Sojka v Eisenman
2024 NY Slip Op 32468(U)
July 11, 2024
Supreme Court, Kings County
Docket Number: Index No. 511438/2024
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8
---x
CHRISTOPHER SOJKA,
Plaintiffs,

Decision and order

- against -

Index No. 511438/2024

DAVID EISENMAN,
Defendant,

July 11, 2024
---x
PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #1, #2 & #5

The defendant has moved seeking to vacate a temporary restraining order issued against him. The plaintiff has moved seeking contempt against the defendant. The motions have been opposed respectively. Papers were submitted by the parties and arguments held and after reviewing all the arguments this court now makes the following determination.

The plaintiff and defendant were each half owners of an entity called Madwell LLC formed in 2010. On April 26, 2024 the plaintiff obtained a temporary restraining order restraining the defendant from preventing the plaintiff from accessing the firm computers and workspace accounts, bank accounts and credit card accounts and for spending any of Madwell's funds, not in furtherance of Madwell's business. The plaintiff then filed a contempt motion against the defendant for violating that restraining order. The defendant also moved seeking to vacate the temporary restraining order. The motion to vacate was denied in an order dated May 9, 2024 due to the plaintiff's failure to appear. Then plaintiff filed this motion, titled an omnibus motion seeking to vacate the restraining order and for the granting of a restraining order against the plaintiff. Thus, this decision will resolve the motion for contempt filed by the plaintiff, the defendant's omnibus motion and the original restraining order as well.

The defendant argues the plaintiff lied to the court when it obtained the injunction restraining the defendant from continuing to block plaintiff's access. The defendant presents lengthy arguments supporting the conclusion the plaintiff lied to the court. In fact, the defendant asserts the plaintiff is the one who locked the defendant out of the accounts and locked other employees out of their accounts.

In early 2024 the plaintiff and defendant attempted to settle differences whereby the plaintiff would buy the shares of the defendant. Those negotiations proved fruitless and according to the complaint the defendant stopped working on March 13, 2024 and his access to accounts and information concerning the company was denied to defendant commencing April 15, 2024. The complaint further alleges that pursuant to Section 1.1(mm) of the company's operating agreement the defendant's absence amounted to a constructive voluntary termination which triggered the redemption of the defendant's shares. Indeed, on June 10, 2024 the defendant was notified of the intent to redeem his shares pursuant to Section 7.3(a) of the operating agreement. The defendant has challenged the assertion his conduct amounted to a constructive voluntary termination. The defendant does not argue that he, in fact, continued to work after March 13, 2024. Rather, he argues, in conclusory fashion, that "no such Termination Event has occurred" (see, Affirmation of David Eisenman, ¶11 [NYSCEF Doc. No. 92]). In another affidavit, the defendant asserts that the allegation he has been absent from work is "bad faith" and that since being locked out of the business on April 15 he has "worked tirelessly to fight my way back into my position as CEO of the Company in order to protect it from Sojka's reckless misconduct and looting of Company assets, and I have spent far more than 15 hours in any four-week period on that endeavor" (see, Affirmation of David Eisenman, ¶24 [NYSCEF Doc. No. 139]). Of course, the absence which precipitated the termination event all occurred prior to April 15. Thus, while these motions filed are not the proper place to adjudicate whether the defendant was properly terminated, nevertheless, in very lengthy papers filed, he has failed to principally rebut that conclusion. Moreover, it is true that Section 7.2 of the operating agreement states that "unless authorized by the Managing Members, no Member shall withdraw from the Company or otherwise cease to be a Member, except in connection with the dissolution of the Company" (id). That provision does not mean the defendant's services could not be terminated. To be sure, Section 7.3 explicitly provides that upon a termination event the company has the right to redeem the shares of the member. Thus, Section 7.2 does not provide a member with eternal membership, rather, such membership exists "unless authorized by the managing members" (supra) which may be so authorized upon a termination event. The fact the parties were negotiating a settlement and such negotiations continued after March 13 may indicate no such termination event occurred and that the plaintiff's unilateral determination was improper. These are factual issues that must be explored. In any event, there is no merit to the defendant's argument that "Sojka has no [sic] presented no viable theory whereby I might no longer be a Managing Member or Member of Madwell" (see, Affirmation of David Eisenman, ¶12 [NYSCEF Doc. No. 92]). There is further no merit to the plaintiff's arguments that there are no questions of fact the defendant has been terminated. This matter is contested, and like all contested matters in a litigation, must be resolved through litigation. The plaintiff's unilateral conclusions regarding defendant's termination are improper ways to circumvent issues that are meant for litigation.

