

**Sarwary v Haidary**

2015 NY Slip Op 30714(U)

April 22, 2015

Sup Ct, Queens County

Docket Number: 9309/14

Judge: Howard G. Lane

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE HOWARD G. LANE  
Justice

IAS PART 6

-----  
MASOOD SARWARY,  
  
Plaintiff,  
  
-against-  
  
WALI HAIDARY,  
  
Defendant.  
-----

Index No. 9309/14  
  
Motion  
Date September 5, 2014  
  
Motion  
Cal. No. 91  
  
Motion  
Sequence No. 1

	<u>Papers Numbered</u>
Order to Show Cause-Affidavits-Exhibits...	1-6
Opposition.....	7-8
Reply.....	9-10

Upon the foregoing papers and after a hearing, it is ordered that the Order to Show Cause by plaintiff, Masood Sarwary for an order, in essence seeking a preliminary injunction: (1) directing the return of the NYC Medallion, Taxi & Limousine Vehicle jointly owned by the parties to the plaintiff or in the alternative, (2) ordering the defendant to abide by the prior business relationship between the parties in which both parties would have equal access to drive the vehicle for 12-hour shifts is hereby decided as follows:

PROCEDURAL HISTORY:

This is an action for breach of contract. The complaint alleges that on May 15, 2012, the plaintiff, Masood Sarwary and defendant, Wali Haidary entered into a written partnership agreement for the purpose of ownership and management of a New York City Taxi Medallion, TC20 and joint ownership of a 2012 Toyota Highlander motor vehicle to which the taxi medallion was attached. Thereafter, in or about March 25, 2014, the parties entered into a second agreement in which defendant Wali Haidary agreed to sell his ½ interest in the Taxi medallion and motor vehicle to the plaintiff Masood Sarwary. The complaint alleges that defendant breached the agreement to sell his ½ interest, and took exclusive possession of the medallion and motor vehicle.

Plaintiff claims that defendant has breached the Partnership Agreement of May 15, 2012 and the Sales Contract of March 25, 2014. Defendant answered pro se, and interposed a general denial of the complaint and asserted a counterclaim alleging "plaintiff is responsible for all business setbacks, and damages from day one, on or about May 15, 2012. Plaintiff must compensate the defendant, and threat [sic] him as equal partner, It is to be fifty, fifty."

With the commencement of the action, plaintiff filed the instant Order to Show Cause seeking injunctive relief. After the initial return date of the motion, the court scheduled and conducted several conferences in an unsuccessful effort to assist the parties to resolve their differences amicably. Thereafter, pursuant to this court's order dated October 9, 2014, this matter was set down for a hearing to be held on January 27, 2015.

#### **FINDING OF FACTS:**

At the hearing the plaintiff testified that without his permission or consent, the defendant had taken exclusive possession of the taxi and medallion. He further testified that prior to defendant's action they had mutually agreed that they each would be entitled to alternating 12-hour shifts whereby they each had equal use and access of the taxi. He testified that defendant now has exclusive possession of the medallion and vehicle, and plaintiff is unable to have any access or use of the medallion and taxi to earn a living to support his family and himself. Moreover, plaintiff further asserts that New York City Taxi & Limousine Commission ("TLC") rules and regulations require that he drive a certain amount of shifts annually and that by defendant seizing exclusive possession of the vehicle he is unable to meet his shift requirements. Plaintiff further asserted that as a direct consequence of his loss of use of the taxi and medallion, he is unable to raise sufficient income to pay taxes, taxi insurance and loans associated with the purchase of the medallion. Plaintiff asserts that while the taxi was in the sole possession of defendant, he failed to bring the vehicle for a measured mile run, which he states is an annual requirement by the TLC.

Defendant testified and did not dispute that he had unilaterally taken possession of the taxi and medallion to the exclusion of the plaintiff. He admitted that he had possession of the taxi and medallion and that the taxi vehicle was parked in a parking lot at his residence. He testified that one of his reasons for taking exclusive possession of taxi and medallion is that plaintiff failed to pay his \$100,000.00 share of the purchase price of the taxi medallion.

