

P.M.W.A. Hair Stylist Inc. v Wood

2023 NY Slip Op 30241(U)

January 24, 2023

Supreme Court, New York County

Docket Number: Index No. 650915/2022

Judge: Barry Ostrager

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. BARRY R. OSTRAGER PART IAS 61EF

Justice

P.M.W.A. HAIR STYLIST INC. d/b/a PAUL MOLE BARBER SHOP, CATCH THE WAVE, INC., and WAI YEE ROONEY a/k/a SUSAN ROONEY, individually and as a shareholder of P.M.W.A. HAIR STYLIST INC. d/b/a PAUL MOLE BARBER SHOP, CATCH THE WAVE, INC.,

INDEX NO.	650915/2022
MOTION DATE	
MOTION SEQ. NO.	010

Plaintiffs,

- v -

ADRIAN H. WOOD, and PMAW HAIR STYLING, LTD.,

DECISION + ORDER ON MOTION

Defendants.

HON. BARRY R. OSTRAGER

On January 24, 2023, the Court heard oral argument via Microsoft Teams on Motion Sequence 010, including plaintiff’s cross-motion. The Court previously issued on January 23, 2023 an Interim Decision and Order granting defendants’ motions for reargument and renewal, but which left open plaintiffs’ cross-motion seeking to expand and modify the scope of the Preliminary Injunction entered into on September 16, 2022. NYSCEF Doc. No. 327. For the reasons stated on the Transcript of Proceedings of January 24, 2023, upon reargument and renewal, the issues raised in the motion regarding contempt addressed in this Court’s January 23, 2023 Interim order are scheduled for an evidentiary hearing via Microsoft Teams on February 1, 2023, the cross-motion is denied, and certain remaining issues are resolved as follows.

As a preliminary matter, the Court notes the important circumstance that the original lease for the Barbershop premises located at 1034A Lexington Avenue (the “Premises”) expires on January 31, 2023. NYSCEF Doc. No. 315. Counsel for defendants represented that the

corporate defendant has entered into a lease with the landlord at the Premises, and defendant Wood is guarantor of that lease. Occupation of the Premises by defendants commences February 1, 2023. The lease reportedly contains a provision precluding defendants from conducting business with plaintiffs at the Premises.

Plaintiffs and defendants entered into a Stipulation of Settlement in a Civil Court proceeding which requires the parties to leave the premises by 5:00p.m. on January 31, 2023 and which requires the turnover of all keys, including electronic key fobs, by that date. The parties must ensure compliance with the Stipulation of Settlement. If the landlord permits defendants to retain their keys in light of the new lease commencing February 1, 2023, defendants should consider changing the locks to the Premises.

The first prong of plaintiffs' cross-motion seeks to apply the restrictions of the Preliminary Injunction entered on September 16, 2022 equally to both parties. The motion is denied because plaintiffs have made no showing entitling plaintiffs to a reciprocal preliminary injunction. Additionally, a prior application by plaintiffs for similar relief was previously presented to Justice Robert Reed of the Commercial Division, who denied the request. NYSCEF Doc. No. 74.

To the extent the cross-motion seeks to modify the Preliminary Injunction to permit a one-time carveout allowing the removal of the personal property to new premises or else to a storage unit, that motion is denied. The Court preliminarily found that the personal property described in defendant Wood's affidavit at NYSCEF Doc. No. 174 belongs to defendant Wood and/or to the defendant corporation because it was acquired prior to Ms. Rooney's involvement in the barbershop and prior to the creation of plaintiff corporation, and no evidence has yet been presented showing a transfer of this property to plaintiffs. Further, it appears over the extensive

record of proceedings over time that there is very little personal property belonging to plaintiffs at the Premises. Counsel and the parties are directed to meet on January 25, 2023 to inventory the chattel/personal property located at the Premises. The parties should work together to equitably divide the personal property at the Premises. Failure to act reasonably in doing so will not be tolerated by the Court. Fixtures such as sinks and barber chairs are excluded from purview of personal property to be inventoried and divided. Should any motion practice arise from any disagreements with respect to the allocation of personal property, the parties are admonished that the non-prevailing party on any such motion will be taxed with the prevailing party's attorney's fees.

To the extent the cross-motion seeks to amend the Preliminary Injunction to allow rent for any other barbershop to be paid from PMWA account without Wood's co-signature, the motion is denied. This case involves disputes between two members of P.M.W.A. who both apparently intend to operate barbershops. Due to the nature of the parties' dispute and their competing interests, neither party is entitled to use the funds contained in the P.M.W.A. corporate account for any purpose without Court order.

Pursuant to the Interim Order on Motion Sequence 010 (NYSCEF Doc. No. 327), a contempt hearing is scheduled for February 1, 2023, at 10:00 a.m., via Microsoft Teams. Direct testimony shall be presented by affidavit. The Court will not consider the affidavit of any witness who is not available for cross-examination via Microsoft Teams at the hearing.

The parties will prepare a Joint Exhibit Book by January 26, 2023 (with the Joint Exhibit List to be efiled by 4:30 p.m. on that day). Plaintiffs shall efile their Direct Testimony Affidavits by January 27, 2023. Defendants shall efile their Direct Testimony Affidavits by January 30, 2023. Hardcopy delivery of the Joint Exhibit Book and the parties' affidavits must be made to

the Room 232 of the Courthouse located at 60 Centre Street, New York, NY 10002 no later than 12:00 p.m. on January 31, 2023.

The Court will use the same Joint Appearance Sheet used for the January 24, 2023 appearance.

Dated: January 24, 2023


BARRY R. OSTRAGER, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: