

Matter of Danzinger v Avtzon
2020 NY Slip Op 32852(U)
August 31, 2020
Supreme Court, Kings County
Docket Number: 514504/2020
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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In the matter of the application of

LEVI DANZINGER, as a Managing Member and Index No. 514504120
Holder of 50% of the Membership Interests of
GOZE PRODUCTS LLC,
Petitioner,

For the Dissolution of GOZE PRODUCTS LLC,
A New York Limited Liability Company, Pursuant
to Limited Liability Company Law §702, and to
Appoint a Receiver to wind up the affairs of
GOZE PRODUCTS LLC pursuant to
Limited Liability Company Law §703, August 31, 2020

-against-

MOSHI AVTZON and ISAAC AVTZON,
a/k/a YOSEL AVTZON,
Respondents,

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PRESENT: HON. LEON RUCHELSMAN

The petitioner has moved pursuant to CPLR §6301 seeking an injunction restraining the respondent's from engaging in certain activities. The respondents have also moved seeking an injunction preventing the petitioner from taking certain actions. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

According to the Petition both the petitioner Levi Danzinger and the respondent Isaac Avtzon are each fifty percent owners of an entity called Goze Products LLC which operates as an internet seller through websites including Amazon.com. The Petition alleges that Avtzon and his son Moshi Avtzon

misappropriated \$250,000, diverted \$120,000 worth of merchandise and interfered with Danzinger's management of the business. The petitioner seeks an injunction ordering Avtzon to return the funds, to refrain from interfering with Danzinger's operations of the business and to appoint a receiver. According to Avtzon it is Danzinger who has locked Avtzon out of various bank accounts and have left Avtzon in the dark concerning the finances of the business. Each party essentially has moved to restrain the other party from interfering with running the business.

Conclusions of Law

CPLR §6301, as it pertains to this case, permits the court to issue a preliminary injunction "in any action... where the plaintiff has demanded and would be entitled to a judgement restraining defendant from the commission or the continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff" (id). A party seeking a preliminary injunction "must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of the injunction and a balance of the equities in its favor" (Nobu Next Door, LLC v. Fine Arts Hosing, Inc., 4 NY3d 839, 800 NYS2d 48 [2005], see also, Alexandru v. Pappas, 68 Ad3d 690, 890 NY2d 593 [2d Dept., 2009]). Further, each of the above elements must be proven by the moving party with "clear and

convincing evidence" (Liotta v. Mattone, 71 AD3d 741, 900 NYS2d 62 [2d Dept., 2010]).

Considering the first prong, establishing a likelihood of success on the merits, the movant must prima facie establish a reasonable probability of success (Barbes Restaurant Inc., v. Seuzer 218 LLC, 140 AD3d 430, 33 NYS3d 43 [2d Dept., 2016]). In this case the basis for the injunction sought by each party is grounded in the fact it is alleged the other party breached the operating agreement in many significant ways, have committed improprieties and have prevented the other party from performing their duties effectively on behalf of the business. Of course, the party opposing each injunction deny these underlying facts supporting the injunctive relief and indeed the allegations are heavily and fundamentally disputed. 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. Therefore, when "key facts" are in dispute and the basis for the injunction rests upon "speculation and conjecture" the injunction must be denied (Faberge International Inc., v. Di Pino, 109 AD2d 235, 491 NYS2d 345 [1st Dept., 1985]). Thus, the Petition (¶¶25-31) accuse Avtzon of "embezzling" \$250,000 yet equally concedes that

such funds were really loans that were given with the consent, even belatedly, of Danzinger. Thus, the failure to pay back a loan, if such loan was indeed not timely paid back does, not constitute embezzlement at all. the Petition (¶¶32-33) next accuse Avtzon of diverting \$120,000 of inventory. However, Levi Baumgarten, the warehouse manager of Goze submitted an affidavit wherein he disputed that any diversion of inventory took place and that an accounting error was the cause of the discrepancy (see, Affidavit of Levi Baumgarten, ¶¶4,5). The Petition further alleges Danzinger was frozen out of the bank accounts and that payments to suppliers were cancelled and these actions harmed the business. However, Avtzon asserts that a philosophical dispute arose between the parties concerning the future of the business and that while Avtzon did prevent Danzinger from accessing the bank accounts, no harm befell the company in any way.

Likewise, Avtzon seeks an injunction accusing Danzinger of diverting Amazon payments. Danzinger asserts the payments were not diverted but rather another account was opened to prevent Avtzon from accessing those funds and they were duly paid. Thus, while the allegations may prove true, at this juncture there are factual disputes undermining the availability of any injunction.

In order to satisfy the second prong of irreparable harm it must be demonstrated that monetary damages are insufficient (Autoone Insurance Company v. Manhattan Heights Medical P.C., 24


Misc3d 1229(A), 899 NYS2d 57 [Supreme Court Queens County, 2009]). Neither party even alleges anything other than money damages. Thus, any alleged loss which can be compensated by money damages is not irreparable harm (Family Friendly Media Inc., v. Recorder Television Network, 74 AD3d 738, 903 NYS2d 80 [2d Dept., 2010]). Therefore, all motions seeking any injunctions are denied.

As noted, the parties fundamentally dispute almost every allegation made. The petition seeks a dissolution, yet the petitioner still apparently seeks to continue the business. In that vein the court will deny the request for a receiver, at this time, to afford the parties an opportunity to try and resolve their differences without such receiver. If the parties are unable to continue to operate without a receiver or other further judicial intervention the parties should contact the court and the court will entertain arguments concerning the appointment of a receiver.

So ordered.

ENTER:

DATED: August 31, 2020
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC