

Matter of Arad 2 LLC v Hamo
2022 NY Slip Op 31589(U)
May 12, 2022
Supreme Court, New York County
Docket Number: Index No. 656951/2020
Judge: Robert R. Reed
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 43

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IN THE MATTER OF THE APPLICATION OF ARAD 2
LLC, DIRECTLY IN ITS OWN RIGHT AND DERIVATIVELY
AS A MEMBER OF 4053-4057 BX, LLC, AND ARAD
LLC, DIRECTLY IN ITS OWN RIGHT AND DERIVATIVELY
AS A MEMBER OF 4001 BX, LLC AND DAVID ARAD,

INDEX NO. 656951/2020
MOTION DATE N/A
MOTION SEQ. NO. 001

Plaintiff,

- v -

GADI HAMO, MOUNT SINAI PROPERTIES, INC. (A/K/A
MT. SINAI PROPERTIES, INC.), 4053-4057 BX, LLC, 4001
BX, LLC,

Defendant.

**DECISION + ORDER ON
MOTION**

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HON. ROBERT R. REED:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 20,
21, 22, 23, 24, 25, 28, 30, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73
were read on this motion to/for INJUNCTION/RESTRAINING ORDER

This action involves a dispute between managing members of two limited liability companies. Plaintiff David Arad (“Arad”) and defendant Gadi Ben Hamo (“Ben Hamo”) are cousins, who jointly hold ownership of 4053-4057 BX, LLC and 4001 BX, LLC.

4053-4057 BX LLC (“4053 LLC”) was created to acquire, own, manage, and operate real property located at 3640 Dyre Avenue and 4053 Boston Road, Bronx County, New York. Arad brings this action derivatively and in his personal capacity to dissolve 4053 LLC for Ben Hamo’s alleged fraud, conversion, and breach of fiduciary duties with respect to his management of the 4053 LLC properties.

Arad filed the instant motion seeking a restraining order, attachment, and preliminary injunction prohibiting Ben Hamo from dissipating funds and assets from the company. Arad also requested appointment of a managing agent, an order rescinding all leases/transactions entered

by Ben Hamo, and an order directing Ben Hamo to disclose documents relevant to the management of the company.

By interim order dated February 26, 2021, the Hon. Peter Sherwood directed Ben Hamo to provide discovery and other documentation, but deferred decision on the remaining grounds of this motion to the Justice who would be re-assigned this matter following Justice Sherwood's retirement.

Upon review of the foregoing documents, the remaining grounds of Arad's motion are denied.

Attachment

CPLR 6201(3) permits a party to seek an attachment order when property may be assigned, disposed of, encumbered, removed, or secreted by another with the intent to defraud creditors or frustrate judgment enforcement. To obtain an order of attachment, plaintiff must show a basis for relief under CPLR 6201, and by affidavit or written evidence, establish that they have a meritorious cause of action, are likely to succeed on the merits of that action, and make a showing that no counterclaim exists that exceeds the amount of recovery demanded (CPLR 6212 [a]). Attachment is a harsh remedy that is strictly construed in favor of those against whom it may be employed (*Glazer & Gottlieb v Nachman*, 234 Ad2d 105 [1st Dept 1996]).

Arad and Ben Hamo jointly owned and operated 4053 LLC for over 16 years. The management agreement for 4053 LLC identifies both Arad and Ben Hamo as joint managing members, each with fifty percent interest in the entity. Based on the pleadings and arguments set for by the parties, the court is unpersuaded that the parties ever had a pattern or practice of managing 4053 BX LLC with consistent reporting or collaborative oversight. It is alleged that Ben Hamo unilaterally entered leases and/or assigned certain property owned by 4053 LLC

without Arad's consent, but the evidence before the court does not sufficiently establish that Ben Hamo lacked the implicit authority to do so. The conduct of the parties at the time the lease agreements were entered, as set forth in the pleadings, does not support Arad's argument that Ben Hamo acted in a deceptive or evasive manner that Arad was incapable of discovering.

There is insufficient evidence at this juncture to support the claim that Ben Hamo was attempting to defraud Arad or frustrate enforcement of a judgment (CPLR 6201). Arad argues that Ben Hamo demonstrated an intent to defraud by seizing properties without Arad's knowledge and physically restructuring them (NYCEF doc. no. 17 pg. 13), but this allegation is insufficient to warrant attachment relief. "The mere assignment or other disposition of property is not grounds for attachment" (*Computer Strategies, Inc. v Commodore Bus. Machines, Inc.*, 105 AD2d 167, 173 [2nd Dept 1984] citing *Laco X-Ray Systems v Fingerhut*, 88 AD2d 425, 429 [2nd Dept 1982]). Allegations raising a suspicion of an intent to defraud are not enough (*Computer Strategies*, 105 AD2d at 173).

Preliminary Injunction & Temporary Restraining Order

A party seeking the drastic remedy of a preliminary injunction must demonstrate: (1) a likelihood of success on the merits, (2) irreparable injury absent the granting of the preliminary injunction, and (3) a balancing of the equities in the movant's favor (CPLR 6301, *Nobu Next Door, LLC v Fine Arts Hous., Inc.*, 4 NY3d 839, 840 [2005]). The decision to grant or deny provisional relief is a matter that falls within the sound discretion of the court (*id.*).

Here, Arad fails to satisfy the second prong, regarding irreparable injury. Even assuming Arad were to prevail on the merits, there has been no showing that Arad could not be adequately compensated by money damages (*see e.g., Mr. Dees Stores, Inc. v A.J. Parker, Inc.*, 159 AD2d 389). Typically, "damages compensable in money and capable of calculation, albeit with some

difficulty, are not irreparable harm for purposes of determining whether party is entitled to preliminary injunction” (see *Sports Channel America Associates v. National Hockey League*, 186 AD2d 417). Arad has not demonstrated on this motion any unique factual circumstances that would compel this court to deviate from the application of the general rule.

Based on the foregoing, the court is not persuaded that the assignment of a managing agent is necessary. The court is not inclined to order a rescission of the 4053 LLC leases. Accordingly, it is hereby

ORDERED that the remaining basis for relief reserved for decision by this court are denied in all respects; and it is further

ORDERED that all parties appear by counsel via Microsoft Teams for a virtual preliminary conference in Part 43 of this court on June 23, 2022, at 10:30am.

05/12/2022
DATE


ROBERT R. REED, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	