

Matter of Fronshtein v Yanvarashvili
2020 NY Slip Op 31126(U)
April 24, 2020
Supreme Court, Kings County
Docket Number: 505501/2018
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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In the Matter of the Application of SARRA
FRONSHTEIN, individually and derivatively
On behalf of ALDAV PHARMACY INC.,
Plaintiff,

Decision and Order

For an Order and Judgement, pursuant to
Business Corporations Law 1104-a dissolving
ALDAV PHARMACY INC.,

April 24, 2020

Index #505501/2018

-against-

RENA YANVARASHVILI & ALEKSANDR YANVARASHVILI
Defendants,

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PRESENT: HON. LEON RUCHELSMAN

The petitioner Sarra Fronshtein has moved seeking a preliminary injunction. The respondent Rena Yanvarashvili opposes the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

The petitioner and respondent are each fifty percent owners of Aldav Pharmacy located at 749 Ocean Parkway in Kings County. In March 2018 Fronshtein commenced a dissolution action pursuant to BCL §1104-a on the grounds that essentially Yanvarashvili has frozen out Fronshtein from all decisions at the pharmacy, hired her husband Aleksandr Yanvarashvili without

authority and diverted funds due to Fronshtein. Now Fronshtein has moved seeking to enjoin Rena Yanvarashvili from taking any action with respect to the pharmacy without the input and participation of Fronshtein.

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]). To establish a likelihood of success on the merits the movant must demonstrate a clear right to relief from the undisputed facts (Cooper v. Board of White Sands Condominium, 89 AD3d 669, 931 NYS2d 696 [2d Dept., 2011]). Therefore, where significant facts are in dispute and it is not clear the movant can establish a likelihood of success on the merits then a preliminary injunction should not be granted (Advanced Digital Security Solutions Inc., v. Samsung Techwin Co., Ltd., 53 AD3d 612, 862 NYS2d 551 [2d Dept., 2008]).

In this case the facts are clearly disputed. Fronshtein alleges Yanvarashvili and her husband have misappropriated

funds, have made unauthorized payments and have prevented her from reviewing any books and records. Further, Fronshtein alleges Yanvarashvili installed a bill pay terminal similar to Western Union without her authorization. However, Yanvarashvili disputes these allegations. Indeed, Yanvarashvili has submitted affidavits from four employees at the pharmacy, Bella Galler, Tatyana Sosland, Marina Blazhko and Lisa Gotlibovsky. They have all stated that Fronshtein was never denied access to any information in the way Fronsthein has alleged in her affidavit in support of the injunction. Further, they have all stated they viewed the bill pay terminal an essential component of the pharmacy and necessary to remain competitive and to help increase traffic in the store. Moreover, Fronshtein has not provided any evidence demonstrating there really are no issues of fact and that the harms she has alleged are uncontroverted. Thus, at this juncture there are significant factual disputes which cannot support the granting of an injunction.

Moreover, Fronshtein has not demonstrated any irreparable injury. First, any economic loss which can be compensable by money damages is not irreparable injury (DiFabio v. Omnipoint Communications Inc., 66 AD3d 635, 887 NYS2d 168 [2d Dept., 2009]). In this case, although Fronshtein may be unhappy with

made the pharmacy more profitable not less. Even if there are allegations of economic losses they cannot support an injunction since money damages are available. Concerning any of the non-economic harms alleged to be taking place, again as noted they are sharply disputed and thus cannot support an injunction (Digestive Liver Disease P.C., v. Patel, 18 AD3d 423, 793 NYS2d 773 [2d Dept., 2005]).

Therefore, based on the foregoing, the motion seeking a preliminary injunction is denied.

So ordered.

ENTER:

Dated: April 24, 2020
Brooklyn, N.Y.



Hon. Leon Ruchelsman
JSC