

NY CLS CPLR § 6330

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Article 63 Injunction (§§ 6301 — 6330)

§ 6330. Obscene prints and articles; jurisdiction.

The supreme court has jurisdiction to enjoin the sale or distribution of obscene prints and articles, as hereinafter specified:

1. The district attorney of any county, the chief executive officer of any city, town or village or the corporation counsel, or if there be none, the chief legal officer of any city, town, or village, in which a person, firm or corporation publishes, sells or distributes or displays or is about to sell or distribute or display or has in his possession with intent to sell or display or distribute or is about to acquire possession with intent to sell, display or distribute any book, magazine, pamphlet, comic book, story paper, writing, paper, picture, motion picture, drawing, photograph, figure, image or any written or printed matter of an indecent character, which is obscene, lewd, lascivious, filthy, indecent or disgusting, or which contains an article or instrument of indecent or immoral use or purports to be for indecent or immoral use or purpose; or in any other respect defined in section 235.00 of the penal law, may maintain an action for an injunction against such person, firm or corporation in the supreme court to prevent the sale or further sale or the distribution or further distribution or the acquisition, publication or possession within the state of any book, magazine, pamphlet, comic book, story paper, writing, paper, picture, motion picture, drawing, photograph, figure or image or any written or printed matter of an indecent character, herein described or described in section 235.00 of the penal law.

2. The person, firm or corporation sought to be enjoined shall be entitled to a trial of the issues within one day after joinder of issue and a decision shall be rendered by the court within two days of the conclusion of the trial.
3. In the event that a final order or judgment of injunction be entered in favor of such officer of the city, town or village and against the person, firm or corporation sought to be enjoined, such final order of judgment shall contain a provision directing the person, firm or corporation to surrender to such peace officer, acting pursuant to his special duties, or police officer, as the court may direct or to the sheriff of the county in which the action was brought any of the matter described in paragraph one hereof and such officer or sheriff shall be directed to seize and destroy the same.
4. In any action brought as herein provided such officer of the city, town or village shall not be required to file any undertaking before the issuance of an injunction order provided for in paragraph two hereof, shall not be liable for costs and shall not be liable for damages sustained by reason of the injunction order in cases where judgment is rendered in favor of the person, firm or corporation sought to be enjoined.
5. Every person, firm or corporation who sells, distributes, or acquires possession with intent to sell or distribute any of the matter described in paragraph one hereof, after the service upon him of a summons and complaint in an action brought by such officer of any county, city, town or village pursuant to this section is chargeable with knowledge of the contents thereof.
6. The court, in its adjudication, may (1) grant the relief sought (2) deny the relief sought or (3) enjoin the sale, further sale, display, distribution, further distribution, acquisition, publication, or possession of the material, to persons under the age of seventeen, upon a finding that the material is of the kind described in paragraph a or b of subdivision one of section 235.21 of the penal law.

History

Add, L 1971, ch 545, § 8, eff Sept 1, 1971, deriving from Crim Code § 22-a; amd, L 1972, ch 826, eff Aug 31, 1972; L 1980, ch 843, § 207, eff Sept 1, 1980.

Annotations

Notes to Decisions

1.In general

2.Constitutionality

3.Construction

4.Preliminary hearings

5.Standards

1. In general

Proper procedure to be followed in CPLR 6330 action seeking to enjoin dissemination of allegedly obscene materials, where defendant claims that complaint or portion thereof is predicated upon illegally seized evidence, is for defendant to make motion to suppress such evidence within civil proceeding. *Monserate v Upper Court Street Book Store, Inc.*, 49 N.Y.2d 306, 425 N.Y.S.2d 304, 401 N.E.2d 414, 1980 N.Y. LEXIS 2043 (N.Y. 1980).

Fact that show cause order which contained temporary restraining order enjoining exhibition of certain alleged obscene movie films was made returnable in ten days rendered show cause order invalid and violative of intent of statute regarding enjoining of distribution of obscene prints and articles. *Gaetano v Erwin*, 46 A.D.2d 735, 360 N.Y.S.2d 741, 1974 N.Y. App. Div. LEXIS 3791 (N.Y. App. Div. 4th Dep't 1974).

District attorney may elect either a civil proceeding to enjoin the sale or distribution of obscene material or a criminal proceeding to enforce the State's policy of regulating obscenity to the extent that such regulation is constitutionally permissible. *People v Ciampa*, 57 A.D.2d 932, 394

N.Y.S.2d 727, 1977 N.Y. App. Div. LEXIS 12190 (N.Y. App. Div. 2d Dep't), app. denied, 42 N.Y.2d 1001, 1977 N.Y. LEXIS 4536 (N.Y. 1977).

CPLR § 6330 does not authorize issuance of subpoena duces tecum to bring allegedly obscene material before court; CPLR § 2302 may not be employed to compel in-court production of publications which are subject of underlying CPLR 6330 injunction action since it makes no provision for constitutional safeguards against prior restraint which are required in action to enjoin sale or distribution of publications; court accordingly quashes subpoena duces tecum issued by district attorney for production of books, magazines and other publications in connection with action to enjoin sale and distribution of said material as obscene. *Unique News Co. v Broderick*, 112 A.D.2d 33, 490 N.Y.S.2d 409, 1985 N.Y. App. Div. LEXIS 50670 (N.Y. App. Div. 4th Dep't), app. dismissed, 65 N.Y.2d 611, 484 N.E.2d 1053, 1985 N.Y. LEXIS 16090 (N.Y. 1985), app. dismissed, 65 N.Y.2d 1054, 494 N.Y.S.2d 1026, 484 N.E.2d 1053, 1985 N.Y. LEXIS 16152 (N.Y. 1985).

County law prohibiting display of material deemed obscene was invalid as preempted by CLS Penal Arts 235 and 245, in view of purpose and scope of state legislative scheme concerning obscenity and need for statewide standard to be applied in obscenity cases; finding of preemption was also supported by CLS CPLR § 6330, which authorizes local officials to bring actions to enjoin retailers from selling obscene materials. *Penny Lane/E. Hampton, Inc. v County of Suffolk*, 191 A.D.2d 19, 598 N.Y.S.2d 806, 1993 N.Y. App. Div. LEXIS 6093 (N.Y. App. Div. 2d Dep't 1993).

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).

2. Constitutionality

CPLR § 6330, providing for temporary injunction against showing of obscene films, is constitutional under guidelines announced by United States Supreme Court obscenity case.

Redlich v Capri Cinema, Inc., 43 A.D.2d 27, 349 N.Y.S.2d 697, 1973 N.Y. App. Div. LEXIS 3052 (N.Y. App. Div. 1st Dep't 1973), app. dismissed, 33 N.Y.2d 974, 353 N.Y.S.2d 738, 309 N.E.2d 136, 1974 N.Y. LEXIS 1761 (N.Y. 1974).

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Failure of CPLR § 6330 to define word “obscene” or to define the “community” to which its obscenity standards now apply, does not render such statute unconstitutional. Lynbrook v United Artists Corp., 75 Misc. 2d 124, 347 N.Y.S.2d 856, 1973 N.Y. Misc. LEXIS 1634 (N.Y. Sup. Ct. 1973).

A Texas public nuisance statute, authorizing injunctions against the habitual use of premises for commercial exhibition of obscene material, was unconstitutional under the First Amendment as authorizing a prior restraint on the exhibition of motion pictures, since it did not provide any special safeguards governing the entry and review of orders restraining the exhibition of named or unnamed motion pictures, without regard to the context in which they were displayed. Vance v Universal Amusement Co., 445 U.S. 308, 100 S. Ct. 1156, 63 L. Ed. 2d 413, 1980 U.S. LEXIS 91 (U.S.), reh'g denied, 446 U.S. 947, 100 S. Ct. 2177, 64 L. Ed. 2d 804 (U.S. 1980).

Civil obscenity statute was not unconstitutionally overbroad or vague where authoritative and consistent construction of the statute limited its application to those matters which would subject one to prosecution under the criminal statute. De Salvo v Codd, 386 F. Supp. 1293, 1974 U.S. Dist. LEXIS 11444 (S.D.N.Y. 1974).

3. Construction

CPLR § 6330 must be enforced in light of the statutory definition of obscenity of Penal Law § 235.00 applicable to the adult community generally. Rosenblatt v Common Sense Newspaper, Inc., 40 A.D.2d 723, 337 N.Y.S.2d 56, 1972 N.Y. App. Div. LEXIS 3599 (N.Y. App. Div. 2d Dep't 1972).

Each of words “lewd, lascivious, filthy, indecent, or disgusting” which follow word “obscene” in CPLR § 6330 stands by itself, especially because of the word “or” separating them, and were not meant to define, describe, enlarge, or circumscribe the word “obscene”. *Lynbrook v United Artists Corp.*, 75 Misc. 2d 124, 347 N.Y.S.2d 856, 1973 N.Y. Misc. LEXIS 1634 (N.Y. Sup. Ct. 1973).

