

Supreme Court, New York.
Kings County
JPMORGAN CHASE BANK, N.A., Plaintiff,
v.
ST AHL 177 MONTAGUE LLC, Defendant.
No. 504757/2013.
October 31, 2013.

At Part Com 1 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 31st Day of October, 2013.

Order

Carolyn E. Demarest, Judge.

Plaintiff is a tenant in a landmarked building recently acquired by defendant. As a bank, plaintiff maintains safe deposit boxes in the basement premises leased from defendant which are only accessible by disabled bank patrons using an elevator which is not within the demised premises. The elevator is scheduled to be replaced in conjunction with a conversion of the upper floors of the building to condominiums so as to comply with ADA regulations. Originally, plaintiff sought a temporary restraining order based upon representations that elevator service to the basement would be suspended on Saturday August 17, 2013, and again in September. The Temporary Restraining Order was initially denied by my colleague, Hon. Debra Silber, who signed the Order to Show Cause on my behalf on August 16, 2013.

On September 25, 2013, it was revealed that the work was not scheduled until December. Defendant argued that alternative accommodations for disabled patrons could be arranged using the stairs within the demised premises. While plaintiff resists such suggestion, it appears that a hearing will be necessary to explore the alternatives as court-ordered efforts to mediate the matter have been unavailing.

A preliminary injunction is denied as plaintiff has failed to demonstrate probability of success on the merits, irreparable harm to itself, or that the equities balance in its favor (*see County of Suffolk v Givens*, 106 AD3d 943, 944 [2d Dept 2013]). Although plaintiff is entitled, under the terms of the lease, to elevator service, its refusal to accommodate temporary interruption would effectively permanently preclude defendant from converting the premises to its intended use, which was made known to plaintiff at the time the lease was entered. Since the elevator apparently must be modified or replaced to comply with the Americans With Disabilities Act, plaintiff's position not only conflicts with defendant's plans, but also may be inconsistent with its own obligations to its customers. In any event, it appears that money damages may adequately compensate plaintiff for any losses or inconvenience.

The parties are directed to appear for a conference, preliminary to scheduling any further hearing date, on November 20, 2013, at 9:30 A.M.

The foregoing constitutes the decision and order of the Court.

ENTER:

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HON. CAROLYN E. DEMAREST, J.S.C.

JPMorgan Chase Bank v. St Ahl 177 Montague LLC
2013 WL 5911419 (N.Y.Sup.) (Trial Order)

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