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

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VLADIMIR SERGEEV, A 50% SHAREHOLDER OF LAND-O-FUN INC., VALDIMIR MILOV & OLEG BAZYLKO, each Having a beneficial interest in 49% of the shares Of LAND-O-FUN INC., and Derivatively on behalf of LAND-O-FUN INC.,

Petitioners,

-against-

Decision and Order
May 19, 2020

Index#520487/2019

LAND-O-FUN INC., AND SEMION KORDUNOV,

Defendants,

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PRESENT: HON. LEON RUCHELSMAN

The petitioners have moved seeking a preliminary injunction and the appointment of a receiver and other reliefs. The respondent opposes the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments, this court now makes the following determination.

As recorded in an order dated December 9, 2019 respondent Kordunov is a fifty percent owner of a children's amusement center called Land-O-Fun while the other fifty percent is owned by the petitioners, Milov and Bazylko who own 24.5% each while Sergeev owns the remaining 1%. There is no dispute that originally Sergeev owned fifty percent of the company and that he validly assigned 49% of his interest to Milov and Bazylko. The petitioners have commenced this litigation alleging that

Kordunov has essentially locked them out of the business, that he has failed to grant them access to any of the books and records of the business and that he has not treated them as owners. Further they allege that Kordunov is depleting the assets and neglecting the business. Kordunov responds that he has accepted the petitioners as owners and will show them the books and records, however, due to an alleged event where the petitioners entered the premises unannounced and acted violently, Kordunov is wary of inviting them back to the premises. The petitioners dispute the violent characterization of that event and insist no improper actions took place. Indeed, the petitioners and respondents dispute almost every facet of the litigation, from the reasons the partnership was first formed, why the assignments were made to Milov and Bazylko and who is responsible for a decline in the operations of Land-O-Fun, if any. These motions have 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, 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. Thus, the moving party is not required to present 'conclusive proof' of its entitlement to an injunction and "the mere fact that there indeed may be questions of fact for trial does not preclude a court from exercising its discretion in granting an injunction" (Ying Fung Moy v. Hohi Umeki, 10 AD3d 604, 781 NYS2d 684 [2d Dept., 2004]).

While there are many factual disputes in this case they do not touch upon the basis the injunction is being sought. The court has already determined that the petitioners are valid owners of the Land-O-Fun. Further, the court already ordered the respondent to present the petitioners with copies of all books and records to which they are entitled. The respondent's excuse that the books and records cannot be viewed by the

petitioners because their presence would upset the manager is not a sufficient basis upon which to disregard a court order. Further, the argument that books and records cannot be supplied because the taxes have not been filed does not address the failure to furnish such documents. The petitioners have a right to view the documents irrespective of any tax filing timeline. Thus, there really is no dispute that the respondent has been unwilling to share the books and records which the petitioners are entitled to review. Thus, there is clearly a likelihood of success on the merits concerning Kordunov's activities which the petitioners are trying to stop.

Further, the harms potentially caused by Kordunov are not merely economic and cannot be resolved merely by the payment of money since the harms alleged are more than just financial, they concern the future viability of the business including permits and licenses which the payment of money could not make whole (DiFabio v. Omnipoint Communications Inc., 66 AD3d 635, 887 NYS2d 168 [2d Dept., 2009]).

Concerning the motion seeking a receiver, it is well settled that "a temporary receiver should only be appointed where there is a clear evidentiary showing of the necessity for the conservation of the property at issue and the need to protect a party's interests in that property" (see, Quick v.

Quick, 69 AD3d 828, 893 NYS2d 583 [2d Dept., 2010]). Thus, a temporary receiver is appropriate where the party has presented "clear and convincing evidence of irreparable loss or waste to the subject property and that a temporary receiver is needed to protect their interests" (Magee v. Magee, 120 AD3d 637, 990 NYS2d 894 [2d Dept., 2014]).

In this case the petitioners have presented sufficient evidence that a receiver is necessary to protect the assets of the amusement center. Sufficient evidence has been alleged demonstrating waste and neglect.

Therefore, the motion seeking a preliminary injunction is granted and the motion seeking a receiver is granted. The court hereby appoints Eric Nelson Esq. 54 Florence Street, Staten Island, New York 10308, (718)356-6069. Mr. Nelson is hereby granted all authority to operate the business and have access to all the books and records which he can share with any of the litigants in this case.

Further, the motion seeking to amend the complaint to add additional causes of action is granted.

Lastly, the court hereby amends its prior order to emphasize that the court did not reach any conclusion regarding the validity of any BCL §603 Notice, special meeting or adoption

of any by-laws. The conclusion the assignments were valid based upon those by-laws merely meant to highlight that according to Kordunov such by-laws sanctioned the assignment and that in any event such assignment was valid since there were no by-laws in place that prohibited it.

So ordered.

ENTER:

Dated: May 19, 2020
Brooklyn, N.Y.

Hon. Leon Ruchelsman
JSC