

Blaze Inc. v Rhinestone

2012 NY Slip Op 30846(U)

January 17, 2012

Supreme Court, Nassau County

Docket Number: 7984/11

Judge: Joel K. Asarch

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU: PART 13

-----X
BLAZE INC. d/b/a WOODY'S VILLAGE SALOON,

Plaintiff,

- against -

DECISION AND ORDER

Index No: 7984/11

**KIRA RHINESTINE and MICHAEL J.
SPOSATO, ACTING SHERIFF OF NASSAU
COUNTY,**

Motion Sequence No: 001
Original Return Date: 06/17/11

Defendants.

-----X

P R E S E N T :

**HON. JOEL K. ASARCH,
Justice of the Supreme Court.**

The following named papers numbered 1 to 4 were submitted on this Notice of Motion on June 17, 2011:

	<u>Papers numbered</u>
Order to Show Cause, Affirmation in Support	1-2
Affirmation in Opposition	3
Reply Affirmation	4

Plaintiff, Blaze, Inc. d/b/a Woody's Village Saloon, moves, by Order to Show Cause, pursuant to CPLR 6301, to enjoin the defendants, or their respective officers, agents, servants, employees, successors and all other people acting by or on their behalf, from conducting a property execution auction and/or sale for property located at 1015 Park Boulevard, Massapequa Park, New York, the property occupied by the plaintiff herein and operated as a bar and grill known as Woody's Village Saloon.

This action for a permanent injunction (commenced on May 31, 2011) stems from an

underlying lawsuit brought by the defendant herein, Kira Rhinestine, in Suffolk County Supreme Court (Index No. 09899/06) against Courthouse Bar & Grill, Janbert Realty Corp., Zachia Inc. and Louis Sosa. The plaintiff sought to recover for serious and severe personal injuries arising out a dog bite to her face which occurred on April 24, 2003 at the Courthouse Bar & Grill located at 1750 Merrick Avenue, Merrick, New York. The dog that attacked Ms. Rhinestine was allegedly owned by Louis Sosa who was the owner and/or manager of the bar.

Apparently, in that proceeding, neither the entity known as Courthouse Bar & Grill [which was alleged in the Complaint to be a domestic corporation {par. 3} or foreign authorized corporation {par. 5}] nor Louis Sosa, appeared in the action. On or about December 5, 2008, the Supreme Court, Suffolk County (Hon. Jeffrey Arlen Spinner), after an Inquest, awarded the plaintiff \$1,500,000.00 for past and future pain and suffering from defendants Courthouse Bar & Grill and Louis Sosa.

Thereafter, by Order to Show Cause, Raymond Forester, a principal in R&L Bar & Grill, Inc., moved for an Order limiting any judgment to be entered in the Suffolk County dog bite action against "Courthouse Bar and Grill" to the bar located at 1750 Merrick Avenue, Merrick, New York, the place where the alleged incident occurred. Notably, Raymond Forester is a principal in R&L Bar & Grill, Inc., the corporation that owned the bar located at 1015 Park Boulevard, Massapequa Park, New York. Forester maintained in his affidavit in support of his Order to Show Cause therein that his corporation, R&L Bar & Grill, Inc. was incorporated in New York on August 3, 2004 (after Ms. Rhinestine's accident). He stated that R&L Bar & Grill, Inc. purchased the bar located at 1015 Park Boulevard, Massapequa Park, New York, from Park Blvd. Bar Inc. in August 2004, at which time it was (also) known as Courthouse Bar & Grill. Forester also stated in his sworn affidavit that to the best of his knowledge, the bar was named "Courthouse Bar & Grill" shortly after it was purchased

by Park Blvd. Bar Inc. from L.J.H. Inc. in March 2002 (before Ms. Rhinestine's accident). In any event, the Supreme Court Suffolk County denied Forester's application on the grounds that "[n]o good and proper reason for the relief being request[ed] [was] proffered [and] therefore, this Court [would] not look back almost three years to entertain at this late date such indemnity."

In this action, plaintiff, Blaze, Inc. d/b/a Woody's Village Saloon, claims to be the licensed owner of the bar located at 1015 Park Boulevard, Massapequa Park, New York. Plaintiff's only proof of ownership is a New York State Liquor Authority License with an effective date of January 26, 2011 and an expiration date of December 31, 2012. In moving for such preliminary injunction, counsel for the plaintiff herein states that the bar located at 1015 Park Boulevard, Massapequa Park, New York is owned by Blaze Inc. and is known as Woody's Village Saloon. It must be noted, however, that no affidavit of an individual with personal knowledge has been furnished, nor has the Complaint been verified by a party with knowledge. Rather, counsel maintains that the prior owner of the bar was R&L Bar & Grill, Inc. and that neither Blaze, Inc. nor R&L Bar & Grill, Inc. was in existence when the plaintiff was injured in 2003. Counsel argues that to permit the Sheriff's Office to advertise and conduct a sale at the plaintiff's premises at 1015 Park Boulevard, Massapequa Park, New York on June 2, 2011 (this short time period may explain why there is no affidavit from plaintiff) for property of a judgment-debtor which is not at that location and which has never been at that location is a "travesty of justice" and will cause "irreparable, embarrassing and disruptive" damage to the business and reputation of the plaintiff (Complaint, ¶15).

