

Young Ah Kim v Wonjae Lee
2020 NY Slip Op 33573(U)
October 27, 2020
Supreme Court, Kings County
Docket Number: 507226/2019
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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YOUNG AH KIM on behalf of STRONG BRAND LAB,
LLC,

Plaintiffs, Decision and order

- against -

Index No. 507226/2019

WONJAE LEE,

October 27, 2020

Defendant,

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved pursuant to CPLR §6301 seeking a preliminary injunction staying the defendant from taking any action which will harm the plaintiff's interest in the company and requiring the defendant to disclose all the books and records and bank accounts of the company. The defendant opposes the motion. Papers were submitted by the parties and arguments held and after reviewing all the arguments this court now makes the following determination.

On May 1, 2017 the plaintiff Kim and defendant formed an entity called Strong Brand Lab LLC [hereinafter 'SBL'] and were each half owner of the entity. The entity engaged in importing cosmetics and selling them to third parties. The complaint alleges, among other improprieties, that defendant, the managing member of the business, is diverting business assets to another wholly owned business of the defendant called I-World. The complaint further alleges the defendant allowed I-World to act as a middle man, purchasing products from sellers, then making a profit upon the sale to SBL against the interests of SBL. The

complaint further alleges the defendant failed to register a trademark in the name of SBL and instead registered it in another entity owned by defendant. The complaint also alleges the defendant diverted business away from SBL and received investor funds against the wishes of plaintiff. The complaint alleges causes of action of breach of fiduciary duty, corporate waste and unjust enrichment.

The plaintiff has now moved seeking a preliminary injunction restraining the defendant from transferring the assets of the company without prior notice, except in the ordinary course of business. As noted, the plaintiff also seeks information about the company's bank accounts and financial wherewithal, asserting the defendant has blocked plaintiff from such access.

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 plaintiff 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 is that it is alleged the defendants have breached their duties to SBL in many ways including diverting funds, making SBL pay unnecessary fees and essentially stealing the trademark among other improprieties. However, the defendants dispute every contention of the plaintiff. Specifically, the defendants argue that at no time did they ever compromise the financial strength of SBL for I-World and that an accounting irregularity, which has been remedied, explains any discrepancies alleged. Concerning the trademark issue, the defendants argue the trademark noted by plaintiff was never intended to be part of SBL and was always intended to be utilized for I-World. Further, the defendants dispute the factual basis for all of plaintiff's remaining claims and grounds for an injunction. 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 moving party cannot satisfy the necessary elements then an injunction must be denied (Digestive Liver Disease P.C. v. Patel, 18 AD3d 423, 793 NYS2d 773 [2d Dept., 2005]).

In this case, every fact alleged by the plaintiff in support of the injunction is heavily disputed by the defendants. The defendants contest the fact they engaged in any wrongdoing at all and in fact accuse the plaintiff of engaging in wrongdoing. Of course, the continuation of discovery and a trial, if necessary, will determine whether the plaintiff will be able to prove the claims alleged and prevail on the allegations of breaches of duty on the part of the defendant. However, at this juncture, the plaintiff has only raised contested and disputed claims of usurpation and diversion of funds. Consequently, the motion seeking an injunction is denied.

The plaintiff likewise seeks access to all the books and records and bank accounts of the company. The defendants do not object per se but note that such access was denied to the plaintiff after she acted improperly causing the bank to close an account. However, even if true that is not a basis to deny the plaintiff access to records and accounts to which she is

entitled. Therefore, the plaintiff is entitled to all the books and records and bank accounts of the SBL without limitation. The defendants are directed to provide all such information when requested.

So ordered.

ENTER:

DATED: October 27, 2020
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC