

Thompson v 76 Corp.
2005 NY Slip Op 30414(U)
March 16, 2005
Supreme Court, Kings County
Docket Number: 50106/99
Judge: Michael J. Garson
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At an IAS Term, Part 23 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 16th day of March, 2005

P R E S E N T:

HON. MICHAEL J. GARSON,
Justice.

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ROBERT G. A. THOMPSON, et al,

Index No. 50106/99

Plaintiffs,

- against -

76 CORP. D/B/A CLUB NEW YORK, et al,

Defendants.

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The following papers numbered 1 to 8 read on this motion:

	<u>Papers Numbered</u>
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed_____	1-4
Opposing Affidavits (Affirmations)_____	5
Reply Affidavits (Affirmations)_____	6-7
_____ Affidavit (Affirmation)_____	_____
Other Papers (<u>memorandum of law</u>)_____	8

Upon the foregoing papers, plaintiffs Natania Reuben and Julius Jones move, by separate orders to show cause, for an order pursuant to Executive Law § 632-a and CPLR 6301, granting them a preliminary injunction and order of attachment enjoining and

restraining defendant Jamal Barrow a/k/a “Shyne” (Barrow) and all persons holding certain specified funds for Barrow from disbursing, distributing, encumbering, transferring or assigning those funds until the resolution of the underlying civil action.

On June 1, 2001, Barrow was sentenced, following his conviction of assault in the first and second degrees, criminal possession of a weapon in the second and third degrees and reckless endangerment, to concurrent terms of imprisonment with a maximum term of ten years. The conviction stemmed from a December 27, 1999 shooting that occurred at Club New York at which plaintiffs were shot and injured. Barrow remains incarcerated pursuant to that judgment of conviction.

Thereafter, plaintiffs commenced separate tort actions against defendants; those actions were consolidated on or about January 19, 2001.

On or about March 23, 2004, Barrow, a recording artist and the sole shareholder of the Gangland Music Corp. entered into a contract with the Island Def Jam Music Group (Def Jam) in which Barrow agreed to record two to five albums for a fee of more than \$3,000,000. Pursuant to that contract, Barrow has reportedly received an advance payment of \$500,000.

On or about August 30, 2004, pursuant to Executive Law Section 632-a, commonly known as the “Son of Sam Law”, the New York State Crime Victims Board, notified

plaintiffs of the existence of the contract and the amount of funds that had been or would be received by Barrow.

Rueben and Jones now move by orders to show cause for a preliminary injunction to prevent Barrow from dissipating the aforementioned funds, in order that the funds can be preserved for the payment of any judgment received by plaintiffs in the underlying tort actions.¹

A preliminary injunction may be granted under CPLR Article 63 when the party seeking such relief demonstrates: (1) a likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the provisional relief is withheld; and (3) a balance of equities tipping in the moving party's favor (*Doe v Axelrod*, 73 NY2d 748, 750 [1988]; see *W. T. Grant Co. v Srogi*, 52 NY2d 496, 517 [1981]). Here, plaintiffs have demonstrated their likelihood of success on the merits of their civil actions against Barrow in light of Barrow's criminal conviction for assault and related charges stemming from his involvement in the nightclub shooting (see *Barrett v Wojtowicz*, 66 AD2d 604, 614 [1979]). They have also demonstrated that they may suffer irreparable injury if the injunction is not granted as there is evidence that much of the money already received by Barrow pursuant to the contract has

¹ Plaintiff Robert Thompson did not file a notice of motion but submits, through his attorney, an affirmation in support of the orders to show cause

been dissipated, raising the real possibility that he will be unable to pay any judgment obtained by plaintiffs in their civil actions.²

Finally, the court concludes that the equities balance in favor of granting the preliminary injunction. Indeed, both the New York legislature and the courts have recognized the strong public interest in ensuring that crime victims receive compensation from the person or persons convicted of causing them harm. To further that objective, in 2001, the New York State legislature, amended Executive Law Section 632-a, commonly referred to as the Son of Sam law, which not only extends the statute of limitations for commencing a civil action against a convicted criminal³ who has obtained monies from virtually any source while imprisoned⁴, but also requires any entity which contracts for, pays

² Interestingly, while Barrow argues that plaintiffs have failed to establish that he would be unable to satisfy any judgments from other sources, he opposes the freezing of the subject funds, claiming that he needs those funds to pay his attorneys' fees as well as for "personal and familial obligations", which suggests that he may not have a substantial alternative source of finances.