In order to obtain injunctive relief pursuant to CPLR Article 63, the moving party must demonstrate (1) a likelihood of success on the merits; (2) irreparable injury absent granting the preliminary injunction; and (3) a balancing of the equities in the movant's favor (CPLR 6301; *Aetna*

Ins. Co. v. Capasso, 75 NY2d 860 [1990]; *W.T. Grant Co. v. Srogi*, 52 NY2d 496 [1981]). The party seeking the preliminary injunction has the burden of establishing a prima facie entitlement to such relief (*Gagnon Bus Co., Inc. v. Vallo Transportation, Ltd.*, 13 AD3d 334 [2nd Dept. 2004]; *William M. Blake Agency, Inc. v. Leon*, 283 AD2d 423 [2nd Dept. 2001]). Proof establishing the foregoing elements must be supported by affidavit and other competent proof supported by evidentiary detail (CPLR 6312[c]; *Faberge Intl. Inc. v. Di Pino*, 109 AD2d 235, 240 [1st Dept. 1985]). Bare conclusory allegations are insufficient to support the motion (*Neos v. Lacey*, 291 AD2d 434 [2nd Dept. 2002]).

It is clear that at all relevant times, “Courthouse Bar & Grill” located at 1015 Park Boulevard, Massapequa Park, New York was a non-entity; rather, it was always simply an assumed name. Thus, assuming that counsel’s contentions are otherwise accurate, it is plain that when L.J.H. Inc., Park Blvd. Bar, Inc. and R&L Bar & Grill, Inc. all owned the Massapequa Park property and establishment, they all operated under the assumed name “Courthouse Bar & Grill.” Assuming the truth of plaintiff’s counsel’s contentions, as early as March 2002, the corporation known as L.J.H. Inc. sold the Massapequa Park property and establishment to Park Blvd. Bar Inc. Subsequently, in August 2004, the corporation known as Park Blvd. Bar, Inc. sold the property and establishment to the corporation R&L Bar & Grill Inc. However, issues persist which affect the Court’s ability to determine whether a preliminary injunction is appropriate, such as issues of common ownership, compliance with formalities in operating the establishments, whether the plaintiff is *de facto* or *de jure* “Courthouse Bar & Grill”, or whether the plaintiff is the judgment-debtor referred to in the Sheriff’s notice of sale. Issues presented in this case focus on responsibility for liability. See, e.e. *Provosty v. Lydia E. Hall Hosp.*, 91 AD2d 659 (2nd Dept. 1982), *aff’d* 59 NY2d 812 (1983).

Pursuant to CPLR 6312(c) and in the interest of justice, a hearing should be held to determine if the plaintiff is, in fact, a separate entity from "Courthouse Bar and Grill", the judgment-debtor. To permit the sale of plaintiff corporation's assets without a hearing may, in fact, cause irreparable injury to the plaintiff. Whether the alleged continuing involvement of Louis Sosa (a.k.a. LaSusa) is sufficient to permit enforcement of the judgment is something that should be determined by the Court for following a hearing. Accordingly, after due deliberation, it is

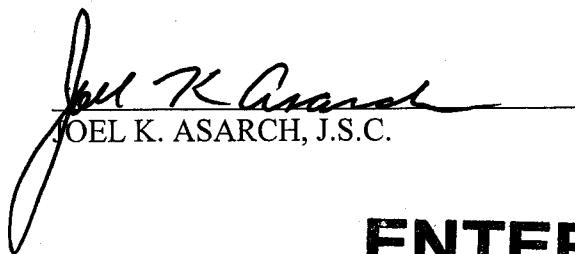
ORDERED, that counsel for the plaintiff, Blaze, Inc. d/b/a Woody's Village Saloon, and defendant Kira Rhinestine shall appear before the undersigned on **January 30, 2012 at 9:30 a.m.** for the purpose of scheduling pre-hearing disclosure and to select a hearing date(s) "to determine the relationship if any between Louis Sosa (a/k/a LaSusa), Woody's Village Saloon and Courthouse Bar and Grill" (Affirmation in Opposition, page 3) and whether the plaintiff is the judgment-debtor referred to in the Sheriff's notice of sale.

The temporary restraining order against enforcing the judgment contained in the Order to Show Cause granted on May 31, 2011, is continued pending the further Order of the Court.

This constitutes the Decision and Order of the Court.

Dated: Mineola, New York
January 17, 2012

ENTER:


JOEL K. ASARCH, J.S.C.

Copies mailed to:
Paul Eisenstein, Esq.
Attorneys for plaintiff

Ferro, Kuba, Mangano and Sklyar, P.C.
Attorneys for defendant Kira Rhinestine

ENTERED

MAR 30 2012

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**