

People v Coalition Against Breast Cancer, Inc.

2011 NY Slip Op 32978(U)

November 1, 2011

Supreme Court, Suffolk County

Docket Number: 20432-2011

Judge: Emily Pines

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SHORT FORM ORDER

INDEX NUMBER: 20432-2011

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

COPY

Present: HON. EMILY PINES
J. S. C.

Original Motion Date: 07-27-2011
Motion Submit Date: 08-23-2011
Motion Sequence No.: 001 MOTD

[] FINAL
[x] NON FINAL

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**THE PEOPLE OF THE STATE OF NEW YORK, by
ERIC T. SCHNEIDERMAN, Attorney General of
the State of New York,**

Plaintiff,

-against-

**COALITION AGAINST BREST CANCER, INC.,
ANDREW SMITH, DEBRA KOPPELMAN,
PATRICIA SCOTT, CAMPAIGN CENTER, INC., and
GARRETT MORGAN,**

Defendants.

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This action was commenced by the Attorney General of the State of New York on behalf of the People of the State of New York ("Plaintiff") against Coalition Against Breast Cancer, Inc. ("CABC"), a New York not-for-profit corporation, CABC's officers and directors, Andrew Smith ("Smith"), Debra Koppelman ("Koppelman"), and Patricia Scott ("Scott"), Campaign Center, Inc. ("Campaign Center"), a New York corporation, and Garrett Morgan ("Morgan"), Campaign Center's sole principal and officer.

Succinctly stated, Plaintiff alleges, among other things, that CABC is a sham charity that wasted and misused millions of charitable dollars and diverted millions of dollars raised in the name of breast

cancer to its officers, directors and fundraisers. The Complaint alleges, among other things, that “Smith, Koppelman and Scott are liable for breaches of fiduciary duty, self-dealing, and failure to oversee CABC’s charitable assets, in violation of the Not-for-Profit Corporation Law and the Estates, Powers and Trusts Law” and “for false and misleading reports filed by CABC with the Attorney General, in violation of the Executive Law.” With regard to Campaign Center and Morgan, the Complaint alleges, among other things, that they “are liable for violations of the Executive Law’s prohibition on illegal acts and schemes to defraud in connection with charitable fundraising.” Additionally, the Complaint alleges that “[a]ll defendants are liable under the General Business Law for engaging in a pattern of deceptive acts and practices and for submitting false reports to the Attorney General by failing to disclose all of Campaign Center’s arrangements and contracts with CABC.”

The relief requested in the Complaint includes: (a) a permanent injunction prohibiting Defendants from soliciting or collecting charitable contributions from the public, (b) a permanent injunction prohibiting Defendants from accessing, using, or distributing CABC funds or other assets; (c) rescinding a certain securities transaction involving Empire National Bank stock, ordering Smith to refund the \$20,000 purchase price paid by CABC for the stock, plus interest, and returning the stock to Smith; (d) requiring Smith to repay unemployment benefits he improperly received, plus interest; (e) removing Smith, Koppelman and Scott as officers and directors of CABC; (f) a permanent injunction prohibiting Smith, Koppelman and Scott from serving as officers, directors, trustees or equivalent positions of CABC or any other not-for-profit corporation; (g) money damages against Smith, Koppelman and Scott for their waste and misappropriation of CABC’s charitable assets; (h) restitution and damages against Defendants; (i) civil penalties against each of the Defendants for violations of General Business Law § 349; and (j) dissolution of CABC with transfer of its assets to charitable uses consistent with CABC’s stated mission.

Plaintiff now moves for a preliminary injunction:

- (1) enjoining all Defendants, or any other persons acting or claiming to act on behalf or in concert with any of them, and/or any of their directors, officers, principals, agents or employees, from soliciting or collecting charitable contributions from the public, by any means, including oral, written, telephonic, or internet solicitations;
- (2) enjoining Defendants from entering into any agreement or arrangement with any individual or entity concerning the solicitation or collection of charitable contributions from the public, whether under a fundraising, consulting, broker, or other agreement or otherwise;
- (3) enjoining all Defendants, or any other persons acting or claiming to act on behalf or in concert with any of them, and/or any of their directors, officers,

principals, agents or employees, from spending, transferring, distributing, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, withdrawing, or otherwise disposing of any funds, property, accounts, contracts, shares of stock, or other assets, including real property, wherever located, that are owned, held or controlled in any way, in whole or in part, by or for the benefit of CABC, except that CABC may make disbursements, by check or wire transfer only, from its Empire National Bank checking account ending in 0769 for the limited purposes of paying duly documented mammogram expenses where CABC has already made a duly documented written promise of such payment and the payment is made directly to a provider of mammography services rather than an individual, CABC has provided written notice to the Attorney General and the Attorney General has not objected to the making of such grant;

