

Collins v Zouvelos

2012 NY Slip Op 33663(U)

July 9, 2012

Supreme Court, New York County

Docket Number: 153165/12

Judge: Ellen M. Coin

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Coin

PART 63

HON. ELLEN M. COIN
Justice

Collins, Wayne David

INDEX NO. 153165/12

MOTION DATE _____

MOTION SEQ. NO. 1

MOTION CAL. NO. _____

- v -

Zouvelous, George

The following papers, numbered 1 to _____ were read on this motion to/for Injunctive Relief

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE WITH THE ANNEXED DECISION AND ORDER.

This constitutes the decision and order of the Court.

Dated: 7/9/12

EC

HON. ELLEN M. COIN J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
WAYNE DAVID COLLINS, MYBAIL INC. d/b/a
MY BAIL BONDS, WAYNE DAVID COLLINS
d/b/a MY BAIL BONDS, and AFFORDABLE
BAILS NY, INC.,

Index No.: 153165/2012
Subm.: June 13, 2012
Mot. Seq.: 001 and 002

Plaintiffs,

DECISION and ORDER

-against-

GEORGE ZOUVELO, SPARTAN BAIL BONDS
AGENCY, INC., and VERIZON
COMMUNICATIONS, INC.,

Defendants.

-----X

For Plaintiffs :
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Papers considered in review of Motion Sequences 001 and 002:

Papers	Numbered
Order to Show Cause and Affidavits Annexed.....	<u>1</u>
Zouvelos Affid. in Opposition.....	<u>2</u>
Memo in Reply.....	<u>3</u>

ELLEN M. COIN, J.:

In motion sequence 001 plaintiffs Collins and MyBail Inc. move for an order (1) enforcing a license agreement and granting exclusive use and occupancy to them of the south storefront at 81 Baxter Street, New York, NY (the "Premises"), and (2) temporarily and permanently enjoining defendants Zouvelos and Spartan Bail Bonds Agency, Inc. ("Spartan") from using or possessing the Premises without a warrant of eviction or written permission of plaintiffs.

In motion sequence 002 all plaintiffs move for an order (1) directing defendant Verizon Communications, Inc. (“Verizon”) to permit exclusive possession of certain telephone numbers; (2) directing defendants Zouvelos and Spartan to deliver to plaintiffs all property, cash and equipment not referenced in the agreement dated January 27, 2012; (3) directing defendants Zouvelos and Spartan to cease conducting business at the Premises; (4) directing defendants Zouvelos and Spartan to inform individuals bonded by plaintiffs to check in at another location of Affordable Bails New York, Inc.; (5) directing Verizon to deliver possession and control of certain phone numbers to plaintiffs; and (6) directing Verizon not to release or to destroy the said phone numbers. Motion sequences 001 and 002 are joined for disposition.

Plaintiff Affordable Bails New York, Inc. was not a party to the Agreement of Sale that is the subject of this action. According to the Amended Complaint, it is a subtenant of plaintiff Collins. However, it has no relationship, contractual or otherwise, with any of the defendants, and thus no standing here. Accordingly, to the extent that it seeks relief in motion sequence 002, such relief is denied.

Verizon has been duly served with the papers comprising plaintiffs’ application in motion sequence 002, but has not appeared or responded thereto. Upon its default, the Court grants so much of plaintiffs’ application as seeks preservation of the subject telephone numbers by defendant Verizon.

As to motion sequence 001, in order to obtain preliminary injunctive relief, the movant must show (1) a likelihood of success on the merits of the action; (2) the danger of irreparable injury in the absence of preliminary injunctive relief; and (3) a balance of equities in its favor. (*See, e.g., Nobu Next Door, LLC v Fine Arts Housing, Inc.*, 4 NY3d 839, 840 [2005]).

The amended complaint alleges seven causes of action. Each of the First through Fifth and Seventh Causes of Action seeks solely monetary relief.¹ Plaintiffs Collins and MyBail Inc. have failed to establish irreparable injury, since they can be compensated by money damages upon such causes of action. (*WHG CS, LLC v LSREF Summer REO Trust 2009*, 79 AD3d 629, 630 [1st Dept 2010]; *GFI Sec., LLC v Tradition Asiel Sec., Inc.*, 61 AD3d 586 [1st Dept 2009]). In the absence of irreparable injury, the Court cannot grant injunctive relief.

In accordance with the foregoing, it is

ORDERED that the motion of plaintiffs Collins and MyBail Inc. for a preliminary injunction (1) enforcing the license agreement and permitting exclusive use and occupancy to them of the Premises and (2) preventing defendants Zouvelos and Spartan from using or possessing the Premises is denied; and it is further

ORDERED that the motion of plaintiffs Collins and MyBail Inc. for a preliminary injunction directing defendant Verizon not to release or destroy the phone numbers 212-608-6200, 212-227-9610, 212-227-9654 and 212-732-2258 (the "Phone Numbers") is granted; and it is further

ORDERED that the motions of Affordable Bails New York Inc. are denied; and it is further

ORDERED that the motions of plaintiffs Collins and MyBail Inc. for a preliminary injunction directing Verizon to permit exclusive possession to them and to turn over possession and control of the Phone Numbers are denied; and it is further

ORDERED that the motions of plaintiffs Collins and MyBail Inc. for a preliminary injunction (1) directing defendants Zouvelos and Spartan to turn over all property, cash and equipment not

¹The Sixth Cause of Action, which seeks a permanent injunction, is addressed solely to defendant Verizon.

referenced in the Agreement; (2) directing Zouvelos and Spartan to cease conducting business at the Premises; (3) directing defendants Zouvelos and Spartan to inform individuals bonded by plaintiffs Collins and MyBail Inc. to check in at another location of Affordable Bail Bonds, New York, are denied; and it is further

ORDERED that counsel for the parties are directed to appear for a preliminary conference on August 29, 2012 at 2:00 p.m at IAS Part 63, Room 311, 71 Thomas Street, New York, New York.

This Constitutes the Decision and Order of the Court.

Dated: 7/9/12

ENTER:



Ellen M. Coin, A.J.S.C.