

Blank v Eckert
2020 NY Slip Op 32401(U)
July 22, 2020
Supreme Court, Kings County
Docket Number: 504430/20
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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SIDNEY BLANK, LEONARD ECKERT, STEVEN
ECKERT, and derivatively on behalf of all
shareholders SHELL ENTERPRISES INC., AND
SHELL LANES INC.,

Petitioners, Decision and order
504430/20

- against -

FRED ECKERT,

Respondent,

- against -

July 22, 2020

SHELL ENTERPRISES INC., AND SHELL LANES INC.,
Nominal Respondents

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PRESENT: HON. LEON RUCHELSMAN

The respondent has moved pursuant to CPLR §2221 seeking to
reargue an order dated March 19, 2020 which granted a preliminary
injunction. The petitioner has moved for contempt due to the
failure of respondent to abide by such injunction. The
petitioner has further filed a motion for default against the
respondent. Lastly, the respondent has filed a motion seeking to
extend the time in which to file the answer. All the motions
have been opposed respectively. Papers were submitted by the
parties and after reviewing all the arguments this court now
makes the following determination.

As recorded in the prior order, the petitioner Sidney Blank
is a fifty percent owner of Shell Enterprises Inc., and Shell
Lanes Inc. Petitioners Leonard and Steven Eckert each own twelve
and a half percent of the corporations and the respondent Fred

Eckert owns twenty five percent of the corporations. According to the Verified Petition, the respondent has been in the exclusive possession of the books and records of the corporations and has exclusively managed the corporation without the involvement of any of the other shareholders since at least 2015. The Petition alleges various improprieties including breach of fiduciary duty, waste, mismanagement, unjust enrichment, breach of contract and other claims. Further, the Verified Petition alleges the respondent has failed to pay real estate taxes for 2018 and 2019 and a foreclosure action has commenced. The court granted petitioner's request for a preliminary injunction and held that "Mr. Eckert must yield all operational and management control of the corporation, turn the keys over to the petitioner and provide a complete and total set of all books and records as requested" (see, Decision and Order dated March 19, 2020). The respondent now seeks to reargue that determination.

Conclusions of Law

A motion to reargue must be based upon the fact the court overlooked or misapprehended fact or law or for some other reason mistakenly arrived at in its earlier decision (Deutsche Bank National Trust Co., v. Russo, 170 AD3d 952, 96 NYS2d 617 [2d Dept., 2019]).

The basis for the reargument or perhaps renewal is the fact

that following the rendering of the previous decision petitioner Steven Eckert sent a nasty text to respondent Fred Eckert. The text was indeed nasty as well as racially inappropriate and wrong. However, that one text can hardly be grounds to vacate the prior order. The respondent argues the text demonstrates that Steven Eckert "is incapable of acting in an operational and managerial capacity in the best interests of the corporation and of all of its shareholders – including Fred Eckert" (Memorandum in Support, page 7). There is no requirement that anyone acting in such a position cannot be nasty or mean spirited or dislike some of the other shareholders. It is sheer speculation to argue that an inappropriate text disqualifies someone from acting in any managerial role. Therefore, the motion seeking renewal or reargument is denied.

The contempt motion was based upon respondent's failure to comply with the court's decision pending the reargument motion. That motion has now been decided and the respondent shall have ten days from receipt of this order to fully comply with the court's earlier directive. The contempt is consequently denied at this time.

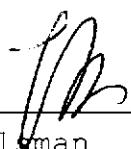
Considering all the motion practice that has already taken place and the COVID-19 pandemic, the motion seeking a default is denied and the cross-motion seeking to file a late answer is granted. The respondent shall have thirty days from the receipt

of this order in which to file an answer.

So ordered.

ENTER:

DATED: July 22, 2020
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC