

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. CV-11-303
TDW - CUM - 7/22/2011

JOSEPH C. GALLETTA,

Plaintiff,

v.

ORDER

ARTHUR W. MCLEOD, et al

Defendants.

STATE OF MAINE
Cumberland, ss, Clerk's Office

JUL 22 2011

RECEIVED

Before the court is plaintiff Joseph Galletta's motion for a temporary restraining order reinstating him as the General Manager at Casco Bay Motors. The court has reviewed plaintiff's original submissions in support of the motion, the submissions of defendants in opposition to the motion, and plaintiff's reply papers.

A party seeking a TRO or preliminary injunction has the burden of demonstrating (1) that he will suffer irreparable injury if the injunction is not granted; (2) that such injury outweighs any harm which granting the injunctive relief would inflict on the other party; (3) that he has a likelihood of success on the merits (at most, a probability; at least, a substantial possibility); and (4) that the public interest will not be adversely affected by granting the injunction. Bangor Historic Track, Inc. v. Department of Agriculture, 2003 ME 140 ¶ 9, 837 A.2d 129, 132. Failure to meet any one of these criteria requires that injunctive relief be denied. Id., 2003 ME 140 ¶ 10, 837 A.2d at 132-33.

Galletta's request for temporary injunctive relief falls short on at least two counts. First, Galletta has failed to demonstrate any irreparable injury, which is a prerequisite to injunctive relief. His claim that Casco Bay Motors will decline in value if

he is not reinstated as General Manager, which is based solely on his own opinion as to the value of his services, has been more than adequately controverted by the affidavits submitted by defendants. On this record, Galletta has not established that, if he is not reinstated, the value of Casco Bay Motors is likely to decline to the point where his ability to recover damages (if he prevails) would be jeopardized. Accordingly, Galletta has an adequate remedy at law in the form of money damages for any alleged contractual breaches by defendant Arthur McLeod.

Second, Galletta has not shown a likelihood of success (either a probability or a substantial possibility) on the merits of his claim for reinstatement as General Manager. Galletta's contention that he has a contractual right not to be terminated as General Manager is based on the following bullet point in a November 2005 Working Agreement between Galletta and defendant Arthur McLeod: "no income changes for partners without written approval by both partners." Whether or not the Working Agreement constitutes a valid shareholders' agreement,¹ the quoted language does not constitute either an express or an implied agreement that Galletta cannot be removed as General Manager, particularly where section 8.5 of the Stock Purchase Agreement expressly contemplates the cessation of Galletta's employment "for . . . any reason whatsoever."

At best, the above language in the Working Agreement constitutes an undertaking that Galletta's income will not be changed, at least so long as he remains a "partner." Presumably this would mean either as long as he remains employed by

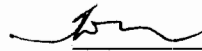
¹ Galletta argues that shareholder agreements are recognized by Maine law, citing 13-C M.R.S. § 741, although the Working Agreement does not constitute either a voting trust or voting agreement as contemplated by that section.

Casco Bay Motors or as long as he remains a shareholder.² This provision may give Galletta a claim for money damages, but as to any such damages Galletta has an adequate remedy at law as set forth above. This provision does not give Galletta a guarantee of continued employment as General Manager.

The entry shall be:

Plaintiff's motion for a TRO is denied. The Clerk is directed to incorporate this order in the docket by reference pursuant to Rule 79(a).

Dated: July 22, 2011



Thomas D. Warren
Justice, Superior Court

² The court leaves to another day whether and to what extent partnership law might apply. However, a partnership at will may be dissolved at any time.