Aiello v Deutsch
2025 NY Slip Op 35523(U)
March 24, 2025
Supreme Court, Suffolk County
Docket Number: Index No. 608076/2024
Judge: Jerry Garguilo
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SHORT FORM ORDER **INDEX NO. 608076/2024**

SUPREME COURT - STATE OF NEW YORK
COMMERCIAL DIVISION IAS PART 48 - SUFFOLK COUNTY

PRESENT:
HON. JERRY GARGUILO
SUPREME COURT JUSTICE

MOTION RETURN DATE:
MOTION SEQ# 004
MOTION: MG

EDWARD AIELLO INDIVIDUALLY, EDWARD AIELLO ON BEHALF OF THE SHAREHOLDERS OF MERCURY ENVELOPE COMPANY, INC. SIMILARLY SITUATED, ANTHONY AIELLO INDIVIDUALLY, ANTHONY AIELLO ON BEHALF OF THE SHAREHOLDERS OF MERCURY ENVELOPE COMPANY, INC. SIMILARLY SITUATED,

Plaintiffs,

-against-

MAURICE DEUTSCH, THE MERCURY ENVELOPE & PRINTING CORP., MERCURY ENVELOPE COMPANY, INC.

Defendants.

NOTIFICATION VIA NYSCEF

In connection with its determination, the Court has considered the following:

1. Plaintiffs' Notice of Motion with Affirmation In Support of Matthew J. Barnes, Esq., Affirmation in Support of Plaintiff Anthony Aiello, Exhibits 1-22; and Memorandum of Law in Support; and
2. Affidavit in Opposition of Defendant Maurice Deutsch, Exhibits A-E, Affidavit in Opposition of Alison Deutsch, Exhibits A-D, and Memorandum of Law in Opposition.

The Court directs the reader to its prior decision dated August 22, 2024, for a historical account of the parties' conflicts concerning this litigation. See, NYSCEF document #47.

Here, counsel for Plaintiffs seek the appointment of a Receiver for Defendant Mercury Envelope Company Inc., ("Mercury") and for Defendant Mercury Envelope & Printing Corp., ("MEP") CPLR 6401.[1]

Plaintiffs claim that Defendants "continue" to strip Mercury of its assets, revenues, clients and goodwill "by transferring same to MEP, an entity controlled by family members of defendant Deutsch." See page 2 of Affirmation in Support of Motion for Appointment Of A Temporary Receiver at NYSCEF document #80. Plaintiffs allege that this "fleecing" of Mercury continued and "escalated" after the issuance of the temporary restraining order.

Despite Mercury's gross bank account deposits ranging from $500,000 to $2,000,000, Plaintiffs allege that they have yet to receive any distributions since the commencement of this litigation.

Plaintiffs further claim, despite court orders, that Defendants have yet to comply with discovery. Plaintiffs have not received financial and accounting records. Only by the usage of subpoena process did Plaintiffs obtain banking records of Bank of America. According to Plaintiffs, the records indicate that Defendants are utilizing MEP (not owned by Plaintiffs) "to shift the business, income and assets of Mercury for their benefit." See, NYSCEF document #80, page 4 of Affirmation In Support of Motion For The Appointment of a Temporary Receiver, by Plaintiff Anthony Aiello.

Plaintiffs also note that Mercury's monthly deposits were much more significant between 2021-2023, whereas MEP's monthly deposits for the same period were significantly less than Mercury's. Plaintiffs' claim that deposits made to MEP were transferred funds of Mercury that Defendant Maurice Deutsch (Maury) facilitated to MEP without Plaintiffs' knowledge or consent. [Id, Aiello's Affirmation pages 5-7.] For instance, during the period of January - August 2024 MEP's monthly deposits increased

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[1] On June 5, 2024, this Court issued a temporary restraining order enjoining Defendant from:

(a) Selling, transferring, encumbering or secreting any of the revenue and/or property and/or assets belonging to Mercury.
(b) Withdrawing or paying out any property/assets of Mercury except in the ordinary course of business; and
(c) Interfering with, harassing and/or poaching of any clients of Plaintiffs or Coral Color Process, Ltd.
(See NYSCEF #33).

This matter was resolved when Defendants made 2 payments totaling $605,911.07 to Plaintiffs representing monies that Mercury owed to Coral Color Process Ltd., a vendor of Mercury owned by Plaintiffs.

significantly, while Mercury deposits decreased significantly. Plaintiffs note that deposits placed into the Mercury operating account decreased substantially when the litigation commenced.

Lastly, Plaintiffs allege that starting as far back as 2017, Maury made unauthorized distributions through 2023 in the total sum of $20,776,114.00. See Exhibits 16- 22, at NYSCEF document numbers 96-102. Plaintiffs argue that as of August 2024, Mercury's ending bank balance was $235,194.39, less than eleven (11) percent of the $20 million allegedly diverted by Defendants. See Exhibit 3 at NYSCEF document number 83.

Defendants oppose the application for the appointment of a Temporary Receiver in all respects.

Defendants state that the reasons for Mercury's revenue loss is due to the departure of Scott Deutsch, described as a former top salesman as well as the loss of Mercury's biggest client, TAG. TAG's loss also decreased the revenue flow to Coral Color Process Ltd., a company owned by the Plaintiffs, and formerly enjoying a symbiotic relationship with defendant, Mercury.

Defendants described the $20 million in distributions as "a myriad number of legitimate business expenses paid by Mercury over the last seven (7) years totaling $20 million." Defendants further state that, "over $17 million dollars of the items included in this list have been readily identified by Defendants and are listed in Exhibit C to Maury Deutsch's Affidavit. These exhibits list numerous payments to the Aiellos themselves totaling over $1 million as well as millions in corporate tax payments, insurance payments, salaries, distributions and a litany of other legitimate business expenses duly noted in Exhibit C to Maury Deutsch's Affidavit. Defendants' Memorandum of Law In Opposition, page 6, NYSCEF document #118. Defendants argue that clients of Mercury are at will and are not property that a Receiver could manage.

In her Affidavit in Opposition, Alison Deutsch emphasizes that she is the sole owner of MEP and the Plaintiffs have falsely claimed that MEP was set up by Maury Deutsch to divert Mercury business and revenue to it. She annexes as is Exhibit "A" to her Affidavit In Opposition NYSCEF document #114, a form entitled Department of State Division of Corporations, showing that MEP was incorporated in 1995. She denies that Maury and Scott Deutsch have any ownership interest in MEP.

As to Plaintiffs' claim that Mercury was unlawfully diverting TAG payments to

MEP, Ms. Deutsch states that TAG payments to MEP were immediately transferred to Mercury and that over $2.5 million was transferred from MEP to Mercury between December 2023 and early 2024. Ms. Deutsch concludes that these payment transfers to Mercury negate Plaintiffs' claim of the TRO violation.

Ms. Deutsch continues to aver that all of Plaintiffs' allegations concerning diversion of clients and monies to MEP from Mercury are unfounded.

Defendants assert that Plaintiffs have failed to justify the need for the appointment of a Receiver.

In their reply papers, Plaintiffs emphasize that MEP is an alter-ego entity utilized by the Deutsche family to conduct the same business as Mercury.

Plaintiffs' concerns are as follows:

1. Defendants did not advise Plaintiffs about the transfer of Mercury's most lucrative client, TAG, to MEP.
2. Defendants "Unauthorized Distributions" to Scott Deutsch and other Maury family members.[2]
3. Scott Deutsch was paid as "President" of Mercury without unanimous approval of the Board of Directors of Mercury (Maury and Plaintiffs).
4. Payments made by Mercury for Scott Deutsch's personal credit cards, personal country club dues, personal real estate taxes, etc.
5. "Personal loans to Mercury."
6. The borrowing of money in excess of $50,000.

Plaintiffs maintain that they have made a clear evidentiary showing for the appointment of a Receiver:

1. the diversion of Mercury business and clients to MEP; and
2. the misappropriation of more than $20 million of Mercury profits to Defendant Maury and his family members.

Plaintiffs maintain that these actions are in contravention of the agreement of shareholders, partnership law and the broad fiduciary duties between partners.

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[2] Plaintiffs state that when they purchased their 50% shareholder interests from Maury, the purchase contracts stated that Scott Deutsch had retired from Mercury in October 2014, which plaintiffs opine means that Maury paid Scott millions of dollars as commissions as President of Mercury while retired.

CPLR 6401 provides in relevant part:

a) Appointment of temporary receiver; joinder of moving party. Upon motion of a person having an apparent interest in property which is the subject of an action in the supreme or a county court, a temporary receiver of the property may be appointed, before or after service of summons and at any time prior to judgment, or during the pendency of an appeal, where there is danger that the property will be removed from the state, or lost, materially injured or destroyed.

A temporary receiver should only be appointed where there is clear evidentiary showing of the necessity for the conservation of the property at issue and the need to protect a party's interest in that property (*Meagher v Dosher*, 157 AD3d 880, 69 NYS 3d 708 [2d Dept 2018]; *Vardaris Tech. Inc., v. Paleros Inc*., 49 Ad3d 631, 632, 853 NYS 2d 601 [2d Dept 2008]). The appointment of a temporary receiver "is an extreme remedy resulting in the taking and withholding of possession of property from a party without an adjudication on the merits" (*Schachner v Sikowitz*, 94 AD2d 709, 709, 462 NYS2d 49 [2d Dept 1983]). A motion seeking such an appointment should be granted only where the moving party has made a "clear and convincing" evidentiary showing of "irreparable loss or waste to the subject property and that a temporary receiver is needed to protect their interests" (*Magee v Magee*, 120 AD3d 637, 638, 990 NYS2d 894 [2d Dept 2014]). Here the Court finds that Plaintiffs have shown that there is the necessity for the conservation of the property at issue and danger of irreparable loss or material injury to the subject property as well as a continuing risk of fraud or insolvency if a temporary receiver is not appointed. Therefore, it is necessary at this time to appoint a receiver to oversee Mercury's business operations and to determine whether an alter-ego relationship between Mercury and MEP exists; whether the "diversion" of Mercury's profits was extraordinary and unauthorized; whether a breach of fiduciary duty and corporate waste exists; and whether the Shareholders' Agreement is or is not dispositive of this Plaintiffs' claim of "self-interested transactions".

Accordingly, Plaintiffs' motion (004) seeking the appointment of a Temporary Receiver is **GRANTED**. Plaintiff is directed to submit a proposed order on notice, appointing a Temporary Receiver as herein delineated within 10 days of the date of this order, with Notice of Entry. The Receiver shall be compensated at an hourly rate consistent with the Receiver's custom and practice (inclusive of his respective support staff billed at their customary rate) and the complexity of the commission. The parties shall share the fees of the Receiver 50-50.

The foregoing constitutes the decision and **ORDER** of this Court.

Dated: March 24, 2025

HON. JERRY GARGUILO, JSC