

Stony Brook Diagnostic Associates v Anand

2008 NY Slip Op 33532(U)

December 8, 2008

Supreme Court, Suffolk County

Docket Number: 32382-2008

Judge: Emily Pines

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SUPREME COURT - STATE OF NEW YORK
COMMERCIAL DIVISION, PART 46, SUFFOLK COUNTY

Present:

HON. EMILY PINES
J. S. C.

Original Motion Date: 09-24-2008

Motion Submit Date: 10-14-2008

Motion Sequence No.: 001 MG

**STONY BROOK DIAGNOSTIC ASSOCIATES
AND STONY BROOK ACQUISITIONS, INC.,**

Plaintiffs,

-against-

AZAD K. ANAND M.D. and SHAFI WANI, M.D.,

Defendants,

and

STONY BROOK RESOURCES,

Nominal Defendant.

_____X

Attorney for Plaintiff

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ORDERED, that the motion (motion sequence number 001) by plaintiff for a preliminary injunction is granted as set forth herein below; and it is further

ORDERED, that a compliance conference is scheduled for December 19, 2008 at 9:30 a.m. before the undersigned.

Plaintiffs commenced this action pursuant to Partnership Law §63, for dissolution of nominal Defendant, Stony Brook Resources, by the filing of a Summons and Complaint on or about August 25, 2008. Plaintiffs then moved by Order to Show Cause (PINES, J.) for a temporary restraining Order and preliminary injunction, enjoining and restraining defendant, Azad K. Anand, M.D. ("Anand") from prosecuting any actions or proceedings against plaintiff, Stony Acquisitions, Inc., including a special landlord-tenant proceeding pending in the Sixth District Court, captioned, *Stony Brook Resources v. Stony Acquisitions, Inc.*, (index no. BRLT 2247-2008). The Court granted the temporary restraining Order, enjoining and restraining Anand, pending further Order of the Court, from prosecuting the

landlord-tenant proceeding. Thereafter, by further Order (PINES, J.) dated October 14, 2008, the Court extended the Temporary Restraining Order pending the determination on the motion for a preliminary injunction, provided that Stony Brook Diagnostic Associates provided certified checks payable to Stony Brook Resources in the amount of \$100,000.00, in four monthly installments, to be held in escrow, commencing on October 15, 2008 and continuing at the rate of \$25,000.00 per month on the fifteenth of each the three succeeding months, and further that Stony Brook Diagnostic Associates continue to make monthly rental payments to Stony Brook Resources in an amount of not less than \$10,000.00 commencing November 1, 2008.

The Court is now considering plaintiffs' motion for a preliminary injunction, enjoining and restraining Anand from prosecuting the landlord-tenant proceeding. The submissions reflect the following:

Nominal defendant, Stony Brook Resources, is a New York general partnership formed on February 12, 1989, pursuant to a written partnership agreement, and its partners are Anand (as to a 25% interest), defendant Shafi Wani, M.D. ("Wani") (as to a 25% interest), and plaintiff, Stony Brook Diagnostic Associates (as to the remaining 50% interest). Stony Brook Resources owns a medical office condominium building located at 2500-15 Nesconset Highway, Stony Brook (the "subject premises") and leases the subject premises to plaintiff, Stony Acquisitions. The interrelationship between these various corporate entities is set forth in a chart annexed to the moving papers from which it appears as follows. Non-party Om P. Soni ("Soni"), owns 100% of the corporate entity, Advanced Diagnostic Asset Management, Inc. ("Advanced Diagnostic"), which in turn is the 40% owner of plaintiff, Stony Brook Diagnostic Associates ("Stony Brook Diagnostic").¹ Stony Brook Diagnostic is the 50% partner of nominal defendant, Stony Brook Resources. Additionally, Soni owns 100% of a corporate entity, Sonix, Inc., which in turn owns 100% of another corporate entity, Sonix Medical Resources, Inc., which owns 100% of plaintiff, Stony Acquisitions.

