

Asprea v Whitehall Interiors NYC, LLC

2021 NY Slip Op 30663(U)

March 2, 2021

Supreme Court, New York County

Docket Number: 653586/2019

Judge: Nancy M. Bannon

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. NANCY M. BANNON PART IAS MOTION 42EFM

Justice

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KAREN ASPREA,

Plaintiff,

- v -

WHITEHALL INTERIORS NYC, LLC, L. STEPHEN HILL,
and DAVID WEST

Defendant.

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INDEX NO. 653586/2019
MOTION DATE 12/15/2020
MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 78, 79, 80, 81, 82, 83, 84, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

The plaintiff in this action, a design professional, previously a member of the defendant Whitehall Interiors NYC, LLC, seeks an accounting, injunctive and declaratory relief, and money damages claiming "monies that are due for her work" for the defendant LLC. The complaint does not state separate causes of action or provide further facts. Defendants L. Stephen Hill and David West are founding members of the firm. The plaintiff, now with her own firm, negotiated a noncompete agreement upon her separation from Whitehall in 2018. The defendants answered the complaint and asserted counterclaims for breach of contract, breach of fiduciary duty and a judgment declaring, inter alia, that the plaintiff' membership terminated in 2018 such that she is not entitled to an inspection of Whitehall's books and record and violated the restrictive covenant of Whitehall's Operating Agreement with regard to non-competition and non-solicitation.

The defendants move by Order to Show Cause for a preliminary injunction enjoining the plaintiff from competing for Whitehall business and claiming credit for Whitehall projects. Specifically, the defendants seek to enjoin her from (1) performing or offering any "services

associated with or related to the selection or purchasing of furniture, fixtures or equipment (FF&E Services)” for Gemini Rosemont Development Services LLC , a major client of Whitehall, including the project known as 531-539 Sixth Avenue, or (2) claiming credit on her website and /or social media for any work performed by defendant Whitehall Interiors NYC, for “Tower 31” or “The Continental.” By order dated November 10, 2020, the court granted a TRO as to the above relief, the defendants having narrowed the list of targeted projects.

The plaintiff filed opposition, including an affidavit from Paul Gerwin, Executive Vice President of Gemini Rosemont who states that the plaintiff was hired by Gemini Rosemont not to do FF&E, but to “coordinate, furnish, accessorize and act as the artistic director for the marketing renderings for Gemini.” The defendants correctly argue that this is a “distinction without a difference” and that the plaintiff effectively concedes that she is performing some work prohibited by the parties’ agreement. Indeed, she agreed to remove some content from her website during prior proceedings. The defendants contend and submit an e-mail communication indicating that the plaintiff agreed on September 18, 2018, that, in regard to Gemini Rosemont, she would provide consulting services only as it “relates to the bidding and value engineering process” for Whitehall’s current project at 531 Sixth Avenue. However, the plaintiff disputes that she withdrew from Whitehall at the same time or on the same terms and conditions as alleged by Hill and that any agreement she signed was entered into under duress, as she was undergoing medical treatment at the time. That agreement was apparently negotiated and drafted but never fully executed. In any event, those issues are among the issues to be determined in this action.

To obtain a preliminary injunction, a movant must demonstrate, by clear and convincing evidence, (1) a likelihood of success on the merits, (2) irreparable injury if a preliminary injunction is not granted, and (3) a balance of equities in his or her favor. See CPLR 6301; Nobu Next Door, LLC v Fine Arts Hous., Inc., 4 NY3d 839, 840 (2005); Doe v Axelrod, 73 NY2d 748, 750 (1988). “Where the plaintiffs can be fully compensated by a monetary award, an

injunction will not issue because no irreparable harm will be sustained in the absence of such relief.” Mar v Liquid Mgmt. partners, LLC, 62 AD3d 762, 763 (2nd Dept. 2009); see Meissner v Yun, 126 AD3d 565 (1st Dept. 2015); Zodkevitch v Feibush, 49 AD3d 424 (1st Dept. 2008).

Here, the movants have met this burden. By the submissions made to date by both sides, the defendants have demonstrated a likelihood of success as to at least some of their counterclaims and in defense of the claims made against them by the plaintiff. A balancing of the equities favors the defendants since the plaintiff would suffer no injury or prejudice by being enjoined from conducting business only as to the narrow scope requested by the defendants, which conduct would likely be in violation of the parties’ agreement. Further, the defendants have shown that should this relief not be granted, they would suffer irreparable harm in that the loss of goodwill and reputation that cannot entirely be compensated by money damages. See FTI Consulting, Inc. v PricewaterhouseCoopers LLP, 8 AD3d 143 (1st Dept. 2004).

The granting of a preliminary injunction requires the posting of an undertaking “in an amount to be fixed by the court.” CPLR 6312(b); see Suttongate Holdings Limited v Laconm Management N.V., 159 AD3d 514 (1st Dept. 2018). The amount of the undertaking must be “rationally related to defendants’ potential damages should the preliminary injunction later prove to have been unwarranted.” Peyton v PWV Acquisition LLC, 101 AD3d 446, 447 (1st Dept. 2012). Here, neither party addresses this issue. However, a review of the parties’ affidavits and other submissions, including various invoices, supports a directive that the defendants shall post an undertaking in the amount of \$5,000.00 as a condition of granting the preliminary injunction.

Accordingly, it is

ORDERED that the defendants’ motion for a preliminary injunction is granted to the extent that, pending the disposition of this action or until a further order of the court, and on the condition that the defendants post the undertaking directed herein, the plaintiff is enjoined from (1) performing or offering any “services associated with or related to the selection or purchasing of furniture, fixtures or equipment (FF&E Services)” for Gemini Rosemont Development

Services LLC , including the project known as 531-539 Sixth Avenue, or (2) claiming credit on her website and /or social media for any work performed by defendant Whitehall Interiors NYC, for "Tower 31" or "The Continental", and the motion is otherwise denied, and it is further

ORDERED that that the undertaking is fixed in the sum of \$5,000.00, conditioned that the defendants, if it is finally determined that they were not entitled to an injunction, will pay to the plaintiff all damages and costs which may be sustained by reason of this injunction; and it is further

ORDERED that the parties shall appear for a compliance conference on April 15, 2021, at 2:30 p.m., to be conducted remotely.

This constitutes the Decision and Order of the Court.



NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

3/2/2021
DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE