

<b>Vashovsky v Zablocki</b>
2022 NY Slip Op 30806(U)
March 10, 2022
Supreme Court, Kings County
Docket Number: Index No. 507373/21
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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CHANA VASHOVSKY, individually and  
derivatively on behalf of  
HUDSON VALLEY NY HOLDINGS LLC,  
Plaintiffs,

Decision and Order

-against-

Index No. 507373/21

YOSEF ZABLOCKI and NATIONAL JEWISH  
CONVENTION CENTER,  
Defendants,

March 10, 2022

And

HUDSON VALLEY NY HOLDINGS LLC,  
Nominal Defendant,

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YOSEF ZABLOCKI and NATIONAL JEWISH  
CONVENTION CENTER,  
Counterclaim Plaintiffs,

-against-

CHANA VASHOVSKY and EPHRAIM VASHOVSKY,  
Counterclaim-Defendants,

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved seeking to reargue a decision and order dated July 26, 2021 and for the appointment of a receiver among other reliefs. The defendant has opposed the motion. After reviewing all the arguments this court now makes the following determination.

As recorded in a prior order, according to the amended verified complaint on April 8, 2019 the plaintiff Chana Vashovsky formed an entity called HVNY which purchased the Hudson Valley Resort, a hotel located in Ulster County in New York State. An agreement was reached with defendant Yosef Zablocki whereby he

was given a fifty percent interest in HVNY and became the managing member in exchange for an initial investment of \$500,000. Disputes arose between the parties concerning the running of the business. Essentially each party has accused the other of mismanagement, failing to contribute necessary capital and diversion of funds. In the prior order the court denied a request seeking removal of the defendant noting the allegations were heavily disputed. However, the court did hold the defendant was prohibited from diverting any bookings to other entities and to permit a representative of the plaintiff to be present when all bookings are made.

The plaintiff has now moved seeking to renew that determination on the grounds there is further evidence of the defendant's malfeasance which demands his removal. Alternatively, the plaintiff seeks the appointment of a receiver. The defendant opposes the motion.

#### Conclusions of Law

Concerning the motion seeking a receiver, it is well settled that "a temporary receiver should only be appointed where there is a clear evidentiary showing of the necessity for the conservation of the property at issue and the need to protect a party's interests in that property" (see, Quick v. Quick, 69 AD3d 828, 893 NYS2d 583 [2d Dept., 2010]). Thus, a temporary receiver

is appropriate where the party has presented "clear and convincing evidence of irreparable loss or waste to the subject property and that a temporary receiver is needed to protect their interests" (Magee v. Magee, 120 AD3d 637, 990 NYS2d 894 [2d Dept., 2014]). Moreover, a receiver is charged with the responsibility to "preserve and protect the property for the benefit of all persons interested in the estate" and the receiver's allegiance is only to the court (Bank of Tokyo Trust Company v. Urban Food Malls Ltd., 229 AD2d 14, 650 NYS2d 654 [1<sup>st</sup> Dept., 1996]).

While many of the contentions remain heavily disputed, the plaintiff asserts the defendant has improperly permitted payments by guests to be made to NJCC the defendant's event planning entity and not to the hotel. The defendant does not deny such payments were made to the entity but insists that the portion of any amounts for the actual room rentals at the hotel were forwarded to the plaintiff and the defendant only retained payments for services the hotel does not offer. Regarding the specific dates in November 2021 wherein bookings for rooms were not forwarded to the hotel, the defendant asserts this happened only because the hotel owed NJCC money for overpayments made during the previous weeks (see, Affirmation of Yossi Zablocki, ¶139). The invoice submitted supports this contention since the invoice submitted by the hotel acknowledges the credit. However,

the entire arrangement permitting NJCC to book events and pay the hotel for the use of the rooms has little value if there is disagreement concerning the amount that should be charged per room or if the determination is unilateral. The defendant concedes he was unilaterally determining the amount that should be forwarded for each room fee by noting that "if Plaintiff did not like the amount of money they were getting from NJCC, that was an issue for trial, not a TRO" (see, Affirmation of Yossi Zablocki, ¶136). While a temporary restraining order is not sought here, the plaintiff need not wait for trial for a determination whether he was paid a fair amount for room rentals for a hotel he owns.

Further, concerning the failure to account for bookings that took place in January 2022, the defendant does not even dispute that payments were made to NJCC and does not provide any evidence the room booking fees were forwarded to the hotel at all. Again, the court did sanction payments made to NJCC to cover all costs for an event and it would be an imposition to require guests to pay two separate fees, one for the room and one for every other amenity, however, without transparency concerning the room payments there is no guarantee the plaintiff is receiving his fair share of the fees. Thus, while the defendant asserts he is careful navigating the two roles he plays as the manager of the hotel and NJCC (see, Affirmation of Yossi


Zablocki, ¶133) perhaps such navigation cannot successfully be accomplished. In any event, it is clear that a receiver is necessary to protect the interests of the parties without the appearance, real or potential, of any conflict. Consequently, the motion seeking the appointment of receiver is granted. The court hereby appoints Gary M. Schuster Esq., of Jacobowitz & Gubitz LLP, P.O. Box 367, Walden, NY 12586-0367, 845-778-2121, GMS@JACOBOWITZ.COM as receiver pursuant to CPLR §6401.

The plaintiff'S motion is granted to this extent.

So ordered.

ENTER:

DATED: March 10, 2022  
Brooklyn N.Y.

  
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Hon. Leon Ruchelsman  
JSC