In sum, plaintiffs allege, by affidavit of Soni, that the Court should grant the preliminary injunction enjoining the landlord-tenant proceeding because Anand had no authority to cause Stony Brook Resources to commence the litigation against Stony Acquisitions and there is substantial common ownership between these various entities and that this dissolution action is the proper forum for resolving all the disputes among the partners of Stony Brook Resources. Soni alleges that several years ago, financial and management disputes developed among the partners of Stony Brook Resources and Anand sought to purchase the subject premises for his own use. Thereafter, in an apparent effort to resolve these disputes, the partners signed a document captioned "*Agreement and Memorandum of*

¹It appears the remaining 60% of Stony Brook Diagnostic is owned by various non-party limited partners.

Understanding” dated October 20, 2006. This document, signed by Soni (on behalf of Stony Brook Diagnostic), Wani and Anand, provided an agreement to sell the subject premises, authorized Anand to “take the lead and proceed to market and sell the building for maximum value for the partners” and further authorized Anand to take over management of the partnership. Additionally, the agreement provided that “All disputes, regarding leases, tenants and rental shall be mutually agreed upon and settled before the distribution of the sale proceeds to the partners.”

Plaintiffs assert that despite the aforementioned agreement, Anand has failed to take any steps to market and sell the subject premises, and further, has neglected his management duties by failing to cause Stony Brook Resources to pay partnership distributions. Soni states that commencing in 2007 he began requesting financial information and an explanation regarding the failure to pay distributions or market the subject premises, but that Anand did not respond to such requests. Soni states that he believed Anand wanted to remove Stony Acquisitions as a competitor in the market for providing radiological services and did not want Soni or any of his corporate entities to purchase the subject premises. Thus, Soni states, he caused Stony Acquisitions, the tenant, to withhold rent on the subject premises, until Stony Brook Resources, provided the requested information. At the time Stony Acquisitions ceased paying, the rent was \$19,155.08 per month; as a result of such actions, Anand caused Stony Brook Resources to commence the landlord-tenant proceeding.

Plaintiffs now move for a preliminary injunction enjoining and restraining Anand from prosecuting the landlord-tenant proceeding. Plaintiffs argue that the landlord-tenant proceeding is really just a small part of the larger dispute amongst the Stony Brook Resources’ partners and that the entire matter should be considered in the context of the instant dissolution action. Additionally, plaintiffs assert that Anand did not have authority from any of the corporate entities to commence litigation against Stony Acquisitions, but rather the October 20, 2006 agreement merely authorized Anand to manage the partnership while attempting to sell the subject premises. Plaintiffs assert they will likely succeed on the merits of their claim that Anand breached the October, 2006 agreement and breached his fiduciary duty and will be entitled to a judicial dissolution. Moreover, they argue irreparable harm if the preliminary injunction is not granted as Stony Acquisitions would be at risk of losing its leasehold interest in the subject premises and would not be able to litigate any of the claims against Anand in the District Court proceeding. Finally, plaintiffs argue that the equities favor granting the preliminary injunction as Stony Brook Diagnostics is merely seeking to resolve all disputes in the same forum.

Defendants oppose the motion for a preliminary injunction and submit an affidavit by Anand who states that he was authorized by the partnership agreement to commence the landlord-tenant proceeding. Specifically, he refers to Article 2.02 of the agreement which states that the partnership is “empowered

and authorized” to “bring and defend actions in law or in equity.” Anand denies the allegations that he is attempting to eliminate Soni as a competitor in the medical office buildings industry. Anand alleges that in September of 2007, he had requested financial information from Sonix, Inc., because that entity had been submitting rental payments on behalf of Stony Acquisitions, but that such information was not provided. He states that he requested such information to fulfill his duties as manager of the partnership pursuant to the October 2006 agreement, but that such information was never provided, despite requests from his counsel. In sum, Anand argues that the only issue in the landlord-tenant proceeding is the nonpayment of rent by Stony Acquisitions and further that the allegation regarding the failure of Stony Brook Resources to pay distributions is a red herring, as that is a separate entity. Stony Acquisitions ceased paying rent on or about December of 2007 and, according to Anand, had not been paying the full amount prior to that time. Thus, Anand caused a three-day rental demand letter on May 12, 2008 and when the matter was not resolved, commenced the landlord-tenant proceeding on or about June 25, 2008.

