

**Washington Deluxe Bus, Inc. v Sharmash Bus Corporation**

2006 NY Slip Op 30493(U)

June 16, 2006

Supreme Court, Kings County

Docket Number: 4611/04

Judge: Lawrence S. Knipel

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At an IAS Term, Part 57 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 16<sup>th</sup> day of June, 2006.

P R E S E N T:

HON. LAWRENCE KNIPEL,

Justice.

-----X

WASHINGTON DELUXE BUS, INC.,

Plaintiff,

- against -

Index No. 4611/04

SHARMASH BUS CORPORATION, Sol WOLLNER  
A/K/A MENACHEM WOLLNER, ZANVEL  
BLUSENSTEIN, VAMOOSE A/K/A VAMOOSEBUS  
AND EXECUBUS, INC,

Defendants.

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The following papers numbered 1 to 19 read on this motion:

Notice of Motion/Order to Show Cause/  
Petition/Cross Motion and  
Affidavits (Affirmations) Annexed \_\_\_\_\_  
Opposing Affidavits (Affirmations) \_\_\_\_\_  
Reply Affidavits (Affirmations) \_\_\_\_\_  
\_\_\_\_\_ Affidavit (Affirmation) \_\_\_\_\_  
Other Papers \_\_\_\_\_

Papers Numbered

1 - 3 6 - 8 10,11 15,16  
4 12 17  
5 9 13  
14 18,19  
\_\_\_\_\_

Upon the foregoing papers, the following motions and cross motions are consolidated for disposition: the motion of plaintiff, Washington Deluxe Bus, Inc, for an order, inter alia, confirming an arbitration award dated February 19, 2004; plaintiff's motion for a preliminary injunction pursuant to CPLR 6301; the cross motion by defendants Sharmash Bus Corporation, Sol Wollner, a/k/a Vamoosebus and Exeubus, Inc., for an order, pursuant to CPLR 3211, dismissing the complaint herein; and the cross motion by defendants for an order vacating the arbitration award pursuant to CPLR 7511.

In its papers, Washington Deluxe Bus, Inc. (Washington Deluxe) alleges that it and Wollner entered into an arbitration agreement pursuant to which the parties agreed to have various issues involving bus routes decided by a Rabbinical Court.<sup>1</sup> On or about February 19, 2004, an award was rendered by the arbitration panel which, among other things, found that the Washington - New York routes at issue belong to Washington Deluxe and that Wollner may not infringe upon Washington Deluxe's territorial rights by operating competing bus routes. The panel also determined that

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<sup>1</sup> Notwithstanding the service of a notice of petition, the parties will be referred to as "plaintiff" and "defendants" or by name, as they have generally done, rather than as "petitioner" and "respondents."

Wollner was not entitled to compensation as a result of his work at Washington Deluxe. In the first of its motions, plaintiff seeks confirmation of the arbitration award pursuant to CPLR 7510 and the addition of Gitty Ungar and Joseph Honig, Washington Deluxe's principals, as additional plaintiffs.

Washington Deluxe alleges that, "in the midst of arbitration," defendants began operating a New York - Washington bus line in competition with Washington Deluxe, notwithstanding that the arbitration award prohibited such activity. According to plaintiff, defendants have "continued to impersonate Washington Deluxe" using misappropriated trade secrets, solicited plaintiff's customers using a stolen e-mail list, and misled customers into believing that they were using Washington Deluxe's website. Plaintiff explains that, "[a]t the heart of, and the unique key to, Washington Deluxe's business are first its trade names, (Washington Deluxe) and 'BUS NYDC' and . . . second, invaluable lists of customers' email addresses and the most advantageous places to advertise." According to plaintiff on or about February 15, 2004, defendants Wollner, Vamoose and ExecuBus, Inc., began to operate a Washington - New York bus route "by pretending to be Washington Deluxe." Plaintiff also faults defendants for linking their website to the Internet key words "Washington Deluxe." Therefore, plaintiff seeks enforcement of the arbitration award via

injunctive relief, as well as damages because of defendants' alleged misappropriation of trade secrets and common law trade name infringement.

In a related motion, plaintiff requests a preliminary injunction "pending enforcement of an arbitration award" so as to prevent defendants from interfering with Washington Deluxe's Washington - New York bus route or from "taking any action calculated to or likely to cause confusion . . . on the part of consumers," including referring to the name of Washington Deluxe or BUS NYDC "as a hyperlink to plaintiff's website."

In a cross motion, defendants seek dismissal of plaintiff's complaint, except for the eighth cause of action.<sup>2</sup> With reference to plaintiff's first cause of action, defendants note that "the arbitrators issued an award . . . naming the generic Washington Deluxe" and, because the arbitration agreement does not name Washington Deluxe Bus Inc., "the award is fatally flawed" and plaintiff "has no standing to enforce the award." Insofar as the complaint alleges a misappropriation of trade

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<sup>2</sup> Plaintiff's eleven causes of action are, as follows: (1) Enforcement of the arbitration award; (2) Misappropriation of trade secrets; (3) Common law trade name infringement; (4) Violation of General Business Law § 133; (5) Violation of General Business Law § 360 - L; (6) Unfair competition; (7) False advertising and deceptive acts; (8) Tortious interference with Contractual Relations; (9) Breach of Fiduciary Duty; (10). Accounting  
11. Injunctive Relief.

