

Sprung v Sprung

2012 NY Slip Op 30453(U)

February 7, 2012

Sup Ct, Nassau County

Docket Number: 13684-11

Judge: Timothy S. Driscoll

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**SUPREME COURT-STATE OF NEW YORK
SHORT FORM ORDER**

Present:

HON. TIMOTHY S. DRISCOLL
Justice Supreme Court

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**HERMAN SPRUNG, SPRUNG REALTY
CORPORATION, GARSTEVE REALTY
CORPORATION, SUFFOLK GRANITE
MANUFACTURING CORPORATION, and BELLA
REALTY ASSOCIATES, LLC,**

**TRIAL/IAS PART: 16
NASSAU COUNTY**

**Index No: 13684-11
Motion Seq. No. 1
Submission Date: 1/23/12**

Plaintiffs,

- against -

ADAM SPRUNG,

Defendant.

-----X

The following papers have been read on this Order to Show Cause

- Order to Show Cause, Affidavit in Support and Exhibits.....X**
- Memorandum of Law in Support.....X**
- Affidavit in Opposition.....X**
- Memorandum of Law in Opposition.....X**

This matter is before the Court for decision on the Order to Show Cause filed by Plaintiffs Herman Sprung (“Herman”), Sprung Realty Corporation (“Sprung Realty”), Garsteve Realty Corporation (“Garsteve”), Suffolk Granite Manufacturing Corporation (“Suffolk Granite”) and Bella Realty Associate, LLC (“Bella”) (collectively “Plaintiffs”) on September 22, 2011. The matter was the subject of oral argument before the Court on October 20, 2011. Pursuant to an Order of the Court dated November 14, 2011 (“Prior Order”), the Court directed that this matter would be the subject of additional argument before the Court on the limited issue of the validity of the New York and Florida Powers of Attorney on which

Plaintiffs rely in support of their claim that Steven and Pearl Sprung are currently in charge of the Plaintiff companies. The Court conducted that additional oral argument and the motion was submitted on January 23, 2012. In the Prior Order, the Court also directed that, pending further court order, the stipulation executed by the parties and so-ordered by the Court on September 22, 2011 (“Stipulation”) shall remain in effect.

For the reasons set forth below, the Court denies Plaintiffs’ Order to Show Cause in its entirety and vacates the Stipulation. The Court, however, hereby directs all parties not to discard, destroy; conceal or remove any documents, electronic or otherwise, or other business materials belonging to the Businesses as that term is defined in the Stipulation, pending further court order.

BACKGROUND

A. Relief Sought

Plaintiffs move for an Order, pursuant to CPLR § 6311, 1) enjoining Defendant Adam Spring (“Adam” or “Defendant”), directly or indirectly, from a) preventing or interfering with Steven Sprung (“Steven”) and Pearl Sprung’s (“Pearl’s”) duties and rights as the officers and directors of Garsteve, Suffolk Granite, and Steven as the manager of Bella (collectively “Businesses”); b) holding himself out as authorized to perform any services or act in any way on behalf of the Businesses; c) interfering with the directive of the Board of Directors of Sprung Realty, Garsteve, and Suffolk Granite or the manager of Bella; d) interfering with Steven and Pearl’s access to the Businesses’ books and records, valuable papers and other materials; e) continuing as a signatory on the bank accounts of the Businesses; f) having any further involvement in the operation of the Businesses and any further access to the corporate documents, finances, books and records and corporate meetings of the Businesses; g) discarding, destroying, concealing or removing, any documents, electronic data, information and other material taken, gathered, obtained or misappropriated from the Businesses; and 2) directing Defendant to turn over to the Plaintiffs, by and through Steven, all originals and copies of the Businesses’ customer information and lists, records, computers, bank statements, books, contracts, agreements, and other documents and data pertaining to the Businesses.

Defendant opposes Plaintiffs’ application.

On September 22, 2011, the Court ordered that, pending the hearing and determination of

Plaintiffs' Order to Show Cause, and until further order of the Court, the parties shall comply with the Stipulation. The Stipulation provides, *inter alia*, that Defendant 1) will not hold himself out as authorized to perform any services or act in any way on behalf of the Businesses, except that Defendant can, on behalf of Suffolk Granite, pay employees, pay vendors, and place and fill orders in the normal course of business; 2) will not write any checks on behalf of the Businesses to himself or any of his agents; 3) will forward to Steven and Pearl, on a daily basis, any checks to be written on behalf of the Businesses for Steven or Pearl's written pre-approval which shall not be unreasonably withheld, except as provided in paragraph 1, and checks on behalf of Suffolk Granite shall be provided weekly to Steven and Pearl; and 4) will not conduct any business activities on behalf of the Businesses outside of the normal course of business. The Stipulation also obligates Defendant to provide certain records, not to discard or destroy certain records belonging to the Businesses, and not to open or close any bank accounts established in the name of the Businesses.

