

AJ Equity Group LLC v US Transp. LLC
2021 NY Slip Op 31971(U)
June 30, 2021
Supreme Court, Nassau County
Docket Number: 600223/2021
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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AJ EQUITY GROUP LLC,

Plaintiff,

-against-

Index No.: 600223/2021
Motion Sequence No. 001

**US TRANSPORT LLC and
LIBAN ALI HUSSEIN,**

Defendants.

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The following papers were read on this motion:

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

Plaintiff AJ Equity Group LLC (“AJ Equity”), moves for an Order pursuant to CPLR §6301 granting a preliminary injunction restraining all funds in any Bank of America account titled to US Transport LLC or Liban Ali Hussein, including the account ending in 1985, up to the amount of \$95,245.00, 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 Asher Sussman, President of AJ Equity, the emergency affirmation of Gene W. Rosen, Esq. and the accompanying memorandum of law dated January 7, 2021.

In his affidavit, Sussman states as follows: Plaintiff and Defendant entered into a written agreement dated December 9, 2020 (“Agreement”), pursuant to which Defendant sold \$89,940.00 of its future receipts (“Purchased Amount”) for an up-front sum of \$60,000.00 (“Purchase Price”), and that Hussein guaranteed the obligations of Defendant under the Agreement. AJ Equity paid the Purchase Price, less contractual fees, on December 9, 2020. Under the Agreement, US Transport agreed to pay the Purchased Amount to AJ Equity by paying 10% of US Transport’s future receipts. Under the Agreement, AJ Equity was granted a security interest in all of US Transport’s personal property. Plaintiff further submits a UCC-1 financing statement was filed regarding this security interest.

Sussman attests that US Transport defaulted under the Agreement by preventing AJ Equity from collecting the Purchased Amount and by otherwise breaching its warranties and covenants to AJ Equity under the Agreement. He states that on December 28, 2020, US Transport directed its bank to stop AJ Equity's ACH debits to US Transport's bank account, which was the agreed upon means by which AJ Equity was to collect the Purchased Amount. Plaintiff further asserts that US Transport changed the online login password to its bank account without providing AJ Equity with the updated information as required by section 16 of the Agreement. As a result, plaintiff has been unable to ascertain US Transport's incoming receivables. Plaintiff submits that defendants did not request any reconciliation of the payments made under the Agreement and that when AJ Equity spoke with Hussein regarding this, he stated he would not pay AJ Equity for at least 8 more weeks. Plaintiff further submits that the Agreement contains provisions that show Defendants have consented to relief being sought.

Section 30 of the Agreement states in relevant part:

In case any Event of Default occurs and is not waived, AJ will be entitled to the issuance of an injunction, restraining order, or other equitable relief in AJ's favor, subject to court approval, restraining Merchant's accounts and/or receivables up to the amount due to AJ as a result of the Event of Default, and Merchant 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 any Merchant or any Guarantor and without AJ being required to furnish a bond or other undertaking in connection with the application.

The Guarantee signed by Hussein states in relevant part:

In case Guarantor's obligations become due hereunder and are not waived, AJ will be entitled to the issuance of an injunction, restraining order, or other equitable relief in AJ's favor, subject to court approval, restraining Merchant's and Guarantor's accounts and/or receivables up to the amount due to AJ as a result of the Event of Default, and Merchant 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 any Merchant or any Guarantor and without AJ 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 \$95,245.00, consisting of \$76,196.00 in damages and legal fees of 25% of the amount claimed, which comes to \$19,049.00. Plaintiff states that US Transport has a Bank of America account ending in 1985.

In the Order to Show Cause issued by the Court on January 8, 2021 in this matter, the Court granted a temporary restraining order restraining all funds in any Bank of America account titled to US

Transport LLC or Liban Ali Hussein, up to the amount of \$70,000, pending the determination of this motion for a preliminary injunction.

No opposition to this motion has been submitted.

"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. Culklin*, 255 AD2d 560 [2d Dept 1998]).

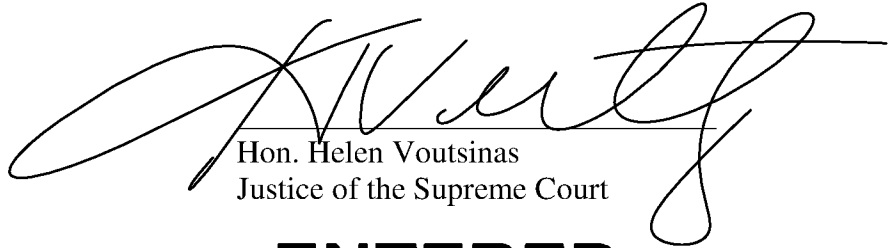
Plaintiff submitted evidence indicating that US Transport breached provisions of the Agreement and further consented to this relief upon breach of the Agreement. US Transport has not submitted opposition. Thus, plaintiff has established a likelihood of success on the merits. Without a preliminary injunction, plaintiff submits a final judgment to which it may be entitled will be rendered ineffectual. Plaintiff has thus established the danger of irreparable injury and a balance 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 Bank of America account titled to US Transport LLC or Liban Ali Hussein, including the account ending in 1985, is **GRANTED**, but the amount restrained shall only be up to the combined and aggregate amount of \$76,196.00. Plaintiff fails to submit a basis for the legal fees.

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

This constitutes the Decision and Order of this Court.

Dated: June 30, 2021
Mineola, NY



Hon. Helen Voutsinas
Justice of the Supreme Court

ENTERED

Jul 08 2021

NASSAU COUNTY
COUNTY CLERK'S OFFICE