

Zabari v Zabari

2008 NY Slip Op 31513(U)

May 28, 2008

Supreme Court, New York County

Docket Number: 0601352/2008

Judge: Walter B. Tolub

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15

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EYAL ZABARI individually and as a
Stockholder of ZED USA, Inc., 506 Broadway
Inc., and Prince Fashions, Inc.,

Plaintiff,

Index No. 601352/08
Mtn Seq. 001

-against-

DORON ZABARI, ZED USA Inc, Prince
Fashions Inc. And 506 Broadway, Inc.

Defendant.

FILED
JUN 03 2008
COUNTY CLERK'S OFFICE
NEW YORK

WALTER B. TOLUB, J.:

This is a pre-answer motion by the Plaintiff to compel the Defendant to turn over, inter alia, rental documents for the current tenant at 542 Broadway and for an order requiring the Defendant to deposit all rent received from 542 Broadway to an account controlled by the officers and directors of ZED USA, Inc. ("ZED").

Facts

Eyal and Doron Zabari are brothers. Plaintiff's Complaint claims that in August 1994 they formed ZED, with each brother holding a 50% interest. (Plaintiff's Ex. 1).

In 1995, ZED purchased a 50% interest in Prince Fashion Inc. ("Prince"). (Plaintiff's Ex. 3). At the time of the Prince purchase, Prince held a long term lease to a retail premises located at 542 Broadway, New York, New York. (Plaintiff's Ex. 4). Prince leased a portion of that premises to ZED in June of 1995.

(Plaintiff's Ex. 5).

In 1997 Plaintiff claims that he and his brother formed 506 Broadway. Plaintiff does not attach any documents regarding the formation of the corporation but does attach Loan Authorizations and Agreements. (Plaintiff's Ex. 6).

It appears that from roughly 1989 through 2005, the brothers operated various business including ZED. Plaintiff claims that in some instances the Defendant held sole ownership of the operating entity but that in others Plaintiff held sole ownership of the operating entity. Plaintiff claims that the brothers agreed that no matter what the ownership interest was, that they would share equally in all benefits and income from establishments operating on premises they controlled. Defendant refutes that claim entirely.

Plaintiff claims that in 2005, the Defendant took control of the assets of ZED, including the premises that it controlled. Plaintiff further claims that in 2006 the Defendant took control of 506 Broadway.

In 2007, Plaintiff claims that Defendant rented the store in the building leased by 506 Broadway to a third-party without his knowledge. (Complaint para. 18) Plaintiff argues in this pre-answer motion that Defendant must turn over information regarding rental income controlled by 506 Broadway and ZED, including the 542 Broadway rental income. Plaintiff further argues that the

Defendant must turn over rental income to an account controlled by the officers and directors of ZED.

Defendant argues that Plaintiff seeks a summary determination in his favor on matters stated in the Complaint without having first afforded the Defendant an opportunity to plead defenses and that Plaintiff has not demonstrated entitlement to an affirmative injunction.

Discussion

Pre-Answer Discovery of Corporate Documents

Business Corporation Law ("BCL") §624 provides the right of inspection to shareholders for any purpose reasonably related to such person's interest as a shareholder. (BCL §624(b)). The statute granting a shareholder's right of inspection of corporate books is to liberally construed so as to facilitate communication among shareholders on issues respecting corporate affairs.

(Bohrer v. International Banknote Co., 150 AD2d 196 [1st Dept 1989]). It follows that the Plaintiff is entitled to review the rental documents for each company he is a shareholder of.

Request for Injunctive Relief Requiring the Transfer of Funds

A preliminary injunction is a provisional remedy designed to maintain the status quo between the parties until litigation is concluded. (Uniformed Firefighters Ass'n v. City of New York, 79 NY2d 236 [1992]). To succeed on a preliminary injunction motion,

Plaintiff must show: (1) a probability of success on the merits in the underlying action; (2) A danger of irreparable injury if an injunction is not issued; and (3) a balancing of the equities in plaintiff's favor. (Aetna Ins. Co. v. Capasso, 75 NY2d 860 [1990]).

Here, Plaintiff is unable to establish that without the issuance of a preliminary injunction, requiring the turning over funds, that he will suffer irreparable injury. An injury is irreparable if it is "real" and if plaintiff lacks an adequate remedy at law. (Lesron Junior, Inc. v. Feinberg, 13 AD2d 90 [1st Dept 1961]). An adequate legal remedy must be plain, certain, prompt complete, and as effective as an injunction. (Id.). Plaintiff lacks an adequate legal remedy, and the injury is irreparable, if money damages are insufficient compensation. (Kelin, Wagner & Morris v. Klein, 186 AD2d 631 [2d Dept 1992]).

Here, Plaintiff has an adequate remedy at law, a money judgment in the amount owed to him and the companies, if any. It follows that a preliminary injunction may not be issued under these circumstances.

Accordingly, it is

ORDERED that Plaintiff's motion for a pre-answer preliminary injunction requiring the transfer of funds is denied; and it is

further

ORDERED that Plaintiff's motion for pre-answer document discovery is granted and Defendant is to provide the Plaintiff with access to or copies of the rental documents within 10 days of service of this order with notice of entry; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

Counsel for the parties are directed to appear for a preliminary conference on Friday August 29, 2008 at 11AM in room 335 at 60 Centre Street.

This memorandum opinion constitutes the decision and order of the Court.

Dated:

5/29/08
FILED
JUN 03 2008
COUNTY CLERK'S OFFICE
NEW YORK

[Signature]

HON. WALTER B. TOLUB, J.S.C.