 proceeding by area residents and community groups against university, city, and State Dormitory Authority to temporarily and permanently enjoin construction of new student center, university's 1967 development plan did not effectively amend city's urban development plan so as to subject site to restrictions in city's plan where university's plan involved about 20 properties owned by university, including site at issue, and was created in accordance with Housing Act of 1949, 42 USCS § 1463(a), which allowed city to obtain federal credit for certain expenditures made by eligible institutions, such as university, for acquisition costs associated with properties located within or in immediate vicinity of urban renewal area. Comm. to Save Wash. Square Inc. v Dormitory Auth., 281 A.D.2d 770, 722 N.Y.S.2d 112, 2001 N.Y. App. Div. LEXIS 2490 (N.Y. App. Div. 3d Dep't 2001).

Temporary injunction restraining defendants from renting or disposing of apartment would be denied where the basis of the alleged discrimination was an alleged offer to rent an apartment to "a white friend" and the refusal to rent to a Negro applicant since the sole basis of the charge of

alleged discrimination was a supporting affidavit by the chairman of the New York City Commission on Human Rights, who had no knowledge of the merits of the complaint, and an affidavit of complaint made by the Negro applicant, whose information was based wholly upon hearsay. City Com. on Human Rights v Regal Gardens, Inc., 53 Misc. 2d 318, 278 N.Y.S.2d 739, 1967 N.Y. Misc. LEXIS 1684 (N.Y. Sup. Ct. 1967).

In light of continuing dangers of presence of lead-based paint at recently renovated facility used by city as emergency shelter, court would restrict use of facility to extent of (1) prohibiting placement of families for more than 30 days, (2) prohibiting placement of families with child under 7 years old or families with pregnant woman or families with member who is mentally retarded, (3) directing city to apply maintenance and inspection plan outlined in open court, and (4) directing city to prominently display signs in English and Spanish advising that pregnant women and their unborn children are at risk if they remained at shelter. Barnes v Koch, 136 Misc. 2d 96, 518 N.Y.S.2d 539, 1987 N.Y. Misc. LEXIS 2388 (N.Y. Sup. Ct. 1987).

Owners of single-room occupancy buildings complied with requirements for preliminary injunctive relief by showing irreparable injury, likelihood of success on merits, inadequate remedy at law, and balancing of equities in their favor on demonstrating that enforcement of Local Laws, 1987, No. 9 (NYC Admin Code § 27-198.2) would violate due process and “takings” clauses, since such violation without payment of just compensation constitutes irreparable injury; moreover, such demonstration entitled owners to permanent injunction. Seawall Associates v New York, 138 Misc. 2d 96, 523 N.Y.S.2d 353, 1987 N.Y. Misc. LEXIS 2780 (N.Y. Sup. Ct. 1987), aff'd in part and rev'd in part, 142 A.D.2d 72, 534 N.Y.S.2d 958, 1988 N.Y. App. Div. LEXIS 12381 (N.Y. App. Div. 1st Dep't 1988).

198. — —Cemetery

In declaratory judgment action, property owner was entitled to preliminary injunction prohibiting religious corporation from using its property as cemetery since (1) CLS Real P § 451, which required consent of county board of supervisors to use land as cemetery, applied to religious

corporation, and (2) owner alleged that burial of corpses next to her backyard would adversely affect her health and safety. Schlichting v Kashau, 195 A.D.2d 551, 601 N.Y.S.2d 837, 1993 N.Y. App. Div. LEXIS 7410 (N.Y. App. Div. 2d Dep't 1993).

199. — —Mining and drilling

A drilling company's request for an injunction to stop another company from continuing to drill for oil and natural gas would be denied where the cessation of defendant's drilling would result in the expiration of defendant's leases and the ripening of plaintiff's top leases on the same property into possessory interests, which would in turn cause damage to innocent landowners on whose properties wells were currently being drilled by plaintiff, and to innocent landowners whose properties had been unitized by defendant company but who had no top leases with plaintiff company. Envirogas, Inc. v Consolidated Gas Supply Corp., 120 Misc. 2d 24, 465 N.Y.S.2d 141, 1983 N.Y. Misc. LEXIS 3656 (N.Y. Sup. Ct.), modified, 98 A.D.2d 119, 469 N.Y.S.2d 499, 1983 N.Y. App. Div. LEXIS 20859 (N.Y. App. Div. 4th Dep't 1983).

A drilling company that had acquired top leases covering portions of lands described in another drilling company's unitization designations concerning separately leased parcels, that had been grouped together in order to promote efficient drilling and to prevent unnecessary and wasteful depletion of resources, would have no standing to request an injunction requiring the cessation of defendant company's drilling activities based on an allegation that defendant company had exercised the unitization and drilling rights contained in its several leases solely to prevent the expiration of such leases, thereby preventing plaintiff's top leases from ripening into possessory interests, since, though plaintiff had an interest in the outcome of any action to declare defendant company's leases expired, it was not a beneficiary of the implied covenant contained in every lease that unitization be done properly and fairly in order to benefit landowners and the State's citizenry by minimizing waste, since plaintiff was not the representative of either the landowners or of the State, which had tacitly approved the unitization by granting drilling permits to defendant company, and since the proposed well spacings did not appear to be wasteful.

Envirogas, Inc. v Consolidated Gas Supply Corp., 120 Misc. 2d 24, 465 N.Y.S.2d 141, 1983 N.Y. Misc. LEXIS 3656 (N.Y. Sup. Ct.), modified, 98 A.D.2d 119, 469 N.Y.S.2d 499, 1983 N.Y. App. Div. LEXIS 20859 (N.Y. App. Div. 4th Dep't 1983).

200. — —Outdoor advertising

Record failed to establish a sufficient basis for such a drastic form of relief as would have entitled owners of billboards situated at various locations in town to a preliminary injunction against ordinance requiring removal of all nonconforming billboards and signs. Suffolk Outdoor Advertising Co. v Hulse, 56 A.D.2d 365, 393 N.Y.S.2d 416, 1977 N.Y. App. Div. LEXIS 10446 (N.Y. App. Div. 2d Dep't 1977), modified, 43 N.Y.2d 483, 402 N.Y.S.2d 368, 373 N.E.2d 263, 1977 N.Y. LEXIS 2565 (N.Y. 1977), rev'd, 45 N.Y.2d 922, 411 N.Y.S.2d 230, 383 N.E.2d 876, 1978 N.Y. LEXIS 2354 (N.Y. 1978).

In action for judgment declaring that defendant advertising company had no right to use plaintiff’s property for any reason, plaintiff was entitled to order compelling defendant to remove billboard sign from plaintiff’s property, and to preliminary injunction enjoining defendant from erecting any further structure on plaintiff’s property during pendency of action, where billboard was constructed without first obtaining all necessary governmental approvals. Northeast Hotel Assoc. v National Advertising Co., 155 A.D.2d 520, 547 N.Y.S.2d 577, 1989 N.Y. App. Div. LEXIS 14269 (N.Y. App. Div. 2d Dep't 1989), app. dismissed, app. denied, 75 N.Y.2d 757, 551 N.Y.S.2d 902, 551 N.E.2d 103, 1989 N.Y. LEXIS 4383 (N.Y. 1989), app. dismissed, app. denied, 76 N.Y.2d 747, 558 N.Y.S.2d 485, 557 N.E.2d 778, 1990 N.Y. LEXIS 1300 (N.Y. 1990).

201. — —Timber

Right of defendants to cut timber growing on plaintiffs’ land was governed by Real Property Law, rather than CLS UCC § 2-107(2), where deeds to plaintiffs and to defendants’ predecessors created in defendants such interest in timber as to constitute freehold estate. Fischer v Zepa Consulting A.G., 263 A.D.2d 946, 695 N.Y.S.2d 456, 1999 N.Y. App. Div. LEXIS 7904 (N.Y.

App. Div. 4th Dep't 1999), aff'd, 95 N.Y.2d 66, 710 N.Y.S.2d 830, 732 N.E.2d 937, 2000 N.Y. LEXIS 909 (N.Y. 2000).

202. — —Preliminary injunction appropriate

Property owners were properly enjoined from interfering with construction of detour on portion of their land appropriated by state after collapse of thruway bridge where irreparable harm to surrounding roads would otherwise result since current detours were inadequate and peak usage period was approaching; furthermore, balancing of equities weighed in favor of state since detour would exist only until bridge was completed (approximately one year) and owners would be compensated, and since state had complied with Eminent Domain Procedure Law and had demonstrated likelihood of success in action for permanent injunction. New York State Thruway Authority v Dufel, 129 A.D.2d 44, 516 N.Y.S.2d 981, 1987 N.Y. App. Div. LEXIS 43659 (N.Y. App. Div. 3d Dep't 1987).

In action for judgment declaring deed to be void, it was not abuse of discretion for court to grant plaintiff’s motion for preliminary injunction to maintain status quo pending court’s resolution of her claim to life estate in premises since she made prima facie showing of reasonable probability of success on merits, defendants failed to effectively dispute her contention that she would suffer irreparable injury if she were evicted, and defendants did not dispute that balance of equities was in her favor. Moczan v Moczan, 135 A.D.2d 692, 522 N.Y.S.2d 591, 1987 N.Y. App. Div. LEXIS 47785, 1987 N.Y. App. Div. LEXIS 52634 (N.Y. App. Div. 2d Dep't 1987).

Uncle, who claimed decedent’s property through will, was entitled to preliminary injunction against eviction by his niece, who claimed property through quitclaim deed, where medical records cast doubt on decedent’s mental capacity at time of deed, uncle was disabled and had no other abode, and issue of uncle’s unjust enrichment could be raised at trial. Terrell v Terrell, 279 A.D.2d 301, 719 N.Y.S.2d 41, 2001 N.Y. App. Div. LEXIS 146 (N.Y. App. Div. 1st Dep't 2001).

In consolidated actions arising from efforts to place mobile concrete plant and equipment on industrially zoned property, plaintiff was not entitled to vacatur of preliminary injunction issued by court in first action on ground that all issues and claims raised in that action were rendered moot by town’s subsequent approval of redesigned plant and court’s ruling that site plan approval was not required, as outstanding claims remained for which continuance of preliminary injunction was proper, where adjacent landowners alleged in second action that town’s issuance of certificate of occupancy (CO) was improper for reasons other than lack of site plan approval, and that plaintiff’s activities at site constituted nuisance and violated CO. Bonded Concrete Inc. v Town of Saugerties, 282 A.D.2d 900, 723 N.Y.S.2d 553, 2001 N.Y. App. Div. LEXIS 3945 (N.Y. App. Div. 3d Dep't), app. denied, 97 N.Y.2d 653, 737 N.Y.S.2d 53, 762 N.E.2d 931, 2001 N.Y. LEXIS 3457 (N.Y. 2001).

In an action by an abortion clinic to enjoin anti-abortion demonstrators from demonstrating, picketing or in any way interfering with the normal operation of the clinic, the clinic was entitled to a preliminary injunction where the demonstrators had been demonstrating on the private property of the building in which the clinic was located, had been blocking the ingress and egress to the premises and physically abusing and harassing people, and had been causing a disruption of the normal activities of the clinic; the demonstrators would be allowed to peacefully protest, demonstrate, assemble and counsel persons concerning their views on abortion if such did not violate the injunction provisions. The clinic had standing to seek the injunction against the demonstrators since the clinic demonstrated that the demonstrations had directly and substantially interfered with the normal functioning of the health care facility. Parkmed Co. v Pro-Life Counselling, Inc., 110 Misc. 2d 369, 442 N.Y.S.2d 396, 1981 N.Y. Misc. LEXIS 3093 (N.Y. Sup. Ct. 1981), modified, 91 A.D.2d 551, 457 N.Y.S.2d 27, 1982 N.Y. App. Div. LEXIS 19382 (N.Y. App. Div. 1st Dep't 1982).

Petitioner, not-for-profit corporation formed to combat communitydeterioration in economically distressed neighborhoods in New York City,was entitled to preliminary injunction preventing city from transferringcity-owned dwellings to private housing partnership under Urban

DevelopmentAction Area Act (UDAAA) (CLS Gen Mun §§ 690-698) where (1) city failed todispute petitioner's allegations that city's transfer of title was inviolation of numerous legal requirements, (2) petitioner offered evidence,inter alia, to show that partnership intended to provide fewer units oflow-income housing at dwellings than required in request for proposals(RFP), or than partnership initially promised in its response to RFP, whichwould result in low-income and homeless members of petitioner and theirfamilies losing number of units of publicly financed affordable housing,and (3) petitioner made clear showing that public policy goals of UDAAA andcity's vacant buildings program would be violated if partnership werepermitted to proceed prior to determination of petitioner's Article 78proceeding. Lee v New York City Dep't of Hous. Preservation & Dev., 162 Misc. 2d 901, 614 N.Y.S.2d 694, 1994 N.Y. Misc. LEXIS 85 (N.Y. Sup. Ct. 1994).

203. — —Preliminary injunction not appropriate

Appellate Division would not exercise its discretion to grant preliminary injunction awarding corporation possession of automobile pendente lite in corporation's action alleging wrongful taking and detention of automobile by ousted corporate director where corporation had failed to make out prima facie showing of irreparable injury as it had adequate remedy at law in suit for damages, and since granting of preliminary injunction would amount to giving corporation ultimate relief it sought, which should be avoided where no inequity would result. Byrne Compressed Air Equipment Co. v Sperdini, 123 A.D.2d 368, 506 N.Y.S.2d 593, 1986 N.Y. App. Div. LEXIS 60144 (N.Y. App. Div. 2d Dep't 1986).

Court would deny village's motion for preliminary injunction to enjoin homeowners' association from permitting water used in heating and cooling systems of townhouse development from draining into dry well system in such quantities as to cause water to flow into village streets, since village failed to join individual owners; owners were necessary parties inasmuch as village was in essence seeking to enjoin them from utilizing their individually controlled heating and air-conditioning systems, thereby potentially rendering their units uninhabitable or requiring use of

prohibitively expensive alternative systems. Atlantic Beach v Pebble Cove Homeowners' Ass'n, 139 A.D.2d 627, 527 N.Y.S.2d 429, 1988 N.Y. App. Div. LEXIS 4375 (N.Y. App. Div. 2d Dep't 1988).

In action resulting from estrangement of 2 former close friends and termination of their involvement in motorcycle racing team, plaintiff's motion for preliminary injunction seeking to bar defendant from transferring vintage motorcycles and related equipment, and to appoint temporary receiver over such chattels, was properly denied where (1) there was sharp dispute as to underlying facts, such as nature of racing team venture and plaintiff's ownership interest therein, (2) there was uncertainty as to ownership of particular pieces of motorcycle property of team, and (3) there was absence of clear proof of danger of irreparable loss or damage in that it did not appear that defendant intended to proceed in manner other than good faith continuation of racing schedule in which motorcycle racing team had engaged for past decade. Elghanayan v Iannucci, 145 A.D.2d 345, 535 N.Y.S.2d 611, 1988 N.Y. App. Div. LEXIS 13332 (N.Y. App. Div. 1st Dep't 1988).

Court would vacate preliminary injunction which enjoined plaintiffs from converting any funds belonging to 24 entities without written consent from defendant since (1) there was sharp factual conflict regarding ownership of entities, (2) in event plaintiffs were to waste assets of any entities in which defendant might establish financial interest, he could be fully compensated by award of monetary damages, and (3) defendant failed to establish that hardship sustained by plaintiffs as result of imposition of preliminary injunction would be less than hardship which he might experience as result of its denial. Somers Assoc., Inc. v Corvino, 156 A.D.2d 218, 548 N.Y.S.2d 480, 1989 N.Y. App. Div. LEXIS 15534 (N.Y. App. Div. 1st Dep't 1989).

Supreme Court improperly granted defendants' motion for preliminary injunction, allowing continued operation of rock crusher at current site for period not in excess of 18 months during which time preparations were to be made to move to different site, where plaintiff, Adirondack Park Agency, had brought instant action under CLS Exec § 813(1) and (2) seeking enforcement of permit conditions, Agency had moved for preliminary injunction enjoining defendants from

operating rock crusher on site during pendency of action, and although Supreme Court denied such motion, on appeal appellate court granted Agency's motion for preliminary injunction; by ordering relocation of rock crusher, Supreme Court did not make final disposition "on the merits" so as to justify lifting of preliminary injunction and prohibition against continued use of machinery. Adirondack Park Agency v Hunt Bros. Contrs., 244 A.D.2d 849, 666 N.Y.S.2d 237, 1997 N.Y. App. Div. LEXIS 12012 (N.Y. App. Div. 3d Dep't 1997).

Defendant, operator of oil terminal and storage facility on upland property on bay harbor, was improperly granted summary judgment in town's action to enjoin defendant from dredging harbor where defendant failed to show that conditions of harbor were such that dredging was necessary in order to preserve its right of access. Town of Oyster Bay v Commander Oil Corp., 249 A.D.2d 295, 670 N.Y.S.2d 876, 1998 N.Y. App. Div. LEXIS 3753 (N.Y. App. Div. 2d Dep't 1998).

Court properly granted defendants' summary judgment motion in action to permanently restrain erection or maintenance of any retail or commercial establishments on any of relevant parcels where no legal authority was cited for plaintiffs' assumption that unencumbered parcel and encumbered parcel somehow had lost their separate identities when joined in latter deeds, there was no language of deeds evidencing intention to subject unencumbered parcel to any new restriction, and uncontroverted evidence showed that proposed improvements were to be made only on unencumbered parcel. Ledda v Chambers, 284 A.D.2d 690, 726 N.Y.S.2d 491, 2001 N.Y. App. Div. LEXIS 6229 (N.Y. App. Div. 3d Dep't 2001).

Court improperly granted plaintiff's motion to enjoin village from entering into agreement with any entity other than it for operation of tennis facility where provision of license agreement giving plaintiff right of first refusal did not indicate terms, duration, price, or any other conditions for its exercise, and right of first refusal, as interpreted by plaintiff, imposed unreasonable restraint on alienability of public parkland. Harbour View Racquet Club, Inc. v Vill. of Mamaroneck, 287 A.D.2d 437, 731 N.Y.S.2d 71, 2001 N.Y. App. Div. LEXIS 9204 (N.Y. App. Div. 2d Dep't 2001).

Plaintiff failed to meet his burden of showing his entitlement to a preliminary injunction, as it was undisputed that plaintiff voluntarily vacated a parking space prior to commencing litigation to recover damages for eviction from the space; thus, he was unable to show that he would suffer irreparable injury without an injunction since he had already vacated the parking space. Scialdone v Stepping Stones Assoc., L.P., 148 A.D.3d 950, 49 N.Y.S.3d 543, 2017 N.Y. App. Div. LEXIS 1818 (N.Y. App. Div. 2d Dep't 2017).

New York City Department of Correction would be allowed to proceed with construction of 400-bed correctional facility on Hart Island without first preparing environmental impact statement since overcrowding in city prisons was emergency situation justifying temporary exemption from such requirement as provided by 6 NYCRR § 617.2, and although city should have complied with its Uniform Land Use Review Procedure (ULURP) before starting construction (NY City Charter § 197-c), work on facility would not be enjoined in view of prison crisis. Hart Island Committee v Koch, 137 Misc. 2d 521, 520 N.Y.S.2d 977, 1987 N.Y. Misc. LEXIS 2616 (N.Y. Sup. Ct. 1987), modified, 150 A.D.2d 269, 541 N.Y.S.2d 790, 1989 N.Y. App. Div. LEXIS 7109 (N.Y. App. Div. 1st Dep't 1989).

Petitioners were not entitled to a temporary restraining order under N.Y. C.P.L.R. §§ 6301 and 6313(a) to stay a developer from demolishing certain buildings as part of a real estate redevelopment project because petitioners failed to provide substantial factual support to show immediate irreparable injury in that the removal of the buildings would affect the nature and character of the neighborhood as no details as to, inter alia, the composition of the neighborhood and its geographical boundaries were provided. Develop Don't Destroy Brooklyn, Inc. v Urban Dev. Corp., 2007 N.Y. Misc. LEXIS 5833 (N.Y. Sup. Ct. 2007).

204. Other particular matters

Supreme Court properly denied motion for preliminary injunction requiring defendant to deposit disputed fund into court where complaint sought money damages only and plaintiff failed to satisfy any grounds required for attachment under CLS CPLR § 6201. Slavin v Rose, 156

A.D.2d 194, 548 N.Y.S.2d 451, 1989 N.Y. App. Div. LEXIS 15455 (N.Y. App. Div. 1st Dep't 1989).

In action to recover balance due on promissory notes, it was error to grant plaintiffs' motion to preliminarily enjoin defendant from selling any property in which plaintiffs might have security interest, as plaintiffs could be adequately compensated by damages or could seek provisional order of attachment under CLS CPLR § 6201(3). Appio v Mel Lyn Office Supplying, 222 A.D.2d 541, 635 N.Y.S.2d 651, 1995 N.Y. App. Div. LEXIS 12968 (N.Y. App. Div. 2d Dep't 1995).

Physician was not entitled to enjoin State Social Services Commissioner from excluding her participation in New York Medicaid Provider Program pending conclusion of evidentiary hearing where she had not carried her burden of demonstrating likelihood of her success, nor had she made requisite showing of equity considering public health and policy issues involved in accusations that her care of patients was poor and, in one case, potentially dangerous. Ramanadhan v Wing, 257 A.D.2d 383, 683 N.Y.S.2d 85, 1999 N.Y. App. Div. LEXIS 5 (N.Y. App. Div. 1st Dep't 1999).

Preliminary injunction enjoining defendant as to disposition of payments received from State Department of Social Services and requiring him to disclose bank records would be vacated, because those provisions were not supported by showing of probability of success on merits or showing that such relief was necessary to avoid irreparable harm, where defendant was likely to succeed on merits of underlying dispute over which party was entitled to operate methadone clinic, plaintiff's surviving claims sought only money damages, and plaintiff did not show that defendant probably would be unable to pay judgment if one were entered against him. East Harlem Mgmt. Group, Inc. v Silbermann, 263 A.D.2d 354, 692 N.Y.S.2d 377, 1999 N.Y. App. Div. LEXIS 7734 (N.Y. App. Div. 1st Dep't 1999).

Motion court abused its discretion when it vacated the temporary restraining order (TRO) without a hearing because the patient's showing that he would be irreparably injured in the absence of a TRO never changed and there was no evidence inconsistent with its finding in issuing the TRO.

Wilder v Fresenius Med. Care Holdings, Inc., 175 A.D.3d 406, 106 N.Y.S.3d 54, 2019 N.Y. App. Div. LEXIS 6061 (N.Y. App. Div. 1st Dep't 2019).

Motion court abused its discretion when it denied the requested preliminary injunction, in view of the substantial issues of disputed fact raised by the parties'. The motion court did not have enough information before it without holding a hearing to determine the likelihood of the patient's success on the merits because the facility was required to determine that the patient's behavior was disruptive and abusive to the extent that the delivery of care to the patient or the ability of the facility to operate effectively was seriously impaired. Wilder v Fresenius Med. Care Holdings, Inc., 175 A.D.3d 406, 106 N.Y.S.3d 54, 2019 N.Y. App. Div. LEXIS 6061 (N.Y. App. Div. 1st Dep't 2019).

Court did not abuse its discretion in granting plaintiffs' request for a preliminary injunction because the court properly found that plaintiffs were likely to succeed on the merits as defendant's explanation for making the modifications to users' access to the bank accounts to prevent fraud did not affect plaintiffs' probability of success because he lacked the authority to make unilateral decisions, and plaintiffs established a danger of irreparable injury as, following defendant's bank modifications, the bank refused to recognize the authority of the governing bodies, and the treasurer's affidavit detailed the financial effects that this would have on plaintiffs. Darwish Auto Group, LLC v TD Bank, N.A., 224 A.D.3d 1115, 206 N.Y.S.3d 736, 2024 N.Y. App. Div. LEXIS 996 (N.Y. App. Div. 3d Dep't 2024).

Plaintiff was not entitled to injunction enjoining any future violation of CLS CPLR § 3120(b) where defense acknowledged procedural mistake in failing to obtain court order upon notice of motion, and there was no threat of repetition. Greenfield v Schultz, 173 Misc. 2d 31, 660 N.Y.S.2d 624, 1997 N.Y. Misc. LEXIS 256 (N.Y. Sup. Ct. 1997), modified, aff'd in part, vacated in part, 251 A.D.2d 67, 673 N.Y.S.2d 684, 1998 N.Y. App. Div. LEXIS 6518 (N.Y. App. Div. 1st Dep't 1998).

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).

For purposes of preliminary injunctive relief, a venue could not arbitrarily, capriciously, and unreasonably terminate season subscriptions of long-time holders based on the fact that they did business with, or accepted financing from, the ticket resellers, although it could rescind season ticket subscriptions for individuals who were posing as “strawmen” for the resellers, based on its policy of limiting tickets purchases. Smile for Kids, Inc. v Madison Sq. Garden Co., 52 Misc. 3d 629, 32 N.Y.S.3d 866, 2016 N.Y. Misc. LEXIS 1891 (N.Y. Sup. Ct. 2016).

Water district supervisor was entitled to a preliminary injunction enjoining the defendant from publishing and posting further defamatory remarks about the supervisor on social media, and directing him to remove and/or delete statements previously posted because the cited statements suggested that the supervisor regularly engaged in professional misconduct and the improper performance of his duties, and were tendered to impute criminal activity on the part of the supervisor and to reflect negatively on the supervisor in his profession and particular employment. Carey v Ripp, 60 Misc. 3d 1016, 77 N.Y.S.3d 863, 2018 N.Y. Misc. LEXIS 2909 (N.Y. Sup. Ct. 2018).

205. —Adoptions

No justiciable controversy existed in proceeding by daughter of one of 2 life tenants of trust to enjoin one life tenant from commencing adoption proceeding in any court other than Surrogate’s Court with jurisdiction over trust since no adoption proceeding had yet been instituted in any jurisdiction. In re Estate of Gardiner, 144 Misc. 2d 797, 545 N.Y.S.2d 466, 1989 N.Y. Misc. LEXIS 547 (N.Y. Sur. Ct. 1989).

Adoptive parents of child born to Native American mother in Oklahoma were granted preliminary injunction enjoining putative father and Chickasaw Nation, or anyone acting on their behalf, from taking any action to interfere with Family Court’s jurisdiction pending it determination of proper

custody of child, where mother consented to adoption by adoptive parents and documents indicated that putative father may have engaged in forum-shopping by seeking relief in Oklahoma court. In re Baby Girl S., 181 Misc. 2d 117, 690 N.Y.S.2d 907, 1999 N.Y. Misc. LEXIS 214 (N.Y. Sur. Ct. 1999).

206. —Cemeteries

Continuation of a temporary restraining order was proper where: (1) a family was likely to succeed in its action against a cemetery; (2) the family's mental and emotional distress from the perceived desecration of their family graves constituted irreparable injury ; and (3) the sensitive nature of the subject matter and lack of any apparent prejudice to the cemetery balanced the equities in the family's favor. Pantel v Workmen's Circle/Arbetter Ring Branch 281, 289 A.D.2d 917, 735 N.Y.S.2d 228, 2001 N.Y. App. Div. LEXIS 12624 (N.Y. App. Div. 3d Dep't 2001).

CLS N-PCL § 513(c) does not override CLS N-PCL § 1507 restrictions on invading principal and thus, in action under CLS N-PCL § 112(a)(1), defendants were preliminarily enjoined from invading principal of cemetery's permanent maintenance trust fund or perpetual care trust fund, and from borrowing money from its perpetual care income fund (without prejudice to them if they applied for judicial approval under § 1507(a)), because (1) borrowing money that probably cannot be repaid is extra-statutory means of removing monies from funds without seeking court approval, (2) there would be continued invasion and arguably irreparable harm if injunction was not issued, and (3) balancing of equities favored issuance of preliminary injunction. People by Vacco v Woodlawn Cemetery, 173 Misc. 2d 846, 662 N.Y.S.2d 369, 1997 N.Y. Misc. LEXIS 397 (N.Y. Sup. Ct. 1997).

207. —Condominiums

In foreclosure action by board of managers of condominium association, motion for preliminary injunction prohibiting defendant from performing any construction or alteration on its unit, and from allowing further liens to be placed against unit, was properly denied because, in addition to

plaintiff's failure to make requisite showing that it was likely to succeed on merits, equities weighed in defendant's favor where plaintiff showed that allowing defendant to proceed with its residential conversion might cause it some injury, while defendant claimed that increase in its debt if its renovation were enjoined, coupled with its inability to timely finish and sell new units, would cause it to go out of business altogether. Board of Managers of 130 Barrow St. Condo. v Royal Blue Realty Holdings, Inc., 264 A.D.2d 636, 695 N.Y.S.2d 347, 1999 N.Y. App. Div. LEXIS 9284 (N.Y. App. Div. 1st Dep't 1999).

Contract vendee of condominium units was not entitled to preliminary injunction against sale of those units by condominium's board where board had purchased units under right of first refusal provision in condominium bylaws, and board's actions were taken in good faith to further legitimate interest of condominium corporation, especially given corporation's start-up financial status. Soho Bazaar, Inc. v Board of Managers of Soho Int'l Arts Condo., 266 A.D.2d 65, 698 N.Y.S.2d 626, 1999 N.Y. App. Div. LEXIS 11612 (N.Y. App. Div. 1st Dep't 1999).

Condominium's board of managers did not waive its right to enforce "prior consent" rule, and thus board was entitled to injunctive relief and summary judgment declaring that unit owner and occupant violated condominium rules by installing black plexiglas over iron gates enclosing vestibule under stairway in front of door to their unit without obtaining board's prior consent, where 2 other units at which their owners were allowed to install black plexiglas over their gates involved gates that were flush with building wall, rather than at right angles with wall, and did not encompass vestibule, which was common element as to which no alterations could be made without board's prior consent. Board of Managers of Manhattan Valley Townhouses v Murovich, 273 A.D.2d 11, 708 N.Y.S.2d 111, 2000 N.Y. App. Div. LEXIS 6101 (N.Y. App. Div. 1st Dep't 2000).

208. —Constructive trusts

Court erred in granting preliminary injunction to plaintiffs in action seeking to impose constructive trust on annuity fund, since plaintiffs' claim was essentially one for money damages

and they made no evidentiary showing that defendant would be unable to satisfy judgment should they prevail in action. Sutton, DeLeeuw, Clark & Darcy v Beck, 155 A.D.2d 962, 547 N.Y.S.2d 773, 1989 N.Y. App. Div. LEXIS 14832 (N.Y. App. Div. 4th Dep't 1989).

Daughter of deceased grantor of 2 Totten trust accounts, seeking to impose constructive trust on proceeds of accounts on theory that although grantor made his brother trust beneficiary he intended proceeds to go to her, was not entitled to preliminary injunction restraining defendant bank from distributing proceeds to beneficiary, since record failed to disclose question of fact as to whether grantor intended beneficiary to transfer funds to daughter and thus failed to show likelihood of success on merits. De Werthein v Gotlib, 188 A.D.2d 108, 594 N.Y.S.2d 230, 1993 N.Y. App. Div. LEXIS 2074 (N.Y. App. Div. 1st Dep't), app. denied, 81 N.Y.2d 711, 600 N.Y.S.2d 442, 616 N.E.2d 1104, 1993 N.Y. LEXIS 1805 (N.Y. 1993).

209. —Corporations

In action by shareholder of defendant banking corporation for judgment declaring that defendant’s plan to acquire another banking corporation constituted de facto merger and thus required approval by ⅔ of defendant’s shareholders pursuant to CLS Bus Corp § 903, plaintiff was not entitled to summary judgment or preliminary injunction preventing defendant from implementing plan based on CLS Bus Corp § 912, which would prevent merger for 5 years after date of acquisition without approval of other corporation’s board of directors, since defendant planned to purchase other corporation’s stock, not its assets, and did not intend to immediately dissolve business of other corporation or assume its debts and obligations; while merger might occur in future, instant transaction was not merger but acquisition of subsidiary. Irving Bank Corp. v Bank of New York Co., 140 Misc. 2d 363, 530 N.Y.S.2d 757, 1988 N.Y. Misc. LEXIS 386 (N.Y. Sup. Ct. 1988).

210. —Employment

Court properly dismissed former employee's action to enjoin employer from terminating employee's employment where employee submitted that he was not aware of provisions of employer's personnel manual at time he was hired, and he also admitted that he and employer never discussed reasons for which he could be discharged; under circumstances, employee could not show detrimental reliance and thus had no cognizable action for breach of contract. Murchison v Community Counseling & Mediation Servs., 228 A.D.2d 657, 646 N.Y.S.2d 10, 1996 N.Y. App. Div. LEXIS 7434 (N.Y. App. Div. 2d Dep't 1996), app. dismissed in part, app. denied, 90 N.Y.2d 930, 664 N.Y.S.2d 263, 686 N.E.2d 1358, 1997 N.Y. LEXIS 3165 (N.Y. 1997).

