SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

----------X **DCM Part 3**

AVRAHAM DINER, 830 BAY ST. SERVICE, INC. and BAY STREET AUTO CENTER INC.

Plaintiffs,

-against-

YARON HALEVI,

Defendant.

----------X

Present:

HON. DESMOND A. GREEN

DECISION and ORDER

Index No. 151069/15

Motion Nos. 4351-001
4483-002

The following papers numbered 1 to 3 were fully submitted on the 16th day of December, 2015:

	Papers Numbered:
Plaintiffs' Order to Show Cause Affidavits, Affirmation in Support (Dated: November 24, 2015)	1
Notice of Cross Motion Affidavit, Affirmation, Memorandum of Law in Support and in Opposition to Plaintiffs' Application (Dated: December 11, 2015)	2
Reply Affirmation and Affirmation, Affidavit in Opposition (Dated: December 15, 2015)	3

Upon the foregoing papers, the application of plaintiffs, Avraham Diner, 830 Bay St. Service, Inc. and Bay Street Auto Center Inc., (hereinafter "Diner") for an order compelling the defendant, Yaron Halevi, to transfer and convey his interests in three (3) specific towing medallions[1] issued by the New

---

[1]While plaintiffs' November 24, 2015 Order to Show Cause purports to request the aid of the Court in effectuating the transfer of **three** towing medallions, only **two** (nos. 5381 and 5557) are cited. The third medallion listed is a duplicate of the first.

York City Department of Consumer Affairs, is denied, as is defendant's cross motion to dismiss.

This matter arises out of a business dispute between Diner and his former son-in-law, defendant, Yaron Halevi. It appears conceded that in 1998, the parties merged their interests in five automobile service stations which are located on Staten Island, only one of which, 830 Bay St. Service, Inc., operates a towing company licensed by the New York City Department of Consumer Affairs. By 2013, the parties' business relationship had deteriorated to the point where Diner and Halevi chose to memorialize the terms upon which they would divide their interests in the various businesses in a written "**Agreement**" dated October 2, 2013 (*see* Plaintiffs' Exhibit D).[2] It is alleged that neither party has been complying with the above "**Agreement**."

According to Diner, 830 Bay St. Service Inc. (hereinafter "Bay St.") will have its towing business "terminated" if the medallions in question are not renewed by April 30, 2016. It is further alleged that defendant refuses to honor his covenant to cooperate in the change of the ownership documentation, in order that the Department of Consumer Affairs may renew the medallions. Thus, plaintiffs seek injunctive and declaratory relief in the form of an order or judgment compelling defendant to comply with the contract provision set forth on page 7 of the "**Agreement,**" which reads as follows: "Yaron Halevi shall transfer and deliver to Avi Diner, and Avi Diner shall take...all of the common stock of...830 Bay St. Service Inc., together with...the license to tow document (Lic. No. 0968158) issued by the Department of Consumer Affairs along with medallions **#6521; #7464 and #6869** issued under that

[2]It appears from a search of the Richmond County Clerk records that on January 5, 2016, plaintiffs instituted a second action against this defendant for, *inter alia*, breach of the October 2, 2013 Agreement.

license to the respective corporation" (*see* Affirmation of Marc E. Scollar, para 3)[3].

On November 24, 2015, this Court signed an Order to Show Cause in plaintiffs' action for, in effect, a preliminary injunction and declaratory relief, and scheduled the matter for a hearing on December 16, 2015 (*cf.* CPLR 6312[c]). To the extent relevant, plaintiffs' Order to Show Cause sought no interim relief in the form of a TRO. Following the hearing, the court reserved decision.

The motion and cross motion are decided as follows.

