

**O'Connor v Society Pass Inc.**

2024 NY Slip Op 30869(U)

March 12, 2024

Supreme Court, New York County

Docket Number: Index No. 656938/2019

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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THOMAS O'CONNOR, CVO ADVISORS PTE. LTD.

INDEX NO. 656938/2019

Plaintiffs,

MOTION DATE 01/16/2024

- v -

SOCIETY PASS INCORPORATED,

MOTION SEQ. NO. 011

Defendant.

**DECISION + ORDER ON  
MOTION**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 011) 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420

were read on this motion for ORDER OF ATTACHMENT AND OTHER RELIEF.

Plaintiff Thomas O'Connor's ("O'Connor" or "Plaintiff") motion for an order of pre-judgment attachment and asset discovery from Defendant Society Pass Incorporated ("SPI" or "Defendant") pursuant to CPLR 5229 is **denied**. Plaintiff's motion is **granted in part** to the limited extent that it seeks "such other and further relief," specifically: (1) SPI shall promptly inform Plaintiff about any agreement(s) to sell SPI's Subsidiaries; and (2) the valuation of O'Connor's shares is referred to a referee to hear and report (CPLR 4311).

**A. Background**

On May 17, 2023, the Court granted in part O'Connor's motion for partial summary judgment on his first cause of action for breach of contract (NYSCEF 199 [Order]; NYSCEF 233 [Transcript]). Specifically, the Court determined that O'Connor exercised his rights under the terms of a Common Stock Purchase Warrant ("Warrant") to purchase 1,148 shares of SPI and reserved the issue of damages for trial.

According to Plaintiff, SPI is in financial distress and at risk of being delisted by NASDAQ. Plaintiff argues, based on SPI's disclosures to the Securities and Exchange Commission ("SEC"), that SPI intends to sell two of its profitable subsidiaries, Thoughtful Media and NusaTrip (the "Subsidiaries"). Therefore, Plaintiff argues that he may not be able to recover damages and that SPI's assets should be restrained.

Plaintiff contends that his 1,148 shares are worth \$6,615,924, based upon a \$5,763 per share valuation that was accepted in another case against SPI (*Narain v Soc. Pass Inc.* 2023 WL 6023691[N.Y. Sup Ct, New York County 2023] [*"Narain"*]). Plaintiff also argues that SPI's former Chairman and CEO, Dennis Nguyen ("Nguyen"), confirmed the \$5,763 share price at his deposition. Accordingly, Plaintiff submits that there is no uncertainty about his damages with respect to the 1,148 shares already awarded.

In opposition, SPI argues that that the \$5,763 valuation applies to Series C Convertible Preferred Shares, not Plaintiff's common shares. SPI's expert, Kevin Flaherty CPA, CVA, concludes that Plaintiff's shares have little to no value (NYSCEF 401). Among other things, Mr. Flaherty opines that the value of SPI's common shares is less than the value of Series C Shares. Mr. Flaherty also concludes that there was no market for O'Connor to sell his shares when he exercised his rights under the Warrant.

SPI also argues that the proposed restraints would harm the company and make it less likely to be able to satisfy a judgment. Finally, in a post-submission letter, counsel for SPI asserts that SPI's "intention is to retain approximately \$39M and \$65M worth of the stock of the Subsidiaries and [SPI] has access to up to \$70M in funding, which is much more than sufficient to satisfy even the largest judgment Plaintiff argues he might be entitled to" (NYSCEF 420).

## B. Discussion

CPLR 5229 provides:

In any court, before a judgment is entered, upon motion of the party in whose favor a verdict or decision has been rendered, the trial judge may order examination of the adverse party and order him restrained with the same effect as if a restraining notice had been served upon him after judgment.

Where judgment is not hypothetical, but is instead a certainty, CPLR 5229 may be employed to attach assets that can be used to secure a judgment (*Sequa Capital Corp. v Nave*, 921 F Supp 1072, 1076 [SDNY 1996]) [collecting cases]. “It is in the trial court's discretion whether to grant the injunctive relief in light of the purpose of the statute: to prevent an adverse party from disposing of assets in order to avoid judgment” (*Gallegos v Elite Model Mgt. Corp.*, 1 Misc 3d 200, 202 [Sup Ct New York County 2003] [citing *id.*] [other citations omitted]).

Plaintiff has not established that any restraint or asset discovery is warranted at this time. First, Plaintiffs are attempting to enjoin *potential* transactions involving the Subsidiaries that, if consummated, could in fact increase SPI's ability to satisfy a judgment (*Goldberg v Dial Car, Inc.*, 2021 WL 5065885 [N.Y. Sup Ct, Kings County 2021] citing *Demirovic v Ortega*, 296 F Supp 3d 477, 483 [EDNY 2017]).

Second, Plaintiff's proposed valuation is based on findings in *Narain* that, while potentially relevant, are not necessarily dispositive in this case. Similarly, Mr. Nguyen testified at his deposition in this case that SPI's Series C and Common Shares have different values (NYSCEF 394 at 128), undermining any suggestion of an admission as to the value of O'Connor's shares. Thus, there is an insufficient basis to summarily grant the relief requested by Plaintiff on the current record (*id.*, *Advance Mag. Publishers Inc. v Corp. Suites 825 LLC*, 2023 WL 4763379 [N.Y. Sup Ct, New York County 2023]).

Finally, Plaintiff's request for "discovery of any and all of SPI's assets" is overbroad as well as premature (*id.*). SPI is a publicly traded company and Plaintiff has demonstrated an ability to keep informed of SPI's regulatory filings with the SEC.

That said, Plaintiff has been seeking relief for more than four years and has prevailed on liability as to 1,148 shares of Common Stock. SPI's interest in selling the Subsidiaries is a legitimate cause for concern and the Court finds that some form of relief is warranted to protect Plaintiff while also permitting SPI to carry on its business (*Screen Media Ventures, LLC v Capella Intern., Inc.* 2023 WL 7275615 [N.Y. Sup Ct, New York County 2023]; *Berg v Au Cafe, Inc.*, 2009 N.Y. Slip Op. 31392[U] [N.Y. Sup Ct, New York County 2009]).

In a post-briefing letter, counsel for Plaintiff requested a valuation hearing on "the earliest date possible" (NYSCE 419). In its responsive letter, counsel for SPI represented that it intends to maintain sufficient assets "to satisfy even the largest judgment Plaintiff argues he might be entitled to" (NYSCEF 420). In those circumstances, the Court finds that SPI should inform O'Connor if it enters into an agreement to sell the Subsidiaries, in whole or in part, so that the parties may discuss alternatives to seeking Court intervention.

The Court further finds that the parties should proceed to a valuation hearing before a referee or judicial hearing officer pursuant to CPLR 4311 to determine the value of the 1,148 shares of Common Stock that were the subject of Plaintiff's exercised option.

\* \* \* \*

Accordingly, it is

**ORDERED** that Plaintiff's motion for an order of pre-judgment attachment and asset discovery pursuant to CPLR 5229 is **DENIED**; it is further

**ORDERED** that Plaintiffs' motion is **GRANTED** to the limited extent that it seeks "such other and further relief" and Defendant SPI shall promptly inform Plaintiff about any agreement(s) to sell the Subsidiaries and the parties shall engage in good faith efforts to resolve any resulting disputes before seeking further relief; it is further

**ORDERED** that any non-public information provided by SPI to Plaintiff be used solely for purposes of this case unless otherwise agreed or directed by the Court;<sup>1</sup> it is further

**ORDERED** that the issue of valuation of O'Connor's shares is referred to a Judicial Hearing Officer/Special Referee who shall hear and make a recommendation to the Court; it is further

**ORDERED** that the parties serve a copy of this decision and order and an Information Sheet<sup>2</sup> on the Special Referee Part by email ([spref@nycourts.gov](mailto:spref@nycourts.gov)) within fifteen (15) days of this order and the Special Referee Clerk shall advise counsel for the parties of the date fixed upon the calendar of the Special Referee Part for a pre-hearing conference; it is further

**ORDERED** that the hearing to be scheduled by the Special Referee Part will be conducted in the same manner as a trial before a Justice without a jury (CPLR 4318) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and that the parties shall appear for the referenced hearing, including with all such witnesses and evidence as they may seek to present, and shall be ready to proceed, on the date first fixed by the Special

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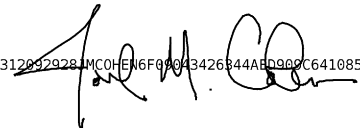
<sup>1</sup> The parties may request the entry of a stipulated confidentiality order using the Commercial Division's Model Order available at [https://www.nycourts.gov/LegacyPDFS/RULES/trialcourts/202.70\(g\)%20-%20Rule%2011-g%20\(attachment\).pdf](https://www.nycourts.gov/LegacyPDFS/RULES/trialcourts/202.70(g)%20-%20Rule%2011-g%20(attachment).pdf).

<sup>2</sup> The information sheet can be accessed at [SRP-InfoSheet.pdf \(nycourts.gov\)](#)

Referee Clerk for the hearing subject only to any adjournment that may be authorized by the Special Referee Part in accordance with the Rules of that Part; it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue specified above shall proceed from day to day until completion.

This constitutes the decision and order of the Court.

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JOEL M. COHEN, J.S.C.

3/12/2024  
DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE