

Furman v 2009 Realty, LLC

2018 NY Slip Op 31912(U)

July 30, 2018

Supreme Court, Kings County

Docket Number: 507659/18

Judge: Leon Ruchelsman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8
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ROSTISLAV FURMAN

Plaintiff,

Decision and order

- against -

Index No. 507659/18

ms # 1

2009 REALTY, LLC, BRIAN SHALITZKY,
SUSAN SHALITZKY, EVA BODNER,
JACOB YAMPEL, RAISA YAMPEL

Defendants,

July 30, 2018

-----x
PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved seeking a preliminary injunction pursuant to CPLR §6301 preventing the defendants from engaging in activities that harm the business prospects of the plaintiff. The defendant has opposed the motion arguing it has no merit. Papers were submitted by the parties and arguments held. After reviewing all the arguments, this court now makes the following determination.

The plaintiff, a fifty percent owner of the defendant corporation instituted a lawsuit alleging essentially that the defendants have frozen him out of access to the books and records of the corporation and have otherwise deprived him of distributions of the corporation. The plaintiff has moved seeking an injunction restraining the defendants from involvement in any assets of the corporation. The defendants have opposed the motion arguing the injunction has no merit.

Conclusions of Law

It is well settled that to obtain a preliminary injunction the moving party must demonstrate: (1) a likelihood of success on the merits, (2) an irreparable injury absent the injunction; and (3) a balancing of the equities in its favor (Volunteer Fire Association of Tappan, Inc., v. County of Rockland, 60 AD3d 666, 883 NYS2d 706 [2d Dept., 2009]).

In this case the basis for the injunction is grounded in the fact that the failure to grant such relief will cause harm to the plaintiff. Of course, the defendants deny these underlying facts supporting the injunctive relief and indeed there is little evidence presented supporting those allegations. Indeed, other than conclusory allegations of improper conduct, the only evidence consists of the plaintiff's claims. Thus, while it is true that a preliminary injunction may be granted where some facts are in dispute and it is still apparent the moving party has a likelihood of success on the merits, (see, Borenstein v. Rochel Properties, 176 AD2d 171, 574 NYS2d 192 [1st Dept., 1991]) some evidence of likelihood of success must be presented. Therefore, when "key facts" are in dispute and the basis for the injunction rests upon "speculation and conjecture" the injunction must be denied (Faberge International Inc., v. Di Pino, 109 AD2d 235, 491 NYS2d 345 [1st Dept., 1985]).

In this case the plaintiff has not presented any specific evidence that have a likelihood of success on the claims. The plaintiff alleges in conclusory terms that the defendant's behavior is harming the LLC and should thus cease to continue. However, there is no specific evidence demonstrating a likelihood of success on the merits. For example, the plaintiff alleges in conclusory terms that he has been frozen out of distributions and attempted to call a meeting but to no avail. The plaintiff has not explained the nature of the freeze out and how an injunction is necessary to preserve any assets or rights as opposed to monetary relief. Therefore, plaintiff's claims fall far short of establishing a likelihood of success on the merits (see, Hui v. New Clients Inc., 126 AD3d 759, 5 NYS3d 279 [2d Dept., 2015]). Thus, in John G. Ulman & Associates, Inc., v. BCK Partners Inc., 139 AD3d 1358, 30 NYS3d 785 [4th Dept., 2016] the court denied a preliminary injunction brought to stop a former employee from unnecessarily taking over the plaintiff's part in the LLC, and from improperly soliciting clients to have an unfair advantage in the LLC. The court explained that the allegations were conclusory and did not warrant the drastic remedy sought. Further, the court noted there was insufficient evidence monetary damages would not be sufficient. Likewise, in this case, other than conclusory allegations, there is no specific evidence

demonstrating the defendant engaged in any of these actions sufficient to establish that the plaintiff will likely prevail upon them. Therefore, the motion seeking a preliminary injunction is denied.

So ordered.

ENTER:



DATED: July 30, 2018
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC

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