

<b>Scarpinato v Renslow</b>
2015 NY Slip Op 30957(U)
June 8, 2015
Supreme Court, Madison County
Docket Number: 2014-1950
Judge: Eugene D. Faughnan
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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.

At a Motion Term of the Supreme Court of the State  
of New York held in and for the Sixth Judicial  
District at the MADISON County Courthouse,  
WAMPSVILLE, New York, on the 10<sup>h</sup> day of April,  
2015

PRESENT: HON. EUGENE D. FAUGHNAN  
Justice Presiding

STATE OF NEW YORK  
SUPREME COURT : MADISON COUNTY

---

DEBORAH SCARPINATO,

Plaintiff,

-vs-

RONALD C. RENSLow, Individually and as a  
Member of ONEIDA LAKE MARINA, LLC,

Defendant.

---

DECISION AND ORDER

Index No.: 2014-1950  
RJI No. 2014-0483

APPEARANCES:

COUNSEL FOR PLAINTIFF<sup>1</sup>,

THERESA M. GIROUARD, ESQ.  
PO Box 4632  
Rome, NY 13442

COUNSEL FOR DEFENDANT,

GERALD H. TAYLOR, ESQ  
TAYLOR & MILLER LLP  
133 S. Peterboro St.  
Canastota, NY 13032

---

<sup>1</sup>Plaintiff's papers reference co-counsel (who actually appeared for the oral argument), but no notice of appearance has been filed, and the papers which have been filed have all been by the attorney listed herein.

**EUGENE D. FAUGHNAN, J.S.C.**

This matter is before the Court based upon the Order to Show Cause filed by Deborah Scarpinato (“Plaintiff”) signed on December 10, 2015, which sought a stay of the “eviction of Plaintiff from the premises 3713 State Route 31, Canastota, NY,” and allowing the Plaintiff to remain in the residence, and a direction prohibiting Ronald C. Renslow, Individually and as a member of Oneida Lake Marina, LLC (“Defendant”) from dissipating or taking any other action to affect the property acquired by the parties in their personal and professional partnership, except for everyday living expenses and/or expenses in the ordinary course of business. The Court declined to Order Defendant to pay attorneys fees to the Plaintiff. In support of the Order to Show Cause, Plaintiff submitted an affirmation of Theresa Girouard dated December 8, 2014 with attached Exhibits. The original return date was set for February 13, 2015 but was adjourned to April 10, 2015. The Defendant submitted an Affidavit in Opposition to Plaintiff’s Motion dated February 6, 2015 with attached Exhibits and an Affidavit of Gerald H. Taylor, Esq. dated February 6, 2015. Oral argument was held on the matter on April 10, 2015 in Wampsville, NY, with both sides present.

**BACKGROUND FACTS**

Plaintiff filed a Summons and Verified Complaint on December 8, 2014. She listed four causes of action, and seeks the imposition of a constructive trust and monetary damages due to Defendant’s alleged fraud, unjust enrichment and intentional infliction of emotional distress. She claims that she and Defendant began an intimate and confidential relationship in 1990 when they were living in California. They began living together in 1993, and Plaintiff contends that

Defendant promised to financially support her for the rest of her life, and the parties agreed to marry. Further, she maintains that the parties moved to New York to operate a marina business and that she has worked there, being paid considerably less than she should have received, as part of the parties' business plan. The parties' romantic relationship ended in February, 2014 and Defendant allegedly began a romantic relationship with an employee. Defendant moved out of the residence, and brought an action to have the Plaintiff evicted. That resulted in a determination by the Lenox Town Court. The Order of Eviction was stayed by this Court's signing of the Order to Show Cause

Defendant filed a Verified Answer with five Affirmative Defenses and three counterclaims, dated December 26, 2014. Defendant alleges that Plaintiff was paid a fair and reasonable amount for the work she did on behalf of the business. His counterclaims are for: 1) breach of trust and conversion; 2) detrimental reliance, and 3) misappropriation of the marina's funds and records. Plaintiff filed a Reply to Defendant's Counterclaims, and raised ten affirmative defenses, and sought dismissal of the Counterclaims.