B. The Parties' History

The parties' history, including the allegations in the Complaint and the substance of the affidavits in opposition and support, the parties' positions and relevant legal principles are set forth in detail in the Prior Order. The Court incorporates the Prior Order herein by reference as if set forth in full.

C. The Parties' Positions

The Court incorporates the Prior Order by reference.

RULING OF THE COURT

A. Preliminary Injunction Standards

A preliminary injunction is a drastic remedy and will only be granted if the movant establishes a clear right to it under the law and upon the relevant facts set forth in the moving papers. *William M. Blake Agency, Inc. v. Leon*, 283 A.D.2d 423, 424 (2d Dept. 2001); *Peterson v. Corbin*, 275 A.D.2d 35, 36 (2d Dept. 2000). Injunctive relief will lie where a movant demonstrates a likelihood of success on the merits, a danger of irreparable harm unless the injunction is granted and a balance of the equities in his or her favor. *Aetna Ins. Co. v. Capasso*, 75 N.Y.2d 860 (1990); *W.T. Grant Co. v. Srogi*, 52 N.Y.2d 496, 517 (1981); *Merscorp, Inc. v.*

[* 4]
Romaine, 295 A.D.2d 431 (2d Dept. 2002); *Neos v. Lacey*, 291 A.D.2d 434 (2d Dept. 2002).

The decision whether to grant a preliminary injunction rests in the sound discretion of the Supreme Court. *Doe v. Axelrod*, 73 N.Y.2d 748, 750 (1988); *Automated Waste Disposal, Inc. v. Mid-Hudson Waste, Inc.*, 50 A.D.3d 1073 (2d Dept. 2008); *City of Long Beach v. Sterling American Capital, LLC*, 40 A.D.3d 902, 903 (2d Dept. 2007); *Ruiz v. Meloney*, 26 A.D.3d 485 (2d Dept. 2006).

Proof of a likelihood of success on the merits requires the movant to demonstrate a clear right to relief which is plain from the undisputed facts. *Related Properties, Inc. v Town Bd. of Town/Village of Harrison*, 22 A.D.3d 587 (2d Dept. 2005); *Abinanti v Pascale*, 41 A.D.3d 395, 396 (2d Dept. 2007); *Gagnon Bus Co., Inc. v Vallo Transp. Ltd.*, 13 A.D.3d 334, 335 (2d Dept. 2004). Thus, while the existence of issues of fact alone will not justify denial of a motion for a preliminary injunction, the motion should not be granted where there are issues that subvert the plaintiff's likelihood of success on the merits to such a degree that it cannot be said that the plaintiff established a clear right to relief. *Advanced Digital Sec. Solutions, Inc. v Samsung Techwin Co., Ltd.*, 53 A.D.3d 612 (2d Dept. 2008), quoting *Milbrandt & Co. v Griffin*, 1 A.D.3d 327, 328 (2d Dept. 2003); *see also* CPLR § 6312(c).

B. Application of these Principles to the Instant Action

The Court denies Plaintiffs' Order to Show Cause in its entirety based on the Court's conclusion that Plaintiffs have not demonstrated a likelihood of success on the merits. As outlined in the Prior Order, and amplified at the oral argument before the Court, there exist significant questions regarding the validity of the powers of attorney on which Plaintiffs rely in support of their contention that Steven and Pearl Sprung are currently in charge of the Plaintiff companies.

The Court denies Plaintiffs' Order to Show Cause in its entirety and vacates the Stipulation. The Court, however, hereby directs all parties not to discard, destroy, conceal or remove any documents, electronic or otherwise, or other business materials belonging to the Businesses as that term is defined in the Stipulation, pending further court order.

All matters not decided herein are hereby denied.

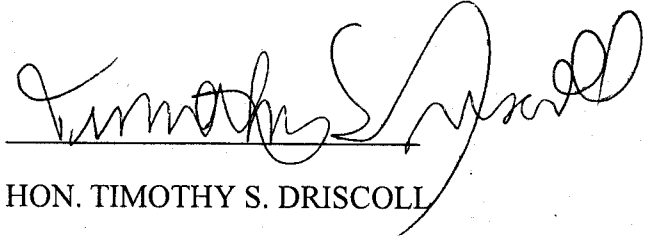
This constitutes the decision and order of the Court.

Counsel for the parties shall appear before the Court on February 27, 2012 at 9:30 a.m., rather than March 23, 2012 as previously directed.

ENTER

DATED: Mineola, NY

February 7, 2012



HON. TIMOTHY S. DRISCOLL

J.S.C.

ENTERED
FEB 16 2012
NASSAU COUNTY
COUNTY CLERK'S OFFICE