In action, inter alia, to permanently enjoin defendant for taking any "retaliatory personnel action" against plaintiff in violation of CLS Labor § 740, court improperly granted plaintiff's motion to restrain defendant from discharging plaintiff from his employment pending trial of action where plaintiff's claims that if he lost his position as faculty member with defendant, he would have no one to support him, he would be unable to live in New York metropolitan area, and would be unable to prosecute instant action, were wholly speculative and conclusory. Khan v State Univ. of N.Y. Health Science Ctr., 271 A.D.2d 656, 706 N.Y.S.2d 192, 2000 N.Y. App. Div. LEXIS 4534 (N.Y. App. Div. 2d Dep't 2000).

211. —Further litigation

Injunctive relief against threat of further litigation was justified where litigant repeatedly refused to discontinue meritless proceeding despite numerous prior determinations against him. Lee v City of New York, 233 A.D.2d 510, 650 N.Y.S.2d 295, 1996 N.Y. App. Div. LEXIS 12686 (N.Y. App. Div. 2d Dep't 1996), app. denied, 89 N.Y.2d 813, 657 N.Y.S.2d 405, 679 N.E.2d 644, 1997 N.Y. LEXIS 448 (N.Y. 1997).

Court properly permanently enjoined plaintiff, his current and formal counsel, and their affiliates from instituting any further actions related to amended complaint in any New York Courts against defendants in light of plaintiff's history of engaging in frequent, protracted, and often

frivolous litigation by attempting to relitigate fraud issues. Braten v Finkelstein, 235 A.D.2d 513, 652 N.Y.S.2d 769, 1997 N.Y. App. Div. LEXIS 666 (N.Y. App. Div. 2d Dep't 1997).

212. —Insurance

In action to invalidate New York City Taxi and Limousine Commission (TLC) rules pertaining to insurance requirements for taxicab and for-hire car industry, plaintiff (whose members were car and limousine companies) was not entitled to preliminary injunctive relief because (1) TLC's power to regulate insurance rates was not preempted by state law, (2) TLC rationally assessed that there was need for greater liability insurance coverage for yellow cab and for-hire vehicles in New York City, and (3) plaintiff's claims as to irreparable injury were speculative, in absence of proof that any of its members were unable to pay additional insurance premiums for increased coverage. United Car & Limousine Found., Inc. v New York City Taxi & Limousine Comm'n, 178 Misc. 2d 734, 680 N.Y.S.2d 815, 1998 N.Y. Misc. LEXIS 542 (N.Y. Sup. Ct. 1998).

213. — —Health insurance

Insured, who was seeking preliminary injunction requiring health insurer to continue paying for intravenous antibiotic therapy for Lyme disease, showed extraordinary circumstances warranting grant of injunction where (1) he was personally unable to pay for such therapy, which was prescribed by his physician, and (2) if such therapy were discontinued, he would suffer dire physical consequences, including potentially irreversible neurological injury. Egan v New York Care Plus Ins. Co., 266 A.D.2d 600, 697 N.Y.S.2d 776, 1999 N.Y. App. Div. LEXIS 11244 (N.Y. App. Div. 3d Dep't 1999).

Although defendant health insurers' prior practice of retroactive termination without advance notice violated parties' contract and CLS Gen Bus § 349, plaintiff insureds were not entitled, in class action, to injunctive relief from insurers' revised procedures where (1) insurers presently provided advance notice with their billing statements, (2) that notice included clear explanation of subscriber's right to remit any overdue payment during ensuing 30-day grace period and of

fact that, if payment were not received, coverage would be terminated retroactive to end of day before premium due date, and (3) that notice was not sort of deceptive act that was likely to mislead reasonable consumer who was acting reasonably under circumstances. Makastchian v Oxford Health Plans, Inc., 281 A.D.2d 197, 721 N.Y.S.2d 351, 2001 N.Y. App. Div. LEXIS 2208 (N.Y. App. Div. 1st Dep't 2001).

Plaintiff was entitled to preliminary injunction, compelling health insurer to pay for nursing care required by plaintiff as result of 1989 stroke, and to provide such coverage pending action, on basis that insurer was equitably estopped from claiming that its 1983 group policy with plaintiff's employer and corresponding benefits booklet, under which lifetime benefits vested on onset of covered disability, were superseded by 1989 insurance contract terminating disability benefits within year or 2 of termination of contract, since (1) irreparable injury to be sustained by plaintiff from lack of nursing care would be more burdensome than defendant's payments, and (2) preliminary injunction would not alter status quo, in that defendant initially paid full benefits and plaintiff was simply seeking to have them continued. Kimm v Blue Cross & Blue Shield, 160 Misc. 2d 97, 608 N.Y.S.2d 385, 1993 N.Y. Misc. LEXIS 575 (N.Y. Sup. Ct. 1993).

214. — —Workers' Compensation

Court erred in granting insurance company permanent injunction prohibiting defendant from proceeding before Workers' Compensation Board where board had ordered defendant's case reopened, insurer had moved only for preliminary injunction, and there was no showing of irreparable injury. Aetna Life & Casualty Co. v McGregor, 138 A.D.2d 974, 526 N.Y.S.2d 414, 1988 N.Y. App. Div. LEXIS 2769 (N.Y. App. Div. 4th Dep't 1988).

215. —Law firms

Law firm was properly enjoined from commencing or prosecuting any lawsuits against its clients where firm's former partners had commenced action against firm seeking enforcement of alleged agreement governing details of their withdrawal from firm, and firm allegedly breached

its prior assurances to court in commencing litigation against clients of firm and former partners. Pomeranz v Blodnick, 162 A.D.2d 323, 556 N.Y.S.2d 902, 1990 N.Y. App. Div. LEXIS 7749 (N.Y. App. Div. 1st Dep't 1990).

Court properly granted plaintiff law firm, Klein, Wagner & Morris, which was formed pursuant to partnership agreement between Wagner & Klein, P.C., and another law firm, “Lawrence A. Klein, P.C.,” preliminary injunction preventing daughter of deceased partner Lawrence A. Klein from using names “Lawrence A. Klein” and “Lawrence A. Klein, P.C., in connection with her law practice, although all shares in ”Lawrence A. Klein, P.C.,“ had been transferred to her by her father prior to his death, since (1) partnership agreement specifically provided that name of deceased partner could be continued as part of firm name, (2) daughter’s continued use of name Lawrence A. Klein would irreparably injure plaintiff law firm by causing confusion and affecting its reputation with clients, (3) CLS Code of Prof Respons EC 4-6 prohibits sales of law practices, and (4) there is also prohibition against use of firm name by associate where all partners are dead, except to wind up partnership. Klein, Wagner & Morris v Lawrence A. Klein, P. C., 186 A.D.2d 631, 588 N.Y.S.2d 424, 1992 N.Y. App. Div. LEXIS 11307 (N.Y. App. Div. 2d Dep't 1992).

There was genuine potential for conflict between interests of law firm’s former and present clients, warranting preliminary injunction precluding latter representation under CLS Code of Prof Respons DR 5-108(A)(1), where adverse interests of clients made initial undertaking to represent present client violative of CLS Code of Prof Respons DR 5-105(A), and conflict would likely continue because present client might be required to indemnify former client. William Kaufman Org., Ltd. v Graham & James LLP, 263 A.D.2d 440, 694 N.Y.S.2d 32, 1999 N.Y. App. Div. LEXIS 8433 (N.Y. App. Div. 1st Dep't 1999), app. dismissed, 94 N.Y.2d 876, 705 N.Y.S.2d 7, 726 N.E.2d 484, 2000 N.Y. LEXIS 41 (N.Y. 2000).

216. —Leases

In action for specific performance of provision in lease which gave plaintiff right of first refusal to lease property and to purchase it, plaintiff was not entitled to preliminary injunction where defendant, to whom property had been transferred, denied both actual and constructive notice of plaintiff's right of first refusal, and vice president of title search company averred that title search revealed that no lease agreement, option to purchase, or right of first refusal had been filed in county clerk's office; absent recordation of lease, defendant was good faith purchaser for value without notice and right of first refusal was void as against her. W.I.L.D. W.A.T.E.R.S., Ltd. v Martinez, 148 A.D.2d 847, 539 N.Y.S.2d 119, 1989 N.Y. App. Div. LEXIS 2820 (N.Y. App. Div. 3d Dep't 1989).

Plaintiff, as assignee of original lease, was entitled to preliminary injunction to preserve status quo where original lease included option to purchase property if owner decided to sell it during term of lease or lease extension, circumstances of sale of property during lease extension period established likelihood of plaintiff's success on merits of its tortious interference claim, purchaser failed to establish as matter of law that it was bona fide purchaser for value entitled to protection of Recording Act, and balancing of equities favored continued use of property for plaintiff's business purposes pending resolution of litigation. Hicksville Properties LLC v Wollenhaupt, 268 A.D.2d 407, 704 N.Y.S.2d 81, 2000 N.Y. App. Div. LEXIS 172 (N.Y. App. Div. 2d Dep't 2000).

Injunction would be granted precluding landlord from interfering with installation of cable television facilities by refusing access unless wiring was through vertical risers running through continuous closets since (1) CLS Exec § 828 prohibits landlord from interfering with installation of cable television facilities, (2) CLS Exec § 824(1) requires cable company to provide service in accordance with applicable regulations, and (3) cable company submitted directives from local regulatory agency mandating wiring by method it had proposed, through public hallway or stairwell, in order to ensure greater ease of servicing and lessened danger of tampering. Manhattan Cable Television, Inc. v Rappaport, 146 Misc. 2d 892, 553 N.Y.S.2d 67, 1990 N.Y. Misc. LEXIS 97 (N.Y. Sup. Ct. 1990).

217. —Mortgages

In action for judgment declaring that plaintiff corporations were not in default on certain mortgages, plaintiffs were not entitled to preliminary injunction prohibiting defendants from enforcing rights of ownership under stock pledge agreement where (1) plaintiffs purchased 424 condominium units from defendants and borrowed all but small fraction of purchase price from defendants, (2) plaintiffs contracted with defendants to manage rental units and to sell vacant units, and defendants provided written guarantee that they would perform under management agreement, and (3) plaintiffs alleged that defendants breached their fiduciary duties under management agreement; plaintiffs failed to show that damages would be insufficient and that they would, therefore, suffer irreparable injury, and equities were not balanced in favor of plaintiffs since their continuing default on mortgages would cause defendants to default on loans obtained from banks using plaintiffs' mortgages as collateral. Preferred Equities Corp. v Ziegelman, 155 A.D.2d 424, 547 N.Y.S.2d 355, 1989 N.Y. App. Div. LEXIS 13999 (N.Y. App. Div. 2d Dep't 1989).

Mortgagor of condominium buildings was not entitled to mandatory injunction requiring mortgagee to execute and deliver partial releases from lien of mortgage to facilitate sale of 2 condominium units on mortgagor's payment of consideration for each where letter agreement on which demand was based did not provide methodology for fixing consideration to be paid for each release, and amount of consideration could not be ascertained by reference to extrinsic event, commercial practice, or trade usage. Kensington Court Assoc. v Gullo, 180 A.D.2d 888, 579 N.Y.S.2d 485, 1992 N.Y. App. Div. LEXIS 1490 (N.Y. App. Div. 3d Dep't 1992).

Condominium was entitled to preliminary injunction restraining party to whom mortgage was assigned on foreclosure from transferring 13 commercial condominium units until outstanding real estate taxes on property were paid, where referee at foreclosure had erroneously paid full proceeds of sale to assignee rather than paying taxes and other expenses of sale pursuant to CLS RPAPL § 1354(1)-(3); condominium's lien for unpaid common charges was extinguished at initial foreclosure, and assignee's failure to pay back taxes on property would likely relegate

condominium’s new lien to junior status or would extinguish it completely. Golden City Commer. Bank v Hawk Props. Corp., 236 A.D.2d 282, 658 N.Y.S.2d 257, 1997 N.Y. App. Div. LEXIS 1403 (N.Y. App. Div. 1st Dep't 1997).

Non-titled wife’s unsubstantiated allegations of fraud in connection with husband’s imposition of second mortgage on marital residence at time when reciprocal restraining order in matrimonial action enjoined both parties from encumbering marital assets, except in usual course of business or for ordinary living expenses, were insufficient to warrant preliminary injunction barring second mortgagee from maintaining action to foreclose mortgage since (1) allegations were inadequate to create likelihood of success on merits, and (2) wife did not demonstrate irreparable injury in view of limited equity remaining in foreclosed premises and fact that her equitable distribution interest might be satisfied out of husband’s interest in business into which mortgage proceeds were allegedly funneled. Arbor Nat'l Mortg., Inc. v Goldsmith, 154 Misc. 2d 853, 586 N.Y.S.2d 702, 1992 N.Y. Misc. LEXIS 323 (N.Y. Sup. Ct. 1992).

218. — —Foreclosures

Plaintiffs who commenced reforeclosure action under CLS RPAPL § 1503 to resolve liens held by defendants, which had inadvertently been omitted from foreclosure action, were entitled to preliminary injunction preventing defendants from conducting execution and sale of premises pending determination of reforeclosure action, in view of irreparable harm that would result from sale of premises at execution sale. Ahern v Pierce, 236 A.D.2d 343, 653 N.Y.S.2d 620, 1997 N.Y. App. Div. LEXIS 1046 (N.Y. App. Div. 2d Dep't 1997).

In breach of contract action, plaintiffs were properly denied preliminary injunction enjoining defendant from conducting foreclosure sale because plaintiffs failed to demonstrate irreparable injury absent preliminary injunction as they could be adequately compensated by money damages, and plaintiffs also failed to demonstrate likelihood of success on merits as defendant’s alleged failure to comply with CPLR 5019(c) did not prevent it from enforcing judgment of foreclosure and sale, and further, pursuant to forbearance agreement, plaintiffs specifically

consented to defendant scheduling foreclosure sale in event they defaulted under forbearance agreement and agreed that, in event of default, they would not interpose any defenses. Benaim v S2 Corona, LLC, 214 A.D.3d 760, 186 N.Y.S.3d 236, 2023 N.Y. App. Div. LEXIS 1318 (N.Y. App. Div. 2d Dep't 2023).

219. —Off-track betting

In action by plaintiff Yonkers Racing Corporation to enjoin defendant Catskill Regional Off-Track Betting Corporation from withdrawing its consent for plaintiff to receive simulcast signals of New York Racing Association (NYRA) races, plaintiff was entitled to vacatur of order temporarily restraining it from receiving simulcasts of NYRA races and from conducting off-track pari-mutuel betting thereon, since defendant's allegations that simulcasting of NYRA races by plaintiff "has diverted and continues to divert on a daily basis [defendant's] patrons...the number of which is impossible to determine with exactitude" did not exhibit urgency contemplated by CLS CPLR § 6301. Yonkers Racing Corp. v Catskill Regional Off-Track Betting Corp., 143 A.D.2d 345, 532 N.Y.S.2d 407, 1988 N.Y. App. Div. LEXIS 9159 (N.Y. App. Div. 2d Dep't 1988).

Regulation and implementing memorandum directive, which required off-track betting corporations (OTBs) to restore "missed pool" bets to public through later "sweetened pools," were unconstitutionally vague and invalid where they failed to set forth any detailed plan for infusion of total amount of missed pool gains and profits back into specific races and specific bets; for rational approach, it would seem that monies should be infused on proportionate basis back into similar types of bets, and thus OTBs would be granted preliminary injunction until proper implementing regulation and implementing memorandum directive were devised which clearly showed that profits and gains would go into proper betting pools for redistribution. New York City Off Track Betting Corp. v State Racing & Wagering Bd., 157 Misc. 2d 524, 597 N.Y.S.2d 869, 1993 N.Y. Misc. LEXIS 162 (N.Y. Sup. Ct. 1993), modified, 196 A.D.2d 15, 608 N.Y.S.2d 328, 1994 N.Y. App. Div. LEXIS 1542 (N.Y. App. Div. 3d Dep't 1994).

220. —Out-of-state actions

Plaintiff was not entitled to preliminary injunction prohibiting defendant from prosecuting action against him in Massachusetts since defendant had merely invoked Massachusetts law that she believed entitled her, as Massachusetts domiciliary, to assignment of interest in house in Massachusetts which she began renting from plaintiff before parties were divorced; whether principles of res judicata and full faith and credit arising from New York divorce judgment barred defendant from litigating title to Massachusetts property in Massachusetts court was question more appropriately addressed to Massachusetts court. Chayes v Chayes, 180 A.D.2d 566, 580 N.Y.S.2d 269, 1992 N.Y. App. Div. LEXIS 2720 (N.Y. App. Div. 1st Dep't 1992).

Court properly granted plaintiff's motion to temporarily stay defendant's subsequently commenced action in Colorado only as against it pending disposition of instant declaratory judgment action where (1) instant action was properly placed, (2) defendant caused numerous delays in instant action, (3) contrary decision in Colorado would have interfered with court's ability to resolve issues before it, (4) facts indicated that defendant might have engaged in forum shopping since each Colorado defendant was amenable to suit in New York, and (5) there were significant New York contacts. Interested Underwriters at Lloyd's v H.D.I III Assocs., 213 A.D.2d 246, 623 N.Y.S.2d 871, 1995 N.Y. App. Div. LEXIS 2801 (N.Y. App. Div. 1st Dep't 1995).

Plaintiff was not entitled to order enjoining defendants from prosecuting action which they had instituted against plaintiff in courts of Madrid, Spain, and from seeking order in any foreign court which would interfere with progress of New York contract action until entry of final judgment therein, where there was no clear showing that suit sought to be restrained was brought in bad faith, or motivated by fraud or intent to harass party seeking injunction, or that its purpose was to evade law of domicile of parties. Sarepa, S.A. v Pepsico, Inc., 225 A.D.2d 604, 639 N.Y.S.2d 128, 1996 N.Y. App. Div. LEXIS 2178 (N.Y. App. Div. 2d Dep't 1996), app. dismissed, 240 A.D.2d 720, 660 N.Y.S.2d 995, 1997 N.Y. App. Div. LEXIS 7127 (N.Y. App. Div. 2d Dep't 1997).

Plaintiff's motion for preliminary injunction against prosecution of action commenced against him in Russia was properly denied; doctrine of comity militates against staying proceedings

previously commenced in foreign court of competent jurisdiction, and additional expense and trouble of litigating in foreign court are insufficient to warrant injunction. Indosuez Int'l Fin. B.V. v National Reserve Bank, 263 A.D.2d 384, 693 N.Y.S.2d 33, 1999 N.Y. App. Div. LEXIS 7817 (N.Y. App. Div. 1st Dep't 1999).

Plaintiffs were entitled to preliminary injunction barring defendant from taking any further action in Ohio suit against plaintiffs, and from filing suits against plaintiffs in any other forum, where (1) plaintiffs demonstrated that they would be forced to engage in expensive duplicate litigation, (2) plaintiffs established that choice of Ohio as forum violated forum selection clause in contract, and (3) plaintiffs established that choice of Ohio forum was attempt to avoid New York statute of limitations. Babcock & Wilcox Co. v Control Components, 161 Misc. 2d 636, 614 N.Y.S.2d 678, 1993 N.Y. Misc. LEXIS 610 (N.Y. Sup. Ct. 1993).

Court would enjoin husband from bringing action for divorce in Connecticut where he had already commenced such action in New York, and he had not moved for leave to discontinue New York action. Hon v Hon, 164 Misc. 2d 806, 624 N.Y.S.2d 553, 626 N.Y.S.2d 408, 1995 N.Y. Misc. LEXIS 191 (N.Y. Sup. Ct. 1995).

221. —Personal property

Plaintiff art dealers were entitled to preliminary injunction to prohibit defendants from removing painting from state or disposing of it in any way where (1) plaintiffs asserted that they purchased painting from individual defendant, through defendant brokers, and paid by check which was cashed by individual defendant, and (2) individual defendant asserted that he revoked authority to sell painting and that he only cashed check when defendant brokers misrepresented that painting had been transferred to plaintiffs; painting was unique and plaintiffs had made strong case for right to relief based on apparent authority of defendant brokers to sell painting. Danae Art Int'l, Inc. v Stallone, 163 A.D.2d 81, 557 N.Y.S.2d 338, 1990 N.Y. App. Div. LEXIS 8355 (N.Y. App. Div. 1st Dep't 1990).

Court erred in granting, sua sponte, preliminary injunction enjoining defendant from disposing of boat and automobile pending conclusion of underlying action since plaintiffs' claim was essentially for money damages, and there was no showing that items were unique or that defendant would be financially unable to pay judgment which might be entered against him. Prozeralik v Johnston, 182 A.D.2d 1108, 583 N.Y.S.2d 85, 1992 N.Y. App. Div. LEXIS 6988 (N.Y. App. Div. 4th Dep't 1992).

Surrogate properly denied preliminary injunction to one of 5 coexecutors, who claimed that decision of other coexecutors to sell artwork of estate would be contrary to decedent's intent, which was to have his art collection preserved for benefit of public, where decision to sell artwork was based on need to create hedge fund to protect against possible success of certain claims against estate, enforcement of which without sale could oblige estate to tender shares of stock expected to increase in value and thus expose estate to claim with virtually unlimited upside potential; decision was made based on assessment of economic factors and its wisdom was beyond proper scope of judicial review. In re Sackler, 192 A.D.2d 660, 596 N.Y.S.2d 837, 1993 N.Y. App. Div. LEXIS 3875 (N.Y. App. Div. 2d Dep't 1993).

Plaintiff was entitled to preliminary injunction escrowing payments of winning $8 million lottery ticket where (1) substantial amount of money might be dissipated or otherwise unavailable for recovery if such relief were not granted, (2) defendants would suffer no great harm if monies disbursed by state were kept in escrow pending resolution of matter, and (3) it was uncontested that source of both 6-number sequences contained on winning ticket, as well as third sequence on second ticket, was plaintiff's deceased mother's Medicaid card, and lottery ticket agent corroborated plaintiff's testimony regarding her purchase of winning tickets. Sau Thi Ma v Xaun T. Lien, 198 A.D.2d 186, 604 N.Y.S.2d 84, 1993 N.Y. App. Div. LEXIS 11155 (N.Y. App. Div. 1st Dep't 1993), app. dismissed, 83 N.Y.2d 847, 612 N.Y.S.2d 110, 634 N.E.2d 606, 1994 N.Y. LEXIS 337 (N.Y. 1994).

Court erred in failing to grant all preliminary injunctive relief requested by plaintiff and in granting defendant's request for preliminary injunctive relief in dispute concerning title to, and right to

commercially distribute, antibody known as “PHF-1” and its cell line where evidentiary submissions, including, inter alia, records as to defendant’s employment status and duties, plaintiff’s policy on patents and licensing agreements, and acceptance agreement executed by defendant obligating her to abide by patent policy, showed that it was plaintiff which would likely succeed on merits, and denial of injunctive relief to plaintiff would prevent its existing licensee from developing commercial products for use in combating Alzheimer’s disease. Yeshiva Univ. v Greenberg, 228 A.D.2d 494, 644 N.Y.S.2d 313, 1996 N.Y. App. Div. LEXIS 6610 (N.Y. App. Div. 2d Dep't 1996).

In forfeiture action under CLS CPLR Art 13-A, court properly granted People’s motion for preliminary injunction restraining individual and corporate defendants from secreting, transferring or otherwise disposing of $99,269,688 in assets, where underlying 240-count criminal indictment alleged that defendants defrauded hundreds of investors by manipulating price of securities and misrepresenting anticipated performance of securities they were selling, and People also established that need for requested relief outweighed hardship on defendants, particularly in light of generous stipulation allowing them $1.45 million for counsel fees and $16,000 monthly living expenses. Morgenthau v A.S. Goldmen & Co., 283 A.D.2d 212, 724 N.Y.S.2d 306, 2001 N.Y. App. Div. LEXIS 4837 (N.Y. App. Div. 1st Dep't 2001).

In forfeiture action under CLS CPLR article 13-A, application for preliminary injunction enjoining defendants from disposing of any property during pendency of action, and for order confirming ex parte attachment of affected property, was granted where claiming authority established substantial probability that it would prevail on issue of forfeiture, that failure to enter order might result in property being unavailable for forfeiture, and that need to preserve availability of property outweighed hardship on any party against whom order might operate. Morgenthau v A.J. Travis Ltd., 184 Misc. 2d 835, 708 N.Y.S.2d 827, 2000 N.Y. Misc. LEXIS 204 (N.Y. Sup. Ct. 2000).

222. —Real property

In action involving dispute over use of luxurious swimming pool, plaintiff was not entitled to preliminary injunction since interruption of plaintiff's tenants in their use of pool did not constitute irreparable harm. London Terrace Gardens v London Terrace Towers Owners, 203 A.D.2d 145, 610 N.Y.S.2d 233, 1994 N.Y. App. Div. LEXIS 4041 (N.Y. App. Div. 1st Dep't 1994).

Court properly enjoined commencement of sandblasting operations pursuant to New York City's "Protocol" which regulated removal of lead paint from city-owned bridges, pending compliance with State Environmental Quality Review Act (SEQRA) and New York City Environmental Quality Review procedures (CEQR), as petitioners demonstrated that they would succeed on merits and that they would be irreparably harmed, and balancing of equities strongly favored petitioners, who were residents of affected neighborhoods and were subjected to toxic cloud of fine hazardous lead dust. Williamsburg Around the Bridge Block Ass'n v Giuliani, 223 A.D.2d 64, 644 N.Y.S.2d 252, 1996 N.Y. App. Div. LEXIS 7310 (N.Y. App. Div. 1st Dep't 1996).

Preliminary injunction was properly granted to prevent trustees of Gramercy Park from cutting down or pruning any trees in park without first obtaining written recommendation from certified arborist that trees posed significant danger, since question of fact existed as to whether trustees exercised diligence and prudence in care of park where reports of their experts recommending removal of certain trees were vague and conflicting, and contradicted trustees' assertion that all trees they cut down posed hazardous condition to park's users. Gramercy Co. v Benenson, 223 A.D.2d 497, 637 N.Y.S.2d 383, 1996 N.Y. App. Div. LEXIS 733 (N.Y. App. Div. 1st Dep't 1996).

In proceeding to revoke letters of administration, Surrogate's Court improvidently exercised its discretion by granting temporary retraining order that essentially restrained administratrix, c. t. a. from managing real property, in absence of showing that property was in danger of immediate and irreparable harm if injunction were not granted. In re Billings, 241 A.D.2d 452, 663 N.Y.S.2d 976, 1997 N.Y. App. Div. LEXIS 7298 (N.Y. App. Div. 2d Dep't 1997).

223. — —Access

In action to enforce and to restrain interference with easement for hunting and fishing over state land, plaintiff was not entitled to judgment permitting him to erect and maintain permanent structures appurtenant to his hunting and fishing rights, but was entitled to judgment permitting him to post signs to protect his rights. Wechsler v People, 147 A.D.2d 755, 537 N.Y.S.2d 900, 1989 N.Y. App. Div. LEXIS 776 (N.Y. App. Div. 3d Dep't 1989), app. dismissed, 74 N.Y.2d 793, 545 N.Y.S.2d 109, 543 N.E.2d 752, 1989 N.Y. LEXIS 5037 (N.Y. 1989), app. denied, 74 N.Y.2d 610, 546 N.Y.S.2d 554, 545 N.E.2d 868, 1989 N.Y. LEXIS 2751 (N.Y. 1989), app. dismissed, 75 N.Y.2d 808, 552 N.Y.S.2d 107, 551 N.E.2d 600, 1990 N.Y. LEXIS 106 (N.Y. 1990).

224. — —Purchase

Litigant who had unsuccessfully attempted to utilize notice of pendency against property which was subject of sales contract was not thereafter precluded by anything in CLS CPLR Art 63 or 65 from seeking specific performance of contract for sale of property. Vincent v Seaman, 152 A.D.2d 841, 544 N.Y.S.2d 225, 1989 N.Y. App. Div. LEXIS 9372 (N.Y. App. Div. 3d Dep't 1989).

Prospective purchaser was properly granted preliminary injunction prohibiting prospective seller from transferring property, despite seller’s contention that purchaser had not complied with mortgage contingency clause and thus had not demonstrated likelihood of success on merits, since (1) term of clause was ambiguous, and thus would not be construed to create condition precedent, and (2) even if construed as condition precedent, seller’s conduct in granting extension of term and continuing negotiations toward effecting closing constituted waiver of condition. Vincent v Seaman, 152 A.D.2d 841, 544 N.Y.S.2d 225, 1989 N.Y. App. Div. LEXIS 9372 (N.Y. App. Div. 3d Dep't 1989).

Buyer’s cross motion for preliminary injunctive relief was properly denied because the buyer failed to establish a likelihood of success on the merits on its cause of action for specific performance of certain provisions of the contract to sell real property. The relief requested in the specific performance cause of action was futile because the February 2018 proposed revised terms would not have been approved by the court as fair and reasonable to the church if the

church were to execute an amendment to the contract containing those terms and submit it to the court for approval. GG Acquisitions, LLC v Mount Olive Baptist Church of Manhasset, 178 A.D.3d 1023, 116 N.Y.S.3d 303, 2019 N.Y. App. Div. LEXIS 9470 (N.Y. App. Div. 2d Dep't 2019).

225. —Regulations, ordinances, and statutes

In action challenging constitutionality of "public charge" regulation, 18 NYCRR § 505.14(h)(7)(ii), Supreme Court had authority to grant preliminary injunction enjoining criminal prosecution of licensed home care agency which allegedly violated challenged regulation by seeking reimbursement for personal care services at higher rate than charged to general public. Ulster Home Care, Inc. v Vacco, 255 A.D.2d 73, 688 N.Y.S.2d 830, 1999 N.Y. App. Div. LEXIS 4222 (N.Y. App. Div. 3d Dep't 1999).

Plaintiff corporations, who stipulated with town to settle their civil liability for allegedly violating local law, were entitled to preliminary injunction restraining town from enforcing terms of stipulation on ground that local law was subsequently declared unconstitutional and invalid by United States Supreme Court; decisions of United States Supreme Court apply retroactively to "all events, regardless of whether such events predate or postdate" Court's announcement of new rule of law. R & R Disposal Carting v Town of Clarkstown, 163 Misc. 2d 196, 620 N.Y.S.2d 215, 1994 N.Y. Misc. LEXIS 548 (N.Y. Sup. Ct. 1994).

Village failed to establish likelihood of ultimate success on merits and thus was not entitled to preliminary injunction restraining town defendants from trespassing on and interfering with waterlines and facilities within "Direct Retail District" to which it claimed right to supply water pursuant to various agreements executed among village, town and water authority, as language of governing agreements and relevant statutes did not support existence of claimed district, village could not unilaterally create water district outside of its municipal boundaries, and defendants were not estopped to deny existence of "de facto village district" on ground that they delineated it in maps which they submitted to Department of Environmental Conservation in their

application for water supply permit in favor of water authority. Village of Webster v Town of Webster, 183 Misc. 2d 956, 707 N.Y.S.2d 747, 1999 N.Y. Misc. LEXIS 652 (N.Y. Sup. Ct. 1999), modified, 270 A.D.2d 910, 705 N.Y.S.2d 774, 2000 N.Y. App. Div. LEXIS 3556 (N.Y. App. Div. 4th Dep't 2000).

Likelihood of success on the merits was not established in an action regarding claims that New York State and federal procurement laws were violated by statutory amendments and issuance of a request for proposals (RFP) for a statewide fiscal intermediary because the statutory amendments and RFP were rationally related to legitimate government purposes of regulating the fiscal intermediaries industry, reducing administrative costs, and using the savings to benefit Medicaid consumers and did not violate separation of powers or equal protection. Save Our Consumer Directed Home Care Program, Inc. v New York State Dept. of Health, 227 N.Y.S.3d 886, 2025 N.Y. Misc. LEXIS 716 (N.Y. Sup. Ct. 2025).

226. —State and local agencies

Court improperly granted petitioners' application for preliminary injunction enjoining respondents, New York City Human Resources Administration and New York State Department of Social Services, from implementing new medical transportation plan that would reduce reimbursement rates for ambulette service providers, and require "group riding" method of transportation, since any losses incurred by reduction in reimbursement rates would be compensable in money damages, equities were not balanced in petitioners' favor, and respondents considered effect of their new plan on Medicaid recipients, solicited industry concerns, and determined that group riding and new rate structure were more cost-efficient system, yet would still provide adequate transportation to all those in need. Non-Emergency Transporters of New York, Inc. v Hammons, 249 A.D.2d 124, 672 N.Y.S.2d 16, 1998 N.Y. App. Div. LEXIS 4315 (N.Y. App. Div. 1st Dep't 1998).

