

Tailored Fund Cap LLC v Bridgeway Group Inc

2021 NY Slip Op 31453(U)

April 14, 2021

Supreme Court, Nassau County

Docket Number: 607659/2020

Judge: Sharon M.J. Gianelli

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU - IAS/TRIAL PART 11
Present: Hon. Sharon M.J. Gianelli

X

TAILORED FUND CAP LLC d/b/a
BUSINESS FUNDING SOURCE,

Index No. 607659/2020

Plaintiff,

Mot Seq. No. 001

Decision and Order

-against-

BRIDGEWAY GROUP INC and
CARLTON BRIAN POWELL JR,

Defendants.

X

Papers submitted on this motion:

Plaintiff's Order to Show Cause _____ X

The electronic filing of a Summons and Verified Complaint, as well as a proposed Order to Show Cause with Temporary Restraining Order, commenced the instant action on or about July 29, 2020.

In connection with the application, Plaintiff seeks a Preliminary Injunction pursuant to CPLR 6301, restraining the funds in all Bank of America, N.A., TD Bank, N.A., and Wells Fargo accounts of Defendants by up to the sum of \$98,710.75 pending the resolution of the action. This application is unopposed.

Underlying Facts

The underlying action is for breach of contract. Plaintiff states that the parties entered into a written agreement on July 13, 2020. Plaintiff further states that pursuant to the agreement, Defendant Bridgeway Group Inc. ("Bridgeway") sold Plaintiff \$52,465.00 of

its future receivables for a sum of \$35,000.00. Plaintiff also states that pursuant to the agreement, Defendant Carlton Brian Powell, JR. ("Powell") guaranteed the obligations of Defendant Bridgeway under the agreement. According to Plaintiff, it paid Defendant Bridgeway the purchase price, minus contractual fees, on July 15, 2020. Plaintiff states that pursuant to the agreement, Defendant Bridgeway agreed to pay the purchase price amount to Plaintiff by paying twenty percent (20%) of its future receipts.

Plaintiff alleges that Defendant Bridgeway defaulted under the agreement by preventing Plaintiff from collecting the purchased amount. Specifically, Plaintiff claims that Defendant Bridgeway blocked Plaintiff's access to its bank account and changed the account's online login information.

Plaintiff states that Defendants have ignored Plaintiff's attempts to resolve the matter and have blocked Plaintiff's calls. Plaintiff further states that Defendants have made only three (3) payments when they breached.

Plaintiff also claims that Defendants fraudulently induced Plaintiff into paying the purchase price, minus contractual fees twice, by claiming that the first payment of the purchase price was never received. Plaintiff states that Defendants have ignored Plaintiff's demands to return the second payment of the purchase price.

Plaintiff states that it is evident that Defendants' business is failing as it "chose to defraud" Plaintiff. Plaintiff further states that if Defendant Bridgeway's bank accounts are not restrained, there will be no assets to satisfy a final judgment. As such, Plaintiff

claims that a final judgment will be rendered ineffectual without the instant sought relief.

Plaintiff states that it anticipates that it will obtain a final judgment for at least \$98,710.75, encompassing of \$56,567.00 in damages, \$14,141.75 in legal fees, and \$28,002.00 for the return of the second payment of the purchase price.

On July 30, 2020, this Court signed Plaintiff's proposed Order to Show cause ("OSC") with Temporary Restraining Order pending the determination of the instant application.

On August 3, 2020, Defendants were served with the signed OSC and its supporting papers, as well as the Summons and Verified Complaint via certified mail, in accordance with the parties' agreement (*see* Affidavits of Service).

Law/Analysis

CPLR 6301 states that a preliminary injunction is appropriate where (1) a defendant appears to threaten or is about to perform, or is performing an act that violates a plaintiff's rights with respect to the subject matter of an action, rendering a final judgment ineffective; or (2) a plaintiff has demanded and is entitled to a judgment restraining a defendant from committing or continuing an act which would cause injury to the plaintiff.

Whether a preliminary injunction is appropriate is within the sound discretion of the court (*see Doe v Axelrod*, 73 N.Y.2d 748 [1988]). In order to be successful when seeking preliminary injunctive relief, a movant must demonstrate: (1) likelihood of success on the merits; (2) irreparable injury absent the injunction; (3) the balance of equities in his favor (*Zoller v HSBC Mtge. Corp. (USA)*, 135 A.D.3d 932 [2d Dept. 2016]).

A *prima facie* showing of a right to a relief sought is sufficient to satisfy the likelihood of success on the merits prong, as actual proof should be established later on in court proceedings (*McLaughlin, Piven, Vogel, Inc. v W. J. Nolan & Co.*, 114 A.D.2d 165 [2d Dept. 1986]). Generally, monetary damages are insufficient to satisfy the irreparable injury prong (*id.* at 174). The injury must be “imminent and nonspeculative” and a movant must establish that the injury cannot be compensable by money damages (*Rowland v Dushin*, 82 AD3d 738 [2d Dept. 2011]). It is worth noting that the First Department has held that a movant can satisfy the irreparable injury prong in a money judgment matter by demonstrating that if the requested relief is not granted, a substantial amount of money may be “dissipated or otherwise unavailable for recovery” (*Sau Thi Ma v Xaun T. Lien*, 198 A.D.2d 186 [1st Dept. 1993]). With respect to the balance of equities prong, a movant must demonstrate that the injury they would sustain from the denial of the preliminary injunction is substantially greater than the injury their adversary would sustain if the preliminary injunction were granted (*Fischer v Deitsch*, 168 A.D.2d 599 [2d Dept. 1990]).

A preliminary injunction is a drastic remedy and will only be appropriate where a movant demonstrates an undisputable right to it pursuant to the law and the facts stated

in their motion (*Koultukis v Phillips*, 285 A.D.2d 433 [1st Dept. 2001]). Additionally, a preliminary injunction should be granted sparingly (*Fischer v Deitsch, supra*, at 601).

Here, the Court uses its discretion and finds that the sought relief is appropriate in the instant action based on the facts and arguments presented.

Accordingly,

It is

ORDERED, that Plaintiff TAILORED FUND CAP LLC d/b/a BUSINESS FUNDING SOURCE's application for a Preliminary Injunction pursuant to CPLR 6301 restraining the funds in all Bank of America, N.A., TD Bank, N.A., and Wells Fargo accounts of Defendants by up to the sum of \$98,710.75 pending the resolution of the action, is Granted; and

It is

ORDERED, that Plaintiff is directed to serve Defendants with a copy of this Order within thirty (30) days of the date of this Order; and


It is

ORDERED, that Defendants shall serve an Answer within forty-five (45) days of the date Plaintiff serves a copy of this Order.

All applications not specifically addressed herein are denied.

This constitutes the Decision and Order of the Court.

DATED: Mineola, New York
April 14, 2021



HON. SHARON M. GIANELLI,
Justice of the Supreme Court

The conformed signature on this Order and copies thereof shall be deemed original.

ENTERED

May 03 2021

NASSAU COUNTY
COUNTY CLERK'S OFFICE