

<b>Khanukov v Badalova</b>
2019 NY Slip Op 30230(U)
January 22, 2019
Supreme Court, Kings County
Docket Number: 526189/18
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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ELINA KHANUKOV, individually and derivatively,  
ON BEHALF OF DEVELOPMENT CENTER 'MY WAY' INC.,  
And CHILD AND YOUTH DEVELOPMENT CENTER 'MY  
WAY' INC.,

Plaintiffs,

Decision and order.

- against -

Index No. 526189/18

ALYONA BADALOVA,

Defendant,

January 22, 2019

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PRESENT: HON. LEON RUCHELSMAN

ms # 7

The plaintiff has moved pursuant to CPLR §6301 seeking to restrain the defendant from paying any corporate funds to herself and for an order allowing the plaintiff to inspect the books and records of the corporation. The defendant opposes the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

On January 17, 2014 the plaintiff Elina Khanukov and defendant Alyona Badalova entered into a shareholder agreement whereby each of them would be fifty percent owners of an entity entitled Development Center My Way Inc. An accompanying 'Unanimous Written Consent of the Board of Directors of Development Center 'My Way' Inc., dated the previous day acknowledged an investment from the plaintiff in the amount of \$186,000. An Investment Agreement signed by both parties the same day as the shareholder agreement identified the plaintiff as an investor and noted that "the investor is a silent investor and

will not participate in a day-to-day management of the Corporation. The investor acknowledges that she was advised of the Corporation management rules" (see, Investment Agreement, ¶4). The plaintiff has accused the defendant of not sharing relevant profits and consequently now seeks to examine the books and records. This motion seeks to compel the defendant to allow such inspection and to further prevent the defendant from making any further payments to herself or her family members until a proper accounting can be made.

#### 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 it is alleged the defendant is no properly dividing any profits. Of course, the defendant denies 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 [1<sup>st</sup> 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 [1<sup>st</sup> 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 she is a fifty percent shareholder of the corporation and that the defendant is not dividing the profits equally. First, there has been no evidence supporting the contention she has not been provided with any profits. Other than conclusory assertions, there has been no proof the defendant has continued to "siphon off funds of the company while her investor partner is kept blind as to the company's finances" (see, Affirmation in Support, ¶10). Thus, simple accusations are insufficient to grant a preliminary injunction. Moreover, even if true, the plaintiff has not presented any evidence why the failure to grant an injunction would result in any irreparable harm. If true the harms alleged are merely monetary in nature and are not a proper basis upon which to obtain a preliminary injunction. The defendant asserts the plaintiff is not entitled

to examine any books and records in any event. While that issue is not presently before the court, further litigation might demonstrate sufficient basis to prevail upon those claims or in this lawsuit. Nevertheless, the evidence 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: January 22, 2019  
 Brooklyn N.Y.




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Hon. Leon Ruchelsman  
 JSC.

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