Court would enjoin New York City Chief Medical Examiner from assigning medical examiner duties relating to investigation and examination of dead bodies to non-physician paraprofessionals, which relegated physicians employed by his office to duty of signing off on investigations of cause of death without having performed investigations themselves; such practice violated NYC Admin Code § 17-202 and NYC Charter § 557(c), which limit performance of such assigned duties to licensed physicians. Liebowitz v Hirsch, 146 Misc. 2d 1065, 554 N.Y.S.2d 983, 1990 N.Y. Misc. LEXIS 206 (N.Y. Sup. Ct.), aff'd, 167 A.D.2d 298, 562 N.Y.S.2d 41, 1990 N.Y. App. Div. LEXIS 14061 (N.Y. App. Div. 1st Dep't 1990).

Although hemp and marijuana sales are closely regulated industries within the administrative search exception to the Fourth Amendment’s warrant requirement, preliminary injunctive relief was granted against unauthorized searches; the New York City Sheriff’s Office lacked authority to conduct warrantless searches of businesses listed in the Office of Cannabis Management (OCM) directory of licensees, and OCM conducted unreasonable searches without limiting scope, timing, or officer discretion. Super Smoke N Save LLC v N.Y. State Cannabis Control Bd., 226 N.Y.S.3d 847, 2025 N.Y. Misc. LEXIS 103 (N.Y. Sup. Ct. 2025).

227. — —New York City Board of Collective Bargaining

Preliminary injunction brought under either CLS CPLR § 6301 or court’s inherent power is unavailable as means of preserving status quo during pendency of improper labor practice proceeding before New York City Board of Collective Bargaining since injunction may issue only within “action”—i.e., judicial suit brought to obtain adjudication of merits of, and substantive remedy for, particular dispute. Uniformed Firefighters Ass'n v New York, 79 N.Y.2d 236, 581 N.Y.S.2d 734, 590 N.E.2d 719, 1992 N.Y. LEXIS 821 (N.Y. 1992).

Court was without jurisdiction to grant preliminary injunction in Article 78 proceeding to bar implementation of certain departmental directives which petitioners alleged constituted material and unilateral changes in terms and conditions of their employment since New York City Board of Collective Bargaining (BCB) had exclusive jurisdiction over disputed public employment practices, and courts should not interfere in matters before BCB. Caruso v Ward, 146 A.D.2d 486, 536 N.Y.S.2d 447, 1989 N.Y. App. Div. LEXIS 109 (N.Y. App. Div. 1st Dep't 1989).

228. —Torts

Employer was entitled to order enjoining its former bookkeeper from selling or transferring any of her assets pending completion of civil action which employer had brought against her, in which it was alleged that she had converted substantial sum from employer's checking account to purchase luxury goods, where employer was likely to prevail on merits of underlying action, and bookkeeper had attempted to sell such goods, which threatened to render ineffectual any judgment which employer might obtain; balance of equities in employer's favor was furthered by provisions of trial court's injunction order exempting certain funds for bookkeeper's necessaries. Zonghetti v Jeromack, 150 A.D.2d 561, 541 N.Y.S.2d 235, 1989 N.Y. App. Div. LEXIS 7043 (N.Y. App. Div. 2d Dep't 1989).

Although equity will not intervene to restrain publication of words on mere showing of their falsity, it may intervene where restraint becomes essential to preservation of business or other property rights threatened by tortious conduct in which words are merely instrument of and incidental to conduct. Trojan Electric & Machine Co. v Heusinger, 162 A.D.2d 859, 557 N.Y.S.2d 756, 1990 N.Y. App. Div. LEXIS 7492 (N.Y. App. Div. 3d Dep't 1990).

In action in which husband and wife sought permanent injunction and money damages for alleged libel and infliction of emotional distress, plaintiffs were entitled to preliminary injunction where (1) litigation arose from repeated oral and written communications of defendant to plaintiffs' family members, business associates, neighbors and former colleagues in which defendant claimed that plaintiff husband raped her in 1953 when she was 19 and he was 24, (2)

communications commenced in 1989 with letters and telephone calls and escalated to picketing by defendant in front of plaintiffs' apartment building with sign which stated that plaintiff husband had raped her, (3) defendant's claim of rape was unsubstantiated by any objective evidence, (4) defendant's allegation of rape was seriously challenged by undisputed fact that 1953 affair between plaintiff husband and defendant continued for 2 years and that defendant later had second 6-year affair with plaintiff husband in 1980's, and (5) defendant's credibility was likely to be hampered by shocking and unsupported accusations of sexual nature with which she impugned morals of plaintiff husband's 89-year-old mother and plaintiff wife, as well as by contradictions in documents authored by defendant, including claim that she bore plaintiff husband's child in 1950's, and subsequent denial that she ever made such claim. Bingham v Struve, 184 A.D.2d 85, 591 N.Y.S.2d 156, 1992 N.Y. App. Div. LEXIS 13718 (N.Y. App. Div. 1st Dep't 1992).

New York State Crime Victims Board failed to show entitlement to preliminary injunctive relief preventing disbursement of that portion of a settlement of a tort claim by a deceased offender against the state corrections system that was owed to the mother of the offender's son in back child support, although relief was granted as to the remainder of the settlement. N.Y. State Crime Victims Bd. ex rel. Hernon v Zaffuto, 196 Misc. 2d 602, 763 N.Y.S.2d 442, 2003 N.Y. Misc. LEXIS 859 (N.Y. Sup. Ct. 2003).

Because the victims of a crime demonstrated their likelihood of success on the merits of their tort action against an inmate and that they might suffer irreparable injury if an injunction were not granted, the equities were balanced in the victims' favor for injunctive relief N.Y. Exec. Law § 632-a and N.Y. C.P.L.R. 6301. Thompson v 76 Corp., 233 N.Y.L.J. 67, 2005 N.Y. Misc. LEXIS 3299 (N.Y. Sup. Ct. Apr. 8, 2005).

While the American Arbitration Association (AAA) had been on notice of the proceeding, and, in fact, served with the order to show cause and supporting papers, personal jurisdiction had not been obtained over the AAA. Inasmuch as an injunction was a provisional remedy which was enforceable by contempt, and personal jurisdiction was not so obtained, an injunction would not

be ordered; further, there was no showing that the AAA was acting in concert with the personal corporations so as to bring the AAA under that injuctive umbrella. AIU Ins. Co. v Deajess Med. Imaging P.C., 235 N.Y.L.J. 28, 2006 N.Y. Misc. LEXIS 4069 (N.Y. Sup. Ct. Feb. 10, 2006).

In an action brought by an infant against pet supply companies arising out of an incident at a store owned by the companies where a patron's dog bit the infant, the infant's application under N.Y. C.P.L.R. art. 63 for an order that the companies prohibit any animals in their stores other than those for sale or, alternatively, that the companies post a warning sign advising its patrons that accompanied pets might have vicious propensities was denied because (1) the only evidence that the infant submitted was an unsworn affirmation by a veterinarian, which was not admissible as a matter of law under N.Y. C.P.L.R. 2106; (2) the veterinarian offered his personal beliefs and opinions and employed words and phrases that were too vague to be of specific use to the application at bar; (3) as to the infant's request for equitable relief, she already had a remedy available at law in which her personal injury action would proceed; and (4) any attempts to cloak the application as a private individual seeking equitable relief on behalf of the public to enjoin a public nuisance was rejected because the complaint failed to state any cause of action for public, or common, nuisance, and the infant failed to establish that the nuisance or endangerment affected a considerable amount of people. Christian v PETCO Animal Supplies Stores Inc., 235 N.Y.L.J. 39, 2006 N.Y. Misc. LEXIS 4030 (N.Y. Sup. Ct. Feb. 28, 2006).

229. —Universities

In proceeding by union to contest layoffs of university employees due to budgetary constraints, union was not entitled to preliminary injunction since it failed to establish irreparable injury in that affected workers would be entitled to reinstatement and back pay if they were to ultimately prevail and there was nothing in record to suggest that university would refuse to comply with such award. Hill v Reynolds, 187 A.D.2d 299, 589 N.Y.S.2d 461, 1992 N.Y. App. Div. LEXIS 12821 (N.Y. App. Div. 1st Dep't 1992).

College professor claiming unlawful denial of tenure was not entitled to preliminary injunction where success in present action would not guarantee her tenure, and court was reluctant to intrude into field of educational and faculty appointments. Roufaiel v Ithaca College, 255 A.D.2d 818, 680 N.Y.S.2d 298, 1998 N.Y. App. Div. LEXIS 12503 (N.Y. App. Div. 3d Dep't 1998).

230. —Use of image or name

Court properly granted preliminary injunction, pursuant to CLS Civ R § 51, against continued use of plaintiff's name in defendants' newspaper advertisements and advertising circulars, since plaintiff did not have to demonstrate that his name was used as endorsement for defendants' products or to promote their business, it being sufficient to satisfy "advertising purposes" prong of statute that plaintiff's name, or readily identifiable likeness of it, was used without his consent as part of defendants' advertisements in solicitation of patronage. Aguilar v Ragusa, 174 A.D.2d 1002, 572 N.Y.S.2d 164, 1991 N.Y. App. Div. LEXIS 8926 (N.Y. App. Div. 4th Dep't 1991).

Heterosexual male model, who posed for the cover of a book without knowledge of its homosexual themes and who filed libel and other claims dismissed by the court, was not entitled to an injunction against the book's distribution and circulation. E.B. v Liberation Publs., Inc., 7 A.D.3d 566, 777 N.Y.S.2d 133, 2004 N.Y. App. Div. LEXIS 6881 (N.Y. App. Div. 2d Dep't 2004).

In dispute which arose after plaintiff took standardized Graduate Record Examination (GRE) administered by defendant and defendant concluded that plaintiff had cheated on exam, defendant was preliminarily enjoined from canceling plaintiff's test score where (1) plaintiff alleged that she would likely be expelled from her university graduate program if defendant cancelled her GRE score and informed school of same, which demonstrated irreparable injury without preliminary injunction, and (2) defendant had destroyed test booklets of plaintiff and person she allegedly copied from, raising triable issue as to defendant's good-faith efforts to fully investigate alleged cheating incident, which created probability of success on merits and balancing of equities in favor of plaintiff. Cortale v Educational Testing Serv., 171 Misc. 2d 928,

656 N.Y.S.2d 154, 1997 N.Y. Misc. LEXIS 96 (N.Y. Sup. Ct. 1997), aff'd, 251 A.D.2d 528, 674 N.Y.S.2d 753, 1998 N.Y. App. Div. LEXIS 7505 (N.Y. App. Div. 2d Dep't 1998).

231. —Vehicles

Plaintiff was entitled to preliminary injunction to prevent defendants from taking possession of automobile in his possession, on condition that bond previously posted by plaintiff be continued in action involving dispute over sale of plaintiff's share in company and noncompetition agreement, in light of facts that bond was sufficient and that plaintiff had possession of automobile for prior 3 years. Rubin v Goldring, Inc., 150 A.D.2d 261, 541 N.Y.S.2d 8, 1989 N.Y. App. Div. LEXIS 6837 (N.Y. App. Div. 1st Dep't 1989).