## CONCLUSIONS OF LAW:

"The law is well settled that to prevail on an application for preliminary injunctive relief, the moving party must demonstrate "(1) a likelihood of ultimate success on the merits; (2) irreparable injury absent the granting of the preliminary injunction; and (3) that a balancing of equities favors [the movant's] position" (*Barone v. Frie*, 99 AD2d 129, 132 [2d Dept 1984] quoting from *Gambar Enterprises v. Kelly Servs.*, 69 AD2d 297, 306, 418 [2d Dept 1979]; *Aetna Ins. Co. v. Capasso*, 75 NY2d 860, 552 [1990]; and *W.T. Grant Co. v. Srogi*, 52 NY2d 496, 517, [1981]; see also, *Merscorp, Inc. v. Romaine*, 295 AD2d 431, 562 [2d Dept 2002]; and *Neos v. Lacey*, 291 AD2d 434 [2d Dept 2002]). The existence of factual disputes will not preclude the granting of temporary injunctive relief in order to maintain the status quo (*U.S. Reinsurance Corp. v. Humphreys*, 205 AD2d 187, 192, 618 [1st Dept 1994]); see also, CPLR 6312[c]; and *Albany Medical College v. Lobel*, 296 AD2d 701,702 [3d Dept 2002]). The determination as to whether to issue a preliminary injunction is a matter left to the sound discretion of the Court (see, *Doe v. Axelrod*, 73 NY2d 748, 750 [1988]). Preliminary injunctive relief is a drastic remedy which will not be granted 'unless a clear right thereto is established under the law and the undisputed facts upon the moving papers, and the burden of showing an undisputed right rests upon the movant (*First Nat. Bank of Downsville v. Highland Hardwoods*, 98 AD2d 924, 926, 471 NYS2d 360; accord, *607 Buegler v. Walsh*, 111 AD2d 206, *Orange County v. Lockey*, 111 AD2d 896, 897 [1985]; *William M. Blake Agency, Inc. v. Leon*, 283 AD2d 423, 424 [2d Dept 2001]; and *Peterson v. Corbin*, 275 AD2d 35, 36, [2d Dept 2000]). As the court stated in *Tucker v. Toia*, 54 AD2d 322, 325-326, however, "it is not for this court to determine finally the merits of an action upon a motion for preliminary injunction; rather, the purpose of the interlocutory relief is to preserve the status quo until a decision is reached on the merits (*Hoppman v. Riverview Equities Corp.*, 16 AD2d 631; *Weisner v. 791 Park Ave. Corp.*, 7 AD2d 75, 78-79; *Peekskill Coal & Fuel Oil Co. v. Martin*, 279 App Div 669, 670; *Swarts v. Board of Educ.*, 42 Misc 2d (761,) 764, *supra*; cf. *Walker Mem. Baptist Church v. Saunders*, 285 NY 462, 474)." The existence of factual disputes will not preclude the granting of temporary injunctive relief in order to maintain the status quo (*U.S. Reinsurance Corp. v. Humphreys*, 205 AD2d 187, 192, 618 [1st Dept 1994]); see also, CPLR 6312[c]; and *Albany Medical College v. Lobel*, 296 AD2d 701,702 [3d Dept 2002]).

The plaintiff moves by order to show cause, in essence seeking, inter alia, an order granting a preliminary injunction mandating that defendant or his agents and attorneys reinstate plaintiff's access, use and possession of the vehicle and taxi

medallion and restraining defendant or his agents and attorneys from prohibiting the plaintiff from using and/or taking possession of the vehicle and taxi medallion. The plaintiff submits in support of this application, inter alia, his affidavit, a copy of Business Certificate for Partners dated May 5, 2012, a copy of the Taxi Medallion Sales Agreement between Masood Sarwary and Wali Haidary dated March 25, 2014, and Promissory Note dated June 8, 2012 in the amount of \$568,000.00.

To prevail on an application for preliminary injunction relief the first prong of the test is a demonstration by plaintiff of a likelihood of success on the merits. Here, the plaintiff has asserted causes of action for breach of contract and specific performance compelling the defendant to transfer  $\frac{1}{2}$  interest in the vehicle and taxi medallion to the plaintiff pursuant to the terms of a sales agreement.

This court finds that plaintiff has made a sufficient showing of likelihood of success. As to likelihood of success, "(i)t is enough if the moving party makes a prima facie showing of his right to relief; the actual proving of his case should be left to the full hearing on the merits (citations omitted)" (*Tucker v. Toia, supra*, 54 AD2d at 326). Plaintiff has set forth facts supporting his claims. Accordingly, upon the record presented and in the exercise of its discretion, the court concludes that the plaintiff has demonstrated a reasonable likelihood of success on the merits.

With regard to the second prong of the test, the plaintiff has demonstrated that he is and will suffer an irreparable injury if the preliminary injunction is not granted. The plaintiff's allegations that he is subject to the loss of his property and livelihood as a taxi driver, constitutes an immediate injury which cannot be adequately compensated by monetary damages, and qualifies as an irreparable injury supporting an award of injunctive relief (see, *Jiggets v. Perales*, 202 AD2d 341 [1<sup>st</sup> Dept 1994]; *Housing Works, Inc. v. City of New York*, 255 AD2d 209 [1<sup>st</sup> Dept 1998]).

With regard to the third prong of the test, the plaintiff has demonstrated that equity is balanced in his favor. Where, as here, the plaintiff seeks to obtain by the issuance of this preliminary injunction the same injunctive relief sought in the complaint, a preliminary injunction will not be granted unless the plaintiff demonstrates, upon clear and undisputed facts, that such relief is imperative and because without it, a trial would be futile (*Xerox Corp. v. Neises*, 31 AD2d 195 [1968]). It is clear to this court that the parties have reached a deadlock in their relationship. This is a partnership that has gone bad and apparently cannot be fixed. It appears that the parties had also

come to the same conclusion when defendant allegedly entered into an agreement to sell his interests to the plaintiff. Although, at this time the court is not deciding the merits of either party's claims, the court believes that the status quo should be maintained pending final disposition of this case. Both parties should be able to continue to generate income from their taxi business so that they can both pay the expenses related to the taxi and medallion and provide financial support for their families and themselves. Defendant's undisputed action in seizing sole possession of the taxi and medallion has prevented the status quo from being maintained during the pendency of this action. The court, having weighed the drastic nature of the relief sought against the plaintiff's allegations of loss of his property and financial bankruptcy, finds that the plaintiff demonstrated the existence of the extraordinary circumstances which would tip the balance of equity in his favor (*Di Marzo v. Fast Trak Structures, Inc.*, 298 AD2d 909 [2002]; *Penfield v. New York*, 115 AD 502 [1<sup>st</sup> Dept 1906]).

Moreover, upon review of the parties' factual averments, the court concludes that the equities balance in favor of maintaining the *status quo* pending resolution of the underlying dispute. (*Merscorp, Inc. v. Romaine, supra*; *Alside Div. of Associated Materials Inc. v. Leclair*, 295 AD2d 873, 875 [3d Dept 2002]; and *State v. City of New York*, 275 AD2d 740, 713 NYS2d 360 [2d Dept 2000]). That is, the harm to be suffered by plaintiff by the loss of his property and means of livelihood outweighs the harm to defendant resulting from the granting of the requested injunctive relief.

Finally, CPLR 6312(b) directs the court to fix the undertaking in an amount that will compensate the defendants for damages incurred "by reason of the injunction", in the event it is determined that the plaintiff was not entitled to the injunction (*see, Margolies v. Encounter, Inc.*, 42 NY2d 475, [1977]; and *Schwartz v. Gruber*, 261 AD2d 526 [2nd Dept 1999]). The fixing of the amount of an undertaking is a matter which rests within the sound discretion of the court (*Clover Street Associates v. Nilsson*, 244 AD2d 312, 313 [2d Dept 1997]). Upon a review of the papers submitted on the motion by the parties, the court is unable to determine the amount of undertaking that will be reasonable and adequate under the circumstances presented. Accordingly, the court's determination on this issue is reserved pending compliance with the directives set forth hereinafter.

Accordingly, it is,

ORDERED, that the plaintiff's motion for a preliminary injunction is granted; and it is further

ORDERED, that plaintiff is entitled to possession of a motor vehicle indentified as a 2012 Toyota Higlander, VIN 5TDBK3EH0CS158875, yellow in color, bearing NY registration 7C20H and a New York Taxi and Limousine Commission Medallion bearing the number 7C20, that is wrongfully held be defendant Wali Haidary to the exclusion of plaintiff Masood Sarwary and plaintiff Masood Sarwary is granted an order of seizure for subject motor vehicle and medallion, and it is further

ORDERED, that the Sheriff of any county where the vehicle may be found is authorized to seize the vehicle and attached medallion from any public place, and upon seizure, the Sheriff shall hold the vehicle for a period of ten (10) days, and then turn it over to plaintiff Masood Sarwary, unless served with a notice of motion for impounding or a returning order, and it further

ORDERED, that defendant Wali Haidary, his agents and attorneys are prohibited and shall not remove a 2012 Toyota Highlander, VIN 5TDBK3EH0CS158875, yellow in color, bearing New York registration 7C20H and a New York Taxi and Limousine Commission Medallion bearing the number 7C20 from the state or otherwise from its location, and said motor vehicle and attached medallion shall not be transferred, sold pledged, assigned or otherwise disposed of, or permitted to become subject to security interest or lien until further order of this court, and it further

ORDERED , that the plaintiff shall post a bond in an amount to be determined upon the serving and filing of a motion by plaintiff to fix the bond amount pursuant to CPLR 6312(b) within fifteen (15) days of entry of this decision. Defendant may submit his position on the amount of the bond in the form of opposition or a cross motion. Alternatively, the parties may stipulate to the waiver of a bond or as to the amount and nature of the bond. If such undertaking is not posted or if such motion to fix the bond amount is not filed within fifteen (15) days of entry of this decision, this motion is denied. Such undertaking shall be in the form of surety, deposited with the Queens County Clerk or in a joint interest bearing escrow account.

Plaintiff is directed to mail a copy of this order with notice of entry upon the defendant, pro se, Wali Haidary.

Plaintiff's Exhibits are being returned with a courtesy copy of this order.

Dated: April 22, 2015

.....  
**Howard G. Lane, J.S.C.**