Defendants additionally argue that the instant dissolution action should not be “consolidated” with the landlord-tenant proceeding and that Soni’s ownership interest in all the corporate entities does not establish a sufficient connection to warrant such consolidation. Additionally, defendants argue that the landlord-tenant proceeding should not be removed from the District Court.

In reply, plaintiffs argue they are not seeking consolidation of the two proceedings, but rather only that the landlord-tenant proceeding be stayed pending resolution of the dissolution action. Additionally, plaintiffs assert that the October 20, 2006 agreement between the Stony Brook Resources’ partners specifically contemplated and provided that all disputes regarding the leases, tenants and rental would be settled before distribution. Additionally, plaintiffs assert that since there is a significant overlap between the parties in the landlord-tenant and this action it would be more appropriate to resolve the dissolution action first. Finally, defendants assert that the Stony Brook Resources’ partners never authorized Anand to institute a landlord-tenant proceeding, but rather, the October 20, 2006 agreement merely authorized him to market and sell the subject premises for the benefit of the partnership. Instead, Anand has failed to take any steps to market and sell the property and commenced the non-payment proceeding in District Court. Thus, plaintiffs urge the Court to grant the motion for a preliminary injunction, staying the landlord-tenant proceeding pending the determination of the within dissolution action.

The law is well settled that to obtain preliminary injunctive relief, the moving party must demonstrate “(1) a likelihood of success on the merits, (2) an irreparable injury absent the granting of injunctive relief, and (3) a balancing of the equities in its favor.” *Automated Waste Disposal,*


Inc., v. Mid-Hudson Waste, Inc., 50 A.D.3d 1072, 857 N.Y.S.2d 648 (2d Dept. 2008)(internal citations omitted). The purpose of a preliminary injunction is to maintain the status quo *pendente lite*, and even when the facts are in dispute, a court may find a likelihood of success on the merits; conclusive proof is not required. *Ruiz v. Meloney*, 26 A.D.3d 485, 810 N.Y.S.2d 216 (2d Dept. 2006). In the case at bar, the Court agrees that injunctive relief is warranted at this stage, enjoining and restraining third-party defendants from proceeding with the summary eviction proceeding pending in Fifth District Court. Plaintiffs have demonstrated the need to preserve the status quo and maintain the sole asset, to wit, the medical office building, located at the subject premises, pending the final resolution of this case. It is obvious that the landlord-tenant proceeding is inextricably linked to the proceedings before this Court and the relationships between the several entities. Moreover, despite the factual disputes, the Court finds that plaintiff has demonstrated a likelihood of success on the merits of this action for dissolution of the partnership and their claims that Anand acted outside the scope of his authority in bringing the landlord-tenant proceeding, especially considering the language of the October 20, 2006 agreement that all issues regarding leases would be settled upon the distribution of proceeds of sale of the subject premises. The Court further finds that since, at this juncture, plaintiffs are only seeking a stay of the District Court proceeding, the equities are in their favor. Thus, based on the foregoing, the temporary restraining Order is continued and during the pendency of this action, defendants are enjoined and restrained from proceeding with the action pending in Sixth District Court, captioned, *Stony Brook Resources v. Stony Acquisitions, Inc., (Index No. BRLT 2247-2008)*. Such preliminary injunction is conditioned upon plaintiffs' continued compliance with the terms of the October 14, 2008 Order requiring the payment of rent to Stony Brook Resources in an amount of not less than \$10,000.00 per month.

Counsel are reminded that a status conference is scheduled for December 19, 2008 at 9:30 a.m. before the undersigned.

Counsel for plaintiffs shall serve a copy of this Order upon counsel for all other parties as well as the Clerk of the Sixth District Court.

This constitutes the **DECISION** and **ORDER** of the Court.

Dated: December 8, 2008
Riverhead, New York


EMILY PINES
J. S. C.