

STATE OF MAINE  
CUMBERLAND, ss.

BUSINESS & CONSUMER DOCKET  
DOCKET NO. BCD-CV-2018-47

KIRK FRANKLIN, et al.,	)	
	)	
Plaintiffs,	)	COMBINED ORDER DENYING
	)	PLAINTIFFS' MOTION TO VACATE
v.	)	STAY, DENYING DEFENDANT'S
	)	MOTION FOR TEMPORARY
DAVID DOUIN, et al.,	)	RESTRAINING ORDER, AND
	)	ORDERING COMPLIANCE WITH
Defendants.	)	THE PURPOSE OF THE MOU

In this action for the dissolution of a Maine limited liability company, both sides have moved for the Court to act on disputes that have arisen during a nine-week stay ordered by this Court to accommodate an auction sale of the LLC's sole asset: a condominium unit. Finger pointing and accusations by both sides now put the agreed-upon auction at risk. The Court thus disposes of the motions in a manner designed to prevent the parties' contentious conduct from undermining the agreed-upon sale of the asset. As further set forth below, the Court requires the Franklins and Mr. Douin to cooperate to auction off the asset, and then they can pursue their claims against one another.

### BACKGROUND

Mr. Douin owns 50% of the membership interest of Portland Harbor Lights, LLC ("PHL" or the "LLC"). The Franklins each own a 25% membership interest and thus collectively own the remaining 50% of the LLC. The LLC has a single asset: a condominium unit located at 11 Sheridan Street, Unit 3, Portland, Maine (the "Condo"). On March 22, 2019, pursuant to a consented-to motion, this Court entered an order staying the case for nine weeks from that date. The stay thus expires May 24, 2019. The case was stayed to allow the parties time to auction off the Property pursuant to a Memorandum of Understanding ("MOU") entered into by the parties on March 8,

2019. (Pl’s Mot. Vacate Stay 2; Douin Aff. ¶¶ 18, 21.) The MOU identified Tranzon Auction Properties (“Tranzon”) as the auctioneer who would conduct a public auction to liquidate the Property. Tranzon requires PHL to pay for marketing costs associated with its services. (MOU Sched. A (“Tranzon Listing Agreement”) § 5.) The parties now quarrel over how to pay Tranzon to conduct the auction.

### DISCUSSION

The Franklins filed a Motion to Vacate Stay because they allege Mr. Douin withdrew money from PHL’s bank account without their authorization, and there are now insufficient funds in the PHL account to pay for Tranzon. Whatever the merits of the Franklins’ challenge to Mr. Douin’s withdrawal of PHL funds, the challenge is distinct from the reason the stay was entered and the ends to be served by the MOU. The purpose of the MOU is laid out in the “Recitals” section thereof: “The Parties have agreed to address the liquidation of the Condo asset through an auction sale as detailed herein.” (MOU, Recitals ¶ 3.) The MOU expressly provides: “The Parties reserve to themselves and do not waive any and all direct and/or derivative rights or claims against each other and/or against PHL.” (MOU § 4.) The MOU further provides that: “In consenting to the sale of the Condo by auction as detailed herein, the Parties reserve and do not waive any rights or claims against each other and/or against PHL, said claims to be mediated . . . .” (MOU § 7.) Section 8 of the MOU, titled “No Admission of Liability,” expressly provides that the MOU is not an admission of liability or wrongdoing by either party. (MOU § 8.) In other words, the Franklins can challenge the allegedly improper withdrawal later—after the Condo is auctioned and the proceeds escrowed.<sup>1</sup> The Franklins’ motion is therefore denied.

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<sup>1</sup> As described above, if the Franklins together are considered one ownership unit, the ownership of PHL is split 50/50, and there is no majority owner. Although the matter has not been fully briefed to this Court, and thus the Court is not at this time taking a position, it may be that no one owner has the unilateral authority to cause the expenditure of PHL monies. To the extent use of funds in PHL’s bank account is causing concerns in this case, any

Mr. Douin has filed a Motion for TRO to force the Franklin's comply with the MOU and auction off the Condo. The problem with Mr. Douin's motion is that it was the wrong motion to file, because he cannot satisfy the applicable standard. Injunctive relief is only available where a movant can show the following: 1) that it will suffer irreparable injury if the relief is not granted; 2) such injury outweighs any harm which granting the relief would inflict on another party; 3) it has a likelihood of success on the merits (at most, a probability; at least, a substantial possibility); and 4) the public interest will not be adversely affected by granting the relief. *Bgr. Hist. Track, Inc. v. Dep't of Agric.*, 2003 ME 140, ¶ 9, 837 A.2d 129. "A temporary restraining order may be granted . . . only if . . . it clearly appears from specific facts shown by affidavit . . . that immediate and irreparable injury, loss, or damage will result to the applicant . . . ." M.R. Civ. P. 65(a). *See also Town of Charleston v. Sch. Admin. Dist. No. 68*, 2002 ME 95, ¶ 6, 798 A.2d 1102 ("Proof of irreparable injury is a prerequisite to the granting of injunctive relief.") (citation omitted). Here, Mr. Douin cannot show irreparable injury, and so his motion is denied.

The MOU includes a contractual provision that expressly gives a party the right to seek an order from this Court "on an expedited basis" compelling another party to comply with the MOU. Specifically, section 9 of the MOU includes the following language: "If any of the Parties hereto fail to cooperate relative to the sale of the Condo (*i.e.*, refuse to execute the transfer deed to the successful bidder at the auction), the remaining parties may seek an order from the Business Court on an expedited basis to compel such compliance . . . ." (MOU § 9.) Under the Court's inherent authority to supervise the Stay it issued in this case—a stay the Court granted at the request of the parties specifically for the purpose of implementing the MOU—the Court interprets the Franklins' motion to vacate stay, and Mr. Douin's motion for a TRO, as in effect a motion to compel

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party can move for an interim order from this Court requiring Court approval for any use of PHL funds for which the parties do not mutually agree.

compliance with the purpose of the MOU.<sup>2</sup> See *Macomber v. Macquinn-Tweedie*, 2003 ME 121, ¶ 17, 834 A.2d 131 (courts “are reposed with inherent authority to control their dockets and promote judicial economy”). The Court in effect grants that motion, and based on its inherent authority to promote judicial economy orders the following:

The Franklins, as collectively 50% owners of PHL, and Mr. Douin owning the other 50%, shall each immediately pay to Tranzon one half of the costs necessary for Tranzon to promptly auction the Condo in accordance with the MOU.<sup>3</sup> Notwithstanding this Order, all parties retain all arguments they have against and among each other for damages, reimbursements, accountings, and so forth.

The Clerk is requested to enter this Order on the docket for this case by incorporating it by reference. M.R. Civ. P. 79(a).

SO ORDERED.

Dated: May, 16, 2019

/s  
Michael A. Duddy  
Judge, Business and Consumer Court

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<sup>2</sup> For the purpose of facilitating prompt resolution of disputes related to implementation of the MOU, the Court will not entertain further written motions regarding the MOU and the Stay. Instead, until the Condo is auctioned off and the funds escrowed, the Court requires the parties to follow Rule 26(g) procedures with regard to MOU and Stay disputes. The parties shall first try to work out their disagreements, and if unsuccessful, any party can ask the Clerk to set up a conference call with the Court. Counsel will be permitted to make oral motions or otherwise verbally present their issues and arguments to the Court during the conference call.

<sup>3</sup> If Tranzon needs additional time beyond May 24, 2019, to complete the auction process, any party can ask the Court to extend the Stay, using the procedures described in fn. 2, *infra*.