To commence the statutory time period of appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
COMMERCIAL DIVISION

Present: HON. ALAN D. SCHEINKMAN,
Justice.

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STEVEN TOCIDLOWSKI,

Plaintiff,

-against–

TELEVISION EQUIPMENT ASSOCIATES, INC., LAURA PEGLER and WESTBROOK PEGLER a/k/a BILL PEGLER,

Defendants,

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Index No. 51073/16
Motion Date: 3/25/16
SEQ # 001

DECISION & ORDER

Scheinkman, J:

Plaintiff Steven Tocidlowksi ("Plaintiff" or "Tocidlowski") moves, for an order:

(a), pursuant to a Shareholders' Agreement and Section 624 of the Business Corporation Law, directing Defendant Television Equipment Associates, Inc. ("TEA") to provide "immediate and unrestrained access" for an examination of books and records;

(b) for a preliminary injunction (1) enjoining Defendant Laura Pegler from serving as an employee, independent contractor or otherwise as a paid representative of TEA; (2) enjoining Defendant Laura Pegler from spending, withdrawing or otherwise accessing TEA's corporate funds[1]; (3) enjoining Defendant Laura Pegler, or any other Defendant, from representing that they have authority to act on behalf of Defendant Westbrook Pegler ("Bill Pegler") with respect to TEA; (4) enjoining Defendant Laura Pegler from calling, conducting or participating in any special meeting of the TEA Board of Directors[2]; (5) restraining TEA from taking any of the actions listed in Paragraph 11(c) of the Shareholders' Agreement (*e.g.,*

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[1]This aspect of the motion was also originally addressed to Sabra N. Pegler and Julia Rotunno, who were originally named as Defendants. By Stipulation dated May 4, 2016 and "so ordered" by this Court, the action was discontinued as against these two individuals and, therefore, the Court deems any request for relief as against these individuals to be moot.

[2]*See* footnote 1, *supra*.

dissolution and winding up of TEA) without further order of the Court; (6) restraining the Company from making any payments to Defendant Laura Pegler, whether by virtue of salary, reimbursements or payments to third parties for their financial benefit[3]; (7) restraining TEA from making any distributions to shareholders other than as authorized in the Shareholders' Agreement; (8) restraining Defendants from instituting or implementing changes to the corporate by-laws or the Shareholders' Agreement;

(c) pursuant to CPLR 6401, for the appointment of a temporary receiver to conduct an accounting, oversee TEA's operations and ensure compliance with Court orders;

(d) pursuant to CPLR 3025, amending the Complaint to add, among other things Bill Pegler as a Defendant[4]; and

(e) pursuant to 22 NYCRR Part 130, for sanctions in the form of attorneys' fees and costs for Defendants' frivolous refusal to allow Plaintiff access to the corporate books and records.

Defendants opposed all aspects of the motion but, by Stipulation dated May 4, 2016, and "so-ordered" by the Court, certain aspects of the motion were resolved. It was agreed, among other things, that: (a) the action would be discontinued as against Sabra N. Pegler and Julia Rotunno; (b) Plaintiff would withdraw the First, Second, Third, Fifth, Sixth, and Seventh Causes of Action, as well as any claim for dissolution of TEA; (c) Plaintiff would be permitted to amend the Complaint to add a claim for breach of a Shareholders' Agreement and in certain other respects, without prejudice to Defendants' rights to contest the Second Amended Complaint, though it was agreed that Defendants would not move for dismissal, except as part of a motion for summary judgment.

In the Second Amended Complaint, Plaintiff presents: (a) a First Cause of Action against TEA for breach of an employment agreement and wrongful termination; (b) a Second Cause of Action against TEA for breach of a Shareholders' Agreement; (c) a Third Cause of Action against Laura and Bill Pegler for tortious interference with an employment agreement; (d) a Fourth Cause of Action against "Defendants" for oppression of a minority shareholder; (e) a Fifth Cause of Action against "Defendants" for refusal to permit inspection of books and records; and (f) a Sixth Cause of Action against Bill Pegler for breach of fiduciary duty.

Defendants have interposed an answer in which they deny the material allegations of the Second Amended Complaint, set up a number of affirmative defenses, and in which TEA asserts counterclaims. TEA counterclaims against Plaintiff for breach of an employment agreement, for breaches of fiduciary duty, and for gross negligence in his actions as an officer of TEA.

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[3] *See* footnote 1, *supra*.

