

<b>Axen v Yankelevich</b>
2022 NY Slip Op 32411(U)
July 18, 2022
Supreme Court, Kings County
Docket Number: Index No. 501329/21
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

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ABIE AXEN, individually, in his capacity as  
the Executor of the Estate of Leon Axen and  
derivatively on behalf of M.G. Medical  
Supply, Inc.,

Petitioners-Plaintiffs,

Decision and order

- against -

Index No. 501329/21

ALEKSANDR YANKELEVICH and YEVGENIY  
KACHKOVSKIY a/k/a EUGENE KACHKOVSKIY,  
Respondents-Defendants,

-and-

M.G. MEDICAL SUPPLY, INC.,  
Nominal Respondent-Defendant

July 18, 2022

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved pursuant to Business Corporation Law §1202 seeking the appointment of a receiver and for an order directing the defendant to return \$105,959.70 to the corporation that was used to pay legal fees. The defendant opposes the motion. Papers were submitted by the parties and arguments held.

After reviewing all the arguments this court now makes the following determination.

As recorded in prior orders, during 2014 Leon Axen the owner of M.G. Medical Supply Inc., transferred fifty percent ownership to defendant Aleksandr Yankelevich. Leon passed away in January 2019 and his son Abie Axen assumed his father's role in the corporation. Abie has now instituted this lawsuit seeking dissolution under the common law and pursuant to statute. The

petition also seeks an accounting, alleges breach of a fiduciary duty both derivatively and personally. The basis for these claims are allegations contained in the petition that Yankelevich improperly paid his relatives from corporate funds, utilized corporate funds for his own personal needs and improperly managed the corporation.

Based upon those allegations the plaintiff has moved seeking a receiver. Moreover, as noted, the plaintiff seeks an order requiring the defendant to return money of the corporation used for purposes of defending this litigation.

#### 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]).

The plaintiff has presented clear and convincing evidence the defendant is utilizing corporate funds for his own personal use. Thus, there is evidence of lavish unjustified spending on vacations, clothing, cars and higher than usual salaries and bonuses. The defendant does not really dispute those allegations. He merely asserts he is continuing the policies of Leon prior to his death and is permitted to engage in such behavior. However, even if that is true, prior conduct does not permit admitted misuse of corporate funds. Further, the defendant is only a fifty percent owner of the corporation and his wholesale management and operational duties of the corporation to the exclusion of the plaintiff is likewise improper. Consequently, the motion seeking the appointment of receiver is granted. The court hereby appoints Cheryl J. Kinch Esq., of One Pierrepont Plaza, 300 Cadman Plaza West, 12<sup>th</sup> Floor Brooklyn, New Yor, 11201-2701, 718-237-5030, [ckinch@kinchlawfirm.com](mailto:ckinch@kinchlawfirm.com), as receiver pursuant to CPLR §6401. The duties of the receiver will be clarified by the receiver upon a further order of the court after the receiver has had an opportunity to assess the situation and the specific powers

required.


Concerning the motion ordering the defendant to return corporate funds used to hire private counsel, there really is no dispute the defendant used such corporate funds to hire counsel. Thus, although the court permitted the plaintiff to seek the return of fees expended, the request at this juncture is premature. Even though the court has held a conflict existed there has been no determination whether the payments made to that counsel was for the benefit of the defendant or the corporation as well. A examination must first be conducted to determine the nature of the legal services rendered and whether such legal services did not benefit the corporation at all. Thus, the motion is denied at this point without prejudice and may be re-filed at a later stage of the litigation.

Lastly, the plaintiff's motion seeking attorney's fees is denied. The discovery motion outstanding will be decided in a separate order.

So ordered.

ENTER:

DATED: July 18, 2022  
Brooklyn NY

  
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Hon. Leon Ruchelsman  
JSC