

**Spartan Bus. Solutions, LLC v Valente Law Group,
P.C.**

2021 NY Slip Op 30960(U)

March 24, 2021

Supreme Court, Nassau County

Docket Number: 612174/2020

Judge: Helen Voutsinas

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU - IAS/TRIAL PART 19
Present: Hon. Helen Voutsinas, J.S.C.**

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**SPARTAN BUSINESS SOLUTIONS, LLC d/b/a
SPARTAN CAPITAL,**

Plaintiff,

-against-

Index No.: 612174/2020
Motion Sequence No. 001

**VALENTE LAW GROUP, P.C., and
DOUGLAS VALENTE,**

Defendants.

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The following papers were read on this motion:

Order to Show Cause, Affirmation and Affidavit in Support, Exhibits..... 1

Plaintiff Spartan Business Solutions, LLC d/b/a Spartan Capital (“Spartan”) moves for an Order pursuant to CPLR §6301 granting a preliminary injunction restraining all funds in any Sterling National Bank Account, other than an IOLA account, titled to Valente Law Group, P.C. (“Law Group”) or Douglas Valente (“Valente”), including the account ending in 7707, up to the amount of \$34,185.17, or such other amount as the Court deems just, pending the resolution of this action and until further Order from this Court.

In this action, plaintiff seeks to recover from defendants for an alleged breach of contract. In support of the motion, plaintiff submits the pleadings and the affidavit of Francisco Mercado-Ebanks, Managing Member of plaintiff.

In his affidavit, Mercado-Ebanks states as follows: Plaintiff and Law Group entered into a written agreement dated September 1, 2020 (“Agreement”), pursuant to which Law Group sold \$59,960.00 of its future receipts (“Purchased Amount”) for an up front sum of \$40,000.00 (“Purchase Price”), and that Valente guaranteed the obligations of Law Group under the Agreement. Plaintiff paid Law Group the Purchase Price, less contractual fees, on September 2, 2020. Under the Agreement, Law Group agreed to pay the Purchased Amount to plaintiff by paying 15% of Law Group’s daily future receipts, and authorized plaintiff to ACH debit daily the amount of \$1,090.18 from Law Group’s bank account. The sum was agreed to be an estimate of 15% of Law Group’s receipts, subject to reconciliation. Under the Agreement, Law Group granted plaintiff a security interest in its future receivables, among other property, which security interest plaintiff perfected by filing a UCC financing statement with the New York Secretary of State on October 29, 2020.

Mercado-Ebanks attests that Law Group defaulted under the Agreement by preventing Spartan from collecting the Purchased Amount and by otherwise breaching its warranties and covenants to Spartan under the Agreement. He states that on October 26, 2020, defendants stopped payment on Spartan's ACH debits to Law Group's account. He asserts further that defendants did not request any reconciliation of the payments made under the Agreement and that they have ignored plaintiff's attempts to resolve this matter.

Section 30 of the Agreement states in relevant part:

[I]n case any Event of Default occurs and is not waived, SPARTAN will be entitled to the issuance of an injunction, restraining order, or other equitable relief in SPARTAN's favor, subject to court approval, restraining [Law Group]'s accounts and/or receivables up to the amount due to SPARTAN as a result of the Event of Default, and [Law Group] will be deemed to have consented to the granting of an application for the same to any court of competent jurisdiction without any prior notice to [Law Group] or any Guarantor and without SPARTAN being required to furnish a bond or other undertaking in connection with the application.

The Guarantee signed by Valente states in relevant part:

In case Guarantor's obligations become due hereunder and are not waived, SPARTAN will be entitled to the issuance of an injunction, restraining order, or other equitable relief in SPARTAN's favor, subject to court approval, restraining [Law Group]'s and Guarantor's accounts and/or receivables up to the amount due to SPARTAN as a result of the Event of Default, and [Law Group] and Guarantor will be deemed to have consented to the granting of an application for the same to any court of competent jurisdiction without any prior notice to [Law Group] or any Guarantor and without SPARTAN being required to furnish a bond or other undertaking in connection with the application.

Plaintiff asserts that if defendants' bank accounts are not restrained immediately, there will be no assets left to satisfy a final judgment. Plaintiff states that a final judgment to which it may be entitled will be rendered ineffectual without the interim relief requested herein. Plaintiff anticipates that it will obtain a final judgment for at least \$34,185.17, consisting of \$25,638.88 in damages and legal fees of 25% of the amount claimed, which comes to \$8,546.29. Plaintiff states that Law Group has a non-IOLA bank account with Sterling National Bank ending in 7707. Plaintiff argues that if the temporary injunctive relief requested is not granted, irreparable harm will be caused to Plaintiff that severely outweighs any prejudice to Defendants.

In the Order to Show Cause issued by the Court on October 30, 2020 in this matter, the Court granted a temporary restraining order restraining all funds in any Sterling National Bank account, other than IOLA accounts, titled to Law Group or Valente, including the account ending in 7707, up to the amount of \$30,000, pending the determination of this motion for a preliminary injunction.

The Court notes that Douglas Valente, the individual defendant named herein, and a practicing New York attorney, had contacted the Court to request an adjournment of the motion on consent. That request was granted, and the motion was adjourned from the original return date of November 18, 2020 to January 19, 2021. Yet no opposition to this motion has been submitted. The Court also has also reviewed the Court's docket and takes note that defendants have not filed an answer to the complaint herein. According to affidavits of service that have been filed, the summons and complaint were served together with the order to show cause and supporting papers, on November 2, 2020.

"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 absent a preliminary injunction; and (3) a balancing of the equities in the movant's favor." (*Greystone Staffing, Inc. v. Warner*, 106 AD3d 954 [2d Dept 2013] quoting *Yedlin v. Lieberman*, 702 AD3d 769 [2d Dept 2013]. See also CPLR § 6301; *Aetna Ins. Co. v. Capasso*, 75 NY2d 860 [1990]).

"The remedy is considered a drastic one which should be used sparingly." (*Town of Carmel v. Melchner*, 105 AD3d 82 [2d Dept 2013]). A movant must satisfy each requirement with "clear and convincing evidence." (*County of Suffolk v. Givens*, 106 AD3d 943 [2d Dept 2013]). The decision to grant or deny a preliminary injunction lies within the sound discretion of the Supreme Court. (See *Butt v. Malik*, 106 AD3d 849 [2d Dept 2013]; *1650 Realty Associates, LLC v. Golden Touch Management, Inc.*, 101 AD3d 1016 [2d Dept 2012]).

"To sustain its burden of demonstrating a likelihood of success on the merits, the movant must demonstrate a clear right to relief which is plain from the undisputed facts." (*Matter of Related Properties, Inc. v. Town Bd. of Town/Village of Harrison*, 22 AD3d 587 [2d Dept 2005]. See also *Abinanti v. Pascale*, 41 AD3d 395 [2d Dept 2007]).

To sustain its burden of establishing irreparable harm, "the plaintiff is required to show that the irreparable injury to be sustained is more burdensome to him than the harm that would be caused to the defendant through the imposition of the injunction." (*Lombard v. Station Square Inn Apartments Corp.*, 94 AD3d 717, 722 [2d Dept 2012]. See also *Klein, Wagner & Morris v. Lawrence A. Klein, P.C.*, 186 AD2d 631 [2d Dept 1992]).

Finally, plaintiff must demonstrate that the balancing of equities favors provisional relief. Plaintiff must show that "the absence of a preliminary injunction would cause it greater injury than the imposition of the injunction would inflict upon the defendant." (*Copart of Connecticut, Inc. v. Long Island Auto Realty, LLC*, 42 AD3d 420 [2d Dept 2007]; *Laro Maintenance Corp. v. Culkin*, 255 AD2d 560 [2d Dept 1998]).

Based upon the papers and arguments before the Court, the Court finds that plaintiff has met its burden, as set forth above, in order to obtain the requested preliminary injunction, and has demonstrated, by clear and convincing evidence, a likelihood of success on the merits, irreparable injury absent a preliminary injunction and a balancing of the equities in its favor.

Accordingly, plaintiff's motion for an Order pursuant to CPLR §6301, granting a preliminary injunction restraining all funds in any Sterling National Bank Account, other than an IOLA account, titled to Valente Law Group, P.C. ("Law Group") or Douglas Valente ("Valente"), including the account

ending in 7707, is **GRANTED**, but the amount restrained shall only be up to the combined and aggregate amount of \$30,000.00.

Any other relief requested but not expressly granted herein is denied.

This constitutes the Decision and Order of this Court.

Dated: March 24, 2021
Mineola, NY



Helen Voutsinas
Justice of the Supreme Court

ENTERED

Mar 29 2021

NASSAU COUNTY
COUNTY CLERK'S OFFICE