

Core Dev. Group LLC v Spaho
2019 NY Slip Op 33053(U)
October 11, 2019
Supreme Court, New York County
Docket Number: 152584/2019
Judge: W. Franc Perry
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. W. FRANC PERRY PART IAS MOTION 23EFM

Justice

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CORE DEVELOPMENT GROUP LLC,

Plaintiff,

- v -

BESNICK SPAHO, FATION SPAHO, CORE
MANAGEMENT NY, LLC

Defendant.

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INDEX NO. 152584/2019

MOTION DATE 10/10/2019

MOTION SEQ. NO. 001

DECISION + ORDER ON
MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 6, 8, 9, 10, 16, 19, 20, 31, 32

were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR

In this action alleging violations of the Lanham Act, plaintiff, Core Development Group LLC, in motion sequence number 001, seeks a preliminary injunction against defendants, Besnick Spaho, Fation Spaho and Core Management NY, LLC ("defendants"). Defendants oppose the motion.

In order to obtain a preliminary injunction, the proponent must demonstrate "(1) a likelihood of success on the merits, (2) irreparable injury absent a preliminary injunction, and (3) a balance of equities tipping in its favor." Harris v. Patients Med., P.C., 93 N.Y.S.3d 299 (1st Dep't 2019), citing C.P.L.R. § 6301 and Nobu Next Door, LLC v. Fine Arts Hous., Inc., 4 N.Y.3d 839, 840 (N.Y. 2005). Irreparable injury must be imminent, and not remote or speculative. See Trump on the Ocean, LLC v. Ash, 916 N.Y.S.2d 177 (2d Dep't 2011). The granting of such relief is committed to the sound discretion of the motion court (Doe v Axelrod, 73 NY2d 748, 532 N.E.2d 1272, 536 N.Y.S.2d 44 [1988]).

Based on the record, plaintiff has simply not met its burden to obtain the extraordinary relief sought against defendants. Plaintiff does not identify any imminent or irreparable injury absent a preliminary injunction. Plaintiff waited four years to bring the instant claims, which stem from transactions that purportedly occurred in and before 2015. Plaintiff made the instant motion, on March 11, 2019. (NYSCEF No. 3). Defendants opposed the motion on June 7, 2019. (NYSCEF No. 8). Plaintiff then stipulated to multiple adjournments of the return date after defendants submitted their opposition. (NYSCEF No. 10, 16). Plaintiff then amended its complaint on July 15, 2019, and filed its reply on the same date. (NYSCEF No. 18, 19). Plaintiff failed to appear for oral argument on October 10, 2019 and the court, based on its review of the submissions, denied the motion on the record and directed the defendants to submit a proposed order to the court.

Not only has plaintiff failed to demonstrate imminent or irreparable injury absent the granting of a preliminary injunction, plaintiff has failed to demonstrate a likelihood of success on the merits or that the balance of the equities tip in its favor. Plaintiff's conclusory allegations are not supported by proof. Plaintiff claims that "by wrongfully holding Core Management out as part of Core, it is attempting to deceive, and has in fact deceived and misled and confused the public in violation of the Lanham Act." (NYSCEF Doc. Nos. 4, 18, ¶¶ 38-42).

The Lanham Act expressly forbids false or misleading descriptions or representations of fact "in commercial advertising or promotion" concerning "the nature, characteristics, qualities, or geographic origin of . . . goods, services, or commercial activities." 15 U.S.C. § 1125(a)(1)(B). To establish a false advertising claim under Section 43(a) of the Lanham Act, a plaintiff must prove the following elements: (1) the defendant has made a false or misleading statement; (2) the false or misleading statement has actually deceived or has the capacity to deceive a substantial

portion of the intended audience; (3) the deception is material in that it is likely to influence purchasing decisions; (4) the defendant placed the false or misleading statement in interstate commerce; and (5) the plaintiff has been injured as a result of the misrepresentation, either by direct diversion of sales or by a lessening of goodwill associated with its products. *S.C. Johnson & Son, Inc. v. Clorox Co.*, 241 F.3d 232, 238 (2d Cir. 2001); *Cashmere & Camel Hair Mfrs., Inst. v. Saks Fifth Ave.*, 284 F.3d 302, 310-11 (1st Cir. 2002).

Plaintiff's motion seeking a preliminary injunction is not supported by any proof; there are no documents or affidavits submitted that support the conclusory and speculative claims alleged in the amended complaint. Rather, plaintiff summarily concludes that defendants placed "misleading representations into interstate commerce when they published them to the internet and on marketing material to potential clients and to anyone connected to the internet" and that defendants "acts are causing and will continue to cause Plaintiff irreparable harm in the nature of loss of control over its reputation, and loss of substantial consumer goodwill." (NYSCEF Doc. No. 18, ¶¶ 54, 56). Plaintiff has failed to demonstrate who the defendants deceived; how the deception influenced anyone; or how the plaintiff was injured. As such, plaintiff has failed to demonstrate a likelihood of success on the merits.

Finally, a balance of the equities does not tip in plaintiff's favor. As noted, plaintiff waited four years to bring the instant claims, which stem from transactions that purportedly occurred in and before 2015. Indeed, defendants have demonstrated that plaintiff has been operating in full awareness of defendants' business for the last four years and plaintiff has failed to sustain its burden to support the issuance of a preliminary injunction against defendants. Waiting four years to seek the relief herein aptly demonstrates that the harm alleged is not


imminent; indeed, the allegations in the amended complaint state that it has been occurring since 2015. (NYSCEF Doc. No. 18, ¶¶ 29-31; ¶ 53).

As the Court of Appeals has observed, "because preliminary injunctions prevent the litigants from taking actions that they are otherwise legally entitled to take in advance of an adjudication on the merits, they should be issued cautiously and in accordance with appropriate procedural safeguards." *Uniformed Firefighters Ass'n of Greater New York v. City of New York*, 79 N.Y.2d 236, 241, 590 N.E.2d 719, 581 N.Y.S.2d 734 (1992); see also, e.g., *Margolies v. Encounter, Inc.*, 42 N.Y.2d 475, 479, 368 N.E.2d 1243, 398 N.Y.S.2d 877 (1977) (a preliminary injunction "operates as a substantial limitation on the defendant's interests prior to any adjudication of the respective rights of the parties on the merits of the controversy between them"). Plaintiff has failed to meet its burden to support the issuance of a preliminary injunction. Accordingly, it is hereby,

ORDERED that plaintiff's motion sequence number 001, seeking a preliminary injunction is denied.

Any requested relief not expressly addressed by the Court has nonetheless been considered and is hereby denied and this constitutes the decision and order of the Court.

10/11/2019
DATE


W. FRANC PERRY, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE