

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D20644
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_____AD3d_____

Argued - September 15, 2008

WILLIAM F. MASTRO, J.P.
ROBERT A. LIFSON
EDWARD D. CARNI
RANDALL T. ENG, JJ.

2007-05371

DECISION & ORDER

Edgar Gluck, et al., appellants, v Chevre
Liady Nusach Hoary, et al., respondents.

(Index No. 320/07)

Feerick Lynch MacCartney, PLLC, South Nyack, N.Y. (Donald J. Feerick, Jr., of counsel), and Wachtel & Masyr, LLP, New York, N.Y. (Howard Kleinhendler of counsel), for appellants (one brief filed).

Harris Beach, Pittsford, N.Y. (Paul Braunsdorf of counsel), and Joseph J. Haspel, Goshen, N.Y., for respondent Chevre Liady Nusach Hoary (one brief filed).

Saretsky Katz Dranoff & Glass, LLP, New York, N.Y. (Alan G. Katz of counsel), for respondent Morris Klein.

In an action, inter alia, for injunctive relief, the plaintiffs appeal from an order of the Supreme Court, Rockland County (Garvey, J.), dated April 30, 2007, which denied their motion for a preliminary injunction and granted the cross motion of the defendants, among other things, to preliminarily enjoin the plaintiffs Edgar Gluck, Elisha Roseman, George Margareten, Thomas Paneth, Abraham Kleinbart, Moshe Gottesman, Bernard Rosenblum, Leah Werner, Yaakov Singer and Paul Zicherman, from holding themselves out as members of the Board of Directors of the plaintiff Northern Services Group, Inc.

ORDERED that the order is affirmed, with one bill of costs.

October 14, 2008

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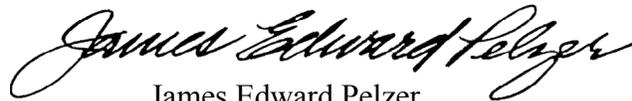
In order “to prevail on a motion for a preliminary injunction, the movant must demonstrate by clear and convincing evidence (1) a likelihood of ultimate success on the merits, (2) irreparable injury absent the granting of the preliminary injunction, and (3) that a balancing of equities favors the movant's position” (*Apa Sec., Inc. v Apa*, 37 AD3d 502, 503). “The purpose of a preliminary injunction is to maintain the status quo pending determination of the action . . . The decision to grant or deny a preliminary injunction rests in the sound discretion of the Supreme Court” (*Automated Waste Disposal, Inc. v Mid-Hudson Waste, Inc.*, 50 AD3d 1072, 1073 [internal citations omitted]).

Here, the Supreme Court properly denied the plaintiffs’ motion for a preliminary injunction. The plaintiffs failed to demonstrate by clear and convincing evidence a likelihood of success on the merits. In contrast, the defendants met their burden of demonstrating a likelihood of success on the merits. The evidence demonstrated that the bylaws of the plaintiff Northern Service Group, Inc. (hereinafter NSG), a New York not-for-profit corporation, were amended in 2004 to install the defendant Chevre Liady Nusach Hoary (hereinafter Chevre Liady) as NSG’s sole member (*see* N-PCL 602[b]). Consequently, as sole member, Chevre Liady had the authority to remove members of the NSG Board of Directors (*see* N-PCL 706[a]).

Furthermore, the evidence was sufficient to demonstrate that the defendants would suffer irreparable harm absent the granting of a preliminary injunction and that a balance of the equities favors granting their cross motion for a preliminary injunction (*see Reuschenberg v Town of Huntington*, 16 AD3d 568, 570). Accordingly, the Supreme Court properly granted the defendants’ cross motion for a preliminary injunction.

MASTRO, J.P., LIFSON, CARNI and ENG, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court