

**Shahirfar v Franchey**

2025 NY Slip Op 30885(U)

March 17, 2025

Supreme Court, New York County

Docket Number: Index No. 653510/2024

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M**

*Justice*

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BABAK SHAHIRFAR,

Plaintiff,

- v -

CHRISTOPHER FRANCHEY, JASON TAYLOR, DB4C  
MANAGEMENT LLC, CAR BUYERS AUTOBODY LLC, CAR  
BUYERS MANAGEMENT LLC, FLORIDA CLASSIC AUTOS,  
INC., 529 CAR CORP., 435 ROUTE 18 LLC, 258 OLDEN  
LLC, 2014 RICHFIELD LLC

Defendant.

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**INDEX NO. 653510/2024**

**MOTION DATE 12/19/2024**

**MOTION SEQ. NO. 002**

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47

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

Upon the foregoing documents, the plaintiff’s motion is denied.<sup>1</sup>

**Background**

The underlying proceeding relates to a dispute between three parties over the management and ownership of various business entities. Babak Shahirfar (“Plaintiff”) brought the complaint with seven causes of action, seeking declaratory relief, an accounting, and alleging breach of contract, breach of fiduciary duty, and unjust enrichment. Plaintiff then moved by order to show cause for an order restraining all Defendants<sup>2</sup> from altering any bank accounts for the business entities, transacting any business outside the normal course of business, and selling

<sup>1</sup> The Court would like to thank Mingyue Deng for her assistance in this matter.

<sup>2</sup> Christopher Franchey and Jason Taylor are referred to collectively as the “Individual Defendants”, the remaining defendants are referred to collectively as the “Business Defendants”, and all defendants collectively are referred to as “Defendants”.

or transferring any interest in the business entities. This previous order was denied for a failure to establish likelihood of success on the merits.

Plaintiff, claiming new and recent circumstances since the prior order, now files another Order to Show Cause seeking to restrain Defendants from changing the ownership structure of the Business Defendants. Plaintiff also seeks to restrain Defendants from dissolving the Business Defendants and from closing bank accounts on which Plaintiff is a signatory or account holder, and to direct Defendants to provide Plaintiff with access to books and records of the Business Defendants. Plaintiff alternatively seeks the appointment of a receiver to be paid for by Defendants pursuant to Limited Liability Law § 703.

### **Standard of Review**

The granting of a preliminary injunction lies in the court's discretion, and it is "an extraordinary provisional remedy which will only issue where the proponent demonstrates (1) a likelihood of success on the merits; (2) irreparable injury absent a preliminary injunction, and (3) a balance of equities tipping in its favor." *Harris v. Patients Med., P.C.*, 169 A.D.3d 433, 434 (1st Dept. 2019).

### **Discussion**

Plaintiff's main problem in seeking this relief is that they have not shown how any of the events since the denial of the last OSC has altered the likelihood of success on the merits analysis. Defendants have control of 529 Car Corp. and are permitted to change the bank accounts, particularly given the current holdover proceeding related to that business. Plaintiff cites to *Darwish*, but that case is distinguishable. There, the plaintiff sought a preliminary injunction preventing co-owners from unilaterally altering bank accounts without the consent of the designated management committee responsible for the accounts in question. *Darwish Auto*

*Group, LLC v. T.D. Bank, N.A.*, 224 A.D.3d 1125, 1117 (3<sup>rd</sup> Dept. 2024). Here, Plaintiff is a minority shareholder in 529 Car Corp. and was removed as an officer. Plaintiff has not shown that his removal from the bank account establishes likelihood of success on the merits for a breach of fiduciary duty claim.

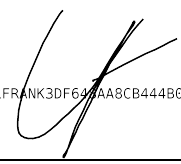
Plaintiff's main argument is that the default from the State Bank goes to the likelihood of success on the merits for the breach of fiduciary duty claim. He alleges that representations from Defendant Taylor to the bank caused the default. Defendants allege that the default resulted from representations that Plaintiff made to the bank that there was an ongoing dissolution proceeding and a failure by Plaintiff to provide requested financial documentation, which is not in fact true, and as of oral argument, this false statement had never been remedied.

Overall, Plaintiff has not shown a likelihood of success on the merits that the State Bank actions constituted a breach of fiduciary duty. The decision whether to grant or deny provisional relief is "a matter ordinarily committed to the sound discretion of the lower courts." *Doe v. Axelrod*, 73 N.Y.2d 748,750 (1988). When there are issues of fact, a plaintiff must establish likelihood of success on the merits with "clear and convincing evidence." *Kazantzis v. Cascade Funding RM1 Acquisitions Grantor Trust*, 217 A.D.3d 410, 411 (1st Dept. 2023). The Plaintiff has failed to do so.

For the reasons discussed above, as the Plaintiff has failed to establish likelihood of success on the merits based on the new events, the Court does not need to reach the remaining two factors. Accordingly, it is hereby

ADJUDGED that plaintiff's motion is denied.

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3/17/2025

DATE

LYLE E. FRANK, J.S.C.

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