

PRELIMINARY INJUNCTIONS IN NEW YORK¹

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Our office prosecutes and defends against actions seeking preliminary injunctions.

Preliminary injunctions are designed to enjoin a defendant from continuing to act in a particular way or, more rarely, to compel a defendant to take a particular action. They are typically preceded by a request for a temporary restraining order which is a short lived injunction generally granted without a hearing and lasting until such time as a hearing can be had.

Preliminary injunction actions require intense preparation in a very short amount of time as they are sought when a danger of imminent harm is alleged, are heard on an urgent basis and require an evidentiary hearing. The following principles, all based on caselaw and statute, should be kept in mind when dealing with preliminary injunctions:

Granting a preliminary injunction under Civil Practice Law and Rules (CPLR) 6301 is a matter within the trial court's sound discretion. Preliminary injunctions are, however, considered "drastic remedies" that should be granted sparingly, and it is well established that when a preliminary injunction seeks the very relief demanded in the underlying complaint "courts are especially loathe to grant the application.

A preliminary injunction is designed to maintain the status quo pending trial. The relevant status quo which needs to be preserved is that which existed immediately prior to the parties' dispute, which may be different than that which existed immediately prior to the initiation of litigation.

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Movant's burden of proof on a motion for a preliminary injunction is particularly high, and such an injunction may be issued only where moving party demonstrates (1) a likelihood of success on the merits, (2) prospect of irreparable harm if an injunction is not granted, and (3) a balance of equities in the moving party's favor. All three elements are required and the movant has the burden of establishing each and every one of these elements by clear and convincing evidence.

It is not sufficient that Plaintiff demonstrate a possibility of success on the merits- he must show a likelihood of success. Where plaintiff's right to recover in the underlying action does not appear any stronger than defendant's, a preliminary injunction will not be granted. In the absence of a clear right to the relief demanded, injunctive relief should not be granted until the issues have been fully explored and the entire matter resolved after a plenary trial.

To satisfy the irreparable harm requirement, plaintiffs must demonstrate that absent a preliminary injunction they will suffer an injury that is neither remote nor speculative, but actual and imminent, and one that cannot be remedied if a court waits until the end of trial to resolve the harm. An injunction will not issue in order to prevent actions which are alleged to have already taken place (a *fait accompli*) but only to prevent specifically identified actions likely to cause irreparable harm in the immediate future, not at some indeterminate future time.

CPLR 6312(b) requires that “prior to the granting of a preliminary injunction the plaintiff shall give an undertaking in an amount to be fixed by the court, that the plaintiff, if it

is finally determined that he or she was not entitled to an injunction, will pay to the defendant all damages and costs which may be sustained by reason of the injunction". The provision of an undertaking is mandatory. A court has no power to waive the filing of an undertaking altogether.