- (4) enjoining Defendants Campaign Center and Morgan and anyone acting or claiming to act on their behalf or in concert with them from spending, transferring, distributing, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, withdrawing, or otherwise disposing of any funds raised for or on behalf of CABC, including, without limitation, any amounts claimed to be due and owing to Campaign Center under any fundraising, broker or other agreement;
- (5) enjoining Defendant CABC from contributing to, and Defendants Smith, Koppelman and Scott and anyone acting on their behalf from spending, transferring, distributing, converting, encumbering, concealing, dissipating, disbursing, assigning, withdrawing, or otherwise disposing of any funds in any retirement or deferred compensation account that has been funded in whole or in part by CABC;
- (6) enjoining all Defendants, or anyone acting or claiming to act on behalf of or in concert with any of them, and/or any of their directors, officers, principals, agents, or employees, from destroying, deleting, or altering any records—paper or electronic, business or personal—concerning the subject matter of this action, the solicitation, collection or receipt of any charitable contributions from the public, or any assets of Defendants;
- (7) directing CABC, within two days of the date of the Court's order, to provide the Attorney General with a list of all professional fundraisers who have been fundraising for CABC, including the full business name, contact person, address, telephone number and fax number of each such fundraiser and copies of all fundraising contracts with those fundraisers;
- (8) directing CABC, within two days of the date of the Court's order, to provide a list to the Attorney General of all banks, credit card companies, and other institutions where CABC maintains an account or holds assets, including the

full business name, address, telephone number, and account number(s) for each institution.

Plaintiff argues that through its submission of an attorney's affirmation with more than 50 exhibits, including sworn testimony of the Defendants, as well as numerous affidavits with exhibits, it has demonstrated a likelihood of success on the merits of its claims, that irreparable harm will occur absent injunctive relief, and that a balancing of the equities weighs in favor of injunctive relief. The Plaintiff contends, among other things, that a preliminary injunction is necessary "to protect the public from further injury and to put a stop to the misappropriation of CABC's charitable assets."

In opposition to Plaintiff's motion, CABC, Smith, Koppelman and Scott dispute many of Plaintiff's factual and legal assertions. However, these defendants through their attorney's affirmation, state that CABC has already suspended all of its operations and is in the process of winding up its affairs. Additionally, Koppelman provides an affidavit stating, among other things, that CABC is not operational, that it has no existing contracts with fundraisers, that it does not intend to fundraise, that it has offered to divest all of the funds it has remaining, that its officers who received retirement benefits have offered to divest those payments, and that no funds are being disbursed for program services. CABC, Smith, Koppelman, and Scott state that they will agree to the following: (1) not to solicit or collect charitable contributions until further Order of the Court, (2) not to enter into any agreement or arrangement with any individual or entity concerning the solicitation or collection of charitable contributions from the public, whether under a fundraising, consulting, broker, or other agreement or otherwise, until further Order of the Court, (3) not to transfer, expend, or otherwise encumber any existing resources of CABC, until further Order of the Court, (4) not to contribute or transfer any resources to themselves and/or their retirement accounts, (5) not to destroy any records of CABC, (6) that all professional fundraisers have been terminated by CABC and that there are no current contracts with any fundraising service provider, (7) to provide a list to the Attorney General of all banks, credit card companies, and other institutions where CABC maintains an account or holds assets, including the full business name, address, telephone number, and account number(s) for each institution.

Defendants Campaign Center and Morgan oppose Plaintiff's motion for a preliminary injunction, primarily because Plaintiff seeks to enjoin Campaign Center and Morgan from *all* solicitations or collection of charitable contributions and from entering into *any* agreements regarding the solicitation or collection of charitable contributions, not just those on behalf of CABC. Morgan states, among other things, that Campaign Center ceased all fundraising efforts on behalf of CABC in or about January 2011 and that it formally terminated its fundraising contract with CABC in June 2011. Morgan points out that despite that fact that Plaintiff has not made any allegation of impropriety by Campaign Center in conducting fundraising activities for any of its other clients, Plaintiff seeks a broad injunction which

would preclude Campaign Center from engaging in any fundraising activities and effectively put it out of business, resulting in the unemployment of approximately 50 people. Morgan also refutes many of the factual assertions made by Plaintiff.