The pretrial issuance of a preliminary injunction in a declaratory judgment action operates to compel a defendant to take specific action, and is rarely granted. Even then, the relief has been held warranted only in extreme circumstances where "imperative, urgent, or grave necessity" leaves the court with little alternative (*see* Slithe Energies, Inc. v. 335 Madison Ave., LLC, 45 AD3d 469, 470 [*internal quotation marks omitted*]). The reason for such reticence lies in the realization that such injunctions may, in many cases, effectively determine the litigation by granting the movant all of the relief sought in the final judgment. Accordingly, such relief will be granted only on the clearest evidence, as where the undisputed facts would render a trial futile (*see* Xerox Corp. v. Neises, 31 AD2d 195, 197 [*internal quotation marks omitted*]; SHS Baisley, LLC V. Res Land, Inc., 18 AD3d 727, 728).

As the Court of Appeals noted long ago in Bachman v. Harrington (184 NY 458, 464 [1906]) "[t]he office of a preliminary injunction is to preserve the *status quo* until, upon final hearing, the court may grant full relief. Generally this can be accomplished by an injunction prohibitory in form, but it sometimes happens that the *status quo* is a condition not of rest, but of action, and the condition of rest is exactly what will inflict the irreparable injury upon complainant, which he appeals to a court of equity

---

[3]It is worthy of note that the medallion numbers designated in the **Agreement** differ from those which are the subject of this action.

to protect him from. In such a case, courts of equity issue mandatory writs before the case is heard on its merits...Therefore, where the complainant presents a case showing or tending to show that affirmative action by the defendant, of a temporary character, is necessary to preserve the status of the parties, then a mandatory injunction may be granted. But if there be neither proof nor allegation to that effect and the act sought to be enforced is not continuous in its character, but solely the one sought to be decreed by final judgment, then the issuing of a preliminary mandatory injunction is without authority." To illustrate this principal, the Court gave the following example. In an action for the specific performance of a contract for the sale of real estate, "the court doubtless may restrain the defendant pending the action from conveying, encumbering or in any way disposing of the subject of the suit, but [the entry of] an *ex parte* order that the defendant forthwith convey the premises to the plaintiff, even though phrased in the form of an injunction restraining him from refusing to forthwith make the conveyance...would be not merely erroneous, but absolutely void. On the other hand, in the case of a threatened violation of a contract continuous in its character, such as a contract to furnish water or light during a term, the defendant might be restrained from failing to supply water or light during the pendency of the litigation" (*id.*).

Here, the incomplete, inconsistent and confusing nature of the evidence adduced compels the denial of plaintiffs' application since, as previously noted, the medallion numbers listed in the parties' **Agreement** are not the same as those listed in plaintiffs' Order to Show Cause and supporting affidavits. Accordingly, this is not a case where the evidence is clear and the facts are essentially undisputed (*see* Xerox Corp. v. Neises, 31 AD2d at 197). Rather, the interlocutory relief requested by plaintiffs would require the Court to direct defendant to take certain actions to which he may or may not have agreed. Under these circumstances, any direction by the Court requiring defendant to "transfer and convey" his ownership of licenses pursuant to which the enumerated medallions were allegedly issued would be

premature, unwarranted and, to some extent, speculative in nature, since the facts on which any such direction would be based remain unclear (*see* Terex Corp v. Bucyras Intl Inc., 94 AD3d 548, 550-551). This is particularly so in the case at bar, where the commencement of a second action involving most of the same parties could result in inconsistent verdicts. Accordingly, consolidation may be appropriate. In any event, there is no evidence suggesting that the loss of the towing medallions could not be monetized for the purpose of awarding damages.

As for defendant's cross motion to dismiss, it is alleged that plaintiffs' service of only a summons with notice requires him to speculate as to the precise nature of the claims brought against him.

The Court disagrees.

The service of plaintiffs' Order to Show Cause, together with the summons with notice, has provided defendant with all of the information necessary to frame a response, the service of which operated to effect a joinder of issue on plaintiffs' application (*see* Matter of Hart Is. Comm v. Koch, 150 AD2d 269, 270-271; Somerset RR Corp. v. Graham, 89 AD2d 819).

Accordingly, it is

ORDERED, that the motion and cross motion are denied.

ENTER,

Dated: 2/23/16

J. S. C.