

Kenner v Balkany

2020 NY Slip Op 33699(U)

November 4, 2020

Supreme Court, Kings County

Docket Number: 509594/20

Judge: Larry D. Martin

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part Comm 12 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 4th day of November, 2020.

P R E S E N T:

HON. LARRY D. MARTIN,
Justice.

-----X

DAVID KENNER, and JEHUDA HERSKOVITS,
individually, and, as Directors of BAIS YAAKOV
OF BROOKLYN,

Plaintiffs,

- against -

Index No. 509594/20

MILTON BALKANY, a/k/a YEHOShUA BALKANY,
SARA BALKANY, TD BANK, N.A.,

Defendants.

-----X

The following e-filed papers read herein:

NYSCEF Docket No.

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) Annexed _____

4-7, 27

Opposing Affidavits (Affirmations) _____

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Upon the foregoing papers, plaintiffs David Kenner and Jehuda Herskovits (collectively, plaintiffs) move, by order to show cause (in motion sequence [mot. seq.] 1), for an order: (1) pursuant to CPLR 6301, enjoining defendants Milton Balkany and Sara Balkany, from, among other things, acting as members, board members, employees or agents of Bais Yaakov of Brooklyn (Bais Yaakov); and (2) directing defendants Milton Balkany and Sara Balkany to hand over to plaintiffs, on behalf of Bais Yaakov, any bank

statements and copies of checks relating to the bank accounts of Bais Yaakov, open or closed, for the past five years.

Plaintiffs' motion is granted to the extent that: (1) defendants and their respective employees and agents, or anyone with knowledge of this order, are enjoined from making or allowing any withdrawals, deposits, transfers, assignments or encumbrances or any other actions that would alter the balances of any bank account(s) held in the name of Bais Yaakov that are under defendants control, including the TD Bank account in the name of Bais Yaakov of Brooklyn with the last three digits of 920 and with an EIN number with the last three digits of 060; (2) defendants Milton Balkany and Sara Balkany are enjoined from acting as members, board members, employees or agents of Bais Yaakov, representing that they are members, board members, employees or agents of Bais Yaakov, calling, attending, or voting at board meetings, signing checks or papers, entering into agreements, hiring or firing employees, appointing or removing members, raising money, and from any other action on behalf of Bais Yaakov; (3) the grant of this preliminary injunction is conditioned upon plaintiffs posting an undertaking in the amount of \$5,000.00 within 15 days of entry of this order; and (4) defendants Milton Balkany and Sara Balkany shall, on or before December 2, 2020, provide plaintiffs with copies of bank statements and checks relating to any of Bais Yaakov's bank accounts, including accounts with TD Bank, N.A., and Northfield Bank, open or closed for the past five years, and, to the extent that such records are no longer in the possession of defendants Milton Balkany and Sara

Balkany, to request that the respective banks provide those records to them so that such records can be provided to plaintiffs.

In this action, plaintiffs allege that Milton Balkany, who was until recently a board member and president of Bais Yaakov, and Sara Balkany, Milton Balkany's wife and a longtime board member of Bais Yaakov, misappropriated, embezzled and converted funds belonging to Bais Yaakov, and that Milton Balkany may not act as a Bais Yaakov board member because he resigned from his position as president and a member of the board in August 2019. These facts are disputed, as is more fully discussed in this court's decision and order in a related action involving some of the same parties, *Bais Yaakov of Brooklyn v David Kenner* (Sup Ct, Kings County index No. 507107/20).

Nevertheless, plaintiffs have demonstrated the need to preserve the status quo pending the determination of this action. As plaintiffs have demonstrated the likelihood of success on the merits, irreparable injury absent an injunction and that the equities balance in their favor (*see 538 Morgan Ave. Props., LLC v 538 Morgan Realty, LLC*, 186 AD3d 657, 658 [2d Dept 2020]; *Ying Fung Moy v Hohl Umeki*, 10 AD3d 604, 604-605 [2d Dept 2004] [the existence of questions of fact for trial does not preclude a court from exercising its discretion in granting an injunction]), the court grants plaintiffs' motion for a preliminary injunction. This grant of a preliminary injunction is conditioned upon plaintiffs posting an undertaking in the amount of \$5,000.00 within 15 days after service of this order with notice entry thereof (CPLR 6312 [b]).

The portion of plaintiffs' motion requesting that the balance of any bank accounts held by defendants Milton Balkany and Sara Balkany in the name of Bais Yaakov be transferred to plaintiffs is denied because there are factual issues as to whether plaintiffs or defendants are responsible for misappropriating assets belonging to Bais Yaakov.


Additionally, plaintiffs, as directors or board members of Bais Yaakov,¹ have an absolute right to inspect the books and records of Bais Yaakov (*see Matter of Cohen v Cocoline Prods.*, 309 NY 119, 123 [1955]; *Derfner Mgt., Inc. v Lenhill Realty Corp.*, 90 AD3d 434, 435 [1st Dept 2011]; *Berkowitz v Astro Moving & Stor. Co.*, 240 AD2d 450, 451 [2d Dept 1999]; *see also Chaudhry v Abadir*, 261 AD2d 497, 498 [2d Dept 1999]). As such, to the extent that Milton Balkany and Sara Balkany possess such records relating to bank accounts or control access to such records relating to bank accounts, they are directed to provide copies of those records to defendants. In view of social distancing issues arising from Covid-19 restrictions, the court has directed that Milton Balkany and

¹ Even assuming there was an issue with respect to Kenner's board membership, it is undisputed that Herskovits is a board member.

Sara Balkany comply by providing copies to defendants rather than an in-person inspection of those records.

This constitutes the decision and order of the court.

E N T E R,


J. S. C.