SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49

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MAGNA EQUITIES II, LLC, and
HANOVER HOLDINGS I, LLC,

Plaintiffs,

- against -

WRIT MEDIA GROUP INC.,
SIGNATURE STOCK TRANSFER, INC.,

Defendants.

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DECISION AND ORDER
Index No. 653808/2016
Mot. Seq. Nos.: 005

O. PETER SHERWOOD, J.:

I. FACTS

The following facts are taken from the Complaint. Plaintiffs Magna Equities II, LLC (Magna) and Hanover Holdings I, LLC (Hanover) are the same entity, as Hanover's name was changed to Magna (Complaint at ¶¶ 8-9). Defendant Writ Media Group, Inc. (Writ) is a publicly traded company. Signature Stock Transfer, Inc. (Signature) and Pacific Stock Transfer Company (Pacific) are securities transfer agents.

Pursuant to a securities purchase agreement, Writ sold Hanover a convertible promissory note, giving Hanover a perfected security interest in certain assets of Writ (*id.*, ¶¶ 14-15). The note gives Hanover the right to convert the unpaid principal of the note into shares of Writ common stock (*id.*, ¶ 20). To exercise this right, Hanover had to deliver a Notice of Conversion to Writ (*id.*, ¶ 21). Writ then has three trading days to deliver the certificates (*id.*, ¶ 21). Subsequently, Magna entered into a second, third, and fourth securities purchase agreement with Writ (*id.*, ¶¶ 26, 38, 50). The notes associated with those transactions (together with the first promissory note, the Notes) included similar conversion rights.

On July 10, 2014, Writ sent Signature a letter instructing Signature to reserve shares of Writ, and to issue them upon receipt of Hanover's conversion notice (*id.*, ¶¶ 62-64). In the event Signature resigns as Writ's transfer agent, Writ agreed to get a replacement agent, which would agree to be bound by the terms of the instructions. Hanover is a third party beneficiary of the instructions (*id.*, ¶ 66). Writ subsequently issued the second, third, fourth, and fifth letter (together, the Transfer Agent Instructions), with similar terms.

On June 20, 2016, plaintiffs delivered the First Notice of Conversion to Writ and Signature, seeking 835,065 shares of Writ common stock. On June 29, 2016, plaintiffs delivered the Second Notice of Conversion to Writ and Signature, seeking 705,992 shares of Writ common stock (id ¶ ¶ 87-89).

Signature did not issue the shares. Instead, Signature referred plaintiffs to Pacific, Writ's new transfer agent, which also failed to issue the shares. Plaintiffs now bring the following claims:

1- Breach of contract (the Notes) against Writ for failing to honor the Notices of Conversion (seeking money damages)
2- Breach of contract (the Notes) against Writ for failing to honor the Notices of Conversion (alternatively, seeking specific performance)
3- Conversion against all defendants for failure to deliver the share of Writ stock
4- Violation of UCC §§ 8-401 and 407 against Signature for failure to issue the shares
5- Violation of UCC §§ 8-401 and 407 against Pacific for failure to issue the shares
6- Negligence against Pacific for failure to obtain all relevant transfer agent instructions
7- Declaratory Judgment that plaintiffs are the owners of shares of Writ stock
8- Breach of contract (the Notes) against Writ, seeking attorneys' fees and costs
9- Permanent Injunction- to convert the notes into shares of stock
10- Replevin of the shares

Defendants having failed to answer the complaint, plaintiff's motion for default judgment against Writ and Signature was granted. (NYSCEF Doc. No. 123). The cross-motion of Writ and Signature to dismiss for lack of personal jurisdiction was denied, as the default was not excusable, and Signature had failed to assert its lack of personal jurisdiction argument in its previous motion to dismiss, and thereby waiving the argument (*see id.*).

II. THIS MOTION

Now, Plaintiffs move for a Temporary Restraining Order ("TRO") and preliminary injunction to stop defendants from moving forward with a spin-off of Writ's wholly owned subsidiary, Skylab, and any transfer of assets or liabilities, the issuance of any dividends, and so forth. Injunctive relief was granted in a TRO dated November 20, 2017.

