

**Hertzano v Pressman Toy Corp.**

2024 NY Slip Op 31658(U)

May 9, 2024

Supreme Court, New York County

Docket Number: Index No. 654488/2023

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*

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MICHA HERTZANO, MARIANA HERTZANO, ORLY FIDELMAN, M&M VENTURES (2014) LTD., LEMADA LIGHT INDUSTRIES, M&M VENTURES LIMITED

Plaintiffs,

- v -

PRESSMAN TOY CORPORATION,

Defendant.

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**INDEX NO.** 654488/2023

**MOTION DATE** N/A

**MOTION SEQ. NO.** 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

Plaintiffs’ motion for a preliminary injunction is denied.

**Background**

This action involves plaintiffs’ effort to domesticate an Israeli judgment issued against defendant. Plaintiffs own intellectual property (“IP”) rights related to a delightful game called Rummikub. Certain plaintiffs entered into a trademark licensing agreement with defendant in 1997 for the exclusive right to manufacture, market, distribute and sell the game in the United States and Canada. Plaintiffs allege that they terminated this agreement in December 2019.

However, according to plaintiffs, defendant refused to recognize this termination and so, in accordance with the license agreement, they pursued an action in Israel for declaratory relief that defendant’s rights under the agreement were terminated. It is uncontested that defendant appeared and participated in the action in Israel, which included a trial. It is also uncontested

that the Israeli court issued a final judgment in June 2023 in plaintiffs' favor that terminated defendant's licensing rights. Because defendant did not stop its Rummikub-related activities in the United States and Canada, plaintiffs brought this action to enforce that Israeli judgment.

In this application, which was brought after the Court denied defendant's motion to dismiss and after defendant filed an answer, plaintiffs seek a preliminary injunction. Specifically, they seek an order "that during the pendency of this action, and pending a final decision on the merits, Defendant, and any persons or entities acting in concert with or on behalf of Defendant, including any officer, agent, employee, and/or representative of Defendant, be enjoined and restrained from manufacturing, importing, marketing, distributing, or selling the game Rummikub both in its original and several derivative forms" (NYSCEF Doc. No. 43 [order to show cause]).

In his affidavit in support, Micha Hertzano insists that under the aforementioned Israeli judgment, defendant is barred from manufacturing, importing, marketing, distributing or selling Rummikub in the United States and Canada (NYSCEF Doc. No. 44, ¶ 9). Mr. Hertzano explains that he has recently engaged in negotiations with other toy distributors with the goal of selling the IP rights to Rummikub (*id.* ¶ 11). However, he complains that these potential purchasers are wary of purchasing any of the IP rights due to defendant's apparent refusal to comply with the Israeli judgment (*id.* ¶ 12).

Mr. Hertzano adds that the quality of the game pieces has suffered because the toy supplier plaintiffs approved to manufacture the game has refused to make the game for defendant and defendant has utilized an unauthorized manufacturer (*id.* ¶ 17). He insists this has caused a "marked deterioration" in the quality of the game pieces and that both retailers and customers have complained (*id.* ¶¶ 18-19). Plaintiffs also argue that defendant has intentionally mislabeled

shipments of Rummikub by referring to it with monikers like “Plastic Toy” in order to avoid detection by Customs and Border Protection (plaintiffs contend they informed this agency that defendant could not import Rummikub).

Plaintiffs insist that injunctive relief is necessary to prevent widespread damage to Rummikub’s brand and to permit plaintiffs to pursue selling the game’s IP rights.

In opposition, the CEO of defendant (Mr. Golad) contends that plaintiffs have no right to approve manufacturers for the game and insists that defendant closely monitors the quality of Rummikub’s production (NYSCEF Doc. No. 67 at 5-8). Mr. Golad contends that the quality of the game pieces has not declined; he explains that defendant discovered that game pieces would smudge or fade when exposed to alcohol, which is a more common occurrence now that people are more likely to use hand sanitizer due to the COVID-19 pandemic (*id.* ¶¶ 31-36).

Mr. Golad admits that the factory that typically manufactured Rummikub refused to make the game for defendant following the Israeli judgment and so it now utilizes another company (which it allegedly used before) to make the game (*id.* at 10 -11). He insists that plaintiffs have continued to issue invoices for Rummikub since the issuance of the Israeli judgment and defendant has continued to pay these invoices.

With respect to the current requested injunctive relief, defendant contends that plaintiffs are seeking an order that directly conflicts with well-established precedent. It argues that preliminary injunctions are limited to maintaining the status quo and not a determination of the merits of an action.

In reply, plaintiffs claim that they properly terminated defendant’s license to Rummikub and so the status quo is just that—defendant cannot have anything to do with Rummikub. They argue that they satisfy all of the elements for a preliminary injunction as they are likely to

succeed on the merits, they will suffer irreparable harm without the granting of an injunction and a balancing of the equities is in their favors.

### **Discussion**

The Court's first task in this decision is to consider defendant's argument that plaintiffs are not entitled to injunctive relief now because that is what they seek as the ultimate relief in this action. "It is well settled that the ordinary function of a preliminary injunction is not to determine the ultimate rights of the parties, but to maintain the status quo until there can be a full hearing on the merits" (*Spectrum Stamford, LLC v 400 Atl. Tit., LLC*, 162 AD3d 615, 616, 81 NYS3d 5 [1st Dept 2018]). "[A] mandatory preliminary injunction (one mandating specific conduct), by which the movant would receive some form of the ultimate relief sought as a final judgment, is granted only in "unusual" situations, where the granting of the relief is essential to maintain the status quo pending trial of the action" (*Second on Second Cafe, Inc. v Hing Sing Trading, Inc.*, 66 AD3d 255, 264, 884 NYS2d 353 [1st Dept 2009] [internal quotations and citations omitted]).

In this motion, plaintiffs seek injunctive relief barring defendant from "manufacturing, importing, marketing, distributing, or selling the game Rummikub both in its original and several derivative forms." And in the complaint, plaintiffs seek a permanent injunction "enjoining defendant Pressman Toy from manufacturing, marketing, distributing and selling the Game" (NYSCEF Doc. No. 1 at 6). In this Court's view, this motion seeks part of<sup>1</sup> the ultimate relief demanded in the complaint; the second cause of action for a permanent injunction is nearly identical to the requested relief in this application. "[A]bsent extraordinary circumstances, a preliminary injunction will not issue where to do so would grant the movant the ultimate relief to

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<sup>1</sup> The complaint also seeks declaratory relief relating to recognition of the Israeli judgment.


which he or she would be entitled in a final judgment” (*Shake Shack Fulton St. Brooklyn, LLC v Allied Prop. Group, LLC*, 177 AD3d 924, 927, 112 NYS3d 196 [2d Dept 2019]).

In other words, the complaint seeks to prevent defendant from having anything to do with Rummikub. This motion seeks the same thing. Without a motion for summary judgment or a trial – that is, without a determination on the merits- it is improper to now grant the ultimate relief requested in the complaint. Therefore, the Court denies the motion.

Accordingly, it is hereby

ORDERED that plaintiffs’ motion for a preliminary injunction is denied.

See NYSCEF Doc. No. 42 concerning the next conference.

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