[4] This aspect of the motion is moot since counsel, by the "so-ordered" Stipulation agreed to allow the amendment.

PLAINTIFF'S CONTENTIONS IN SUPPORT OF HIS MOTION

Plaintiff submits an affidavit in support of his motion in which he avers that he began running TEA in 2003 and that TEA's financial performance was improved over that time. He claims that when he was wrongfully terminated the Company had cash reserves of approximately $12 million. He avers that Laura Pegler only worked for the Company for 1 summer during Plaintiff's 36 years of employment and made no contributions. He asserts that Bill Pegler would ask him to give Laura assignments but Plaintiff could not comply as he did not respect her work ethic or judgment. He states that he has no confidence in Laura Pegler's management skills and is concerned that she has access to millions of dollars in the Company's cash reserves.

Plaintiff's attorney, Michael LoGuidice, Esq., submits a lengthy affirmation which describes Plaintiff's factual contentions but since Mr. LoGuidice does not assert that he has personal knowledge of the facts alleged in his affirmation and it appears that most of those allegations are outside any personal involvement on his part, the Court is constrained to disregard virtually all of Mr. LoGuidice's affirmation.[5] However, the Court may consider the Verified Complaint, which is annexed to counsel's affirmation, since the verification is by Plaintiff and he has personal knowledge of the facts and a verified pleading is entitled to be treated as an affidavit (*see* CPLR 105[u]).

In the Verified Complaint, Plaintiff avers that he has been employed by TEA for some 36 years. TEA is primarily in the business of providing advanced tactical headsets and communication support to law enforcement and the military.

According to Plaintiff, around 2000, Bill Pegler, who was the President and owner of TEA, decided to move to California and asked Plaintiff to run the business. A Shareholders' Agreement was entered into, dated as of April 1, 2003, between TEA, Bill Pegler and Plaintiff.[6] A separate Employment Agreement, also dated as of April 1, 2003, was entered into between TEA and Plaintiff.

Under the Employment Agreement, Plaintiff was to be employed as Vice President, starting April 1, 2003 and continuing for so long as he is a shareholder in TEA. He was to be paid a base salary, provided with fringe benefits, and receive reimbursement for his business expenses. He was also afforded, pursuant to a Stock Purchase Agreement, the opportunity to purchase 24.75 shares of Class A stock in TEA, which would give him a 25% interest in TEA. TEA was permitted to terminate Plaintiff's employment for "cause", which was defined as: conviction of a felony; repeated failure to discharge assignments from TEA's President or Board which failure was not corrected after 30 days written notice; and in the event of gross negligence or wilful misconduct in the performance of his duties which has a

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[5]The portion of Mr. LoGuidice's affirmation which addresses his request, on behalf of Plaintiff, to inspect books and records is a matter that he can properly attest to and is discussed *infra.*

[6]While the Agreement contained signature lines for Laura, Sabra and Julia Pegler, the version of the Agreement submitted to the Court does not contain their signatures.

material adverse impact on TEA's operations, profits or business.

The Shareholders' Agreement provided that there were 99 shares of Class A Non-Voting Stock without par value outstanding and 1 Class B Voting Common Stock, without par value, outstanding. Generally, no shares were to be sold, assigned or transferred to any one, except as provided in the Shareholders' Agreement. Upon termination of Plaintiff's employment, TEA had the option to repurchase his shares and Plaintiff had the right to require TEA to purchase all of this shares. The Shareholders' Agreement provides that, for as long as Bill Pegler is a shareholder, he is to be the sole director of TEA. Upon Bill Pegler's death, the Board was to be composed of Plaintiff, Laura Pegler, Sabra Pegler, and Julia Pegler, provided that each was a shareholder. Further, upon Bill Pegler's death, Plaintiff was to serve as President of TEA for so long as he was a shareholder in TEA. In addition, upon Bill Pegler's death, the Class B shares were to be distributed such that each of the remaining shareholders would have 1 voting share in the Company. The Shareholders' Agreement also prohibits certain significant corporate actions (*e.g.*, dissolution, admission of new shareholders, capital expenses above $50,000) without unanimous consent of the Board of Directors.

According to Plaintiff, through 2012, TEA experienced an eight-fold increase in sales and a nearly six-fold increase in gross profits. On April 5, 2012, Bill Pegler, as sole director, named Plaintiff the President of TEA.

Plaintiff disparages the role of Laura Pegler by asserting that she had a variety of emotional problems and received significant dividends from TEA though she made no contribution to TEA's success. However, by 2014, Laura Pegler was asserting herself in TEA business matters.

