

<b>Dar v SAJ Transp. Northeast LLC</b>
2022 NY Slip Op 31650(U)
May 17, 2022
Supreme Court, New York County
Docket Number: Index No. 650707/2022
Judge: Louis L. Nock
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. LOUIS L. NOCK PART 38M

*Justice*

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ZAHIDAH DAR,

Plaintiff,

- v -

SAJ TRANSPORTATION NORTHEAST LLC, JAFFAR LLC  
(NY), JAFFAR LLC (NJ), NYSPEED LLC, JAFFAR NAQVI,  
and ALI NAQVI,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29

were read on this motion to

APPOINT A TEMPORARY RECEIVER

LOUIS L. NOCK, J.

Upon the foregoing documents, and after argument, it is ordered that the plaintiff's motion for the appointment of a receiver is denied for the reasons that follow.

**BACKGROUND<sup>1</sup>**

In April 2015, defendant SAJ Transportation Northeast LLC ("SAJ") was started, funded, and owned equally by defendant Jaffar Naqvi ("Jaffar") and nonparty Salman Dar, plaintiff's husband. SAJ is a company that purchases cars and then makes them available to car service drivers in order to derive a profit from the revenues collected from the car service providers.

The complaint alleges that in June 2015, nonparty Salman Dar, with the consent of Jaffar, transferred his fifty percent ownership interest in SAJ to his wife, the plaintiff herein.

<sup>1</sup> The recital of facts, to the extent not cited to affidavit material, is taken from the allegations of the complaint and is not to be construed as a factual finding by the court at this pre-discovery stage of the case.

The complaint alleges that between 2017 and 2019, defendant Jaffar and his son, defendant Ali Naqvi (“Ali”), began skimming monies from the car service drivers and deposited them into their personal bank accounts instead of depositing such revenue proceeds into SAJ’s company account. The complaint alleges that such monies, upon information and belief, amounted to “over thirty-five thousand dollars (\$35,000.00)” (Complaint ¶ 18).

It is additionally alleged that, in 2018, Jaffar and plaintiff caused a line of credit to be taken through SAJ; but that Jaffar used the money from this line of credit, as well as monies from SAJ’s operating account, to purchase approximately 28 new cars for his own competing company, defendant Jaffar LLC (NY). The complaint alleges that such monies were “approximately two hundred seventy-five thousand dollars (\$275,000.00)” (Complaint ¶ 19). It is further alleged that Jaffar caused many drivers working for SAJ to switch to Jaffar LLC NY, and that Jaffar used SAJ’s office infrastructure to accomplish work for Jaffar LLC NY in competition with SAJ. It is further alleged that, from 2017 through 2019, “upon information and belief,” Jaffar and Ali took cash revenues from the car service drivers instead of depositing the cash into SAJ accounts, to the extent of \$95,000.00 (*see, id.*, ¶ 22).

Various other nefarious activities are alleged in the complaint, all in the nature of usurpations by Jaffar and Ali of SAJ’s assets and revenues for their own gain, or their affiliate entities’ gains (such as defendants Jaffar LLC [NY], Jaffar LLC [NJ] and NYSPEED LLC).

Plaintiff has submitted an affidavit (NYSCEF Doc. No. 3) designed to support the allegations of the complaint.

The complaint asserts a cause of action for breach of contract. SAJ's operating agreement of June 1, 2015 (NYSCEF Doc. No. 10), identifies plaintiff and Jaffar each as 50% owners and members of SAJ. The record also contains what purports to be an April 4, 2019, schedule to the

SAJ operating agreement (NYSCEF Doc. No. 12) identifying plaintiff and Jaffar each as 45% owners and members of SAJ, plus Ali as a 10% owner and member. The first cause of action asserts that the alleged actions by Jaffar and Ali constitute breaches by them of the SAJ operating agreement, to which plaintiff appears to be a party. The complaint thereafter asserts causes of action for breach of fiduciary duty, fraud, unjust enrichment, and tortious interference.

### DISCUSSION

Plaintiff moves for the appointment of a receiver “to take over all business operations” of SAJ, Jaffar LLC (NY), Jaffar LLC (NJ), and NYSPEED LLC; and “ordering Receiver to make immediate income distributions to Plaintiff” (Order to Show Cause [NYSCEF Doc. No. 7]). Plaintiff claims that in 2019, her signature was removed by Jaffar from SAJ’s operating account, “cutting off [her] access to monies and/or information about the accounts . . . .” (Affidavit of Zahidah Dar [NYSCEF Doc. No. 3] ¶¶ 19-21.) Plaintiff, therefore, claims that since that time – two years ago – she has “stopped receiving her weekly disbursement from SAJ of two thousand dollars (\$2,000.00) per week, which is Plaintiff’s only income” (*id.*, ¶ 22). Plaintiff’s position on her within motion to appoint a receiver is distilled in paragraph 31 of her affidavit, stating:

My attorney has informed me that CPLR § 6401 governs the appointment of a receiver in New York. CPLR§ 6401(a) states that “a temporary receiver of the property may be appointed . . . where there is danger that the property will be removed from the state, or lost, materially injured or destroyed”. *See Puro v. Puro*, 162 A.D.2d 227, 556 N.Y.S.2d 336 (1<sup>st</sup> Dept 1990); *In re Armienti*, 309 A.D.2d 659, 767 N.Y.S.2d 2 (1<sup>st</sup> Dept 2003).

In opposition, defendants argue, *inter alia*, that:

i) Plaintiff does not have the requisite property interest in the Defendant entities to have standing to seek the appointment of a receiver; ii) even if Plaintiff did have such an interest, a) Plaintiff’s complaint seeks only generic money damages; and b) Plaintiff cannot show any property is being removed from the state, lost or destroyed, both of which preclude the granting of the relief which Plaintiff seeks; iii) Plaintiff waited more than two years since learning of the conduct she complains about herein before moving for relief, and as such, laches precludes her from obtaining the relief sought herein; [and]

iv) even assuming Plaintiff is held to be a member of SAJ, nothing in SAJ's operating agreement entitles her to \$2,000 (or any other amount of money) in weekly distributions . . . .

(Defendants' Mem. [NYSCEF Doc. No. 8] at 1-2.) Jaffar has submitted an affirmation (NYSCEF Doc. No. 9) which contradicts the allegations of the complaint and plaintiff's affidavit. Jaffar states that "no SAJ funds were used to purchase Jaffar vehicles," and he offers "to produce bank statements, bills of sale and wire confirmations" to substantiate that (*id.*, ¶ 16). Jaffar further attests that "neither myself nor Ali withdrew any funds from SAJ" (*id.*, ¶ 20). Jaffar then lodges counter-accusations at plaintiff, stating "Plaintiff . . . withdrew the entirety of the SAJ bank account . . . to her own personal account . . ." (*Id.*, ¶ 22.) In sum, Jaffar denies all of plaintiff's allegations and affidavit attestations in the body of his own affirmation (*see, id.*, ¶¶ 31-39).

Another major conflict among the parties at this pre-discovery phase of the case is the fundamental issue whether plaintiff, as of the time of the filing of this action, was a member of SAJ, at all. The complaint alleges that she was, and is (*see*, Complaint ¶ 2). Jaffar attests that she was not, and is not (*see*, NYSCEF Doc. No. 9 ¶¶ 27-28 [attesting that plaintiff "was expelled from SAJ pursuant to the vote of the majority of the other members of SAJ under Section 3.15 of the SAJ Operating Agreement"]<sup>2</sup>).

CPLR §6401 (a) provides that a person "having an apparent interest in property" may seek the appointment of a receiver "where there is danger that the property will be removed from the state, or lost, materially injured or destroyed."

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<sup>2</sup> The referenced section, titled "EXPULSION OF A MEMBER," provides: "A member may be expelled by unanimous vote of the other members under Section 35-45 of the Limited Liability Company Law" (NYSCEF Doc. No. 10 § 3.15).

“The appointment of a temporary receiver is an extreme remedy resulting in the taking and withholding of possession of property from a party without an adjudication on the merits. Therefore, a motion seeking such appointment ‘should be granted only where the moving party has made a clear evidentiary showing of the necessity for the conservation of the property at issue and the need to protect the moving party’s interests.’” (*Vardaris Tech, Inc. v Paleros, Inc.*, 49 AD3d 631, 632 [2d Dept 2008] [citations omitted].) ““There must be danger of irreparable loss, and courts of equity will exercise extreme caution in the appointment of receivers, which should never be made until a proper case has been clearly established”” (*In re Armienti*, 309 AD2d 659, 661 [1st Dept 2003] [citations omitted]).

Moreover, the appointment of a temporary receiver pursuant to CPLR §6401 should generally not be made in an action seeking a sum of money; but rather, only “if the subject of the action is specific moneys” (*Meurer v Meurer*, 21 AD2d 778, 778 [1st Dept 1964]) (*see*, Complaint [seeking a minimum *ad damnum*, at large, of \$500,000]).

First and foremost, the issue of fact as to whether plaintiff even holds an interest in SAJ makes it impossible for this court to issue the extreme remedy of receivership. It is simply too early to tell, at this pre-discovery stage of the case, whether plaintiff fits the statute’s criterion of someone “having an apparent interest in property” (CPLR 6401 [a]).<sup>3</sup> And, of course, the very allegations of wrongdoing which form the factual predicate for plaintiff’s application for a receiver are vehemently denied by the defendants. Accordingly, these seminal questions of fact, born of the parties conflicting submissions, preclude, in and of themselves, receivership relief at this pre-discovery point in time. This problem is distinct of the fact that the action, in all its causes of action, seeks monetary relief, at law.

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<sup>3</sup> Relatedly, there is no dispute that plaintiff has absolutely no interest in the other entity defendants for which she similarly applies to be placed into receivership (i.e., Jaffar LLC [NY], Jaffar LLC [NJ], and NYSPEED LLC).

Distinct of the foregoing questions of fact, plaintiff’s application for this extreme equitable relief – receivership – should be denied on grounds of laches because by her own admission, she has been aware of the alleged conduct that she is complaining about since 2019 (*see*, Complaint ¶ 35), but only filed suit in February 2022 and brought this application in March 2022, more than two years after being aware of the alleged conduct she complains of herein.

Accordingly, it is

ORDERED that plaintiff’s motion for the appointment of a temporary receiver “to take over all business operations of Defendants” and “to make immediate income distributions to” her, is denied; and it is further

ORDERED that a remote preliminary conference will occur on June 1, 2022, at 2:00 p.m.

This will constitute the decision and order of the court.

ENTER:



<u>5/17/2022</u>			<hr/>	
DATE			LOUIS L. NOCK, J.S.C.	
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE