

At a Part 2 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof, located at 360 Adams Street, Brooklyn, New York 11201, on the \_\_ day of August, 2017

P R E S E N T: Hon. Gloria M. Dabiri, J.S.C.

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:  
JENNIFER LEE and RICHARD LEE,  
:  
Plaintiffs,  
:  
- against -  
:  
BROOKLYN BOULDERS, LLC,  
:  
Defendant.  
:  
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**ORDER TO SHOW CAUSE WITH T.R.O.**

Index No. 503080/2013E

Upon reading and filing the annexed affirmation of Nicholas Hurzeler, sworn to on August 16, 2017, and the emergency affirmation of Nicholas Hurzeler sworn to on August 16, 2017, the exhibits annexed thereto; and good and sufficient reason appearing therefor, it is hereby:

**ORDERED** that Plaintiffs, or their attorneys, show cause before the Hon. Gloria M. Dabiri, in Part 2 of this Court, at the Courthouse, 360 Adams Street, Brooklyn, New York 11201 on August \_\_\_\_, 2017, at 9:30 a.m., why an order should not be granted:

- (1) In accordance with CPLR § 2201, staying the entry of judgment until a decision and order are rendered on the Defendant’s pending post-trial motion for a new trial, remittitur, and other relief, and until the decision and order is entered with the County Clerk; and
- (2) For such other and further relief as the Court deems just and proper; and

It is further **ORDERED**, that effective from the date of this Order, and pursuant to CPLR §§ 6301 and 6313, Defendant is granted a Temporary Restraining Order (“TRO”) staying the entry or execution of judgment pending the hearing and determination of this motion; and

**LET** service of a copy of this order and the papers upon which it is granted, upon the attorneys for all parties in the above-captioned action, by \_\_\_\_\_, on or before \_\_\_\_\_, 2017, be deemed good and sufficient service.

ENTER:

\_\_\_\_\_  
J.S.C.

-----X

JENNIFER LEE and RICHARD LEE,

Plaintiffs,

-against-

BROOKLYN BOULDERS, LLC,

Defendant.

Index No. 503080/2013E

**AFFIRMATION IN SUPPORT**

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**NICHOLAS HURZELER**, an attorney admitted to practice law in the State of New York hereby affirms the truth of the following under the penalties of perjury:

1. I am a member of LEWIS BRISBOIS BISGAARD & SMITH, counsel for Defendant Brooklyn Boulders, LLC, in this action, and I am fully familiar with the facts and circumstances of this matter based on my review of this firm's file kept for the defense of the claims, and having personally prepared the post-trial motion that is pending as of this writing.

2. I respectfully submit this affirmation in support of Defendant's motion for an Order:

- (a) In accordance with CPLR § 2201, staying the entry of judgment until a decision and order are rendered on the Defendant's pending motion for a new trial, remittitur, and other relief, and until the decision and order is entered with the County Clerk; and
- (b) in accordance with CPLR §§ 6301 and 6313, granting a Temporary Restraining Order ("TRO") staying the entry or execution of judgment pending the hearing and determination of this motion; and
- (c) For such other and further relief as the Court deems just and proper.

### Statement of Relevant Facts

3. Plaintiff filed this action to recover damages for personal injuries allegedly sustained in an accident on March 15, 2013, at the Brooklyn Boulders rock climbing gym located at 575 Degraw Street in Brooklyn.

4. This case was tried and resulted in a verdict in Plaintiff's favor in the sum of \$1.25 million on January 27, 2017. The jury awarded \$750,000 for past pain and suffering, and \$500,000 for future pain and suffering. A copy of the verdict sheet is annexed within Exhibit "1."

5. Immediately after the verdict, defense counsel Jim Whalen made an oral application, on the record, to stay the entry of judgment pending the Defendant's post-trial motion (see relevant portion of trial transcript dated January 27, 2017, Exhibit "2" at p. 83):<sup>1</sup>

MR. WHALEN: Your Honor, I would like to reserve a motion to stay the judgment for 45 days and make a written motion to the court.

MR. CARMAN: I have no objection, Judge.

THE COURT: Granted.

6. By notice of motion dated March 10, 2017, Defendant timely moved, within 45 days, for a new trial or alternatively, to reduce the amount of the verdict as excessive compensation for Plaintiff's injuries.

7. Defendant's motion also seeks a stay, under CPLR §§ 2201, 6301, and 6313, of the entry or execution of any judgment on the jury verdict pending the hearing and determination of the motion.

8. Plaintiff opposed the motion, Defendant filed a reply, and the motion was orally argued before this Court on May 19, 2017.

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<sup>1</sup> Only the transcript cover and page 83 are annexed, but the entire transcript was E-Filed on August 3, 2017, and can be easily accessed on the E-Filing system.

9. After oral argument, the motion was marked submitted for decision. A decision on the motion remains pending as of this writing.

10. Although the decision remains pending, Plaintiff has repeatedly attempted to enter judgment on the verdict.

11. On or about May 1, 2017, Plaintiff attempted to enter judgment with the County Clerk. The judgment was rejected and returned for correction.

12. On or about July 20, 2017, Plaintiff served a "Proposed Judgment With Notice of Settlement" (Exhibit "1").

13. The Notice states that Plaintiff would appear on August 4, 2017, in this Court and request that the Court sign the judgment.

14. Defense counsel E-Filed an affirmation in opposition to the Notice to Enter Judgment (Exhibit "3")(without exhibits).

15. Defense counsel Bianca Nicoletti appeared in this Court on August 4, 2017, in opposition to the "Proposed Judgment With Notice of Settlement."

16. Plaintiff's counsel did not appear. Defense counsel inquired about the proposed judgment. The Part Clerk replied that the matter was not on the Court's calendar, and that the Court had no intention of taking any action with respect to the proposed judgment.

17. Thereafter, Nicoletti called Plaintiff's counsel's office and was told that counsel still intends to enter judgment.

18. Accordingly, upon information and belief, Plaintiff's counsel will make additional efforts to enter judgment in the near future, even though the decision on the post-trial motion remains outstanding.

19. In compliance with Uniform Rule 202.7(f), annexed as Exhibit "4" is a copy of E-

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