

Chung v Xie
2022 NY Slip Op 30825(U)
March 10, 2022
Supreme Court, Kings County
Docket Number: Index No. 503139/2020
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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YOUNG S. CHUNG, individually and on behalf of
URBAN FRESH CORP. and 11 UM FOOD CORP.,

Plaintiffs, Decision and order

- against -

Index No. 503139/2020

COLIN K. XIE, BARBARA JANUS, JUICEBROTHERS,
LLC, AND DOES 1-100

March 10, 2022

Defendants,
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PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved seeking the appointment of a receiver. The defendant has cross-moved seeking a preliminary injunction ordering the plaintiff to cease from engaging in certain conduct. The motions have been opposed respectively. After reviewing all the arguments this court now makes the following determination.

As recorded in prior orders, the plaintiff Young Chung and the defendant Colin Xie are equal owners of two grocery stores, one located in Queens County and the other in Kings County. Each party has accused the other of essentially stealing money fro the corporations. On January 5, 2021 the parties entered into a stipulation wherein they each agreed not to withdraw any funds from either store without the consent of the other. The defendant has now accused the plaintiff of opening a secret account and stealing funds belonging to the stores amounting to approximately \$300,000. The plaintiff accuses the defendant of poaching employees to another grocery store wherein the plaintiff

does not maintain any ownership interest at all.

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 [1st Dept., 1996]).

The defendant has presented clear and convincing evidence the plaintiff opened a bank account without informing the defendant and of diverting and utilizing corporate funds for his own personal use. Thus, on February 9, 2021 the plaintiff's counsel sought to obtain PPP loans and requested defendant's

participation in opening a bank account. However, defendant asserts the plaintiff opened another account and this 'secret' account contains corporate funds hidden from the defendant. Indeed, the defendant has not presented any evidence at all demonstrating the legitimate use of those funds. Consequently, the motion seeking the appointment of receiver is granted. The court hereby appoints Leo Barnes Esq., of Barnes & Barnes PC, 445 Broadhollow Road, suite 226, Melville, NY 11747-3619, 631-683-2408, LKB@BARNESPC.COM as receiver pursuant to CPLR §6401.

The plaintiff has filed a cross-motion seeking to enjoin the poaching of any employees by the defendant. A party seeking a preliminary injunction "must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of the injunction and a balance of the equities in its favor" (Nobu Next Door, LLC v. Fine Arts Hosing, Inc., 4 NY3d 839, 800 NYS2d 48 [2005]). Further, each of the above elements must be proven by the moving party with "clear and convincing evidence" (Liotta v. Mattone, 71 AD3d 741, 900 NYS2d 62 [2d Dept., 2010]).


Contrary to the arguments of the plaintiff there is no likelihood of success the stipulation entered between the parties prohibits any such poaching. The stipulation prohibits either party from removing "any funds or assets" of either grocery store (see, Stipulation, ¶1(a)). There is no likelihood of success that "assets" include employees. Further, affidavits submitted

by employees who left 11 UM Food Corp., noted that the defendant did not influence their decision at all (see, Affidavits of Confesor Kendysson, ¶2, Jose Delgado, ¶2, Luis Alfredo, ¶2 and Andy Diaz, ¶2). Thus, other than allegations of such poaching there is no evidence supporting them. Consequently, the motion seeking a preliminary judgement is denied.

So ordered.

ENTER:

DATED: March 10, 2022
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC