

60 A.D.3d 516, 875 N.Y.S.2d 463, 2009 N.Y. Slip Op. 01878
(Cite as: 60 A.D.3d 516, 875 N.Y.S.2d 463)

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Supreme Court, Appellate Division, First Department,
New York.

AI ENTERTAINMENT LLC, Plain-
tiff–Appellant–Respondent,

v.

27TH STREET PROPERTY LLC, et al., Defend-
ants–Respondents–Appellants.


March 17, 2009.

Background: The Supreme Court, New York County, Marilyn Shafer, J., denied subtenant's motion for a preliminary injunction, and granted cross motion seeking dismissal of the complaint, and subtenant appealed.

Holding: The Supreme Court, Appellate Division, held that subtenant failed to demonstrate a likelihood that it would succeed in proving that it was not aware of the termination provision contained in the overlease.

Affirmed as modified.

West Headnotes

[1] Injunction 212  1235

212 Injunction

212IV Particular Subjects of Relief

212IV(D) Property in General

212k1235 k. Landlord and tenant. Most

Cited Cases

(Formerly 212k138.37)

Although irreparable injury was presumed since subtenant's commercial lease had been terminated, subtenant failed to demonstrate a likelihood that it would succeed in proving that it was not aware of the termination provision contained in the overlease, and therefore subtenant was not entitled to preliminary injunction.

[2] Corporations and Business Organizations 101

 1067

101 Corporations and Business Organizations

101II Disregarding Corporate Entity; Piercing
Corporate Veil

101k1057 Particular Occasions for Determin-
ing Corporate Entity

101k1067 k. Landlord and tenant. Most
Cited Cases

(Formerly 101k1.6(6))

Property and lessee were not shown to be alter egos of each other, such that piercing the corporate veil was warranted where subtenant failed to make the requisite showing of domination of either entity which was the instrument of fraud or otherwise resulted in wrongful or inequitable consequences.

****463** Nesenoff & Miltenberg, LLP, New York
(Philip A. Bvier of counsel), for appellant-respondent.

Stern Tannenbaum & Bell LLP, New York (David S.
Tannenbaum of counsel), for respondents-appellants.

FRIEDMAN, J.P., NARDELLI, CATTERSON,
DeGRASSE, JJ.

***516** Order, Supreme Court, New York County (Marilyn Shafer, J.), entered August 21, 2008, which denied plaintiff's motion for a preliminary injunction, granted that portion of defendants' cross motion seeking dismissal of the complaint and denied that portion of the cross motion seeking the imposition of sanctions, unanimously modified, on the law, to declare that there was no merger of estates between defendants 27th Street Property LLC (Property) and 27th Street Lessee LLC (Lessee), and otherwise affirmed, with costs in favor of defendants.

[1][2] To obtain a preliminary injunction, plaintiff was required to demonstrate a likelihood of ultimate success on the merits, irreparable injury absent provisional relief, and a balancing of the equities in its favor. Although irreparable injury is presumed since plaintiff's commercial lease has been terminated, plaintiff failed to demonstrate a likelihood that ****464** it will succeed in proving that it was not aware of the

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termination provision contained in the overlease. Plaintiff's claim of a merger of estates is reliant on the premise that Property and Lessee are alter egos of each other, such that piercing the corporate is warranted. Plaintiff, however, has failed to make the requisite showing of domination of either entity which was the instrument of fraud or otherwise resulted in wrongful or inequitable consequences (*see Kali Corp. v. A. Goldner Inc.*, 49 A.D.3d 397, 398, 859 N.Y.S.2d 1 [2008]). Dismissal of the cause of action for a declaration required that the court make some declaration in favor of defendants, and we modify accordingly (*Decana, Inc. v. Contogouris*, 55 A.D.3d 325, 326, 865 N.Y.S.2d 72 [2008]). Absent a showing that a preliminary injunction is warranted, the remaining issues are common*517 landlord tenant issues which were properly dismissed since they should be litigated in Civil Court (*see Post v. 120 East End Ave. Corp.*, 62 N.Y.2d 19, 28, 475 N.Y.S.2d 821, 464 N.E.2d 125 [1984]; *Cox v. J.D. Realty Assocs.*, 217 A.D.2d 179, 181, 637 N.Y.S.2d 27 [1995]).

The court providently exercised its discretion in declining to impose sanctions on plaintiff for its questionable conduct in this litigation.

N.Y.A.D. 1 Dept.,2009.
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