

Bedessee v Bedessee
2022 NY Slip Op 32924(U)
August 26, 2022
Supreme Court, Kings County
Docket Number: Index No. 507184/2022
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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NAWSHAD BEDESSEE,

Plaintiffs, Decision and order

- against -

Index No. 507184/2022

VERMAN BEDESSEE, RAYMAN BEDESSEE,
INVOR BEDESSEE, BEDESSEE IMPORTS INC.,
ANDREW BEDESSEE CORP., BEDESSEE HOLDINGS
INC., BEDESSEE EAST-WEST INDIAN FOOD, INC.
D/B/A BEDESSEE SPORTING GOODS, and
OTHER XYZ CORPORATIONS 1-10,
the true names of which are unknown
to the Plaintiff,

August 26, 2022

Defendant,

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved pursuant to CPLR §6301 seeking a preliminary injunction staying the defendant from taking any action to sell or otherwise encumber any of the defendant entities, to remove any funds from the bank accounts of the defendant entities, permitting the plaintiff access to the property, to restrain any action to dispossess the plaintiff and the plaintiff's company and requiring the defendant to disclose all the books and records and bank accounts of the company. The defendants oppose the motion. Papers were submitted by the parties and arguments held and after reviewing all the arguments this court now makes the following determination.

The plaintiff and the defendants are all brothers and all assumed control of their father's businesses upon his death in 2017. The complaint alleges, among other improprieties, that defendant, Verman Bedessee the managing member of the business,

is diverting business assets to his other wholly owned businesses and to pay personal expenses. The complaint further alleges the defendant utilizes employees of the entities to work for his own wholly owned companies thereby ruining the financial stability of the defendant entities. The complaint alleges causes of action for a declaratory judgement, an accounting, breach of fiduciary duty, constructive trust, conversion, corporate waste and unjust enrichment.

The plaintiff has now moved seeking a preliminary injunction restraining the defendant from transferring the assets of the company without prior notice, except in the ordinary course of business. As noted, the plaintiff also seeks information about the company's bank accounts and financial wherewithal, asserting the defendant has blocked plaintiff from such access.

Conclusions of Law

CPLR §6301, as it pertains to this case, permits the court to issue a preliminary injunction "in any action... where the plaintiff has demanded and would be entitled to a judgement restraining defendant from the commission or the continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff" (id). 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], see also, Alexandru v. Pappas, 68 Ad3d 690, 890 NY2d 593 [2d Dept., 2009])). 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])).

Considering the first prong, establishing a likelihood of success on the merits, the plaintiff must prima facie establish a reasonable probability of success (Barbes Restaurant Inc., v. Seuzer 218 LLC, 140 AD3d 430, 33 NYS3d 43 [2d Dept., 2016])). In this case the injunction is sought because it is alleged the defendants have breached their duties to the entities in many ways including diverting funds, taking unauthorized loans and the denial of any ownership interests of the plaintiff. However, the defendants dispute these contentions and assert the plaintiff has diverted funds of the company for his own personal use. Moreover, the defendants assert the plaintiff is not an owner of the companies and has no standing seeking injunctive relief. However, the plaintiff has presented evidence in the form of an email sent by defendant Verman Bedessee acknowledging the plaintiff's ownership interest in the defendant entities. While the defendants still dispute that contention and discovery will sharpen these issues, at this juncture the plaintiff has demonstrated ownership interests in the entities. Thus, even if issues of fact exist, the court can still conclude the moving

party has demonstrated a likelihood of success on the merits (see, Ruiz v. Meloney, 26 AD3d 485, 810 NYS2d 216 [2d Dept., 2006]). Indeed, "the mere existence of an issue of fact will not itself be grounds for the denial of the motion" (Arcamone-Makinano v. Britton Property Inc., 83 AD3d 623, 920 NYS2d 362 [2d Dept., 2011]). This is especially true where the denial of an injunction would disturb the status quo and render the continuation of the lawsuit ineffectual (Masjid Usman, Inc., v. Beech 140, LLC, 68 AD3d 942, 892 NYS2d 430 [2d Dept., 2009]). Thus, the moving party is not required to present "conclusive proof" of its entitlement to an injunction and "the mere fact that there indeed may be questions of fact for trial does not preclude a court from exercising its discretion in granting an injunction" (Ying Fung Moy v. Hohl Umeki, 10 AD3d 604, 781 NYS2d 684 [2d Dept., 2004]). Of course, issues of fact will necessarily prevent the issuance of any injunction only where the factual issues "subvert[s] the plaintiff's likelihood of success on the merits in this case to such a degree that it cannot be said that the plaintiff established a clear right to relief" (County of Westchester v. United Water New Rochelle, 32 AD3d 979, 822 NYS2d 287 [2d Dept., 2006]),

In this case the plaintiff seeks an injunction to stop the defendants from taking any action that could potentially harm the companies where the plaintiff asserts he maintains ownership interests. Even though such ownership is disputed the plaintiff

has satisfied the burden demonstrating a likelihood of success on the merits. Any allegations the plaintiff has acted improperly do not undermine the claims of ownership sufficient to deny the injunction.

In order to satisfy the second prong of irreparable harm it must be demonstrated that monetary damages are insufficient (Autoone Insurance Company v. Manhattan Heights Medical P.C., 24 Misc3d 1229(A), 899 NYS2d 57 [Supreme Court Queens County, 2009]). While it is true that some of the allegations only concern monetary matters, that narrow view of the case fails to appreciate the plaintiff's potential loss of ownership of the entities which is something that cannot be compensated with mere money. Therefore, the plaintiff has asserted irreparable injury. Further, the balance of the equities favors the plaintiff. Therefore, based on the foregoing, the motion seeking an injunction preventing the defendants from taking any action with respect to any of the properties, other than in the ordinary course of business, without the plaintiff's consent is granted.

So ordered.

ENTER:

DATED: August 26, 2022
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC