

SMRC Mgt. LLC v Sternklar

2023 NY Slip Op 33038(U)

September 1, 2023

Supreme Court, New York County

Docket Number: Index No. 653388/2023

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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SMRC MANAGEMENT LLC,

Plaintiff,

- v -

SARAH STERNKLAR,

Defendant.

-----X

INDEX NO. 653388/2023

MOTION DATE 07/14/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

LOUIS L. NOCK, J.

The following e-filed documents, listed by NYSCEF document numbers 1 through 33, were read on this motion by the plaintiff for A PRELIMINARY INJUNCTION.

For the reasons set forth hereinbelow, the motion is DENIED.

Briefly stated, the verified complaint alleges that defendant Sarah Sternklar has wrongly represented herself to be a member of plaintiff SMRC Management LLC, a real property management company. Without providing the court with even the most rudimentary detail, the complaint alleges that “[f]or the past six years, Sarah has engaged in scorched-earth litigation with her Sternklar siblings spanning multiple actions in Manhattan’s Supreme and Surrogate’s Courts. . . . Sarah has consistently lodged threats at and defamed SMRC based on the unfounded and disproven premise that her father was, and so now she is, a member of the entity.”

(Complaint ¶ 2.)¹ But not much in the way of wrongdoing is actually alleged in the complaint.

¹ No case names, captions, index numbers, or any other identifying details are provided by plaintiff regarding the alleged six-year history of related litigation. Nor is any detail provided as to the nature or substance of said litigation. The oddity of such silence leaves the undersigned to wonder why, in the first place, the undersigned should retain jurisdiction over this newly filed action when the complaint opens with the concession that six years of prior pending related litigation already exists in this county, both in this court and in the Surrogate’s Court (*see*, CPLR 3211 [a] [4] [dismissal due to prior action pending]). Moreover, when plaintiff was afforded a post-commencement opportunity to supplement its complaint by providing such details in its affidavit submitted in support of its within motion (NYSCEF Doc. No. 9), it simply repeated the vagueries contained in the complaint.

At one point, the complaint refers to defendant's "behavior" as "puzzling" (Complaint ¶ 6). But what is puzzling *to the court* is the plaintiff's somewhat remarkable statement that "SMRC does not turn a profit" and that "[a]s such, the membership interest that she so desperately wishes to conjure is, in essence, valueless" (Complaint ¶ 8). But if that is so, what is at stake in this entire lawsuit? The court is left to wonder and, indeed, must do so now, because the plaintiff has now moved this court for preliminary injunctive relief (NYSCEF Doc. No. 21) seeking to enjoin defendant from: "(i) representing that she is a member of, or otherwise attempting to obtain non-public information belonging to, SMRC; [and] (ii) disclosing any non-public information belonging to SMRC that she has already obtained to any third parties" (*Id.*)²

In order to succeed on a motion for a preliminary injunction, the movant must demonstrate "a likelihood of success on the merits, irreparable injury, and a balancing of the equities in the movant's favor" (*Global Merchants, Inc. v Lombard & Co.*, 234 AD2d 98, 99 [1st Dept 1996]).

Likelihood of success is doubtful, at least as viewed at this early stage of the case.³ First of all, as noted above, the complaint, and the movant's supporting affidavit, while providing little information, do succeed in providing just enough information to persuade this court of a likelihood of dismissal on grounds of two prior actions pending (CPLR 3211 [a] [4]). But in addition to that, plaintiff's dreadful delay in seeking injunctive equity during the pendency of six years of concededly related litigation gives rise to a textbook defense of laches, which is "an equitable bar, based on a lengthy neglect or omission to assert a right and the resulting prejudice to an adverse party" (*Matter of Linker*, 23 AD3d 186, 189 [1st Dept 2005]). The equitable

² The court denied plaintiff's application for a temporary restraining order (*see*, NYSCEF Doc. No. 21) at the conclusion of a TRO conference which the court convened with all counsel.

³ The summons and complaint were filed in mid-July, with proof of service of process filed near the end of July.

doctrine of laches is applicable where a party “inexcusably slept on his rights” (*Jakubowicz v A. C. Green Electrical Contractors, Inc.*, 25 AD3d 146, 151 [1st Dept 2005], *lv denied* 6 NY3d 706 [2006]). Inordinate delay in moving for an injunction justifies a denial of the motion (*see, Elefante v Hanna*, 40 NY2d 908 [1976]; *SportsChannel America Assocs. v Natl. Hockey League*, 186 AD2d 417 [1st Dept 1992]).

Moreover, the entire theory of the complaint – that defendant has no membership interest in plaintiff – is, at least at this early stage of the case, impaired by some indicia of defendant’s membership found in the record; to wit, a U.S. Internal Revenue Service Form 1065 (“Record of Account”) identifying defendant as a member of plaintiff (*see*, NYSCEF Doc. No. 15). Without true joinder of issue and subsequent discovery effectively geared toward ascertaining legal or, if applicable, equitable, rights in the LLC, it is simply too soon to ask this court to implement the drastic measure of a preliminary injunction (*see, R&G Brenner Income Tax Consultants v Fonts*, 206 AD3d 943, 944 [2d Dept 2022] [“While the existence of issues of fact alone will not justify denial of a motion for a preliminary injunction, the motion should not be granted where there are issues that ‘subvert the plaintiff’s likelihood of success on the merits . . . to such a degree that it cannot be said that the plaintiff established a clear right to relief’”]). This is especially so in light of the complaint’s concession that “SMRC does not turn a profit” and “[a]s such, the membership interest . . . is, in essence, valueless” (Complaint ¶ 8).

As stated by the Appellate Division, First Department: “[a] party seeking the drastic remedy of a preliminary injunction must [nevertheless] establish a clear right to that relief under the law and the undisputed facts upon the moving papers.’ Conclusory statements lacking factual evidentiary detail warrant denial of a motion seeking a preliminary injunction.” (*1234 Broadway LLC v West Side SRO Law Project*, 86 AD3d 18, 23 [1st Dept 2011] [citations

omitted].) As pointed out above, insufficient factual support has been proffered by plaintiff, at this stage, to demonstrate that defendant has no interest in the LLC. This is compounded by the glaring absence of any detail whatsoever concerning the six years of related litigation that both the complaint and the plaintiff's affidavit only make passing references to, perhaps in an attempt to evade the equally glaring question of why the instant motion was never made during the pendency of that six-year fight. The court has been provided no means to comprehend the rightful place of this action within the context of that lengthy litigation history, involving one other Supreme Court action and one Surrogate's Court action – two prior actions pending (CPLR 3211 [a] [4]).

One final note. Although the provisional assessment of likelihood of success on the merits is obviously focused on the cause of action which would ultimately mandate permanent relief in said regard – in this case, the first cause of action for a declaratory judgment as to LLC membership status – it is still worth noting that the remaining two causes of action, for defamation, which are independent of the membership status issue, suffer also, from a merits standpoint. The second cause of action for “Defamation Per Se” makes reference to defendant's communication regarding a “fraudulent takeover of SMRC” by non-parties Susan Gallant and Lawrence Malitzky (*see*, Complaint ¶ 31; NYSCEF Doc. No. 3).⁴ SMRC – the only plaintiff in this action – is not the target of that reference. The targets are non-parties Gallant and Malitzky, who are not parties to the action (*see*, CPLR 1001 [necessary parties]; *see also*, *Arts4All, Ltd. v Hancock*, 5 AD3d 106 [1st Dept 2004] [corporation lacked standing to assert cause of action for libel for alleged statements made about its corporate officers]).

⁴ Said non-parties are alleged to be members of plaintiff (*see*, NYSCEF Doc. No. 9 ¶ 3).

Additional to all the foregoing points, the court is not persuaded of the presence of irreparable harm or of equitable favor toward plaintiff given the laches which plague this action in the face of a six-year long stretch of related litigation and given plaintiff’s concession that no tangible economic loss is at stake (*see*, Complaint ¶ 8).

Accordingly, it is

ORDERED that plaintiff’s motion for a preliminary injunction is denied; and it is further ORDERED that defendant shall answer, or move against, the verified complaint on or before 30 days from the date of filing hereof.

This will constitute the decision and order of the court.

ENTER:

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| CHECK ONE: | <input type="checkbox"/> | CASE DISPOSED | <input checked="" type="checkbox"/> | NON-FINAL DISPOSITION |
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| | <input type="checkbox"/> | SETTLE ORDER | <input type="checkbox"/> | SUBMIT ORDER |
| APPLICATION: | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> | FIDUCIARY APPOINTMENT |
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