The defendant argues that notwithstanding any termination, the plaintiff lied to the court to obtain an injunction against him. First, the defendant argues that he had been locked out of the company's accounts, however, the plaintiff sought a restraining order alleging the defendant had locked out others. The defendant asserts the evidence is abundantly clear that the defendant had been locked out of all company accounts as well as bank accounts and that the plaintiff had terminated the accountant Dan Tucker. Thus, the plaintiff, in seeking the first injunction asserted that "Managing Member Sojka and Mr. Tucker remain similarly unable to control Madwell's bank accounts or Madwell American Express credit card account(s) that are now under Eisenman's exclusive control (with seven-figure credit limits) and funded solely by Madwell bank accounts" (see, Affirmation in Support, ¶7 [NYSCEF Doc. No. 5]). However, defendant notes the plaintiff sent an email to the Bank of America indicating that he had suspended Mr. Tucker and that he was seeking to change access to bank accounts completely contradicting the affirmation that he and Mr. Tucker were locked out of access to the bank account (see, Emails [NYSCEF Doc. No. 93]). The plaintiff's explanation that he only suspended Tucker for two days does not resolve the contradiction noted in any way. Thus, the defendant asserts in his answer that "Sojka locked the Company's CFO out of the Bank's online accounts, but then swore to the Court under penalty of perjury that Eisenman had done it" (see, Answer:Counterclaim, 45 [NYSCEF Doc. No. 64]). However, Tucker submitted an affidavit where he categorically disputed he had been terminated by the plaintiff and insisted that only the defendant maintained the capabilities to deny him access (see, Affidavit of Daniel Tucker, ¶3 [NYSCEF Doc. No. 156]).

Next, concerning work accounts, the plaintiff asserted that "Eisenman has also impaired Madwell's ability to operate by placing improper restrictions on Madwell employees' email, G-Suite, and Google Workplace accounts. On or about April 17, 2024, Sojka was contacted by Information Technology ("IT") team members in Madwell's Brooklyn and Denver satellite office because they were stripped of all ordinary and administrative privileges required to access Madwell's Google Workspace (and derivatively, email) accounts" (see, Affirmation in Support, ¶¶22,23 [NYSCEF Doc. No. 5]). However, the defendant has introduced evidence that the plaintiff locked out the defendant (see, Affirmation of David Eisenman, ¶¶55,56 [NYSCEF Doc. No. 92]).

The above is just a small sampling of the contentious issues in this litigation. The inconsistencies and accusations of theft, lying and each side attempting to financially harm the other are legion. There is no point in elaborating any further upon each and every disputed fact. Indeed, going forward the parties are reminded to comply with all court rules concerning the length of motion papers. No such permission for an enlargement of the page requirement has been granted and at this juncture no such permission is forthcoming. The duplicative nature of the filings demands a denial of any such requests.

CPLR §6301, as it pertains to this case, permits the court to issue a preliminary injunction "in any action... where the plaintiff has demanded and would be entitled to a judgement restraining defendant from the commission or the continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff" (id). A party seeking a preliminary injunction "must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of the injunction and a balance of the equities in its favor" (Nobu Next Door, LLC v. Fine Arts Hosing, Inc., 4 NY3d 839, 800 NYS2d 48 [2005], see also, Alexandru v. Pappas, 68 Ad3d 690, 890 NY2d 593 [2d Dept., 2009]). Further, each of the above elements must be proven by the moving party with "clear and convincing evidence" (Liotta v. Mattone, 71 AD3d 741, 900 NYS2d 62 [2d Dept., 2010]).

Considering the first prong, establishing a likelihood of success on the merits, the plaintiff must prima facie establish a reasonable probability of success (Barbes Restaurant Inc., v. Seuzer 218 LLC, 140 AD3d 430, 33 NYS3d 43 [2d Dept., 2016]). In this case the basis for the removal of the injunction is that the plaintiff lied in order to obtain it. However, the plaintiff disputes every contention of the defendant. The extent of the dispute has been partially recounted above. Thus, while it is true that a preliminary injunction may be granted where some facts are in dispute and it is still apparent the moving party has a likelihood of success on the merits, (see, Borenstein v. Rochel Properties, 176 AD2d 171, 574 NYS2d 192 [1st Dept., 1991]) some evidence of likelihood of success must be presented. Therefore, when "key facts" are in dispute and the moving party cannot satisfy the necessary elements then an injunction must be denied (Digestive Liver Disease P.C. v. Patel, 18 AD3d 423, 793 NYS2d 773 [2d Dept., 2005]).

In this case, virtually every fact alleged by the plaintiff in support of the injunction is heavily disputed by the defendants. The defendants contest the facts that were used to secure the injunction in the first place. Likewise, every fact presented by the defendant seeking an injunction against the plaintiff is in fact disputed by the plaintiff. While some of the explanations are satisfactory there still remains significant questions of fact. Of course, the continuation of discovery and a trial, if necessary, will determine whether the plaintiff will be able to prove the claims alleged and prevail on the allegations against the defendant. Likewise, the defendant will be required to prove his counterclaims. At this juncture, the plaintiff has only raised contested and disputed claims of usurpation and diversion of funds. The facts are so disputed that there is no way for the court to determine whether any party has a likelihood of success.

Further, even if the plaintiff's allegations were sufficient to demonstrate a likelihood of success on the merits, concerning the central allegation of the complaint, namely that defendant has essentially taken money of the business for his own personal needs, or that the plaintiff has done so, those are mere money claims, without any accompanying emergency application. In order to satisfy the second prong of irreparable harm it must be demonstrated that monetary damages are insufficient (Autoone Insurance Company v. Manhattan Heights Medical P.C., 24 Misc3d 1229(A), 899 NYS2d 57 [Supreme Court Queens County, 2009]). The parties do not even really allege anything other than money damages. The plaintiff does assert that if the defendant continues to operate and loot the business it will negatively affect his ownership interests in the company. However, those are merely claims for damages which can be satisfied with money damages. Thus, while the parties may prevail in certain aspects of their respective claims, the parties have failed to establish that the denial of the injunction will affect anything other than economic or financial matters. Thus, any alleged loss which can be compensated by money damages is not irreparable harm (Family Friendly Media Inc., v. Recorder Television Network, 74 AD3d 738, 903 NYS2d 80 [2d Dept., 2010]). Indeed, an injunction based upon purely monetary damages is improper even if the passage of time will render any judgement obtained ineffectual (Rosenthal v.

Rochester Button Company, 148 AD2d 375, 539 NYS2d 11 [st Dept., 1989]). As noted, the injunctions sought are merely to protect the further dissipation of the assets of the company. This is not irreparable harm and is an improper basis upon which to obtain an injunction.

It is true also true, as noted, that the parties dispute whether the defendant still maintains an ownership interest. That issue concerns the termination which will not in any way be served by an injunction.

Consequently, the motion seeking to vacate the injunction is granted.

Likewise, for the reasons noted, the defendants motion seeking an injunction against the plaintiff is denied. Lastly, any motion for sanctions or contempt is denied.

So ordered.

ENTER:

DATED: July 11, 2024
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC