

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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| ----- | X | |
| NAP IV, LLC, <i>d/b/a</i> STS MCM, | : | Index No. 651937/2024 |
| | : | |
| <i>Plaintiff,</i> | : | Mot. Seq. No. 1 |
| | : | |
| - against - | : | |
| | : | |
| QUBE USA LLC, GEORGE VLAMIS AND | : | |
| QUINE LIDDELL, | : | |
| | : | |
| <i>Defendants.</i> | : | |
| ----- | X | |

DEFENDANTS’ MEMORANDUM OF LAW IN OPPOSITION TO
PLAINTIFF’S REQUEST FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION

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Defendants Qube USA LLC (“Qube” or the “Company”), George Vlamis (“Vlamis”) and Quine Liddell (“Lidell” and, together with Vlamis, the “Individual Defendants” or “Justice Involved Individuals”, and together with Qube and Vlamis the “Defendants”) submit this Memorandum of Law in Opposition to the Order to Show Cause by NAP IV LLC, *d/b/a* STS MCM (“STS” or “Plaintiff”) for a temporary restraining order and preliminary injunction (Mot. Seq. No. 1, the “Order to Show Cause”).¹

PRELIMINARY STATEMENT

Qube is the holder of State-issued, social equity CAURD license permitting it to operate an adult-use cannabis dispensary at 1412 Broadway in Manhattan (the “Property”). As a CAURD license holder, Qube is majority owned by the Individual Defendants – two Justice Involved Individuals that were adversely impacted by decades of unjust drug policy. Plaintiff is an unlicensed entity run by V. Michael Korytny (“Korytny”) – who represented that STS could deliver a viable lease for the Property, and help raise \$500,000 in capital, but failed to do either.

STS’ claim to a 49% interest in the Company arises from an alleged agreement (referenced in a resolution filed at NYSCEF No. 14, the “Resolution”) to provide Qube with (i) “a viable lease” for the Property, and (ii) funding of at least \$500,000. (Vlamis Aff. Ex. 2².) However, STS repeatedly failed to deliver on either of its obligations by (i) attempting to negotiate a sublease from the Property’s former tenant (StubHub), which fell apart when StubHub refused to sublease the Property to Qube (*id.* ¶¶ 25-6), and (ii) failing to raise a *single dollar of investment* for the Company (*id.* ¶¶ 24, 33, 80). Even worse, when STS was revealed as a fraud, Korytny tried to

¹ Defendants submit the arguments set forth herein as an initial opposition to the Order to Show Cause, and on an expedited basis in light of the *ex parte* nature of Plaintiff’s request for injunctive relief. Defendants hereby reserve their right to submit a more fulsome set of opposition papers in the event that Plaintiff’s request for preliminary injunctive relief is not denied out of hand.

² Affirmation of George Vlamis (“Vlamis Aff.” or Vlamis Affirmation”) submitted herewith. Unless otherwise specified, all citations to an “Ex.” herein refer to exhibits to the Vlamis Affirmation.

intimidate Qube into providing STS with *seventy percent* of Qube's economics – in flagrant (and knowing) violation of the Office of Cannabis Management's ("OCM") regulations. When the Individual Defendants informed Korytny that his proposal would violate OCM Rules, he offered them a bribe of \$50,000 to look the other way and comply with his illicit scheme (which the Individual Defendants refused). (*Id.* ¶ 83; Ex. 9.)

Having failed to deliver anything of value to the Company and conspired to violate OCM rules, STS now seeks to enjoin Defendants from "opening a cannabis dispensary" at the Property – a remarkable and unwarranted request for injunctive relief that would disrupt the *status quo* by (i) destroying Qube, (ii) putting the Individual Defendants into bankruptcy, and (iii) usurping the policy goals of the Marihuana Regulation and Taxation Act (the "MRTA"). In short, Plaintiff's Order to Show Cause should be denied in its entirety for at least four reasons.

First, "[t]o obtain a preliminary injunction, the movant must demonstrate a probability of success on the merits." *Ave. A Assocs. LP v. Bd. of Managers of Hearth Hous. Condo.*, 190 A.D.3d 473, 473 (1st Dep't 2021). Here, STS is unable to show that it is likely to succeed on the merits of its claims because (i) the Property is not a "trade secret" because its availability for rent was public information (the Property had a "for rent" sign in the window and Vlamis was independently contacted by a third-party broker about renting it) (*see* Vlamis Aff. ¶¶ 66-71; Exs. 6-7), and (ii) STS failed to deliver on *any of its promises* to the Company (Vlamis Aff. ¶¶ 24-7, 40-4). Thus, even if "the identity of the Location" were a trade secret (and it is not), STS is unlikely to succeed on the merits of its claims because it failed to satisfy either of the requirements to receive an interest in the Company.

Second, a movant must show that it will "suffer irreparable injury absent the injunction," which it cannot do where it can be "fully compensated by damages". *JSC VTB Bank v. Mavlyanov*,

154 A.D.3d 560, 561 (1st Dep’t 2017); *see Apostolopoulos v. Oxford Assocs. Grp., Inc.*, 219 A.D.3d 480, 484 (2d Dep’t 2023). Here, STS claims that it has a 49% equity stake in the Company, and that its non-existent “trade secret” must be protected. (*See* NYSCEF No. 23 at 1-2.) However, Plaintiff’s punitive request to enjoin Qube’s operation of its own license bears ***no relation*** to the preservation of any trade secret or STS’ alleged 49% interest in the Company. In reality, granting the Order to Show Cause (i) will neither preserve nor protect Plaintiff’s purported interest ***in any way*** and, instead, (ii) would destroy the Company STS claims to be a 49% owner of. What is more, even if STS’ claims had merit (they do not), it would be entitled to nothing but money damages for the loss of its alleged interest in the Company. Because STS cannot show that it will suffer irreparable harm in the absence of injunction, the Order to Show Cause should be denied.

Third, where the requested relief would inflict irreparable harm on the enjoined party, the balance of equities requires denial of a motion for temporary or preliminary injunctive relief. *State v. Premier Color of N.Y., Inc.*, 285 A.D.2d 544, 545 (2d Dep’t 2001). Here, Plaintiff’s request for injunctive relief would ***inflict*** (rather than prevent) irreparable harm. In February, Qube signed a 15-year lease for the Property (the “Lease”), agreeing to (i) provide the owner with a \$420,000 security deposit and the first month’s rent of \$70,000 (both of which have been paid) (ii) personally guarantee the first \$1.26 million of rent, and (iii) pay millions in rent over the life of the Lease. (*See* Vlamis Aff. ¶ 44; Ex. 4.) On April 12, the Company took possession of the Property, and has paid tens of thousands of dollars to vendors to build out and open a dispensary in the next 60 days. (Vlamis Aff. ¶¶ 48-50.) If STS’ Order to Show Cause is granted, Defendants will not be able to follow through on their financial and contractual obligations – let alone realize a return on their investment – because the Company will not be able to operate or generate any revenue. Such an

outcome would bankrupt Qube and the Individual Defendants. (*Id.* ¶¶ 51-4.) This too requires the denial of Plaintiff's Order to Show Cause.

Finally, the equities also require the denial of a request for an injunction where the relief would hinder enforcement of a statute. *EdCia Corp. v. McCormack*, 44 A.D.3d 991, 994 (2d Dep't 2007). One of the core policy objectives of the MRTA is to ameliorate the "devastating collateral consequences" caused by "mass incarceration and other complex generational trauma" inflicted on Justice Involved Individuals like the Individual Defendants. (*See, e.g.*, MRTA § 2 (Legislative findings and intent.) Thus, granting Plaintiff's proposed injunctive relief would frustrate the policy goals of the MRTA by preventing one of the few bright spots in an otherwise beleaguered New York adult use cannabis market from opening its doors. This further tips the balance of equities in Defendants' favor.

In sum, STS does not (and cannot) satisfy any of the elements of emergency injunctive relief. To the extent the Court concludes otherwise (and it should not), the relief sought in the Order to Show Cause will destroy Defendants' business entirely. As a result, Defendants request that (i) to the extent the Court does not deny the Order to Show Cause out of hand, it conduct a hearing on Plaintiff's request for extreme and unwarranted injunctive relief, and (ii) to the extent STS' request for a temporary restraining order or preliminary injunction is granted, the Court should require STS to post an undertaking of not less than \$15 million pursuant to the express requirements of CPLR Section 6312(b).

STATEMENT OF FACTS

Defendants' statement of facts is set forth in the Vlamis Affirmation filed herewith, which Defendants incorporate by reference herein.

ARGUMENT

“To obtain a preliminary injunction, the movant must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of an injunction and a balance of equities in its favor.” *Ave. A Assocs. LP*, 190 A.D.3d at 473; *see also Nobu Next Door, LLC v. Fine Arts Hous., Inc.*, 4 N.Y.3d 839, 840 (2005). “Although the purpose of a preliminary injunction is to preserve the status quo pending a trial, the remedy is considered a drastic one, which should be used sparingly.” *Apostolopoulos*, 219 A.D.3d at 484. Where the request for injunctive relief would disrupt, rather than preserve, the *status quo*, the movant’s request for an injunction should be denied. *Buchanan Cap. Markets, LLC v. DeLucca*, 144 A.D.3d 508, 509 (1st Dep’t 2016).

Here, STS cannot establish any of the elements of its request for extraordinary injunctive relief because (i) the existence of the Property is not a “trade secret” and STS failed to deliver on either of its obligations under the alleged agreement with Qube, (ii) STS’ erroneous claim to a 49% interest in Qube (x) can be fully compensated by money damages and, in any event, (y) bears no relation to its bizarre request to enjoin the operation of Qube’s dispensary at the Property, and (iii) the Order to Show Cause would (if granted) inflict irreparable harm on Defendants by destroying their business and putting them into personal bankruptcy.

I. PLAINTIFF’S CLAIMS FAIL AS A MATTER OF FACT AND LAW

Where the movant alleges that an injunction is necessary to prevent the revelation of a purported trade secret, it must pass a multiple factor test; however, “*a trade secret must first of all be secret*”. *Ashland Mgmt. Inc. v. Janien*, 82 N.Y.2d 395, 407 (1993) (emphasis added)³. Where

³ In accordance with the Restatement of Torts, New York law provides six factors for determining whether information qualifies as a trade secret: (i) the extent to which the information is known outside of the business; (ii) the extent to which it is known by employees and others involved in the business; (iii) the extent to which measures taken by the business to guard the secrecy of the information; (iv) the value of the information to the business and its competitors; (v) the amount of effort or money expended by the business to develop the information; and (vi) the ease or difficulty

a movant fails to establish the existence of a confidential trade secret, its request for injunctive relief should be denied. *See Buchanan Cap. Markets, LLC*, 144 A.D.3d at 509; *see also Marsh USA, Inc. v. Alliant Ins. Servs., Inc.*, 49 Misc. 3d 1210(A), at *4 (Sup. Ct. N.Y. County 2015).

In addition, it is axiomatic that (i) a party cannot enforce a contract that it has failed to perform (*see, e.g., Ampower-US, LLC v. WEG Transformers USA, LLC*, 214 A.D.3d 1129, 1131 (3d Dep’t 2023)), and (ii) a party seeking an injunction must “come with clean hands” and failure to do so requires denial of the injunction. *Amarant v. D’Antonio*, 197 A.D.2d 432, 434 (1st Dep’t 1993); *Kaufman v. Kehler*, 25 A.D.3d 765, 766 (2d Dep’t 2006).

Here, STS does not (and cannot) establish a likelihood of success on any of its claims. In essence, STS claims (i) the “identity of the Location” is some kind of “trade secret” that must be protected, and (ii) it is entitled to a 49% interest in Qube. (*See generally* NYSCEF No. 23.) STS’ assertions fail as a matter of law and fact and, as a result, it cannot show that it is likely to prevail on the merits of its claims.

First, public information is, by definition, not a trade secret under New York law. *See Marsh USA, Inc.*, 49 Misc. 3d 1210(A), at *5 (“publicly available information cannot be a trade secret.”); *Midsummer Fin. Prods., Inc. v. Rapid Filing Servs. LLC*, 14 Misc. 3d 1209(A), at *2 (Sup. Ct. N.Y. County 2006). In fact, the very NDA that STS claims to enforce says “confidential information shall not include . . . information which is publicly known.” (NYSCEF No. 6 § 1; *see also* Ex. 1 § 1.) Here, the “identity of the Location” was the furthest thing from a trade secret, because the Property (i) was visible to anyone that walked down Broadway, (ii) had a giant “for rent” sign in the window, and (iii) had no less than three prominent New York City brokers (all of

by which the information could be acquired or duplicated by others. *See Ashland Mgmt. Inc.*, 82 N.Y.2d at 407; *see also* Restatement (First) of Torts § 757.

which were identified on the sign) trying to lease it. (Vlamis Aff. ¶¶ 63-8; Exs. 6-7.) In fact, one of these brokers contacted Vlamis about renting the Property through channels that had **nothing** to do with STS or Korytny. (Vlamis Aff. ¶ 27.) Simply put, if the “identity of the Location” is a trade secret, it is hard to imagine anything that would **not** qualify as a trade secret. STS’ inability to establish the existence of a trade secret requires the denial of its Order to Show Cause. *Buchanan Cap. Markets, LLC*, 144 A.D.3d at 509.

Second, STS’ entire claim to a 49% interest in the Company stems from the purported Resolution – which states that STS’ right to that interest is contingent upon STS’ provision of (i) “a **viable** lease”, and (ii) funding of at least \$500,000. (Ex. 2 (emphasis added).) However, STS failed to deliver on either of these obligations and, therefore, is entitled to nothing.

STS’ assertion that it satisfied the first of the preconditions because the Company received “a lease for signing on August 10, 2023, with a conditional rider” is nonsense. (NYSCEF No. 23 at 9.) For months, STS tried to structure a transaction in which StubHub (the tenant at the Property at the time) would sublease the Property to Qube and contribute \$100,000 in tenant improvement funds to the Company. (Vlamis Aff. ¶¶ 24-5.) However, when StubHub refused, the Property’s landlord demanded that Qube pay a \$1.25 million deposit to rent the Property directly – a deposit Qube could not pay because STS had failed raise any money for the Company. (*Id.* ¶¶ 27-8.) In other words, the supposed lease “with a conditional rider” was never “viable”. (*Id.* ¶¶ 26-30.)

Moreover, STS failed to raise a **single dollar of investment** for Qube, and repeatedly declined to invest any of its own capital into the Company (presumably, because STS has no capital). Unable to point to any actual investment in the Company, Korytny makes a cryptic reference to “bank statements showing available funds north of \$1,250,000” – as if this is somehow

proof that STS raised any actual money for the Company. (NYSCEF No. 5 ¶ 41.) Needless to say, it is not, and STS' claim fails for this reason as well.

Because STS does not (and cannot) show a likelihood of success on the merits, its Order to Show Cause should be denied.

II. STS DOES NOT SHOW IRREPARABLE HARM

A party seeking an injunction must show that it will “suffer irreparable injury absent the injunction,” which it cannot do where it can be “fully compensated by damages”. *JSC VTB Bank*, 154 A.D.3d at 561; *Apostolopoulos*, 219 A.D.3d at 484.

Here, even if STS were entitled to an interest in the Company (and, for the reasons set forth in Section I, *supra*, it is not), it can be fully compensated for this alleged loss by money damages. This alone renders its Order to Show Cause dead on arrival. *See Ave. A Assocs. LP*, 190 A.D.3d at 474; *Montgomery v. 215 Chrystie LLC*, 209 A.D.3d 587, 587 (1st Dep't 2022); *see, e.g., Noyack Med. Partners, LLC v. OSK IX, LLC*, 206 A.D.3d 429, 430 (1st Dep't 2022) (“Contrary to plaintiff's contentions, money damages would adequately compensate it for the breach alleged here, and thus, its potential harm is not irreparable.”)

In fact, STS' requested injunction bears no relation to the requests for relief set forth in its Complaint. To wit, STS does not (and cannot) explain how enjoining Qube's operation of its own license will in any way preserve STS' rights to its non-existent “trade secret” or purported 49% stake in the Company. Rather, by attempting to enjoin Qube's ongoing business operations, STS' request for injunctive relief would **destroy** (rather than preserve) the value of the Company. STS' entire Order to Show Cause is thus a complete non-*sequitur* and should be denied.

Plaintiff's circular claims that, if Qube is not enjoined from operating its own license, “any lease for the [Property] that has been signed will be fully effective, and part of the relief sought by

plaintiff, a permanent injunction enjoining the Qube Defendants from opening will be rendered moot” fails for several reasons. (NYSCEF No. 23 at 14.)

First, Qube has already signed a fully binding lease and taken possession of the Property, rendering STS’ bizarre request to prevent the Lease from becoming “effective” moot. (*See* Vlamis Aff. ¶¶ 44, 48; Ex. 4.)

Second, STS cannot manufacture irreparable harm by claiming that its request for permanent injunctive relief will be rendered moot if its Order to Show Cause is (properly) denied. STS’ request for a permanent injunction ***should be rendered moot*** because it is utterly without merit. The very fact that Plaintiff resorts to such a circular and nonsensical claim simply confirms that there is no irreparable harm to speak of.

Finally, by claiming that its request for a preliminary injunction would render its unnecessary and baseless request for a permanent injunction moot, STS concedes that it is attempting to improperly obtain the ultimate relief sought in the complaint by way of a preliminary injunction. *See, e.g., E. Fordham DE LLC v. U.S. Bank Nat’l Ass’n*, 146 A.D.3d 610, 611 (1st Dep’t 2017). This too requires denial of the Order to Show Cause.