4. Preliminary hearings

Upon application for temporary restraining order with respect to exhibition of alleged obscene movie films, court must make inquiry to ascertain that reasonable cause clearly exists for finding that material sought to be enjoined is obscene at which inquiry person charged with exhibiting it shall have opportunity to be heard preliminarily; after such a hearing, if court concludes that such cause exists, it may issue preliminary injunction pending trial of issues. *Gaetano v Erwin*, 46 A.D.2d 735, 360 N.Y.S.2d 741, 1974 N.Y. App. Div. LEXIS 3791 (N.Y. App. Div. 4th Dep't 1974).

5. Standards

Before a Magistrate may properly issue a search warrant, he must first conduct a full and searching inquiry into the facts on which the warrant application is based; accordingly, in an action to enjoin the sale or distribution of obscene prints or articles (CPLR 6330), the complaint was properly dismissed insofar as it was based upon evidence seized pursuant to a search warrant issued by a Judge who could not possibly have examined the thousands of items seized and not presented to him in the warrant application with sufficiently close scrutiny given the limited duration of his inquiry. A CPLR 6330 complaint seeking to enjoin the dissemination of allegedly obscene materials can only survive a motion to dismiss upon a showing that there is legally admissible evidence supporting the allegation that such material is obscene, and where no evidence of obscenity may properly be brought before the court, the complaint must be dismissed; however, such a dismissal should be without prejudice to the commencement of a

new action based upon the same subject matter should evidence of obscenity be lawfully obtained in the future. *Monserate v Upper Court Street Book Store, Inc.*, 49 N.Y.2d 306, 425 N.Y.S.2d 304, 401 N.E.2d 414, 1980 N.Y. LEXIS 2043 (N.Y. 1980).

Temporary injunction was issued for public benefit under CPLR § 6330 against showing of films which, vaunted by advertisements is “hard core”, and graphically depicting multiple and variegated acts of sexual perversion, were “simple pornography unrelieved by any merit,” and would have been regarded by average New Yorker as appealing to prurient interest. *Redlich v Capri Cinema, Inc.*, 43 A.D.2d 27, 349 N.Y.S.2d 697, 1973 N.Y. App. Div. LEXIS 3052 (N.Y. App. Div. 1st Dep’t 1973), app. dismissed, 33 N.Y.2d 974, 353 N.Y.S.2d 738, 309 N.E.2d 136, 1974 N.Y. LEXIS 1761 (N.Y. 1974).

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).

In a civil action instituted pursuant to CPLR 6330, seeking a permanent injunction of the sale or distribution by defendant of 14 named publications alleged to be obscene and all other future publications within the ambit of CPLR 6330, the defendants’ motion for partial summary judgment dismissing the complaint, insofar as it sought to enjoin the future sale or distribution of materials as yet undetermined, was properly granted. Such relief would have been in clear violation of defendants’ first amendment rights. *Cosgrove v Cloud Books, Inc.*, 83 A.D.2d 789, 443 N.Y.S.2d 450, 1981 N.Y. App. Div. LEXIS 15126 (N.Y. App. Div. 4th Dep’t), app. dismissed, 54 N.Y.2d 831, 1981 N.Y. LEXIS 5274 (N.Y. 1981).

Research References & Practice Aids

Cross References:

§ 6330. Obscene prints and articles; jurisdiction.

Obscenity; definitions of terms, CLS Penal § 235.00.

Disseminating indecent material to minors in the second degree, CLS Penal § 235.21.

Treatises

Matthew Bender's New York Civil Practice:

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 6330, Obscene Prints and Articles; Jurisdiction.

Matthew Bender's New York CPLR Manual:

CPLR Manual § 28.22. Injunctions against obscene matter.

Matthew Bender's New York AnswerGuides:

LexisNexis AnswerGuide New York Civil Litigation § 14.16. Obtaining Temporary Restraining Order (TRO).

LexisNexis AnswerGuide New York Civil Litigation § 14.18. Obtaining Preliminary Injunction.

Matthew Bender's New York Checklists:

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

Forms:

Bender's Forms for the Civil Practice Form No. CPLR 6330:1 et seq.

LexisNexis Forms FORM 75-CPLR 6330:1.— Complaint in Action to Enjoin Sale or Distribution of Obscene Prints and Articles.

LexisNexis Forms FORM 75-CPLR 6330:2.— Judgment Granting Permanent Injunction Against Sale or Distribution of Obscene Prints and Articles.

LexisNexis Forms FORM 75-CPLR 6330:3.— Order to Show Cause in Support of Motion for Partial Summary Judgment to Dismiss Causes of Action Seeking to Enjoin Future Sale and Distribution of Materials Not Held Obscene.

LexisNexis Forms FORM 75-CPLR 6330:4.— Attorney's Affirmation in Support of Motion for Partial Summary Judgment to Dismiss Causes of Action Seeking to Enjoin Future Sale and Distribution of Materials Not Held Obscene.

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

Hierarchy Notes:

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