

Lanza v Ciaccio

2008 NY Slip Op 31053(U)

April 8, 2008

Supreme Court, Suffolk County

Docket Number: 0034701/2007

Judge: Thomas F. Whelan

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judgment compelling defendants to sell their respective equity interests in the subject companies to the individual plaintiffs.

Now before the court is a motion (#001) by the plaintiffs for a mandatory, preliminary injunction compelling defendants to sell their equity interests to the individual plaintiffs for fair value as determined after a hearing by the court. Plaintiffs claim that the defendants' uncooperative conduct has harmed the financial well-being and good will of both of the limited liability companies that are the subject of this action. Such conduct purportedly constitutes a breach of the defendants' obligations under two written agreements executed by the parties in 1998 and 1999 regarding the establishment and operation of plaintiff, Suzuki, 112, LLC, and similar unidentified agreements relating to plaintiff, JNRS Realty, LLC. As a result of the defendants' purportedly actionable conduct, the plaintiffs demand an order granting them provisionally, the ultimate relief demanded by them in the first cause of action set forth in their complaint, namely, that the court direct the defendants to sell their respective 25% equity interests in the two limited liability companies at issue herein to the individual plaintiffs at a fair value to be fixed by the court after a hearing.

Defendants oppose the plaintiffs' motion in chief and cross move (#002) for dismissal of plaintiffs' complaint pursuant to CPLR 3211(a)(5) and (a)(7). Defendants claim that the 1998 and 1999 written agreements governing the establishment and operating rules of plaintiff, Suzuki 112, LLC, require disputes by and between the members of said company regarding the terms or purported breaches of said agreements to be determined by arbitration. In addition, the defendants claim that the plaintiffs' joinder of the two limited liability companies at issue as party plaintiffs in this action is improper as the individual plaintiffs, being members of said companies with a 25% ownership therein, have no authority to include said companies as plaintiffs herein nor any right to retain counsel for said companies. Finally, defendants assert that plaintiffs are not entitled to any of the mandatory injunctive relief demanded by them on their motion in chief.

For the reasons set forth below, plaintiffs' motion is denied while defendants' cross motion is granted to the limited extent set forth below.

It is well established that to prevail on a motion for preliminary injunctive relief, the movant must demonstrate a likelihood of success on the merits, danger or irreparable harm unless the injunction is granted, and that a balancing of the equities favors the movant (*see Grant Co. v Srogi*, 52 NY2d 496, 438 NYS2d 761 [1981]; *Family Affair Haircutters v Detling*, 110 AD2d 745, 488 NYS2d 204 [2d Dept. 1985]). The decision to grant a preliminary injunction is committed to the sound discretion of the court (*see Bergen-Fine v Oil Heat Inst., Inc.*, 280 AD2d 504, 720 NYS2d 378 [2d Dept. 2001]) as the remedy is considered to be a drastic one (*see Doe v Axelrod*, 73 NY2d 748, 536 NYS2d 44 [1988]). A clear legal right to relief, which is plain from undisputed facts, must be established (*see Blueberries Gourmet v Avis Realty*, 255 AD2d 348, 680 NYS2d 557 [2d Dept. 1998]) and the burden of showing an undisputed right to the injunction rests with the movant (*see Doe v Poe*, 189 AD2d 132, 595 NYS2d 503 [1993]). Factors militating against the granting of preliminary injunctive relief include: that the movant can be fully recompensed by a monetary award or other adequate remedy at law (*see White Bay Enter. v Newsday, Inc.*, 258 AD2d 520, 685 NYS2d 257 [1999]) and that the granting of the requested injunctive relief would confer upon the plaintiff the ultimate relief requested

in the action (*see SHS Baisley, LLC v. Res Land, Inc.*, 18 AD3d 727, 795 NYS2d 690 [2d Dept. 2005]), or effect an alteration, rather than a preservation of the *status quo* (*see McIntyre v Metropolitan Life Ins. Co.*, 221 AD2d 602, 634 NYS2d 180 [2d Dept. 1995]; *Rosa Hair Stylists, Inc. v Jaber Food Corp.*, 218 AD2d 793, 631 NYS2d 167 [2d Dept. 1995]).