The record shows that previously, Defendant commenced an action in Lenox Town Court to Recover Real Property. He sought the eviction of the Plaintiff from the house that they had both been living in until the cessation of their romantic relationship. The property had been purchased by Defendant in 2003 and it was titled to the marina business. (Oneida Lake Marina LLC). Plaintiff was represented by counsel in that action and participated in the litigation. That action resulted in a determination from the Lenox Town Court dated December 12, 2014 granting a Warrant of Eviction against Plaintiff, and a separate Order and Judgment confirming that the Defendant should have possession of the property. The parties agreed that no action would be

taken on the Order and Warrant until December 12, 2014. In the interim, Plaintiff filed this action on December 8, 2014.

### **PLAINTIFF'S ORDER TO SHOW CAUSE/MOTION**

Plaintiff filed this Motion as an Order to Show Cause, due to the time constraint of possibly being subject to eviction based on the determination of the Town of Lenox Court. Plaintiff further argued that a constructive trust should be imposed. In support thereof, she raised the facts of the parties' 23 year relationship, an alleged promise by the Defendant to take care of her financially, and that the parties relocated to New York in order to support their marina business endeavor. She also alleges that Plaintiff has been unjustly enriched because she worked without compensation or was under compensated. Defendant had also designated the Plaintiff as beneficiary under a Living Trust.

Defendant disputes many of Plaintiff's allegations. Defendant contends that there never was any intention to marry, despite Plaintiff's desire to do so. Defendant claims that he purchased all the property with his own assets, and that he covered all the business expenses. Plaintiff did not transfer any assets to help the business and that Plaintiff received considerable wages and other benefits, and that it actually exceeded the value of any services she performed on behalf of the business. She has also allegedly incurred unauthorized expenses on behalf of the business that were actually for her personal use. Defendant further argues that he was effectively evicted from the house because of Plaintiff's actions.

The parties appeared and presented their arguments to the Court on April 10, 2015, after which the Court reserved decision.

## DISCUSSION

This matter was brought on by the filing of an Order to Show Cause under CPLR 2214. An Order to Show Cause is another way of bringing on a motion, with a shortened notice before the hearing date. *See New York Civil Practice: CPLR (Weinstein Korn & Miller), 2214.04.* Importantly, an order to show cause “may include a temporary restraining order which may continue to the return date or to the disposition of the motion.” *Mallory v. Mallory*, 113 Misc.2d 912, 913 (Sup. Ct. Nassau County 1982). The relief sought by the Plaintiff consisting of a stay of the eviction, and a prohibition against Defendant enjoining him from taking actions that may decrease the value of the business, were essentially requests for a temporary restraining order. The third request, regarding attorneys fees, was denied, and will not be considered further. The rest of the Order to Show Cause is essentially a motion for this temporary injunctive relief.

A preliminary injunction constitutes "drastic relief" (*Troy Sand & Gravel Co., Inc. v Town of Nassau*, 101 AD3d 1505, 1509, 957 NYS2d 444 [2012]; *see Cooper v Board of White Sands Condominium*, 89 AD3d 669, 669, 931 NYS2d 696 [2011]) and, while ordinarily a decision within the trial court's discretion, nonetheless the party seeking such relief "must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of an injunction and a balance of the equities in its favor" (*Nobu Next Door, LLC v Fine Arts Hous., Inc.*, 4 NY3d 839, 840, 833 NE2d 191, 800 NYS2d 48 [2005]; *see Doe v Axelrod*, 73 NY2d 748, 750, 532 NE2d 1272, 536 NYS2d 44 [1988]; *Moore v Ruback's Grove Campers' Assn., Inc.*, 85 AD3d 1220, 1221, 924 NYS2d 197 [2011]).

*Rural Community Coalition, Inc. v. Village of Bloomingburg*, 118 A.D.3d 1092, 1095 (3<sup>rd</sup> Dept. 2014).