III. THE BALANCE OF EQUITIES CLEARLY FAVORS DEFENDANTS

Where the grant of injunctive relief would ***inflict*** irreparable harm on the party enjoined, the balance of equities favors the denial of the request for injunctive relief. *See Premier Color of N.Y., Inc.*, 285 A.D.2d at 545. In addition, the balance of the equities weighs against granting an injunction where (i) the purposes of a statute “would be hindered by a preliminary injunction” (*EdCia Corp.*, 44 A.D.3d at 994), and/or (ii) it would be contrary to the public interest (*Harris v. Patients Med., P.C.*, 169 A.D.3d 433, 435 (1st Dep’t 2019)).

Here, Plaintiff's request for injunctive relief would destroy the Company, bankrupt the Individual Defendants and frustrate the purposes of the MRTA.

As set forth more fully in the Vlamis Affirmation, the Company signed its Lease with the Property's owner in February 2024, paying a \$420,000 security deposit and \$70,000 in rent per month. (Vlamis Aff. ¶ 43.) In addition, the Individual Defendants have guaranteed \$1.25 million of the Company's rent, meaning that – if the Company is enjoined from operating and generating revenue – it is certain to default under the Lease and trigger guaranty obligations that the Individual Defendants will not be able to pay. (*Id.* ¶¶ 45, 54.) As a result, Qube's State-issued CAURD license will be rendered essentially worthless, and its business will be dead on arrival.

Even worse (if that were possible), STS' requested injunction would frustrate the purpose of the MRTA, which expressly intended to, *inter alia*, (i) reduce the “devastating collateral consequences” that the War on Drugs has had on Justice Involved Individuals like the Individual Defendants, (ii) “make substantial investments in communities and people most impacted by cannabis criminalization”, (iii) reduce crime by curbing the illicit market for cannabis, and (iv) “increase employment and strengthen New York's agricultural sector.” MRTA § 2. All of these laudable legislative purposes will be frustrated if the Individual Defendants – who are among the few CAURD licensees to secure both the funding and property required to operate a dispensary – are hamstrung by injunctive relief that prevents them from opening the dispensary or generating revenue of any kind. (Vlamis Aff. ¶¶ 54-8.)

STS knows this – which is why it came out of the woodwork (after months of silence) to request a nonsensical temporary restraining order on the day that Qube (i) received its official certificate of licensure from the State (Ex. 5), and (ii) took possession of the Property (Vlamis Aff. ¶ 48). Simply put, after attempting to bully Qube into providing STS with an equity interest it did

not earn, STS is attempting to leverage the threat of destroying the Company to extract damages and/or a settlement to which it is not entitled.

For all these reasons, the equities strongly favor Defendants (not STS), and the Order Show Cause should be denied in its entirety.

**IV. IN THE ALTERNATIVE, THE COURT SHOULD REQUIRE
AN UNDERTAKING OF \$15 MILLION**

“[T]he language of CPLR 6312(b) is clear and unequivocal, and it requires the party seeking the injunction to give an undertaking.” *Schwartz v. Gruber*, 261 A.D.2d 526, 527 (2d Dep’t 1999). “[F]ixing the amount of an undertaking when granting a motion for a preliminary injunction is a matter within the sound discretion of the court.” (citations omitted). *Ying Fung Moy v. Hoho Umeki*, 10 A.D.3d 604, 605 (2d Dep’t 2004). “CPLR 6312(b) directs a court to fix an undertaking in an amount that will compensate a defendant for damages incurred by reason of the granting of a preliminary injunction in the event that it is finally determined that a plaintiff was not entitled to the injunction. Plaintiff, as the party herein who sought a preliminary injunction, was clearly and unequivocally required to post an undertaking.” *Vassenelli v. City of Syracuse*, 160 A.D.3d 1412, 1413-14 (4th Dep’t 2018); *see also Destiny USA Holdings, LLC v. Citigroup Glob. Markets Realty Corp.*, 69 A.D.3d 212, 224 (4th Dep’t 2009).

In the event STS’ request for an injunction is granted (and it should not be), the injunction presents an existential risk to the Company and the Individual Defendants’ livelihoods. While it is hard to quantify that risk, the damage would be immense and irreparable. As a result, STS should be required to post an undertaking of not less than \$15 million.

CONCLUSION

For the foregoing reasons, Plaintiff's Order to Show Cause should be denied in its entirety, and the Court should grant such other relief as it deems just and proper.

Dated: New York, New York
April 15, 2024

FEUERSTEIN KULICK LLP

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STATEMENT OF COMPLIANCE

I, Richard Trotter, hereby certify that the above memorandum of law complies with the word limit set by the Uniform Rules of this Court. I hereby further certify that, according to the word count feature of Microsoft Word, this document is 3,758 words, excluding the caption, table of contents, table of authorities and signature block.

/s/ Richard Trotter

Richard Trotter