

Femic v Kouvaros
2017 NY Slip Op 33337(U)
May 16, 2017
Supreme Court, Queens County
Docket Number: 701285/2017
Judge: Marguerite A. Grays
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: **HONORABLE MARGUERITE A. GRAYS**
Justice

IAS PART 4

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SASA FEMIC, INDIVIDUALLY, AND OBO
PLAZA PATISSERIE, INC., D/B/A PLAZA
KITCHEN AND BAR,

Index

No.: 701285/2017Motion Date: April 4, 2016

Plaintiff(s),

Motion Cal. No.: 4

-against-

Motion Seq. No. 1CHRISTOS KOUVAROS AND ANASTASIA
KOUVAROS.Defendant(s).
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The following papers numbered 1 - 9 read on this motion by plaintiffs for an Order granting a preliminary injunction: (1) enjoining defendant Christos Kouvaros from taking any corporate actions or making any management decisions on behalf of Plaza Patisserie, Inc., d/b/a Plaza Kitchen and Bar (Plaza) without plaintiff Sasa Femic's express consent and approval; (2) enjoining defendants Christos Kouvaros and Anastasia Kouvaros from using Plaza's revenue, cash, or bank accounts to make any distributions, transfer or payments to themselves or to any other entity or individual, without plaintiff Sasa Femic's express consent and approval; (3) compelling defendant Christos Kouvaros to provide plaintiff Sasa Femic with a full and complete accounting of Plaza, including but not limited to, income and expenses, profits and losses, distributions to shareholders, payments and/or distributions to employees, vendors, and other third parties, income statements, balance sheets, bank statements, credit card statements, documents used to prepare the tax returns, a detailed general ledger, and documents concerning Plaza's liquor license; (4) enjoining defendants Christos Kouvaros and Anastasia Kouvaros from paying or advancing any legal fees or costs using Plaza's funds in connection with this litigation; (5) enjoining defendants Christos Kouvaros and Anastasia Kouvaros from disposing of, conveying, assigning, or transferring any Plaza funds which they illicitly paid to themselves, as complained of in this action and (6) compelling defendants Christos Kouvaros and Anastasia Kouvaros to redeposit any Plaza funds which they illicitly paid to themselves as complained of in this action, into Plaza's bank account; and (7) appointing a special referee to oversee and monitor Plaza's accounting and finances during this action.

FILED
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COUNTY CLERK
QUEENS COUNTY

	<u>Papers Numbered</u>
Order to Show Cause.....	1-4
Opposing Affidavit-Exhibits.....	5
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Upon the foregoing papers the motion is determined as follows:

Plaintiff Sasa Femic commenced the within action, in his individual capacity and on behalf of Plaza, by e-filing the summons and complaint on January 26, 2017. After the service of the within Order to Show Cause, together with the summons and complaint and supporting papers, plaintiff e-filed an amended complaint. Defendants, in their answer, interposed an affirmative defense and counterclaim for declaratory judgment. The Court's records reveal that defendants have e-filed an amended answer which interposed an affirmative defense and a counterclaim, and that plaintiff has e-filed a reply to the counterclaim.

An amended complaint has been submitted along with a supplemental affirmation in support of the Order to Show Cause. Plaintiff Femic alleges in the amended complaint that he and defendant Christos Kouvaros are each 50% owners of Plaza. Mr. Femic alleges that he purchased a 50% interest in Plaza from Tatiana Dimakis in 2014; that Ms. Dimakis had purchased a 25% interest in Plaza in 2001, and in 2003 exercised an option to purchase another 25% interest in Plaza. It is further asserted that defendant Christos Kouvaros filed an application with the State Liquor Authority in connection with Ms. Dimakis' 25% interest in Plaza, that said application was approved, and that Kouvaros thereafter failed to properly update the liquor license renewals to reflect Ms. Dimakis' 50% ownership as well as Femic's 50% ownership. Mr. Femic alleges that his purchase of Ms. Dimakis' shares of stock was partially financed by Ron Caricic, although he was not named in the contract of sale.

Defendant Anastasia Kouvaros is married to Christos Kouvaros. Ms. Kouvaros is neither a shareholder nor officer of Plaza. Plaintiff alleges in the amended complaint that Mr. Kouvaros had paid wages to his wife Anastasia, although she is not an employee of Plaza. Plaintiff also alleges that Mr. Kouvaros had written several checks to himself, and made other transfers from Plaza's accounts, in excess of \$180,000.00, and that these were not valid distributions of Plaza's profits. Plaintiff alleges that Mr. Kouvaros embezzled in excess of \$180,000 from Plaza for his own benefit, as well as that of his wife, and possibly others.

The first cause of action against Christos Kouvaros is for breach of fiduciary duty and seeks to recover compensatory damages, costs and attorney's fees, and punitive damages; the second cause of action against Christos Kouvaros is for breach of the duty of good faith and fair dealings and seeks to recover compensatory damages, costs and attorney's fees, and punitive damages; the third cause of action against Christos Kouvaros and Anastasia Kouvaros is for fraud and conspiracy to commit fraud, and seeks to recover compensatory damages, costs and attorney's fees, and punitive damages; the fourth cause of action against Christos Kouvaros and Anastasia Kouvaros is for conversion and seeks to recover compensatory damages, costs and attorney's fees, and punitive damages; the fifth cause of action against Christos Kouvaros and Anastasia Kouvaros seeks a preliminary and permanent injunction, and seeks to enjoin the defendants from operating Plaza for their own personal benefits, including transferring, embezzling, skimming, misappropriating, converting, and/or wasting Plaza's funds and assets; from making any decisions concerning the management and operation of Plaza without first obtaining plaintiff's express consent and approval; from changing the status quo by diminishing, disavowing, divesting, or otherwise attempting to eliminate Plaintiff's co-equal ownership interest in Plaza; and from interfering with plaintiff's participation in Plaza's management and operations; the sixth cause of action against Christos Kouvaros is for an accounting; the seventh cause of action for declaratory judgment seeks a declaration to the effect that Mr. Femic has a 50% ownership interest in Plaza; and the eighth cause of action against Christos Kouvaros and Anastasia Kouvaros is for unjust enrichment and seeks to recover monetary damages; the ninth cause of action, against Christos Kouvaros, is for fraud and seeks to recover compensatory damages, costs and attorney's fees, and punitive damages; and the tenth cause of action against Christos Kouvaros is for fraudulent inducement and seeks to recover compensatory damages, costs and attorney's fees, and punitive damages.

Plaintiff, in his wherefore clause, in addition to seeking relief on the ten causes of action, seeks to enjoin Christos Kouvaros from paying or advancing any legal fees or costs from Plaza's funds in connection with this litigation; an order requiring the defendants to return to Plaza any improperly misappropriated assets, revenues or profits; the imposition of a constructive trust on all profits realized from Christos Kouvaros' improper conduct challenged herein; to restrain Christos Kouvaros and Anastasia Kouvaros from disposing of or drawing on any of Plaza's funds so transferred from Plaza's bank account; an order directing Christos Kouvaros to redeposit Plaza funds in Plaza's bank account; the appointment of a special referee pending this action; and costs and attorney's fees.

Defendant Christos Kouvaros, in his answer alleges, among other things, that Femic is not an owner of Plaza; that the purported sale of the stock by Demakis to Femic was contingent on obtaining the approval of the State Liquor Authority, and said approval was not obtained; that Dimakis never owned more than 25% of Plaza's shares of stock, as her acquisition of an additional 25% of such shares was never approved by the State Liquor

Authority; and that the entire sale of stock to Femic was void and unlawful, as he had a silent partner or lender of funds, Ron Carica, whose existence and involvement was not disclosed to the State Liquor Authority. The counterclaim seeks a declaration to the effect that the contract of sale for 50% of the shares of the corporation is void as a matter of law.

In order to obtain relief pursuant to CPLR 6301, a movant must clearly demonstrate (1) a likelihood of success on the merits, (2) irreparable injury absent granting of the preliminary injunction, and (3) a balancing of the equities in the movant's favor (*Nobu Next Door, LLC v Fine Arts Hous., Inc.*, 4 NY3d 839, 840; *Aetna Ins. Co. v Capasso*, 75 NY2d 860[1990]; *Doe v Axelrod*, 73 NY2d 748; *Ruiz v Meloney*, 26 AD3d 485 [2006]; *Stockley v Gorelik*, 24 AD3d 535 [2005]; *Matos v City of New York*, 21 AD3d 936 [2005]). "Irreparable injury, for purposes of equity, has been held to mean any injury for which money damages are insufficient" (*L & M 353 Franklyn Ave., LLC v S. Land Dev., LLC*, 98 AD3d 721, 722 [2012]).