Upon the application of the foregoing legal maxims to the facts adduced on the instant motion, the court finds that the plaintiffs failed to establish any entitlement to the expansive, mandatory injunctive relief demanded on their motion. As indicated above, the within action is one in which the plaintiffs demand money damages by reason of the defendants' purportedly wrongful conduct, which the plaintiffs assert is actionable under theories of tort and contract law. It is thus apparent that the plaintiffs have an adequate remedy at law, namely, the recovery of money damages, in the event they should prevail on their pleaded claims for breach of contract and breach of fiduciary duties. The plaintiffs thus failed to demonstrate they would suffer irreparable harm if their motion was denied (*see 1659 Ralph Ave. Laundromat Corp. v Ben David Enter., LLC*, 307 AD2d 288, 762 NYS2d 288 [2d Dept. 2003]).

It is equally apparent that while the plaintiffs have also demanded in their complaint a judgment "ordering the defendants to sell their equity interests in the companies to the Lanza plaintiffs at fair value, less credits due to the Lanza plaintiffs, to be determined by this court," the mere pleading of this demand does not afford the plaintiffs a right to this relief, provisionally, as the granting of same, *pendente lite*, would confer upon the plaintiffs the same relief as that demanded by them in their complaint (*see SHS Baisley, LLC v. Res Land, Inc.*, 18 AD3d 727, *supra*; *Rosa Hair Stylists, Inc. v Jaber Food Corp.*, 218 AD2d 793, *supra*). This result is clearly repugnant to the purposes that underlie the drastic remedy which a preliminary injunction affords. Accordingly, the plaintiffs' motion for the expansive, mandatory injunctive relief demanded therein is in all respects denied.

Defendants' cross motion (#002) for an order dismissing the plaintiffs' complaint is granted to the extent that the plaintiffs' claims for breach of the defendants' obligations under the 1998 and 1999 written agreements concerning plaintiff, Suzuki 112, LLC, is granted pursuant to CPLR 3211(a)(5). The moving papers sufficiently establish that said agreements provide that all disputes arising between the parties to said agreements shall be submitted to arbitration for resolution. Plaintiffs failed to establish that the agreement to arbitrate is invalid or that the issues raised in this action are not subject to said agreement to arbitrate. The plaintiffs thus have no cognizable claims for relief against the defendants with respect to the 1998 and 1999 agreements pertaining to Suzuki 112, LLC (*see MH Kane Constr. Corp. v URS Corp. Group Consultants*, 42 AD3d 512, 840 NYS2d [2d Dept. 2007]). Accordingly, those portions of the instant cross motion by the defendants wherein they seek a dismissal of the individual claims of the Lanza plaintiffs for an order directing the sale of the defendants' equity interests in Suzuki 112, Inc., and the recovery of damages and counsel fees by reason of the defendants' purported breaches of the terms of the 1998 and 1999 written agreements concerning the creation and operation of Suzuki 112, LLC, are granted and Suzuki 112, LLC is dropped as a party plaintiff to this action.

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The remaining portions of the defendants' cross-motion are denied. The defendants' failed to sufficiently establish that plaintiffs' claims with respect to defendants' purported violations of agreements pertaining to the creation and operation of plaintiff, JNRS Realty, LLC, provide for arbitration of disputes of the kind sued upon herein or that plaintiffs' claims of actionable conduct on the part of the defendants by reason of their purported breaches of said agreements are not cognizable under New York Law. The defendants' cross moving papers also failed to establish that the plaintiffs' demands for an order directing the sale of the defendants' equity interests in JNRS Realty, LLC is not cognizable under theories of specific performance or otherwise. Accordingly, those portions of the defendants' cross motion wherein they demand an accelerated judgment dismissing the plaintiffs' pleaded claims with respect to JNRS Realty, LLC are denied. The defendants are thus directed to serve their answer to these claims within the time limitations period set forth in CPLR 3211(f).

DATED: 4/8/08



THOMAS F. WHELAN, J.S.C.