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

PRESENT: HELEN E. FREEDMAN PART 39
Justice

Lazare Kaplan Intl. Inc.,

Plaintiff,

- v -

GIA Enters., Inc. and Gemological Inst. of Am.,

Defendants

INDEX NO. 602649/06

MOTION DATE

MOTION SEQ. NO. 001

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☐ No

Motion by plaintiff for a preliminary injunction is denied for the reasons set forth below.

Background – In this action, plaintiff Lazare Kaplin International Inc. ("Lazare") claims that defendant Gemological Institute of America ("GIA") wrongfully terminated a License Agreement dated as of February 16, 1996 (the "Agreement") between Lazare and GIA Enterprises, Inc, which no longer exists and whose operations were subsumed within GIA. Under the Agreement, GIA, which grades and certifies precious stones and gems (generally diamonds), was granted an exclusive license to use Lazare's equipment, which employs lasers to inscribe stones and gems with identifying letters and numbers (the "Equipment.") The license was mutually exclusive, in that the Agreement prohibited Lazare from licensing its Equipment to any third parties in the United States. Moreover, under the Agreement, each piece of Equipment had its own license term.

After licensing six units of Equipment from Lazare between August 1997 and September 2000, and accepting delivery of another unit to replace the first in April 2002, GIA notified Lazare by letter dated January 30, 2006 that it was terminating the Agreement effective July 31, 2006. As grounds for termination, GIA invoked section 12.1 of the Agreement, which provided that

> [GIA] may in its discretion terminate this Agreement . . . (ii) as of the end of the sixth year of the Initial License Term, or as of the end of any subsequent year during the term of this Agreement, upon six (6) months' prior notice to [Lazare].

The term "Initial License Term," was defined in section 3.2 of the Agreement:

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

> [T]he term of the license will commence . . . upon a determination by [GIA] that the first unit of Equipment meets [certain performance standards], and unless sooner terminated or extended in accordance with the provisions of this Agreement, continue for ten (10) years (the "Initial License Term"or "License Term.")

Motion – Claiming that GIA's termination was improper, Lazare now moves for an order (1) preliminarily enjoining GIA from, among other things, "taking any action that would be adverse to [Lazare's] rights and privileges under the [Agreement]" and (2) declaring the Agreement to be in full force and effect through at least April 2008, i.e., six years after Lazare last delivered a piece of Equipment to GIA. The parties' dispute centers on the meaning of the early termination provision in the Agreement. Lazare argues that the six-year minimum license term set forth in section 12.1 applies separately to each piece of Equipment that GIA licensed. GIA construes the Agreement as allowing it to terminate the Agreement and all the Equipment licenses six years after it licensed the first piece of Equipment in August 1997.

To obtain a preliminary injunction, a plaintiff has the burden of showing that (1) it is likely to prevail on the merits, (2) it will be irreparably injured without an injunction, and (3) the equities weigh in its favor. *See W.T. Grant Co. v. Srogi,* 52 N.Y.2d 496, 517 (1981). Lazare has not shown any likelihood of success, and accordingly it is not entitled to the "drastic" remedy of a preliminary injunction before the merits of the lawsuit are determined. *See Faberge Intl. v. Di Pino*, 109 A.D.2d 235, 240 (1st Dept. 1985). To satisfy the first element, a plaintiff must make a factual showing of a "strong likelihood of success on the merits of their causes of action." *Rubinstein v. Bullard,* 285 A.D.2d 366, 367 (1st Dept. 2001). Lazare has not met that burden because its strained reading of the termination provision conflicts with its plain language, which provides that the six-year waiting period runs from the date that GIA licenses the first piece of Equipment. Lazare's construction also conflicts with the sense of the Agreement considered as a whole, since the Agreement contemplated throughout that once GIA had terminated it pursuant to section 12.1, the parties' rights and obligations with respect to all pieces of Equipment would end. For example, section 12.5 requires that, after GIA terminated, it had to return all the Equipment to Lazare.

In addition, Lazare fails to show that it will be irreparably injured without a preliminary injunction. Money damages would adequately compensate Lazare, especially since it does not dispute that GIA's obligations under the Agreement will end at some point. Finally, Lazare cannot demonstrate that the equities weigh in its favor, since it waited six months after GIA's

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notice of termination, and days before the Agreement was due to terminate, before it moved for a preliminary injunction. *See Mercury Serv. Sys., Inc. v. Schmidt*, 50 A.D.2d 533, 533 (1st Dept. 1975) (finding the denial of a preliminary injunction "amply justified by delay of three and one-half months in seeking this relief.")

Motion denied. The parties are directed to appear for a status conference before the Court on October 17, 2006 at 9:30 a.m. (Courtroom 208, 60 Centre St., NY, NY). This is the order of the Court. .

Dated: September 29, 2006

Helen E. Freedman, *J.S.C.*

Check one: ☐ **FINAL DISPOSITION** ☐ **NON-FINAL DISPOSITION**

Check if appropriate: ☐ **DO NOT POST**