

Esposito v Estate of Casale

2018 NY Slip Op 32185(U)

August 24, 2018

Supreme Court, Kings County

Docket Number: 409/18

Judge: Leon Ruchelsman

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

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ANTHONY ESPOSITO, CASTLE U.S.A. CORP.,
VINCENT ESPOSITO & JULY4EVER CO., LTD.,
Plaintiffs,

Decision and order

- against -

Index No. 409/18

ms # 1

ESTATE OF LOUIS CASALE, LOUIS JOHN CASALE
AS ADMINISTRATOR OF THE ESTATE OF LOUIS
CASALE, LOUIS JOHN CASALE, individually,
ROSEMARIE CASALE, JOHN SAGARIA & FIREWORKS
EXTRAVAGANZA INC.,

Defendants,

August 24, 2018

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved seeking a preliminary injunction enjoining John Sagaria and Fireworks Extravaganza Inc., [hereinafter "FIE"] from taking any action on behalf of Castle USA Corp., [hereinafter "Castle"] until the shareholders and officers of Castle are determined. The defendants oppose the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments, this court now makes the following determination.

The complaint alleges that on June 5, 2000 the plaintiff Anthony Esposito and Louis Casale entered into a shareholder agreement wherein each member was a fifty percent owner of a corporation known as Castle USA Corp. Castle purchased property located at 382 Rock Cut Road in Walden New York and gave a ninety nine year lease to Vincent Esposito. Vincent entered into

a further lease with defendants Sagaria and FIE which expired on December 31, 2017. Louis Casale passed away on November 3, 2012 and the plaintiff sought to purchase Casale's shares from his son Louis Casale Jr., the administrator of his father's estate. It was later revealed that additional shares of stock were issued to Vincent Esposito, Rosemarie Casale and Louis Casale Sr. prior to his death. Some of those shares were then transferred to Sagaria and FIE who are now acting as owners of Castle. This lawsuit has been commenced seeking a determination no such additional shares were allowable and that consequently Sagaria and FIE have no claims of ownership of Castle. This motion seeking to enjoin Sagaria and FIE from asserting any ownership over Castle has now been filed. The Casale defendants, namely the Estate of Louis Casale Sr., Rosemarie Casale and Louis Casale Jr., all assert that no shareholder agreement ever existed and the production of such an agreement in this case was the result of fraud. They further argue that Castle was a joint venture between Vincent Esposito and Louis Casale Sr., and that upon his divorce from Rosemarie half of his half of Castle was given to her. Thus, she owned twenty five percent, Louis owned twenty five percent and Vincent owned fifty percent. Thus, in 2017 Rosemarie as well as the Estate of Louis Casale sold their shares to FEI.

The defendant John Sagaria likewise disputes the validity of the shareholder agreement presented by Anthony Esposito. He echoes the other defendants and asserts that as president of FEI he purchased half of the shares of Castle from Rosemarie and the Estate of Louis Casale and is thus half owner of Castle.

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 it is alleged the failure to grant such relief will cause harm to the plaintiff since Castle has essentially been stolen from the plaintiff. Of course, the defendants deny these underlying facts supporting the injunctive relief and indeed there is disputed evidence presented supporting those allegations. 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 they have a likelihood of success on their claims. The plaintiff alleges he was a fifty percent shareholder of the corporation while the defendants contend the plaintiff was not such an owner and never was an owner. However, there is no specific evidence demonstrating a likelihood of plaintiff's success on the merits. For example, the plaintiff's entire case rests upon the authenticity of the shareholder agreement he presented. However, the resolution of this motion rests far more than upon a bald assertion of forgery (Banco Popular North America v. Victory Taxi Management Inc., 1 NY3d 381, 774 NYS2d 480 [2004]). Thus, in a related matter during a hearing conducted in Orange County on October 12, 2017 the plaintiff testified that he did not maintain any corporate records including any shareholder agreement (see, Transcript, pages 13, 22). Indeed, on page 23 of the transcript, Anthony Esposito testified that regarding

the shareholder agreement he signed he "threw it out" (id). Moreover, the defendants have submitted extensive negotiations concerning the sale of Louis Casale Sr.'s shares to Vincent Esposito including a proposed stock purchase agreement. Absent from any of these negotiations is any mention of Anthony Esposito as the owner. Of course, Anthony has presented the shareholder agreement as well as other evidence supporting his claims of ownership. Thus, while all that might suffice to succeed a motion to dismiss and ultimately to prevail in this lawsuit, it falls 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]). Therefore, since the facts are in serious dispute (see, Advanced Digital Security Solutions Inc., v. Samsung Techwin Co. Ltd., 53 AD3d 612, 862 NYS2d 551 [2d Dept., 2008]) the motion seeking a preliminary injunction is denied.

So ordered.

ENTER:



DATED: August 24, 2018
 Brooklyn NY

 Hon. Leon Ruchelsman
 JSC

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