

Kurland v Passaretti

2007 NY Slip Op 30640(U)

January 26, 2007

Supreme Court, New York County

Docket Number: 0601954/2006

Judge: Debra A. James

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

PRESENT: DEBRA A. JAMES
Justice

PART 59

SCOTT KURLAND and KPG, INC.,
Plaintiffs,

Index No.: 601954/06

Motion Date: 10/31/06

- v -

Motion Seq. No.: 01

JOHN J. PASSARETTI and JOHN J. PASSARETTI,
ARCHITECT, P.C.,
Defendants.

Motion Cal. No.: OSC

The following papers, numbered 1 to 2 were read on this motion for a preliminary injunction.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits _____

Answering Affidavits - Exhibits _____

Replying Affidavits - Exhibits _____

PAPERS NUMBERED

1

2

FILED

FEB 05 2007

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Cross-Motion: Yes No

Upon the foregoing papers,

In this action which seeks the judicial dissolution of plaintiff KPG and damages from the defendants, plaintiff moves for a preliminary injunction. By So-Ordered Stipulation dated September 29, 2006, the parties entered into a temporary restraining order that among other relief provided that the defendants were to permit plaintiffs to copy KPG's computer records and allow plaintiffs to request information from KPG's account. The stipulation also provided for the parties to arrange for plaintiffs to remove their furniture and property

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

from the premises.

The court shall deny plaintiffs' motion for a preliminary injunction because on the facts presented there has been no showing of irreparable harm because money damages can adequately compensate the plaintiffs if defendants are found liable upon the complaint.

To the extent that the plaintiffs sought on this application to obtain access to KPG's files and accounting information, those disputes were resolved by the So-Ordered Stipulation dated September 29, 2006 and no further relief is warranted.

Plaintiffs on this motion allege that the defendants have transferred money out of the KPG corporate account as set forth in the KPG Checking Account Journal attached as an exhibit to their papers. Further, defendant Passaretti admits at paragraph 28 of his affidavit that such transfers did take place. The defendants cite no contractual or other provision or agreement authorizing the monetary transfers of nearly \$120,000 in corporate funds on May 11 and May 12, 2006.

If the evidence had shown nothing more than the impermissible transfer of corporate funds, plaintiffs would have made out a prima facie case of irreparable harm to the corporate interests of KPG. However, subsequent to these transfers the parties entered into an Agreement dated May 22, 2006, pursuant to which the parties agreed to work toward "the winding up and

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ultimate dissolution of KPG." As to the payment of KPG's expenses, the Agreement provided that "KPG shall, subject to available funds, pay for all required operating expenses until final dissolution, including without limitation continued health insurance for SK and JP, salaries of staff, and general overhead." With respect to KPG's checking account the Agreement provided that "SK and JP shall be removed as signatories on KPG's bank account, and KPG's accountant shall be the sole signatory on such account through final dissolution."

To the extent that the monetary transfers complained of were executed prior to the parties' Agreement, the lack of any provision in the Agreement for repayment of the funds weighs against a finding of irreparable harm as any loss to the corporation can be had by money damages. Plaintiffs did not move for injunctive relief at the time of the transfers and indeed entered into the Agreement and provided that future disbursements of corporate funds were to be made by the KPG's accountant. Therefore, injunctive relief does not lie nearly five months after the transfers occurred because the transfers obviously were not considered by the parties to have caused irreparable harm to KPG. See Sterling Fifth Associates v Carpentille Corp., Inc., 5 AD3d 328, 329 (1st Dept 2004).

Plaintiffs further allege that defendants have converted certain KPG computer assets after the execution of the Agreement,

but plaintiffs' generic allegations are insufficient to establish that there is a risk of loss absent the grant of extraordinary relief.

Therefore, the court shall deny the plaintiffs' application on the grounds that irreparable harm was not demonstrated.

Accordingly, it is

ORDERED that plaintiffs' motion is DENIED; and it is further

ORDERED that the parties are directed to attend a preliminary conference on February 27, 2007, at 9:30 A.M., in IAS Part 59, Room 1254, 111 Centre Street, New York, New York 10013.

This is the decision and order of the court.

Dated: January 26, 2007

. ENTER:

1/27/07
DEBRA A. JAMES J.S.C.
J.S.C.

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