Plaintiffs claim that a Skylab spinoff will divest Writ of practically all of its assets and make it impossible to collect a judgment. Plaintiffs sought the injunction to preserve the status quo while the inquest as to damages proceeds.

Signature and Writ, with new counsel, argue that the spin-off of Skylab will have no impact on Writ's assets, as all of Skylab's assets were transferred to Writ already. Skylab used to be

Pandora Venture Capital Corp., which was acquired by Writ in January 2016 (Opp at 3). All of Pandora's assets were transferred to Writ by an Asset Assignment and Debt Assumption Agreement dated as of July 1, 2016 (*id.* citing Asset Assignment attached as Exhibit D to Mitchell Aff, NYSCEF Doc. No. 184). After Pandora was stripped of its assets, its name was changed to Skylab (Opp at 4). The planned stock transaction is a stock dividend by which the shareholders of Writ will receive 1,250,000 shares of common stock of Skylab (*id.*). The intangible assets (intellectual property related to digital currencies) owned by Writ are not affected by the planned stock dividend. Skylab, an empty shell, has no assets, so the value of the planned stock dividend of the Skylab stock to the shareholders is only $125.00, total (Opp at 1-2, 4).

The point of the transaction is to give Skylab a broad shareholder base in anticipation of Skylab's possible merger with another entity, Skylab Apps, Inc., and going public. Writ also argues that its liability to Magna is minimal, less than $200,000, and nowhere near the $1.7 million claimed by Magna. Further, injunctive relief is not appropriate, as Magna is seeking money damages which is a remedy at law and injunctive relief is not available. Writ also argues that the equities tip in its favor, as the injunction threatens the completion of the Skylab Apps acquisition. Writ also argues that Magna should not be allowed to seek equitable relief, because it has unclean hands. Specifically, Magna bypassed Pacific's counsel and sent Pacific a letter demanding the issuance of over $1.7 million in stock, falsely representing that this court ordered the issue (*id* at 14). This misrepresents the court's order and contradicts Magna's representation in court that they were seeking money damages (*id.* at 15).

Finally, if the court does issue a preliminary injunction, Writ asks that Magna be required to post a bond in the amount of the worth of the entity which would result if the Skylab/Skylab App merger were to take place, which Writ claims is $5,139,209.

III. DISCUSSION

The issuance of a preliminary injunction is governed by CPLR 6301, which provides, in pertinent part:

> "A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiffs rights respecting the subject of the action, and tending to render the judgment ineffectual . . . ."

"The party seeking a preliminary injunction must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of an injunction and a balance of equities in its favor" (*Nobu Next Door, LLC v Fine Arts Hous., Inc.*, 4 NY3d 839, 840 [2005]). "The decision to grant or deny provisional relief, which requires the court to weigh a variety of factors, is a matter ordinarily committed to the sound discretion of the lower courts" (*id.*). Here, the court need not review the first and third elements required for the grant of a preliminary injunction because plaintiffs have failed to show irreparable harm.

The relief being sought in this case is monetary damages. Accordingly, Magna has an adequate remedy at law and thus cannot show that it will suffer irreparable harm if the motion is denied (*see JSC VTB Bank v Mavlyanov*, 154 AD3d 560, 561 [1st Dept 2017]). Similarly, the spin-off of Skylab will have no impact on Writ's assets as all of Skylab's assets and liabilities were transferred to Writ on July 1, 2016. Evidence of an absence of assets appears in the Writ SEC Form 10-Q for the quarter ended September 30, 2017, p. 12 (*see* NYSCEF Doc. No. 182). Because Skylab is nothing more than a shell with negligible value, the contemplated spin-off will not cause irreparable harm to Magna.

Accordingly, plaintiffs' motion for preliminary injunction is DENIED and it is

ORDERED that the Temporary Restraining Order dated November 20, 2017 is hereby VACATED.

This constitutes the decision and order of the court.

DATED: January 3, 2018

ENTER,

O. PETER SHERWOOD J.S.C.