³ The statute applies to those convicted of certain "specified crimes", which include at least one of the crimes of which Barrow was convicted (*Executive Law* § 632-a [1] [e][i]).

⁴ The statute provides that earned income and child support are excluded from the calculation of whether the \$10,000 notice requirement has been reached; it does not, as Barrow urges, prevent a victim from collecting monies received from these sources or prevent the court from granting injunctive relief and freezing these funds (see *Executive Law* § 632-a 1(c), 2(a); see also Governor's Memo Approving 2001, c.62 ; Yager, *Investigating New York's Son of Sam Law: Problems with the Recent Extension of Tort Liability for People Convicted of Crimes*, 48

or agrees to pay monies in excess of \$10,000 to an incarcerated individual to notify the Crime Victims Board, which, in turn, is required to notify all known crime victims of the existence of these funds.⁵ The statute also gives the Crime Victims Board the power to seek any provisional relief which would otherwise be available to the plaintiff.

In light of this strong state interest in ensuring that crime victims are compensated by those who injure them, the court concludes that the equities are balanced in plaintiffs' favor

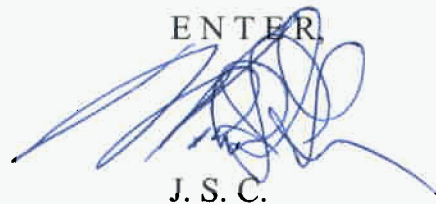
N.Y.L. Sch. L. Rev. 433, 447-448 [2004]).

⁵ The original Son of Sam Law was enacted in 1977, in response to community outrage at the possibility that David Berkowitz, a/k/a the "Son of Sam", who had terrorized New York City with a string of shootings that had left six people dead and seven others wounded, would sell his story to a publishing house for \$75,000. In the original version of the law the notice requirement was only triggered when an entity contracted with the criminal for the details of his or her story. In *Simon & Schuster, Inc. v Members of the New York State Crime Victims Board*, 502 US 105 (1991), the United States Supreme Court struck down the Son of Sam statute finding that it violated the First Amendment since it "single[d] out income derived from expressive activity for a burden the State places on no other income, and it is directed only at works with a specific content" (*id* at 116). In striking down the statute, however, the court acknowledged that the State has a compelling interest in ensuring that victims of crime are compensated by those who harm them and that funds of criminals are not dissipated before their victims can recover for their injuries (*id* at 509-510). In 1992, the legislature passed a new version of the law which recognized that interest, but avoided the prior law's first amendment infirmities by targeting all profits of a crime, rather than solely specified speech. In 2001, the statute was amended to include not only profits from the crime, but to money received by the imprisoned criminal from any source. The current statute has thus far survived constitutional challenges (*see Snuszki v Wright*, 751 NYS2d 344 [2002], *aff'd* 1 AD3d 879 [2003]; *New York State Crime Victims Board v Majid*, 749 NYS2d 837 [2002]).

and that they have met their burden of demonstrating the necessity for injunctive relief in this action.

Accordingly the court grants plaintiff's motion for a preliminary injunction restraining Barrow and all persons acting in conjunction with him or under their supervision or control from distributing, disbursing, encumbering, transferring or assigning any funds paid to, credited to or to be paid to Barrow in connection with the Def Jam contract. All money that has been already been paid to Barrow in connection with that contract and all future payments are to be held in an escrow account to be administered by the law firm of DEBRA S. REISER, ESQ, attorney for plaintiff Natania Reuben, save for \$1000, which is to be deposited in Barrow's prison account pursuant to Executive Law §632-a (3).⁶ This injunction will remain in effect until the resolution of this action. It is further ordered that the temporary restraining order imposed by the order to show cause dated November 18, 2004 is hereby vacated.

This constitutes the decision and order of the court.

ENTER

J. S. C.

⁶ Barrow's attorney may petition this court to lift the injunction to pay reasonable attorney's fees.