

Haider v Rupall

2023 NY Slip Op 31309(U)

April 21, 2023

Supreme Court, New York County

Docket Number: Index No. 650917/2023

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

SYED HAIDER,

Plaintiff,

- v -

JASBIR KAUR RUPALL, TARLOCHAN SINGH RUPALL,
RH HOSPITALITY, LLC

Defendant.

-----X

INDEX NO. 650917/2023

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2-7, 13, 14, 15 were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

Plaintiff’s motion for a preliminary injunction is denied.

Background

Plaintiff contends that he is an investor in defendant RH Hospitality, LLC (“RH”), which owns and operates restaurant in Manhattan. He claims that defendant Jasbir Kaur Rupall is the managing member of RH along with her husband, defendant Tarlochan Singh Rupall (collectively, “defendants” or “individual defendants”). Plaintiff insists that the individual defendants have engaged in self-dealing by embezzling funds from RH and diverting it for their own personal use.

He contends that in 2022, defendants expressed a desire to buy out plaintiff’s interest in RH and that defendants allegedly said the company was not doing well. Plaintiff insists that he endeavored to find out the true value of RH (and therefore the value of his investment) and discovered that the restaurant was thriving. He claims that the defendants were using the funds from RH to pay personal expenses, paying individuals in cash to avoid state and local taxes, and

concealing the company's books and records. Plaintiff brings twelve causes of action to inspect RH's books and records, two claims for breach of fiduciary duty, breach of the duty of good faith and fair dealing, two claims for unjust enrichment, a request for a constructive trust, equitable accounting, injunctive relief, judicial dissolution of RH, fraud in the inducement, as well as another breach of contract claim.

In this motion, plaintiff seeks injunctive relief in the form of:

- a) enjoining Defendants from withdrawing, distributing and/or transferring any assets or property out of the Company, whether in the form of salaries, reimbursement of expenses or otherwise unless (1) it is a legitimate expense of the Company; and (2) Plaintiff, or an individual approved by Plaintiff, approve the transfer;
- b) requiring Defendants to provide Plaintiff with a full accounting of the Company's finances;
- c) requiring Defendants to make available to Plaintiff for inspection and copying under reasonable working conditions, from the Company's inception to present, full and complete access to all of the corporate books and records, including all tax, payroll, and financial records and bank accounts and access to the bank accounts via the financial institution's website;
- d) requiring Defendants to disgorge all improperly received or distributed funds and return the funds to the Company;
- e) requiring Defendants to implement cash handling procedures that comport with generally accepted accounting principles;
- f) enjoining Defendants from using the Company's funds to pay counsel fees incurred in defending this proceeding;
- g) enjoining Defendants from taking any action relative to the Business, including applying for credit or loans, absent court approval;
- h) imposing a constructive trust on all the Company's assets and monies both within the Business's possession and in the possession of the Defendants, to protect and preserve those assets for the benefit of both Plaintiff and the Company" (NYSCEF Doc. No. 2).

In opposition, defendants argue that plaintiff has not met his burden for a preliminary injunction. They claim that plaintiff only offers vague legal conclusions in support of the motion and that there are no meaningful allegations of misconduct to which defendants could respond. Defendants insist that plaintiff cannot show irreparable harm based on conclusory assertions nor can he show a likelihood of success on the merits. Defendants also argue that plaintiff's motion seeks the ultimate relief sought in the complaint, which should compel the Court to deny the instant motion.

Discussion

As an initial matter, the Court observes that much of the relief requested is identical to the causes of action on the complaint. For instance, both the order to show cause and the complaint seek an accounting, inspection of the books and records, disgorgement of improperly diverted funds, preventing defendants from using company funds to pay legal fees, preventing defendants from taking any action relative to the business as well as a constructive trust. Courts generally do not grant a motion for a preliminary injunction where the movant seeks the exact same relief as demanded in the complaint (*Spectrum Stamford, LLC v 400 Atl. Tit., LLC*, 162 AD3d 615, 617, 81 NYS3d 5 [1st Dept 2018]). Accordingly, the motion is denied.

To the extent that relief requested is not identical to the causes of action, the Court also denies the motion. "A preliminary injunction substantially limits a defendant's rights and is thus an extraordinary provisional remedy requiring a special showing. Accordingly, a preliminary injunction will only be granted when the party seeking such relief demonstrates a likelihood of ultimate success on the merits, irreparable injury if the preliminary injunction is withheld, and a balance of equities tipping in favor of the moving party" (*1234 Broadway LLC v W. Side SRO Law Project*, 86 AD3d 18, 23, 924 NYS2d 35 [1st Dept 2011] [citations omitted]).

Here, as defendants observe, plaintiff did not articulate with sufficient detail exactly what wrongful acts defendants are taking with respect to RH. He did not adequately show that he will suffer irreparable harm or a likelihood of success on the merits based on the allegations lodged in the moving papers. Plaintiff claims that defendants are improperly siphoning money for personal expenses but does not give any examples or the basis for that claim. The Court declines to impose the drastic relief sought by plaintiff—which includes a request that defendants refrain from taking any action whatsoever with respect to the business—based on the vague allegations offered by plaintiff.

Moreover, some of the requested relief is inappropriate or lacks sufficient clarity. Plaintiff asks the Court to make defendants stop transferring any assets, whether the transfers are for salaries or the reimbursement of expenses, although he adds, confusingly, that transfers for a “legitimate expense of the company” or approved by him are acceptable. He also asks the Court to prevent defendants from taking “*any action relative to the Business.*” Surely, plaintiff is not entitled to hamper the operations of a business that he has an interest in. The Court declines to tell RH to stop paying its bills based solely on these papers.

The Court recognizes that plaintiff, as alleged, is simply an investor in RH and that the individual defendants run the day-to-day business. He may not have access to the records that might support his claims. That is the purpose of the discovery process—to explore documents and take testimony concerning a plaintiff’s causes of action. But the Court cannot impose the drastic forms of relief plaintiff seeks at this early stage of the case based on these papers. Plaintiff clearly has suspicions about how RH is run and thinks defendants have engaged in wrongful conduct. However, a mere belief is not sufficient to impose a preliminary injunction.


If defendants delay providing documents in discovery, plaintiff may make a motion for appropriate relief. This Court expects discovery to move very swiftly.

The Court also observes that the purpose of a preliminary injunction “is not to determine the ultimate rights of the parties, but to maintain the status quo” (*Spectrum Stamford, LLC*, 162 AD3d 615 at 616). Maintaining the status quo does not involve granting plaintiff nearly all the relief he seeks in his complaint before defendants have even answered.

Accordingly, it is hereby

ORDERED that plaintiff’s motion for a preliminary injunction is denied.

Conference: June 20, 2023 at 12 p.m. By June 13, 2023, the remaining parties are directed to upload 1) a discovery stipulation signed by all parties, 2) a stipulation of partial agreement that identifies the areas in dispute regarding discovery or 3) letters explaining why no agreement about discovery could be reached. Based on these submissions, the Court will assess whether an in-person appearance is necessary. The failure to upload anything by June 13, 2023 will result in an adjournment of the conference.

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