

Villano v Villano

2012 NY Slip Op 31821(U)

July 6, 2012

Sup Ct, Suffolk County

Docket Number: 29422-2011

Judge: Emily Pines

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SUPREME COURT - STATE OF NEW YORK
COMMERCIAL DIVISION, PART 46, SUFFOLK COUNTY

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Present:

Hon. Emily Pines
Justice Supreme Court

Motion Date: 10-13-2011
Submit Date: 04-24-2012
Motion No.: 001 MG

Final
 Non Final

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**THOMAS VILLANO, as a Shareholder of One
Source Tool Supply, Inc., and in the right of One
Source Tool Supply, Inc.,**

Plaintiff,

-against-

**WILLIAM A. VILLANO, EILEEN VILLANO, and
ONE SOURCE TOOL SUPPLY, INC.,**

Defendants.

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ORDERED that the motion by the plaintiff for a preliminary injunction enjoining William A. Villano and Eileen Villano, their agents, employees and all persons acting in concert or privity with them from conducting transactions outside the defendant One Source Tool Supply, Inc.'s ordinary course of business, is granted, as provided herein.

In this shareholder's derivative action, the plaintiff, Thomas Villano, alleges

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that defendants William A. Villano and Eileen Villano wrongfully converted funds from the defendant One Source Tool Supply, Inc. (“the corporation”) for personal and family expenses, and for the development of a parcel of property located at 341 County Road 39A, Southampton, New York. The complaint alleges that the defendants William Villano and Eileen Villano have usurped the powers and prerogatives to conduct the business and affairs of the corporation against the will and desire of the plaintiff, and that the withdrawals and conversions of corporate funds were made fraudulently and without the knowledge or consent of the plaintiff and without any accounting to the plaintiff as shareholder of the defendant corporation, and without authorization of the Board of Directors of the corporation.

The plaintiff now moves for a preliminary injunction to enjoin the defendants William and Eileen Villano from, *inter alia*, conducting any transactions on behalf of the defendant corporation outside of said corporation’s ordinary course of business.

In support of his motion, the plaintiff submits his personal affidavit, wherein he avers that he is the owner of 20% of all the issued and outstanding shares of One Source Tool Supply, Inc., which is located at County Road 39A in Southampton New York. The corporation is engaged in the tool sale and rental business. The plaintiff acknowledges that William and Eileen Villano own the remaining 80% of the issued and outstanding shares of the corporation. The corporation was formed as the successor to the Riverhead Tool Corporation in 1991. That corporation was owned by the plaintiff’s and William’s father and uncle, each owning 50%. Their father’s 50% share was divided into 20% for the plaintiff and 30% for William and Eileen Villano. William and Eileen Villano purchased the remaining 50% interest from their uncle. Since that time, the plaintiff and William Villano have worked full-time in the corporation. The plaintiff states that since 1998, William and Eileen Villano have been exclusive control of the corporation. Although he questioned their decisions,

he states that they exercised their majority status and did not share information with him. In 1999, the plaintiff learned that the corporation was going to purchase a parcel of property and construct a building where it could operate its business. The plaintiff states that William and Eileen handled all the details of that project. In 2001, the business was moved to the new location. In 2005, the plaintiff noticed that payments were being made to a company named CRKJ, LLC, a company that William and Eileen Villano formed to buy the property and build the building.

The plaintiff states that William Villano told him that all of the money which was used to purchase the property and construct the building came from the corporation and that the corporation was making the mortgage payments of approximately \$16,000 per month to CRKJ, LLC, which then pays Bridgehampton National Bank. He also learned by reviewing the corporation's books and records that William and Eileen Villano used the corporation's money and assets to pay for many of their personal and family expenses since 1998, including \$200,000 to purchase their uncle's 50% interest in the Riverhead Tool Corporation, \$200,000 to construct their residence, \$200,000 to pay their children's college tuition, and monthly payments of a home equity loan, cell phone charges, and vehicles. The plaintiff states that William and Eileen Villano are now involved in a divorce action, and he avers that the corporation continues to suffer damages as a result of William and Eileen Villano's control over the corporation and its finances.

In opposition, the defendant Eileen Villano avers in her affidavit that she will be prejudiced in her divorce action if the corporation is enjoined from paying its regular and usual financial obligations in the ordinary course of its business, which includes William Villano's support payments to her. She is otherwise not opposed to the motion. The defendant William Villano submitted no opposition.

“To establish entitlement to a preliminary injunction, a movant must

demonstrate: (1) a likelihood of success on the merits; (2) irreparable harm in the absence of an injunction; and (3) a balance of the equities in favor of granting the injunction.” **Copart of Conn., Inc. v. Long Is. Auto Realty, LLC**, 42 AD3d 420, 421 [2d Dept 2007] citing **Aetna Ins. Co. v. Capasso**, 75 NY2d 860, 862 [1990]; **Stockley v. Gorelik**, 24 AD3d 535, 536 [2d Dept 2005]). The party seeking a preliminary injunction has the burden of demonstrating the foregoing by clear and convincing evidence. **Temple-Ashram v. Satyanandji**, 84 AD3d 1158 [2d Dept 2011]). Where the denial of a preliminary injunction would disturb the status quo and render the final judgment ineffectual, the degree of proof required to establish the element of likelihood of success on the merits should be reduced. **North Fork Preserve, Inc. v Kaplan**, 31 AD3d 403 (2d Dept 2006), *affd.* 68 AD3d 732 (2009).

Here, the record reveals that the defendants William and Eileen Villano have informed the Court during conferences that they are in the process of negotiating the division of their assets in their divorce action. Under these circumstances, the plaintiff has demonstrated his entitlement to a preliminary injunction inasmuch as he seeks to continue the daily and ordinary operations of the corporation, and to maintain the status quo.

Accordingly, the defendants William A. Villano and Eileen Villano are hereby enjoined from:

a) conducting any transactions on behalf of the defendant One Source Tool Supply, Inc. outside of the corporation’s ordinary course of business;


b) failing to deposit all cash or other payments received on behalf of the defendant One Source Tool Supply, Inc., into a bank account in the name of said corporation;

c) commingling funds or other assets of the defendant One Source Tool Supply, Inc. with the personal assets of William A. Villano and Eileen Villano; and

d) transferring, withdrawing, encumbering, or using any funds or other assets of the defendant One Source Tool Supply, Inc. for the expenses and benefit of CRKJ, LLC, or any person, including but not limited to William A. Villano, Eileen Villano, or any of their children, or for any purpose other than the ordinary course of business of the corporation.

This constitutes the **DECISION** and **ORDER** of the Court.

Dated: July 6, 2012
Riverhead, New York



Emily Pines
J. S. C.

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