Attorney General was properly granted permanent injunction enjoining car rental companies from refusing to rent cars to persons between ages of 18 and 25 solely on basis of age in violation of CLS Gen Bus § 391-g. People by Vacco v Alamo Rent A Car, 226 A.D.2d 294, 642 N.Y.S.2d 213, 1996 N.Y. App. Div. LEXIS 4649 (N.Y. App. Div. 1st Dep't 1996), reh'g denied, 644 N.Y.S.2d 892, 1996 N.Y. App. Div. LEXIS 8156 (N.Y. App. Div. 1st Dep't 1996), aff'd, 89 N.Y.2d 560, 656 N.Y.S.2d 196, 678 N.E.2d 882, 1997 N.Y. LEXIS 315 (N.Y. 1997).

Trucker, from whom tractor had been repossessed by title holder, was not entitled to preliminary injunction to restrain defendant from selling or otherwise disposing of tractor pending his replevin action where he averred that he had located a purchaser for tractor and intended to sell it, and thus it appeared that monetary damages would be sufficient to compensate him. Roushia v Harvey, 260 A.D.2d 687, 688 N.Y.S.2d 706, 1999 N.Y. App. Div. LEXIS 3276 (N.Y. App. Div. 3d Dep't 1999).

232. — —Preliminary injunction appropriate

Court properly enjoined implementation of Medicaid Utilization Thresholds (MUTS) (new system for delivery of medicaid services which posed threat of restricting and controlling poor persons'

access to health care) where (1) there was no specific statutory authority under enabling provisions of CLS Soc Serv §§ 20(3), 363, or 365(2) permitting imposition of initial general service limits which might bar access to necessary medical care, and (2) at pleading stage of proceeding, it was not clear whether MUTS complied with mandates of Social Services Law for commissioner to provide medically necessary services and to review quality and availability of care with Department of Health. Community Service Soc. v Cuomo, 167 A.D.2d 168, 561 N.Y.S.2d 461, 1990 N.Y. App. Div. LEXIS 13524 (N.Y. App. Div. 1st Dep't 1990).

Preliminary injunction barring not-for-profit law enforcement support organizations from telephonically soliciting donations from public other than through pre-approved script was properly modified to prohibit all solicitation since (1) organizations' solicitations violated original preliminary injunction by deviating from pre-approved script, showing likelihood of success on merits (2) money raised by scheme, which allegedly induced contributions by stating that contributor would be given preferential treatment by police, might never be recovered, and (3) although organizations might suffer financial hardship as result of injunction, interest of public in not being defrauded outweighed other considerations; organizations' free speech rights were not violated because type of activity alleged can be suppressed when it misinforms public. People by Abrams v New York State Fed'n of Police, Inc., 188 A.D.2d 689, 590 N.Y.S.2d 573, 1992 N.Y. App. Div. LEXIS 13558 (N.Y. App. Div. 3d Dep't 1992).

In action wherein plaintiff alleged that she gave son power to withdraw funds from safe deposit box for her expenses, and that he stole $68,000 in cash from box and wrongfully induced her to transfer 2 parcels of property to him, plaintiff was entitled to preliminary injunction to restrain son from transferring or encumbering property, but court properly refused to direct son to deposit $68,000 into court, since triable issues of fact existed which precluded summary judgment in regard to cash. Bryne v Bryne, 194 A.D.2d 640, 599 N.Y.S.2d 82, 1993 N.Y. App. Div. LEXIS 6132 (N.Y. App. Div. 2d Dep't 1993).

Plaintiff was not entitled to preliminary injunction to restrain sale of gambling facility in action to enforce terms of contract under which plaintiff loaned money to defendants, and became part-

owner of gambling facility located on tribally-owned reservation land, where she failed to establish likelihood that she would succeed on merits given defendants' showing that, as nonmember of tribe, she was not permitted to hold interest in land at issue; moreover, it was far from clear that contract afforded her partnership interest in gambling facility, since contract did not explicitly provide for sharing of losses, and appeared to limit plaintiff's liability in such regard. Montour v White, 212 A.D.2d 891, 622 N.Y.S.2d 371, 1995 N.Y. App. Div. LEXIS 1408 (N.Y. App. Div. 3d Dep't 1995).

Archdiocese of Ethiopian Orthodox Church was entitled to order enjoining defendant from representing himself as representative or Archbishop of church, in action to recover possession of building known as Archdiocese Headquarters of Ethiopian Orthodox Church, and relinquishment of control of certain bank accounts and funds, where defendant had been dismissed by Church Holy Synod. Archdiocese of the Ethiopian Orthodox Church in the United States & Can. v Yesehaq, 232 A.D.2d 332, 648 N.Y.S.2d 605, 1996 N.Y. App. Div. LEXIS 11225 (N.Y. App. Div. 1st Dep't 1996).

Plaintiff was entitled to preliminary injunction barring alteration or resale of real property pending resolution of its action for specific performance and breach of its contractual right of first refusal regarding purchase of that property, even though it appeared uncertain whether plaintiff would ultimately prevail on merits, where there was danger of irreparable harm to plaintiff in absence of injunction, balance of equities favored plaintiff, and plaintiff's $300,000 undertaking afforded defendants adequate protection. Delta Props. v Fobare Enters., 251 A.D.2d 960, 674 N.Y.S.2d 817, 1998 N.Y. App. Div. LEXIS 7727 (N.Y. App. Div. 3d Dep't 1998).

Attorney General would be granted, under CLS Labor § 345, preliminary injunction prohibiting manufacturer from shipping, delivering, or selling items of apparel allegedly manufactured in violation of CLS Labor Art 6 and CLS Labor Art 19 where Attorney General probably would prevail on merits, remedial nature of "hot goods" law and deterrent effect of enforcing it weighed heavily in favor of granting injunction, freezing of items satisfied irreparable injury and balancing of equities factors, practical effect of injunction was to protect laborers from further mistreatment

and to ensure their compensation for items by demanding payment before injunction could be lifted, and manufacturer could lift injunction at any time by paying laborers in accordance with Labor Law. People ex rel. Spitzer v 14 West Garment Factory Corp., 182 Misc. 2d 146, 697 N.Y.S.2d 458, 1999 N.Y. Misc. LEXIS 322 (N.Y. Sup. Ct. 1999).

233. — —Preliminary injunction not appropriate

Petitioners were not entitled to preliminary injunction to halt progress in construction of emergency ventilation facility for tunnels under Hudson river where respondents urged that 2 4 ½ -story masonry structures would provide much needed improvement in emergency ingress and egress as well as ventilation of tunnels and that environmental assessments form prepared in connection with project adequately demonstrated that it was designed to have minimal visible impact on area. Federation to Preserve Greenwich Village Waterfront etc., Inc. v New York State DOT, 150 A.D.2d 225, 541 N.Y.S.2d 394, 1989 N.Y. App. Div. LEXIS 6528 (N.Y. App. Div. 1st Dep't 1989).

Court properly denied motion for preliminary injunction by bank's chief executive officer (CEO), seeking to enjoin defendant attorneys from disclosing information, obtained from CEO, to committee of bank formed to investigate relationship among CEO, his family, and his former law firm, on ground that such communications were covered by attorney-client privilege where (1) CEO retained attorneys on behalf of bank in connection with bank's acquisition of savings and loan association, (2) attorneys recommended that they conduct due diligence inquiry, and (3) during inquiry, statements were made by CEO and member of his former law firm, indicating that CEO continued to receive payments from his former law firm; attorneys were retained on behalf of bank, not on behalf of CEO. Doe v Poe, 189 A.D.2d 132, 595 N.Y.S.2d 503, 1993 N.Y. App. Div. LEXIS 2687 (N.Y. App. Div. 2d Dep't), app. denied, 81 N.Y.2d 711, 600 N.Y.S.2d 442, 616 N.E.2d 1104, 1993 N.Y. LEXIS 1804 (N.Y. 1993).

In action seeking declaration that defendants had no right to distribute certain literature to plaintiff's private donors, court properly denied plaintiff's request for preliminary injunction

enjoining defendants from “directly contacting” any person they had reason to believe was private donor who previously made or intended to make charitable contributions to plaintiff, as proposed restriction constituted prior restraint on free speech in violation of First Amendment. Children's Village v Greenburgh Eleven Teachers' Union Fed'n of Teachers, Local 1532, 258 A.D.2d 610, 685 N.Y.S.2d 754, 1999 N.Y. App. Div. LEXIS 1422 (N.Y. App. Div. 2d Dep't), app. dismissed, 93 N.Y.2d 953, 694 N.Y.S.2d 343, 716 N.E.2d 178, 1999 N.Y. LEXIS 1391 (N.Y. 1999).

Court properly denied plaintiff’s motions to compel defendant’s immediate release of certain funds that defendant was allegedly holding in escrow and to refer certain alleged misconduct by defendant’s attorney to disciplinary authorities where (1) triable issues of fact existed as to whether parties agreed that proceeds realized from sale of plaintiff’s stock should remain in escrow beyond completion of sale—that is, whether escrowing of proceeds was intended for benefit of stock buyer or plaintiff, (2) to release those funds to plaintiff would be, in effect, to decide in his favor that defendant was his attorney, rather than his coadventurer, and thus prematurely determine merits of action, and (3) although court was critical of attorneys for both sides, there was no reason to disturb its refusal to initiate disciplinary or other punitive action against either. Ben-Dak v Sazer, 286 A.D.2d 615, 730 N.Y.S.2d 224, 2001 N.Y. App. Div. LEXIS 8566 (N.Y. App. Div. 1st Dep't 2001).

In plaintiffs’ breach of contract action which involved issues regarding defendants’ compensation from an animal hospital, the trial court erred in granting plaintiffs an injunction ordering defendants to repay to the animal hospital any excess compensation previously paid from the action’s commencement through 1999, given that (1) the injunctive relief should have been prospective only, (2) there was no allegation that the animal hospital was insolvent, and (3) plaintiffs had an adequate remedy at law if the portions of salary at issue were improperly paid. Allen v Pollack, 289 A.D.2d 426, 735 N.Y.S.2d 147, 2001 N.Y. App. Div. LEXIS 13178 (N.Y. App. Div. 2d Dep't 2001).

In disciplinary proceeding, respondent police officer was entitled to preliminary injunction suppressing his telephone conversations with third party concerning purchase of illegal discounted airline tickets, where such conversations were illegally intercepted and taped in Louisiana by FBI-paid informant. Ruskin v Safir, 177 Misc. 2d 190, 676 N.Y.S.2d 451, 1998 N.Y. Misc. LEXIS 279 (N.Y. Sup. Ct. 1998), app. dismissed, 257 A.D.2d 268, 692 N.Y.S.2d 356, 1999 N.Y. App. Div. LEXIS 7434 (N.Y. App. Div. 1st Dep't 1999).

Research References & Practice Aids

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