“To establish entitlement to a preliminary injunction, a movant must demonstrate: (1) a likelihood of success on the merits; (2) irreparable harm in the absence of an injunction; and (3) a balance of the equities in favor of granting the injunction” (*Copart of Connecticut, Inc. v. Long Island Auto Realty, LLC*, 42 AD3d 420, 421 [2d Dept 2007] citing *Aetna Ins. Co. v. Capasso*, 75 NY2d 860, 862 [1990]; *Stockley v. Gorelik*, 24 AD3d 535, 536 [2d Dept 2005]). The party seeking a preliminary injunction has the burden of demonstrating the foregoing by clear and convincing evidence (*Temple-Ashram v. Satyanandji*, 84 AD3d 1158 [2d Dept 2011]).

In light of the concession by Defendants CABC, Smith, Koppelman, and Scott to most of the relief requested by Plaintiff in its motion, as well as Morgan’s representation that Campaign Center ceased all fundraising efforts on behalf of CABC in or about January 2011 and that it formally terminated its fundraising contract with CABC in June 2011, it is hereby

ORDERED that pending further Order of the Court:

1. Defendants CABC, Smith, Koppelman and Scott, and any other persons acting or claiming to act on their behalf or in concert with them, and/or any of their directors, officers, principals, agents or employees, are enjoined from soliciting or collecting charitable contributions from the public, by any means, including oral, written, telephonic, or internet solicitations;
2. Defendants Campaign Center and Morgan, and any other persons acting or claiming to act on their behalf or in concert with them, and/or any of their directors, officers, principals, agents or employees, are enjoined from soliciting or collecting charitable contributions from the public on behalf of CABC, by any means, including oral, written, telephonic, or internet solicitations;
3. Defendants CABC, Smith, Koppelman and Scott are enjoined from entering into any agreement or arrangement with any individual or entity concerning the solicitation or collection of charitable contributions from the public, whether under a fundraising, consulting, broker, or other agreement or otherwise;
4. Defendants Campaign Center and Morgan are enjoined from entering into any agreement or arrangement with any individual or entity concerning the solicitation or collection of charitable contributions from the public, whether

under a fundraising, consulting, broker, or other agreement or otherwise, on behalf of CABC;

5. Defendants, or any other persons acting or claiming to act on behalf or in concert with any of them, and/or any of their directors, officers, principals, agents or employees, from spending, transferring, distributing, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, withdrawing, or otherwise disposing of any funds, property, accounts, contracts, shares of stock, or other assets, including real property, wherever located, that are owned, held or controlled in any way, in whole or in part, by or for the benefit of CABC, except that CABC may make disbursements, by check or wire transfer only, from its Empire National Bank checking account ending in 0769 for the limited purposes of paying duly documented mammogram expenses where CABC has already made a duly documented written promise of such payment and the payment is made directly to a provider of mammography services rather than an individual, CABC has provided written notice to the Attorney General and the Attorney General has not objected to the making of such grant;
6. Defendants Campaign Center and Morgan and anyone acting or claiming to act on their behalf or in concert with them are enjoined from spending, transferring, distributing, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, withdrawing, or otherwise disposing of any funds raised for or on behalf of CABC, including, without limitation, any amounts claimed to be due and owing to Campaign Center under any fundraising, broker or other agreement with CABC;
7. Defendant CABC is enjoined from contributing to, and Defendants Smith, Koppelman and Scott, and anyone acting on their behalf, are enjoined from spending transferring, distributing, converting, encumbering, concealing, dissipating, disbursing, assigning, withdrawing, or otherwise disposing of any funds in any retirement or deferred compensation account that has been funded in whole or in part by CABC;
8. Defendants, or anyone acting or claiming to act on behalf of or in concert with any of them, and/or any of their directors, officers, principals, agents, or employees, from destroying, deleting, or altering any records—paper or electronic, business or personal—concerning the solicitation, collection or receipt of any charitable contributions from the public to CABC, or any assets of CABC;

and it is further

ORDERED that within 14 days of service of this Order upon CABC, CABC shall:

1. Provide a list to the Attorney General of all professional fundraisers who have been fundraising for CABC, including, if known, the full business name, contact person, address, telephone number and fax number of each such fundraiser, and copies of all fundraising contracts with those fundraisers;
2. Provide a list to the Attorney General of all banks, credit card companies, and other institutions where CABC maintains an account or holds assets, including, if known, the full business name, address, telephone number, and account number(s) for each institution.

To the extent that Plaintiff's motion seeks a more expansive preliminary injunction against Campaign Center and Morgan, in light of the sharply conflicting assertions of the parties, a conference is scheduled before the Court on November 17, 2011, at 10:00 a.m., to discuss scheduling a hearing on this branch of Plaintiff's motion for a preliminary injunction.

Dated: November 1, 2011
Riverhead, New York



EMILY PINES
J. S. C.

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