

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

**FILED**  
IN CLERK'S OFFICE  
US DISTRICT COURT E.D.N.Y.  
★ NOV 02 2017 ★  
BROOKLYN OFFICE

-----X  
CANER DEMIRAYAK, :

Plaintiff, :

v. :

CITY OF NEW YORK; NEW YORK CITY  
DEPARTMENT OF CITYWIDE  
ADMINISTRATIVE SERVICES; LISETTE  
CAMILO; RICK D. CHANDLER; IRA  
GLUCKMAN; NEW YORK CITY  
DEPARTMENT OF BUILDINGS; STATE OF  
NEW YORK; OFFICE OF COURT  
ADMINISTRATION; and HON. RONALD  
YOUNKINS, :

Defendants. :

-----X

**MEMORANDUM & ORDER**  
17-CV-5205 (WFK) (RER)

**WILLIAM F. KUNTZ, II, United States District Judge:**

Caner Demirayak, Esq. ("Plaintiff"), proceeding *pro se*, brings this action against the State of New York, the City of New York, and several State and City agencies and employees (collectively, "Defendants"), alleging violations of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12182; section 504 of the Rehabilitation Act, 29 U.S.C. § 794; the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution; the New York Human Rights Law ("NYHRL"), N.Y. Exec. Law § 296(2)(a); and the New York City Human Rights Law ("NYCHRL"), N.Y.C. Admin. Code § 8-107(4)(a), as well as several violations of New York common law. *See generally* Am. Compl., ECF No. 14. Plaintiff seeks, *inter alia*, compensatory damages in an amount exceeding \$1,000,000.00 and injunctive relief requiring Defendants to remove structural and architectural barriers at, and otherwise make wheelchair accessible, the state courthouse located at 360 Adams Street in Brooklyn, New York. *See id.*

On October 30, 2017, over a month before the deadline for Defendants to file an Answer or other responsive pleading, Plaintiff petitioned this Court for a temporary restraining order and preliminary injunction requiring Defendants to (1) “remove all false accessibility signs and to install new, correct signage”; (2) “keep the only 3 barely accessible bathrooms on the second, fifth, and seventh floor in working order”; (3) “purchase and install temporary portable ramps and lifts for use in the jury coordinating part, law library, and fourth and fifth floor staircases”; and (4) “submit a plan/design for removing all architectural barriers, as stated herein, within 120 days,” and restraining Defendants from “taking any retaliatory action against the plaintiff in response to his filing of this suit, including but not limited to, any attempts to circumvent the random assignment of judges, or issuing unfavorable rulings/decisions in an attempt to discriminate on the basis of disability,” Mot. for Prelim. Inj., ECF No. 15; *see also* Demirayak Aff., ECF No. 15-1; Mem. of Law, ECF No. 15-3. On October 31, 2017, this Court denied Plaintiff’s motion because it prematurely sought final relief beyond the proper scope of a preliminary injunction, as explained further below.

“A party seeking injunctive relief ordinarily must show: (a) that it will suffer irreparable harm in the absence of an injunction and (b) either (i) a likelihood of success on the merits or (ii) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly in the movant’s favor.” *Tom Doherty Assocs., Inc. v. Saban Entm’t, Inc.*, 60 F.3d 27, 33 (2d Cir. 1995). In this Circuit, however, the movant is required “to meet a higher standard where: (i) an injunction will alter, rather than maintain, the status quo, or (ii) an injunction will provide the movant with substantially all the relief sought and that relief cannot be undone even if the defendant prevails at a trial on the merits.” *Id.* at 33-34. This is because “[t]he purpose of a preliminary injunction is not to give the plaintiff the

ultimate relief it seeks. It is ‘to prevent irreparable injury so as to preserve the court’s ability to render a meaningful decision on the merits,’ ‘to keep the parties, while the suit goes on, as far as possible in the respective positions they occupied when the suit began.’” *WarnerVision Entm’t Inc. v. Empire of Carolina, Inc.*, 101 F.3d 259, 261-62 (2d Cir. 1996) (citations omitted) (quoting, respectively, *Meis v. Sanitas Serv. Corp.*, 511 F.2d 655, 656 (5th Cir. 1975), and *Hamilton Watch Co. v. Benrus Watch Co.*, 206 F.2d 738, 742 (2d Cir. 1953)). “As a general rule, therefore, a temporary injunction ‘ought not to be used to give final relief before trial.’ Neither should it ‘permit[ ] one party to obtain an advantage by acting, while the hands of the adverse party are tied by the writ.’” *Id.* at 262 (citations omitted) (quoting, respectively, *United States v. Adler’s Creamery, Inc.*, 107 F.2d 987, 990 (2d Cir. 1939), and *Corica v. Ragen*, 140 F.2d 496, 499 (7th Cir. 1944)); *see also Louis Vuitton Malletier v. Dooney & Bourke, Inc.*, 454 F.3d 108, 114 (2d Cir. 2006) (“A preliminary injunction is usually prohibitory and seeks generally only to maintain the status quo pending a trial on the merits. A prohibitory injunction is one that ‘forbids or restrains an act.’”).

Here, Plaintiff seeks far more than merely prohibitory relief or to maintain the status quo. Rather, as noted above, he asks the Court to order Defendants to undertake several affirmative acts, including the installation of new signs and ramps and the production of architectural plans, all of which would require the expenditure of financial and other resources, well before discovery has even commenced in this action. Although the ADA and the Rehabilitation Act do provide for such permanent, prospective relief, it is typically available only as a remedy after a finding of liability. If the Court granted Plaintiff’s request at this juncture, it would be giving him the ultimate, final relief he seeks without requiring him to prove the merits of his case at trial. This is not the appropriate purpose of a preliminary injunction. *See WarnerVision*, 101

F.3d at 261-62. Moreover, Plaintiff has not even attempted to meet the heightened standard required to justify the extraordinary prospective relief he seeks. *Cf. Tom Doherty*, 60 F.3d at 34 (noting that preliminary injunctions that would alter the status quo or provide final relief require a “clear” or “substantial” showing, which “alters the traditional formula by requiring that the movant demonstrate a greater likelihood of success”). Accordingly, Plaintiff’s motion for a temporary restraining order and preliminary injunction, ECF No. 15, must be DENIED at this time, without prejudice to his seeking appropriate permanent injunctive relief after further development of the record and/or a finding of liability on the merits.

**SO ORDERED.** 

s/ WFK  
  
WILLIAM F. KUNTZ, II  
UNITED STATES DISTRICT JUDGE

Dated: November 2, 2017  
Brooklyn, New York