The purpose of a preliminary injunction is to maintain the status quo and prevent the dissipation of property that could render a judgment ineffectual (*Ruiz v Meloney*, 26 AD3d 485, *Coinmach Corp. v Alley Pond Owners Corp.*, 25 AD3d 642, [2006]; *Weinreb Management, LLC v KBD Management, Inc.*, 22 AD3d 571[2005]). The decision to grant or deny a preliminary injunction rests in the sound discretion of the Supreme Court (*Doe v Axelrod*, *supra*, at 750; *Ruiz v Meloney*, *supra*; *Weinreb Management, LLC v KBD Management*, *supra*). "[A]bsent extraordinary circumstances, a preliminary injunction will not issue where to do so would grant the movant the ultimate relief to which he or she would be entitled in a final judgment" (*SHS Baisley, LLC v Res Land, Inc.*, 18 AD3d 727, 728 [2005]; *see Board of Mgrs. of Wharfside Condominium v Nehrich*, 73 AD3d 822, 824 [2010]; *Village of Westhampton Beach v Cayea*, 38 AD3d 760, 762 [2007]; *St. Paul Fire & Mar. Ins. Co. v York Claims Serv.*, 308 AD2d 347 [2003]).

Plaintiff Sasa Femic in support of the within motion for injunctive relief and for the appointment of a referee, alleges in his affidavit, among other things, that he is a 50% shareholder of Plaza, which operates a restaurant and bar located in Astoria, New York; that defendant Christos Kouvaros, the other 50% owner, has failed to make available to him Plaza's books and records; that Mr. Kouvaros has paid wages to his wife Anastasia Kouvaros who is neither an employee or officer of Plaza; that Mr. Kouvaros has written checks to himself totaling over \$150,000.00, and that even if these were valid distributions of Plaza's profits the amount he received during the same periods "are wildly disproportionate and do not correspond" to their equal ownership in the company; that Mr. Kouvaros has failed to provide an accounting of Plaza's finances; and that Mr. Kouvaros has now taken the position that Femic is not a co-owner of Plaza. Mr. Femic states that he fears that Mr. Kouvaros is attempting to sell Plaza and diminish or eliminate his interest in said corporation.

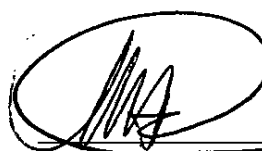
Plaintiffs has not established the likelihood of success on the merits, as the contract for the purchase of Ms. Dimakis' shares of stock in Plaza was contingent on approval of said sale by the State Liquor Authority, and there is no evidence that said approval was obtained. Furthermore, plaintiffs cannot establish irreparable injury with respect to the first, second, third, fourth, eighth, ninth and tenth causes of action, as these causes of action all seek to recover money damages.

As the fifth cause of action seeks a preliminary and permanent injunction, it is clear that plaintiff is seeking the ultimate relief requested in the original complaint, and is not seeking to maintain the status quo and to prevent any conduct which might impair the ability of the court to render a final judgment (*see* CPLR 6301; *St. Paul Fire and Mar. Ins. Co. v York Claims Serv.*, 308 AD2d at 348-349 [2003]). The circumstances presented in this case are not of such an extraordinary nature as to warrant mandatory injunctive relief pending the resolution of the litigation (*see Board of Mgrs. of Wharfside Condominium v Nehrich*, 73 AD3d 822 at 824[2010]; *Village of Westhampton Beach v Cayea*, 38 AD3d 760 at 762 [2007]; *SHS Baisley, LLC v Res Land, Inc.*, 18 AD3d 727 at 728 [2005]; *St. Paul Fire & Mar. Ins. Co. v York Claims Serv.*, 308 AD2d 347[2003]; *Rosa Hair Stylists v Jaber Food Corp.*, 218 AD2d 793, 794 [1995]).

Finally, Mr. Femic's bare assertions are insufficient to establish that defendants are attempting to transfer, distribute, convey, sell, assign or otherwise dispose of funds in Plaza's bank accounts, or that Mr. Kouvaros is attempting to sell, assign or otherwise dispose of his interest in Plaza.

Accordingly, plaintiffs' motion for a preliminary injunction and for the appointment of a special referee to oversee and monitor Plaza's accounting and finances during the pendency of this action, is denied in its entirety.

Dated: **MAY 16 2017**



MARGUERITE A. GRAYS
J.S.C.

FILED

MAY 25 2017

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