

**Raisman v Treglia**

2010 NY Slip Op 30552(U)

March 11, 2010

Supreme Court, Suffolk County

Docket Number: 40717/2008

Judge: Joseph Farneti

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SUPREME COURT - STATE OF NEW YORK  
I.A.S. TERM, PART 37 - SUFFOLK COUNTY

## PRESENT:

**HON. JOSEPH FARNETI**  
**Acting Justice Supreme Court**

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 MYRON RAISMAN,

Petitioner,

-against-

ALDO TREGLIA and MARILYN HEISS,

Respondents,

-and-

 RAISMAN, MAGEN, ZICHT ASSOCIATES,  
 C.P.A.'s, P.C.,

Nominal Respondent.

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ORIG. RETURN DATE: DECEMBER 8, 2008  
 FINAL SUBMISSION DATE: MAY 7, 2009  
 MTN. SEQ. #: 001  
 MOTION: MOT D

ORIG. RETURN DATE: JANUARY 23, 2009  
 FINAL SUBMISSION DATE: MAY 7, 2009  
 MTN. SEQ. #: 002  
 MOTION: MG

**PLTF'S/PET'S ATTORNEY:**  
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Upon the following papers numbered 1 to 10, read on these motions TO COMPEL ARBITRATION, FOR A PRELIMINARY INJUNCTION AND TO SUPPLEMENT PAPERS.  
 Order to Show Cause and supporting papers 1-3; Affirmation in Opposition and supporting papers 4, 5; Notice of Motion and supporting papers 6-8; Replying Affidavit and supporting papers 9, 10; it is,

**ORDERED** that this motion by petitioner MYRON RAISMAN ("petitioner") for an Order:

(1) pursuant to the parties' Shareholders' Agreement dated December 3, 1997 ("Shareholders' Agreement"), compelling respondents ALDO TREGLIA and MARILYN HEISS (collectively "respondents") to submit to mediation, or in the alternative, pursuant to CPLR 7503 (a), compelling respondents to submit to arbitration under the terms of the Shareholders' Agreement;

(2) pursuant to CPLR 7502 (c), 6301, 6311 and 6313, granting a temporary restraining Order and preliminary injunction restraining and enjoining respondents, their attorneys, agents, servants and employees, and all of those acting in concert with them, or with the knowledge of the preliminary injunction, until such time as a mediation and/or arbitration decision is rendered and completed in accordance with the Shareholder's Agreement, from:

- a. Engaging in any conduct which interferes with the day to day operations of nominal respondent RAISMAN, MAGEN, ZICHT ASSOCIATES, C.P.A.'s, P.C. ("RMZ") and its business;
- b. Denying access to petitioner or his nominee to the premises occupied by RMZ and known as 996 West Jericho Turnpike, Smithtown, New York, and/or to any of the clients or assets of RMZ;
- c. Drawing, paying or incurring any expense of any kind other than in the regular and ordinary course of the business of RMZ from RMZ, without prior approval of petitioner or without prior Order of this Court;
- d. Drawing or paying any salary or income from any of RMZ's businesses to respondents, until further Order of this Court granted after motion on notice to petitioner;
- e. Transacting any business whatsoever on behalf of or in the name of RMZ, other than the regular and ordinary course of business, without prior Order of this Court granted after motion on notice to petitioner;
- f. Transferring, pledging, hypothecating, encumbering, secreting, converting, taking, depleting, wasting, injuring or destroying the clients, client base, assets and/or property or in any other manner disposing of any of the same of RMZ, or aiding, abetting, acquiescing or assisting in the same without prior Order of this Court granted after motion on notice to petitioner;
- g. Removing, altering, destroying, secreting, fabricating, copying or tampering with any of books, records, computer generated

Quick Books or computer-generated information of RMZ, without prior Order of this Court granted after motion on notice to petitioner;

- h. Communicating with, or making disparaging remarks to, any of the clients, vendors, creditors or employees of RMZ, without prior Order of this Court granted after motion on notice to petitioner;
- i. Communicating the subject matter of the dispute between the parties with any of the employees and/or soliciting any employee of RMZ, without prior Order of this Court granted after motion on notice to petitioner; and
- j. Paying or incurring any expenses from RMZ's funds for payment to any attorney or other professional for representation of the respondents in this proceeding or mediation and/or arbitration proceedings which may be required by this Court or by the terms of the Shareholders' Agreement, without prior Order of this Court granted after motion on notice to petitioner;

(3) pursuant to CPLR 6301, 6311 and 6313, authorizing and empowering petitioner and/or his designated agent to continue to carry on the business of RMZ until a final decision is rendered in the mediation and/or arbitration proceeding pursuant to the terms of the Shareholders' Agreement, without prior Order of this Court granted after motion on notice to petitioner; provided, however, that no indebtedness shall be incurred on behalf of RMZ, except that which is normally incurred in the regular and ordinary course of business of RMZ; and

(4) directing respondents, their agents, servants and all those acting in concert with them, to immediately surrender:

- (a) all keys to the premises; and
- (b) assets and books, records and/or computer generated information and documentation of RMZ presently in their possession,

is hereby **GRANTED** to the extent provided hereinafter; and it is further

**ORDERED** that this motion by respondents for an Order: (1) pursuant to CPLR 405, permitting respondents to supplement their opposition papers to correct defects, including adding a verification and providing the corresponding supporting affidavits; and (2) granting leave to provide a sur-reply to respond to new issues raised by petitioner's counsel, is hereby **GRANTED** to the extent provided hereinafter.

By Order dated November 24, 2008 (Baisley, J.), the Court granted the following relief, which was originally proposed by petitioner in the form of a stipulation of the parties:

1. The Petitioner's Order to Show Cause and Petition compelling arbitration and requesting a temporary injunction and other affirmative relief is granted to the extent that the parties shall file their respective demands for arbitration to the American Arbitration Association within two (2) weeks from the date of this "SO-ORDERED" stipulation and each party to the dispute, other than the nominal respondent, **Raisman, Magen, Zicht Associates, C.P.A.'s, P.C.**, shall be responsible for the payment of all fees, including their own attorneys' fees, disbursements and other expenses attributable to the costs of arbitration as set forth in the Shareholders Agreement, page 15, Article 26 et. seq.

2. Each party at all reasonable business hours shall have full access to all of the books, records, client files and computer documents of the professional corporation upon prior notice to the other parties.

3. No party, or his/her nominee, agent, servant or employee can remove any file or document contained in a file from the office of the professional corporation, other than in the ordinary course of business.

4. The Petitioner shall upon signing this stipulation transfer back to the operating account of the professional corporation, \$30,000.00 less his salary which was not paid by the Respondents.

5. Petitioner's salary of \$1,600.00 per week shall be immediately reinstated and paid weekly.

6. Petitioner will not prepare tax returns for the professional corporation until resolution of this dispute by arbitration or further order of this court.

7. The law firm of Raisman & Raisman shall bring current its rent due to the nominal respondent under the terms of the oral sub lease between the said law firm and the nominal respondent

(Order, Baisley, J., November 24, 2008).

This proceeding was commenced by petitioner to protect his interest as a shareholder in RMZ, a professional corporation whose shareholders are certified public accountants. Petitioner formed the corporation in 1991, and has been a member since that time. Petitioner alleges that respondents, without authority and in violation of the Shareholders' Agreement, attempted to divest petitioner of his ownership of fifty-eight (58%) percent of RMZ, and to increase their ownership to thirty-three and one third (33 $\frac{1}{3}$ %) each, in order to control RMZ and force petitioner out of RMZ. Petitioner further alleges that respondents have taken control of the books, records and investment accounts of RMZ, to the detriment of petitioner. Petitioner seeks compensatory damages in the amount of \$1 million.

Petitioner informs the Court that on or about December 3, 1997, respondents entered into the aforementioned Shareholders' Agreement with the four original shareholders, one of which is the petitioner herein. Pursuant to the Shareholders' Agreement, petitioner was given a thirty-three and one-half (33 $\frac{1}{2}$ %) percent ownership, while respondents were given a five (5%) percent ownership. Subsequent thereto, three of the four original shareholders either retired or died. Petitioner contends, upon information and belief, that the common shares of the retiring or deceased shareholders were purchased by RMZ pursuant to the terms of the Shareholders' Agreement. Thereafter, petitioner alleges that the percentage of ownership of RMZ was redistributed among petitioner and respondents, the only remaining shareholders, such that petitioner's ownership interest increased from thirty-three and one-half (33 $\frac{1}{2}$ %) percent to fifty-eight (58%) percent, respondent TREGLIA's ownership interest increased from five (5%) percent to twenty-two (22%) percent, and respondent HEISS' ownership interest increased from five (5%) percent to twenty (20%) percent.

Petitioner claims that commencing in or about January of 2007, petitioner became aware that respondents were violating the covenant of good faith and fair dealing with respect to petitioner and RMZ. Specifically, petitioner claims that on or about June 23, 2008, respondents, without petitioner's knowledge or consent, filed a fraudulent corporate tax return for tax year 2007 on behalf of RMZ, indicating that petitioner and respondents each had a one-third ( $\frac{1}{3}$ ) interest in RMZ. Further, petitioner alleges that since May of 2008, respondents have acted as the majority shareholders and officers and directors, notwithstanding the fact that petitioner is president of RMZ, and have misappropriated corporate funds for their own personal benefit.

Moreover, petitioner alleges that respondent TREGLIA engaged in a sexual affair with an employee of RMZ; fathered a child out of wedlock with this employee; supported the child with funds belonging to RMZ; and conspired with respondent HEISS and others to settle a potential lawsuit by the employee by paying her an "exorbitant settlement amount" from the funds of RMZ, all without the knowledge or consent of petitioner. Finally, petitioner claims that on or about August 18, 2008, respondents locked petitioner out of RMZ's offices, prevented him from accessing the books and records of RMZ, and withheld petitioner's salary. Based upon the foregoing, petitioner filed the instant application for the relief described hereinabove.

Respondents have filed opposition to petitioner's motion disputing many of the allegations by petitioner, as well as a motion seeking leave to supplement their opposition papers to correct defects, and to provide a sur-reply to respond to new issues allegedly raised by petitioner's reply. Respondents argue that petitioner's reply raised new issues, including a request that respondents' counsel be disqualified herein. Respondents' motion is **GRANTED** to the extent that the Court has reviewed the additional submissions by respondents; however, the Court finds that any affirmative relief sought by petitioner in his reply must be **DENIED**, as petitioner failed to seek such relief in his original moving papers (see CPLR 2214).

As discussed hereinabove, the Order of November 24, 2008 (Baisley, J.) recites that it granted petitioner's instant motion by directing, among other things, that the parties file demands for arbitration with the American Arbitration Association within two (2) weeks from the date thereof; that each party at all reasonable business hours have full access to all of the books, records,

client files and computer documents of RMZ upon prior notice to the other parties; that petitioner shall transfer back to the operating account of RMZ \$30,000.00 less his salary; and that petitioner's salary of \$1,600.00 per week be immediately reinstated and paid weekly. The Court is unaware of the status of any arbitration had by the parties, or any resolution reached in that forum. Accordingly, petitioner's motion is **GRANTED** to the extent that the Order of November 24, 2008 (Baisley, J.) shall remain in full force and effect pending further Order of this Court.

The foregoing constitutes the decision and Order of the Court.

Dated: March 11, 2010

  
HON. JOSEPH FARNETI  
Acting Justice Supreme Court