

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

PRESENT: DEBRA A. JAMES  
Justice

PART 59

YOUNG ISRAEL OF FIFTH AVENUE,  
An Unincorporated Association, By Its  
President VICTOR BELLINO,

Plaintiff,

- v -

NATIONAL COUNCIL OF YOUNG ISRAEL,

Defendant.

Index No.: 109055/03

Motion Date: 9/21/04

Motion Seq. No.: 4

Motion Cal. No.: \_\_\_\_\_

The following papers, numbered 1 to 2 were read on this motion for an injunction.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits \_\_\_\_\_  
Answering Affidavits - Exhibits \_\_\_\_\_  
Replying Affidavits - Exhibits \_\_\_\_\_

PAPERS NUMBERED

1

2

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers,

Plaintiff's present application by its terms seeks use of certain areas in the building located at 3 West 16<sup>th</sup> Street, New York, which building is the subject of this declaratory judgment action, for religious services for the Yom Kippur and Succoth holidays. (The determination of the parties' respective interests in the property including possession thereof is not determined by the court on this motion as that is the ultimate issue to be resolved by the final disposition of this action.) A similar application was made before this court one year ago and

Check One: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check If appropriate: ☐ DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

**FILED**  
SEP 29 2004  
NEW YORK  
COUNTY

ultimately resolved by the Appellate Division, First Department in a number of Orders. As petitioner's possessory interest in the property implicates the ultimate issue in this case, the court finds that this application is not a "lockout" proceeding covered by RPAPL 853. However, the court finds that the prior Appellate Division Orders provide the proper framework for resolving the parties' current dispute and the court shall direct similar relief.

Accordingly, it is

ORDERED that on the same terms and conditions as Justice Saxe's Order dated October 5, 2003, the defendant is enjoined from physically blocking or otherwise interfering with plaintiff's use of the fourth floor meeting room in the Building for religious services during the Yom Kippur holiday on Friday, September 24, 2004 and Saturday, September 25, 2004 and plaintiff shall provide a security guard during the Yom Kippur holiday; and it is further

ORDERED that on the same terms and conditions as Justice Marlowe's Order of October 10, 2003, the plaintiff's application to use the Sukkah during the entire holiday is granted provided movant complies with the instructions of its engineer. Movant during this time may use the bathroom on the highest floor which is unlocked. Defendant is directed to use best efforts to locate its employee who has the key or combination to open such lavatory

on the highest floor closest to the Sukkah. Defendant is directed to allow use of the Sukkah in accordance with the terms of this Order; and it is further

ORDERED that on the same terms and conditions as Justice Williams' Order of October 7, 2003, the parties rights and obligations under the proceeding paragraph are subject to the following conditions: that plaintiff obtain \$2,000,000.00 liability insurance in addition to its caterer's \$2,000,000.00 insurance; that plaintiff obtain all required permits, and that YIFA provide adequate security.

This is the decision and order of the court.

**Dated:** September 22, 2004

ENTER:

SEP 22 2004

~~Richard A. Jones~~  
DEBRA A. JAMES J.S.C.  
J.S.C.

**FILED**  
SEP 29 2004  
NEW YORK  
COUNTY CLERK'S OFFICE