

Hongying Zhao v Gata-Aura

2018 NY Slip Op 30243(U)

February 9, 2018

Supreme Court, New York County

Docket Number: 156591/2017

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 32

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HONGYING ZHAO, JUAN LIU, SHENSI HE, HONGLEI THAN,
HAIYAN WANG, JINMEI WANG, YIHE SUN, SHAOMIN LU,
GE GAO, KUNYUN ZHANG, FENGWEI WANG, DANDONG
WU, XIAOLI WANG, PENG WANG, YIMIN YANG, JINGRUI
FENG, LING SHEN, CUIRONG LI, HUI ZHENG, CHANGLI
XIAO, QIUYUE ZU, XIUHUA WANG, XIAOYUN ZHANG,
JINLI QIN, SHUYAN FENG, KANWEN ZHANG, and QIAN
LU,

Index No. 156591/2017
Motion Seq: 001

Plaintiffs,

**DECISION & ORDER
ARLENE P. BLUTH, JSC**

-against-

SAVRAJ GATA-AURA a.k.a SAM AURA

Defendant.

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The motion for a preliminary injunction seeking *inter alia* to enjoin and restrain defendant from removing to transferring his assets (up to a maximum of \$1,390,602.34) is denied.

Background

This action arises out of a failed business venture called Bar Works. Bar Works purportedly sold co-working desk space at various locations throughout the United States. Plaintiffs, investors in Bar Works, maintain that Bar Works was a Ponzi scheme and that many locations were never opened or never intended to be opened. Plaintiffs invested over \$3 million with Bar Works.

Plaintiffs characterize defendant as a director, officer or employee of Bar Works and that defendant received over \$1 million from Bar Works despite the fact that this company never made any

profits. Plaintiffs stress that defendant met with certain plaintiffs in March 2017 (after plaintiffs had invested with Bar Works) to assure them that they had made good investments. Plaintiffs contend that defendant's statements at this meeting evidence his involvement in the fraudulent scheme.

In opposition, defendant argues that a preliminary injunction is not appropriate because plaintiffs can be compensated with money damages. Defendant insists that plaintiffs' conclusory allegations cannot support their claim for a preliminary injunction.

Discussion

"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, 800 NYS2d 48 [2005] citing CPLR 6301). "Entitlement to a preliminary injunction depends upon probabilities, any or all of which may be disproven when the action is tried on the merits" (*Destiny USA Holdings, LLC v Citigroup Global Markets Realty Corp.*, 69 AD3d 212, 216, 889 NYS2d 793 [1st Dept 2009] [internal quotations and citation omitted]).

"Although the inclusion of a money demand will not necessarily preclude an injunction if other relief, which would satisfy this provision of CPLR 6301, is also sought, the court will refuse the injunction if convinced that a money judgment is the true object of the action and that all else is incidental" (Siegel, N.Y. Practice § 327 [5th ed]).

The Court finds that the true object of plaintiffs' action is for a money judgment– the return of their investments in Bar Works– and, therefore, plaintiffs are not entitled to a preliminary injunction. Plaintiffs cannot show irreparable injury because they can be compensated by money damages (*WHG*

CS, LLC v LSREF Summer REO Trust 2009, 79 AD3d 629, 630, 915 NYS2d 36 [1st Dept 2010]). To the extent that plaintiffs claim that defendant will hide or transfer his assets and prevent plaintiffs from collecting a judgment (should plaintiffs prevail in this lawsuit), that claim is mere speculation and a risk inherent in litigation.

The purportedly taped conversation of a meeting including defendant does not change the Court's conclusion. The transcript of this conversation (NYSCEF Doc. No. 29) does not transform this action to one in which a preliminary injunction is an appropriate remedy— this is still a case for money damages.

And as suggested by Professor Siegel, if a plaintiff fears that “[defendant] will secrete property during the action’s pendency and thus make a money judgment uncollectable” and “ if [plaintiff] can corroborate that foreboding with some palpable indication of [defendant’s] misconduct— a mere suspicion will no do— the particular remedy for [plaintiff] would be an order of attachment under CPLR 6201(3)” (Siegel, N.Y. Practice § 327 [5th ed]). Plaintiffs appear to acknowledge this fear in their moving papers by claiming that “ Unless injunctive relief is granted in this action . . . Plaintiffs will not be able to recover any damages from Defendant as any judgment Plaintiffs would be awarded against the Defendant would be ineffectual” (NYSCEF Doc. No. 8 at 17).

Summary

A preliminary injunction is a drastic remedy and plaintiffs failed to show that a preliminary injunction is appropriate or warranted here. The Court will not bypass the discovery process because plaintiffs claim they were the victims of fraud and speculate that defendant will be judgment-proof.

Plaintiffs' demand for discovery relating to the location of all of defendants' assets is denied because plaintiffs have not set forth a sufficient basis for this requested relief.

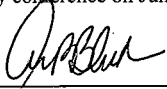
Accordingly, it is hereby

ORDERED that the motion for a preliminary injunction is denied.

This is the Decision and Order of the Court.

The parties are directed to appear for a preliminary conference on June 12, 2018 at 2:15 p.m.

Dated: February 9, 2018
New York, New York



ARLENE P. BLUTH, JSC

HON. ARLENE P. BLUTH