

Weiser v Nemanov

2020 NY Slip Op 31158(U)

April 22, 2020

Supreme Court, Kings County

Docket Number: 502269/2020

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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SHOLEM WEISER,

Plaintiff,

Decision and Order

-against-

April 22, 2020

Index #502269/2020

SHMUEL NEMANOV, et. al.,

Defendant,

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved seeking a preliminary injunction. The defendants have opposed the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court makes the following determination.

On July 9, 2019 the plaintiff and defendant Shmuel Nemanov entered into an agreement concerning patents which provided that the plaintiff was a 78% percent owner and Nemanov was a 22% owner of the patents described in the agreement. The agreement further provided that only the plaintiff had the right to essentially sell the patents or grant licenses under the patents. Further, the plaintiff sent a letter to "a major player in today's World Economy and the U.S. Economy" (see, Affirmation of Sholem Weisner, ¶27) that such global player has

infringed upon the patents outlined in the agreement. The identity of this global player remains anonymous pursuant to a non-disclosure agreement and will be referred to in this decision as the global player. The plaintiff alleges that the defendant Nemanov initiated contact with the global player in violation of the agreement and that such negotiations ruined the fruitful negotiations that were ongoing. This motion seeking an injunction to prevent the defendant Nemanov from continuing to hold himself out as a legitimate representative of the patents and to negotiate on behalf of the plaintiff has now been filed.

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]). Thus, even assuming the plaintiff has satisfied this prong, it must likewise satisfy the remaining prongs as well. Therefore, concerning irreparable injury, 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]). Thus, even if there are allegations of economic losses they cannot support an injunction since money damages are available.

The plaintiff argues that the defendant has caused reputational harm which cannot be compensated by money damages, therefore, they have satisfied this prong. However, a distinction must be drawn between reputational 'harm' which evidence does not permit any injunction and 'irreparable harm' which evidence does support an injunction (see, Campbell Apartment Ltd., Metropolitan Transportation Authority, 53 Misc3d 282, 35 NYS3d 856 [Supreme Court New York County 2016]). First, the plaintiff has presented insufficient evidence of any reputational harm at all. Indeed, the only basis for such harm is the self-serving affidavit of the plaintiff himself that the defendant's interference ruined the plaintiff's reputation, specifically, that the global player now refused to take the plaintiff seriously. As noted, there is no evidence corroborating those allegations. Conclusory allegations concerning reputation and goodwill are insufficient to establish irreparable harm (John G. Ullman and Associates Inc., v. BCK Partners Inc., 139 AD2d 1358, 30 NYS3d 785 [4th Dept., 2016]).

Even if the plaintiff could corroborate its alleged loss of reputation there is no evidence such reputational harm would be permanent rendering it 'irreparable' (see, Apple Air Conditioning & Appliance Service Inc., v. Apple Home Heating Corp., 164 AD3d 460, 81 NYS3d 581 [2d Dept., 2016]). The allegations consist of the fact the defendant interfered with negotiations with the global player which caused the global player to view the plaintiff as unserious. However, first, as noted that is conclusory. More importantly, there is no evidence the global player would have reached an agreement with the plaintiff in any event. There is no evidence the defendant's interference was anything more than an insignificant setback that would not have long lasting harm to the plaintiff. Moreover, if the plaintiff's allegations are true and the global player indeed violated patent laws it is difficult to imagine how some unwanted and uncalled-for interference on the part of the defendant could have caused such permanent and definitive harm necessary to secure the injunction. Indeed, the plaintiff asserts he was in the process of negotiating a settlement with the global player, however, there is no evidence such settlement would have successfully been negotiated. Thus, the allegations that the defendant somehow caused any irreparable injury to the plaintiff have not been sufficiently supported.

Consequently, based on the foregoing, the motion seeking an injunction is denied.

So ordered.

ENTER:

Dated: April 22, 2020
Brooklyn, N.Y.



Hon. Leon Ruchelsman
JSC