With regard to the probability of success on the merits, “[i]t is not for the 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. (*see, Incorporated Vil. of Babylon v. John Anthony's Water Café*, 137 AD2d 791, 525 N.Y.S.2d 341 [2d Dept 1988]). A showing of likelihood of success on the merits required before a preliminary injunction may be properly issued must not be equated with the showing of a certainty of success (*Id.*). Furthermore, provided that the elements required for the issuance of a preliminary injunction are demonstrated in the plaintiff's papers, the presentation by the defendant of evidence sufficient to raise an issue of fact as to any such elements shall not in itself be grounds for denial of the motion (CPLR 6312[c]).” *Olympic Ice Cream Co., Inc. v. Sussman*, 2015 N.Y.Misc. LEXIS 1867, \_\_\_\_\_ (Sup. Ct. Queens County 2015).

In the instant case, Plaintiff seeks two forms of injunctive relief; enjoining the Defendant from taking acts that could impair the value of the business, and a stay of the eviction. These will be considered in order.

With regard to enjoining the Defendant from taking acts that may impair the value of the business, there are clearly issues of fact that will need to be resolved. At this point, the Court cannot determine conclusively which party will succeed on the merits. However, the Plaintiff has at least advanced a potentially valid argument to support her claim. With regard to irreparable harm, the question is generally about how to maintain the status quo so that any judgment on the underlying action would not be ineffectual. In this case, the Defendant potentially could transfer assets, and thereby make any relief awarded to Plaintiff ineffective. The balance of the equities must also support the request, which they do in this case, as the Defendant controls the business operations, and the injunction serves only to maintain the status quo, and preserve the business, which is the most valuable asset in issue here. Therefore, the Court will continue the injunction and Order preventing Defendant from taking actions involving

the business assets, as more particularly described in the signed Order to Show Cause.


With respect to the stay of the eviction, however, the Court concludes that the stay should be vacated. Defendant previously commenced an action in the Town of Lenox Court to Recover Possession of Real Property. Plaintiff had a full and fair opportunity to litigate that case, and was represented by an attorney. At the conclusion, the Town Justice granted a warrant of eviction. The proper method to challenge that decision would be by an appeal to County Court. *See Uniform Justice Court Act §1701* (McKinneys 2015). Instead, however, Plaintiff brought this proceeding, which includes the imposition of a constructive trust. While that could ultimately affect ownership of the business and property, that does not equate to possession. That is, even if Plaintiff succeeds on her claim, that does not mean that she will be entitled to possession of the property. Plaintiff contends that the Court should stay the eviction as part of its equitable powers in order to maintain the status quo while this current action is pending. In essence, the Plaintiff is attempting to use the existence of this action as a way to stay the eviction by claiming the Court should maintain the parties in their current position, while Defendant view it as a “second bite at the apple” after having lost at Town Court. In reality, the status of the parties before this action was commenced was that Defendant had obtained a Warrant of Eviction. Therefore, to maintain the status quo, the Court should not continue the stay of that Eviction. The Court also agrees with Defendant that his possession of the house will help the business operations. The house was bought, and has served as, a central location relative to the business operations. The Court further concludes that enforcing the Town of Lenox order will not jeopardize Plaintiff’s claim for a constructive trust or her other relief sought. The asset will still be available for whatever determination is made in this case. Accordingly, the Court concludes that the stay of the Town

of Lenox Court's rulings should be lifted.

To the extent that the Court is allowing one part of the preliminary injunction to remain in place, it is conditioned upon the filing by the Plaintiff of an undertaking pursuant to CPLR, §6312 in an amount to be determined by the Court. The parties are directed to settle an Order on notice, except with regard to the amount of the undertaking, and with regard to that, the parties may submit proof and recommendations as to the amount of the undertaking. The Order is to be submitted to the Court within 30 days.

**This constitutes the Decision and Order of this Court.**

Dated: June 8, 2015  
Wampsville, New York



---

Hon. Eugene D. Faughnan  
Supreme Court Justice