On April 23, 2014, Laura Pegler sent Plaintiff a letter which purported to be sent on behalf of all shareholders. The letter raised a number of issues and made a request that 13 specific initiatives be undertaken. By letter dated May 1, 2014, Plaintiff responded in detail to the April 23, 2014 letter, including with an expression of his view that employees should be required to speak with him before involving the Shareholders. Plaintiff agreed to some of the initiatives but not others. Plaintiff learned through the TEA accountant that Laura Pegler was not pleased with some of his responses and proposed to Laura Pegler that they meet directly so that he could explain the basis for his views. Laura Pegler wrote back that she appreciated the offer but could not accept it, because she was going to be away the following week and because she could not speak for all of the shareholders.

Thereafter, apparently around May 16, 2014, Bill Pegler wrote Plaintiff to state that Laura Pegler had his "power of attorney" and that Bill Pegler would not converse with Plaintiff regarding TEA without Plaintiff first having taken the issues to Bill Pegler's daughters. Written communications were to be copied to Richard Bradbury, the Company accountant, and to Laura Pegler. Laura Pegler refused Plaintiff's request for a meeting.

Matters continued to deteriorate and in November 2014, Bradbury wrote Plaintiff that the Board was aware that Plaintiff was not working "harmoniously" and that a meeting would be convened to try to make that happen. However, in late 2014 or early 2015, Bill Pegler became ill and was hospitalized. In February 2015, Laura Pegler began asking Plaintiff

for a "5 Year Plan" for the Company, with specific detail as to a plan to grow the Company. This subject was broached again in July 2015, this time with specific directives for Plaintiff to include in the 5 Year Plan. Plaintiff was given a deadline of September 15, 2015 to present the plan.

In October, 2015, Laura Pegler advised Plaintiff by email that the stockholders had been told that a vendor was interested in buying the Company and Plaintiff was not to discuss this with the vendor since the shareholders had asked Bradbury to handle further discussions. Plaintiff objected that Bradbury would be invading Plaintiff's authority and, without a full background, this could result in a detriment to the Company. In reply, Laura Pegler accused Plaintiff of withholding time-sensitive and valuable information. She also pointed out that her father was the voting shareholder and wanted it done this way.

In late November, Bill Pegler issued a letter authorizing Bradbury to inform another TEA employee of the vendor's offer.

In January 2016, Plaintiff was called into a meeting with Bradbury and the Company's counsel, Kevin Walsh. He was told that the Board wanted to go in a different direction and that Plaintiff would be removed as President and given a lesser position. Plaintiff was, in fact, removed as President and Jeff Norment appointed to replace him. Plaintiff was also presented with a new Employment Agreement, which, among other things, would have made him an "at-will" employee and give up any value to the 25% voting interest he was entitled to on Bill Pegler's death. Plaintiff declined to sign the new agreement and was given a notice of termination for "cause".

Plaintiff argues that he is entitled to immediate access to the Company's books and records pursuant to Paragraph 14 of the Shareholder's Agreement and pursuant to New York's statutory and common law. He also asks for injunctive relief preventing further unauthorized conduct by shareholders who do not have authority to control the Company and to prevent further breaches of his Employment Agreement. He requests that the Court appoint a receiver to conduct an accounting, to oversee the Company's operations, and to ensure compliance with Court orders. He also asks for sanctions since he asserts that the Company had no reasonable basis to deny Plaintiff's request for access to the Company books and records.

As to records access, Mr. LoGuidice states that on February 1, 2016, he made a request, on behalf of Plaintiff, to request access to inspect corporate books and records. In response, TEA's counsel demanded 5 days' advance notice and an affidavit, pursuant to BCL §624, that the inspection was not desired for a purpose other than TEA's business. Mr. LoGuidice claims that he provided the requested affidavit and gave five day's notice. However, access on the date and time specified was refused, though counsel for TEA represented that the items requested were being sent by a delivery service.

DEFENDANTS' CONTENTIONS

Defendants oppose Plaintiff's motion. They submit a number of affidavits.

Jeffrey Norment, the President of TEA since January 2016, asserts that he has worked for TEA since 2010 and, prior to appointment as President, was the Sales Manager, Director of Sales, and Executive Director of Sales, Marketing and Programs. He states that TEA has some 20 employees, several of whom have lengthy histories with TEA, and that one of the Company's objectives is to diversify its product line. While Bill Pegler's involvement in day to day business activities has diminished, he remains in contact with the management team and makes decisions in his role as Director. Norment states that TEA's cash on hand has not materially changed since Plaintiff left and Norment does not expect the cash will materially diminish or that there will be any extraordinary transactions or events during 2016 that would imperil the business. He avers that the appointment of a receiver or entry of a preliminary injunction would jeopardize the Company's relationships with suppliers and customers which could lead to catastrophic results.

Bill Pegler avers that, while he is no longer involved in day-to-day operations of TEA, he remains informed of TEA's operations and performance and makes decision appropriate to his role as Director. He requests, and receives, information from persons he trusts, such as Bradford and Laura Pegler and confers with them and with his other daughters, Julie Rotunno and Sabra Pegler. Bill Pegler states that the decisions to terminate Plaintiff, and to promote Norment and Gus Prohaszka, were made by him, after consultation with Bradbury and Bill Pegler's daughters. He executed a Power of Attorney in favor of Laura Pegler on several occasions, most recently in late September 2015, a copy of which is submitted. He acknowledges having physical disabilities and infirmities but asserts that he is more than capable of exercising judgment with respect to what he believes is the best interests of TEA. Bill Pegler also submits affidavits from two physicians – Salah Sonbol, M.D. and Trung D. Bui, M.D. – who attest to Bill Pegler's communication with them clearly and intelligently and to their lack of any reason to believe that Bill Pegler lacks the mental capacity to make decisions concerning the management of his affairs, including TEA.

Bradbury submits an affidavit in which he states that he has known Bill Pegler and his family for 30 years and has long provided accounting services to TEA, Bill Pegler, his daughters and Plaintiff. Bill Pegler has also consulted with him and sought his advice. Bradbury communicates regularly with the TEA management team and Bill Pegler's daughters. Bradbury asserts that Plaintiff's claims regarding Bill Pegler's mental capacity are false. While Bill Pegler suffers from physical disabilities and infirmities, Bradbury believes that Bill Pegler is mentally competent and not subject to manipulation. Since Plaintiff was terminated, there have been no material changes in the business and the amount of cash on hand has not materially changed. No changes have been made to shareholder compensation, except that Laura Pegler's compensation increased by $50,000 per year. There are no payments by TEA to members of the Pegler family other than salaries and ordinary dividends paid in accordance with the Shareholder's Agreement and TEA's long-standing practices.

Kevin A. Walsh, Esq., submits an affirmation in which he supplies copies of correspondence concerning access to records as well as Plaintiff's document demands. In

particular, Mr. Walsh relies on his February 11, 2016 letter to Plaintiff's counsel in which Mr. Walsh indicated that he would look into certain requests made by letter of January 27, 2016, though he acknowledged that the Company's 2015 tax return and Plaintiff's K-1 schedule was not yet ready. According to the February 11, 2016, Plaintiff's counsel sent an email at 12:26 p.m. on February 1, 2016 advising that Plaintiff's counsel and his accountant would be arriving at 2 p.m. that day to inspect a far larger set of documents. The February 11, 2016 letter proceeds to itemize a number of ensuing disputes and complaints regarding access to records. Mr. Walsh affirms that on March 2, 2016, Defendants provided Plaintiff with TEA's by-laws, TEA's basic financial information through year-end 2015; and the powers of attorney for Bill Pegler (the Court having directed production of same).

Defendants argue that Plaintiff seeks a mandatory injunction that would force Laura Pegler to resign from her employment with TEA and would oust Bill Pegler from his role as TEA's sole voting shareholder. Defendants maintain that Plaintiff seeks relief that would interfere with the internal affairs of a corporation or supersede the business judgment of directors and officers and Plaintiff has not shown "exceptional" circumstances that would justify such relief. Defendants contend that Plaintiff has not shown a likelihood of success on the merits, that Plaintiff does not present any imminent, irreparable harm, and that the equities favor Defendants.

In addition to these submissions, the Court has considered Defendants' Verified Answer, which, because it is verified by Defendants Bill Pegler and Laura Pegler, and by Jeffrey L. Norment, is to be given the effect of an affidavit.

LEGAL DISCUSSION

The standard for preliminary injunctive relief is well settled. The movant must establish by clear and convincing evidence (1) a likelihood of success on the merits, (2) irreparable injury absent the granting of the injunction, and (3) a balance of equities in the movant's favor (*Brach v Harmony Servs., Inc.*, 93 AD3d 748 [2d Dept 2012]; *Apa Sec., Inc. v Apa*, 37 AD3d 502 [2d Dept 2007]; *Nobu Next Door, LLC v Fine Arts Hous., Inc.*, 4 NY3d 839 [2005]). "A party seeking the drastic remedy of a preliminary injunction must establish a clear right to the relief under the law and the undisputed facts" (*Omakaze Sushi Rest., Inc. v Ngan Kam Lee*, 57 AD3d 497 [2d Dept 2008]). While the existence of an issue of fact will not defeat a motion for injunctive relief which demonstrates the required elements (CPLR 6312[c]), the movant must show a clear right to relief which is plain from the undisputed facts (*Matter of Related Prop., Inc. v Town Bd. of Town/Village of Harrison*, 22 AD3d 587 [2d Dept 2005]; *Stockley v Gorelik*, 24 AD3d 535 [2d Dept 2005]). To that end, CPLR 6312 (c) provides that upon plaintiff's papers demonstrating the elements required for the issuance of a preliminary injunction and defendant's papers, thereafter, raising an issue of fact as to any of the elements, the court shall make a determination by hearing or otherwise as to whether each of the elements required for the issuance of a preliminary injunction exists. A hearing, however, is not mandated in all cases, as it may be clear from the papers that a plaintiff has or has not met the burden of proof, or the motion may be denied on a balancing of the equities or some other ground having nothing to do with the disputed issue of fact (Vincent C. Alexander, Practice Commentary, McKinney's Cons Law of NY, Book 7B, CPLR C6312:1). Where key

facts are in sharp dispute, it cannot be said that plaintiff established a clear right to a preliminary injunction, and the motion for a preliminary injunction should be denied (*see Radiology Assocs. of Poughkeepsie, PLLC v Drocea*, 87 AD3d 1121 [2d Dept 2011]; *Omakaze Sushi Rest., Inc.*, 57 AD3d at 497).

In this case, Plaintiff has failed to show that there is a likelihood of success on the merits. The essence of this case is found in Plaintiff's causes of action for breach of the Employment Agreement and Shareholder's Agreement and tortious interference with those Agreement by the two Pegler Defendants. Plaintiff, in essence, avers that he was root cause for TEA's business success, that Laura Pegler is an interloper who lacks business skills, and that there was no cause for his termination. Further, Plaintiff intimates that Bill Pegler is not of sound mind and/or is under improper influence from Laura Pegler and it is because Laura Pegler is manipulating Bill Pegler that Plaintiff has been treated wrongfully. Only the other hand, Defendants maintain that Plaintiff breached the Employment Agreement in a number fo distinct ways, including improper disclosure of confidential information and the payment of overtime pay to his brother, who was an exempt employee and was late for work, and to his ex-wife. It is evident that whether Plaintiff was terminated for cause and whether Bill and Laura Pegler tortiously interfered with Plaintiff's contract are dependent upon the resolution of numerous questions of fact. Plaintiff has certainly not shown a clear right to relief.

Furthermore, the nature of the injunctive relief sought by Plaintiff would require the Court to oust Laura Pegler and restrict the management of the Company in exercising its business judgment in significant ways. It is not disputed that Bill Pegler has the sole voting power and, thus, effectively has sole control over the Company. While Plaintiff challenges Bill Pegler's mental health, he does not offer any medical evidence and, to the contrary, the opposition papers make a *prima facie* showing of Bill Pegler's capacity to make business decisions. Additionally, Bill Pegler has given Laura Pegler a power of attorney and Plaintiff has not shown any basis upon which the Court could view that power of attorney to be invalid.

To the extent that Plaintiff presents a cause of action for "oppression of a minority shareholder", there is no showing by Plaintiff that any such cause of action exists, apart from the opportunity given to seek dissolution in the event of oppression, which opportunity Plaintiff has stipulated not to invoke. Any claim against Bill Pegler for breach of fiduciary duty would present clear questions of fact.

Nor has Plaintiff shown that he will be befall irreparable injury absent an injunction. Should Plaintiff prevail on his claims for breach of contract, tortious interference with contract, or breach of fiduciary duty, money damages would be a more than adequate remedy. And while not essential, Defendants have shown that the Company has sufficient assets to respond to any judgment.

The balance of equities does not favor Plaintiff. The parties constructed a corporate structure that provides, essentially, that while Bill Pegler is alive, he is the sole decision-maker for the Company and, upon Bill Pegler's death, Plaintiff would have, at best, a 25% voting interest. The Court is not at all inclined on the present record to displace the management of the Company or restrict their exercise of business judgment, based on the disputed record here, especially since any injury to Plaintiff can be compensated for by money

damages.

Plaintiff also seeks the temporary appointment of a receiver pursuant to CPLR 6401. The appointment of a receiver is a drastic remedy and should only be granted "where there is a clear evidentiary showing of the necessity for the conservation of property at issue and the need to protect a party's interest in that property" (*Quick v Quick*, 69 AD3d 828 [2d Dept 2010]; *see Schachner v Sikowitz*, 94 AD2d 709 [2d Dept 1983]). General accusations regarding wrongful conduct with respect to the subject property is not sufficient to establish clear and convincing evidence of the need for the appointment of a receiver (*id.* at 709; *see Vadaris Tech, Inc. v Paleros Inc.*, 49 AD3d 631 [2d Dept 2008]). Here, Plaintiff failed to establish by evidentiary proof the necessity for the appointment of a receiver.

Finally, as to Plaintiff's request for access to the corporate books and records, the Shareholder's Agreement provides that all books of account and corporate books and records of any nature shall be available for inspection or audit during normal business hours provided that the parties seeking access is in compliance with the Agreement at the time the request is made. Here, as alleged by Plaintiff himself, he was purportedly terminated for cause effective January 8, 2016. Since Plaintiff, by his counsel, did not seek access to the records until February 1, 2016, whether Plaintiff is entitled to the broad access to records provided for by the Shareholder's Agreement depends upon the determination of a key factual issue – did Plaintiff comply with his obligations under the Shareholder's Agreement?

With regard to Plaintiff's exercise of the inspection right conveyed by BCL §624, it appears, according to letter from defense counsel dated February 5, 2016, that the documents requested were provided, albeit the documents were shipped for delivery to Plaintiff's counsel, rather than having Plaintiff and his counsel attend to the Company offices for a physical inspection. While it appears that the Company did not have the right to refuse Plaintiff the opportunity for a physical inspection, the Court perceives that Plaintiff did receive the documents he requested. Plaintiff's request for "immediate and unconstrained" access to books and records is overbroad, as the statute permits access to "minutes of the proceedings of ...shareholders and record of shareholders" (BCL §624[b]). While there is also a common law of shareholders to inspect records, Plaintiff has not invoked that right and, in any event, Plaintiff will be able to obtain relevant corporate records through disclosure in this action. The Court does not view the Company's conduct in responding to Plaintiff's demands for records to be frivolous.

The Court notes that it expects counsel to complete discovery by October 27, 2016 in accordance with the Preliminary Conference Order.

CONCLUSION

The Court has considered the following papers in connection with this motion:

1) Order to Show Cause dated February 24, 2016; affirmation of Michael LoGiudice, Esq., dated February 19, 2016, together with the exhibits

annexed thereto; affidavit of Steven Tocidlowksi, sworn to February 19, 2016;

2) Plaintiff's Memorandum of Law, dated February 19, 2016;

3) Defendants' Memorandum of Law, dated March 19, 2016; Affidavit of Jeffrey Norment, sworn to March 17, 2016; affidavit of Westbrook Pegler, sworn to March 14, 2016; Affidavit of Salah Sonbol, sworn to March 14, 2016; affidavit of Trung D. Bui, sworn to March 12, 2016; affidavit of Richard M. Bradbury, sworn to March 16, 2016, affirmation of Kevin A. Walsh, Esq., dated March 16, 2016, together with the exhibits annexed thereto;

4) Memorandum of Law in Support of Plaintiff's Order to Show Cause dated October 26, 2015;

5) Stipulation dated April 4, 2016;

6) Second Amended Verified Complaint, dated May 5, 2016;

7) Verified Answer, dated June 6, 2016[7];

Based upon the foregoing papers, and for the reasons set forth above, it is hereby

ORDERED that Plaintiff's motion for a preliminary injunction and the appointment of a temporary receiver is denied in its entirety.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York
July 26, 2016

ENTER:

Alan D. Scheinkman
Justice of the Supreme Court

[7]The Court has **not** considered, and specifically declines to consider, the letter from Jeffrey W. Varcadipane, Esq., dated March 8, 2016 and the affidavit of Michael Hornby, sworn to March 4, 2016, and the CD-ROM included therewith, since the submission of same was not authorized by the Court.

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