secrets (second cause of action), defendants argue that the maintenance by plaintiff of “a secret list of media in which to advertise is bizarre,” as is plaintiff’s claim to having maintained a “secret customer list.” Defendants characterize plaintiff’s use of the term “Washington Deluxe” and “Bus NY DC” as generic since they relate to bus service between New York and Washington and, as such, they can be expected to produce the name of plaintiffs, Vamoose and other competitors in response to an Internet search request. Therefore, defendants urge that the cause of action for common law trade name infringement (third cause of action) should likewise be dismissed. Because the Internet search results have not led to any mistaken identity between Washington Deluxe and defendants and Washington Deluxe is “simply attempting to using common generic and descriptive terms for its own use,” defendants argue that the fourth and fifth causes of action (based upon the General Business Law) are without merit. Given defendants’ claims that its Internet activities (as described above) are proper, they assert that plaintiff’s sixth cause of action, (unfair competition) and seventh cause of action (false advertising) are meritless. Based upon deposition testimony of Gitty Ungar, the president of Washington Deluxe, that Wollner “did paperwork “ and “errands” for Washington Deluxe, defendants maintain that no fiduciary relationship ever existed between Wollner and

plaintiff and, consequently, a claim for breach of fiduciary duty (the ninth cause of action) does not lie. Defendants further contend that since plaintiff's claims for damages are without merit, an accounting (the tenth cause of action) is similarly unnecessary. Lastly, defendants assert that plaintiff is not entitled to a monopoly on any bus route and there is no reason to grant plaintiff an injunction (the eleventh cause of action) that would merely "stifle competition."

In a companion cross motion to vacate the arbitration award, defendants accuse the arbitration panel (the Beth Din) of enjoining Wollner "for life from participating in a bus transportation business between New York and Washington." Moreover, because plaintiff did not deposit money which the arbitrators directed him to do, plaintiff should not, according to defendants, be able to enforce the arbitration award since the arbitrators were, in that event, to rule in favor of Wollner.

A Beth Din is "a religious tribunal that adjudicates disputes according to Jewish law and custom" (*Meisels v Uhr*, 79 NY2d 526, 531 [1992]). Confirmation and vacatur of a Beth Din award are governed generally by CPLR Article 75 (*see id.*, at 526). The losing party may oppose confirmation by seeking to have the award vacated or modified on the grounds listed in CPLR 7511

(*see* CPLR 7510); that is, that the rights of that party were prejudiced by corruption, fraud, misconduct, or bias, that the panel so exceeded its power, or so imperfectly executed it that a final and definite award was not made upon the matter submitted or that there was a failure to follow the procedures of CPLR Article 75 (*see Erber v Goldstein*, 195 Misc2d 792 [2003]).

In opposing the application to confirm, defendants have failed to establish any of the foregoing defenses; rather, defendants challenge plaintiffs' standing to confirm the award since it was Washington Deluxe Bus Company which proceeded to arbitration, rather than Washington Deluxe Bus, Inc., the plaintiff herein. The arbitrators considered plaintiff's request that Sol Wollner be prohibited from interfering with its Washington - New York bus route and his entitlement, if any, to compensation. Because the disputes at issue were clearly defined, notwithstanding that the arbitrators referred to plaintiff's firm as "Washington Deluxe," no substantial right of defendants will be prejudiced if any error in plaintiff's name is disregarded (*see* CPLR 2001). The court notes that defendant Sharmash Bus Corporation, plaintiff's competitor, was referred to as "Sharmash Bus Co." and that the arbitration award provided that "clarification arising out of this arbitration award" could be (but was not) submitted to the arbitrators for a ruling. This court further notes that, according to

according to the supplemental submissions of the parties, the corporate plaintiff amended its name on two occasions and that this action bears that name of the most recent amendment, which is proper (*see* Business Corporation Law § 806 [b] [5]). Under the circumstances, the plaintiff's motion to confirm the arbitration award is granted, and the cross motion by defendants for an order vacating the arbitration award is denied. The branch of the motion by plaintiff to amend the caption herein is denied, as unnecessary.

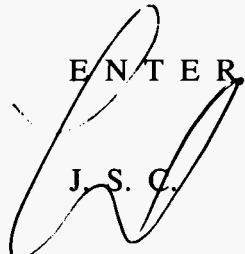
In order to obtain a preliminary injunction, the party seeking the relief must demonstrate a likelihood of success on the merits, that irreparable harm will occur if the preliminary injunction is not issued and a balancing of the equities favors the issuance of a preliminary injunction (*see W.T. Grant Co. v Srogi*, 52 NY2d 496 [1981]). Plaintiff has established all of these elements required to obtain a preliminary injunction. Given the arbitration award rendered by the Beth Din, plaintiff has made a prima facie showing of a right to relief. Moreover, since the restriction applies to a single bus route - one which defendants allegedly established after the arbitration award was rendered - the equities favor plaintiff. Having determined that a preliminary injunction is warranted, the court is required to set an undertaking to be posted by plaintiff in the event that it is

later determined that the injunction was inadvertently granted (*see* CPLR 6312 [b]). Therefore, plaintiff is directed to post an undertaking of \$10,000 within 30 days after entry of this order.

In seeking dismissal of plaintiff's causes of action pursuant to CPLR 3211 (a), defendants characterize such claims as "demonstrably false" and explain at great length their permissible use of the Internet to attract customers. Under the circumstances, however, the court finds that plaintiff's allegations fit within cognizable legal theories (*see Fast Track Funding Corp v Perrone*, 19 AD3d 362 [2005]) and that defendants have failed to conclusively establish defenses to the asserted claims as a matter of law (*see Leon v Martinez*, 84 NY2d 83 [1994]). Accordingly, the cross motion by defendants to dismiss the complaint herein is denied.

In sum, the motions by plaintiff are granted to the extent indicated herein, and the cross motions by defendants are denied.

The foregoing constitutes the decision and order of this court.

  
E N T E R  
J . S . C .