

Eikenberry v Lamson
2021 NY Slip Op 30200(U)
January 19, 2021
Supreme Court, Kings County
Docket Number: 516653/20
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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KRISTEN L. EIKENBERRY,

Plaintiffs

Decision and order

- against -

Index No. 516653/20

RICHARD JOSEPH LAMSON,

Defendants,

January 19, 2021

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved seeking to enforce a preliminary injunction that was granted November 30, 2020. The defendant opposes the motion. Papers were submitted by the parties and arguments held and after reviewing all the arguments this court now makes the following determination.

In the prior order the court noted there are questions of fact whether the plaintiff is a partner with defendant on certain accounts and certain companies. Thus, the court held that an injunction would be proper considering that "without the injunction the defendant would have the means and the ability to render these alleged partnership assets beyond the reach of the plaintiff" (see, Order dated November 30, 2020).

Further, concerning demonstrating an irreparable injury the prior order explained that loss of stream of income constituted such irreparable injury. Specifically, the court drew upon cases where indigent individuals were granted injunctions mandating that dependency payments continue upon a likelihood of success on the merits. Thus, the injury presented by Ms. Eikenberry

concerned "life's basic necessities" and on that basis ordered the defendant "to make distributions to the plaintiff from partnership accounts wherein the plaintiff appears on such accounts sufficient to provide for her basic cost of living needs" (id).

Pursuant to that decision the defendant has presented that he would pay \$33,246 per month for the plaintiff's basic necessities. The plaintiff has now moved seeking \$100,000 per month. The additional money is based upon the need to pay legal expenses. Further, although not a clarification but rather a reargument, plaintiff seeks to recover such funds from an account of her choosing. Moreover, plaintiff seeks equal access to what she describes as partnership property.

Concerning the request for extra monthly funds to pay legal expenses these expenses can hardly be termed necessities or basics of life demanding immediate payment. The fact such expenses were presented in the original request for an injunction wherein Ms. Eikenberry noted such expenses and Mr. Lamsom did not object to them does not mean they are essential. The plaintiff argues that "legal expenses are a necessary expense for Eikenberry to enforce her rights in partnership assets" (Memorandum in Support, page 11). That may certainly be true but those expenses are not essential to the basic necessities of Ms. Eikenberry's life which can only include food, shelter, clothing

and other similar necessities. They may be necessary in the broader sense of Ms. Eikenberry's priorities and her ongoing litigation, however, they can hardly be deemed necessary considering the court's basis for permitting such payments in the first place. Under Ms. Eikenberry's broad definition of necessities of life surely an accountant would be included as well. Indeed, it is difficult to envision any expense that would not fall within such necessities since virtually any expense could be justified to further her claims in this lawsuit. Of course legal expenses are the primary means by which she may pursue such claims but that merely highlights their degree in a legal environment. They are not in like kind with other necessities of life which were permitted by the courts this court relied upon. The case cited by plaintiff Aero Garage Corp., v. Hirschfeld, 185 AD2d 775, 586 NYS2d 611 [1st Dept., 1992] deals with compensatory damages and is inapplicable in this case which concerns a preliminary injunction. Likewise, Liberty Vending Inc., v. C.I.R., T.C. Memo 1998-177 [United States Tax Court 1998] is about deducting legal expenses in divorce proceedings. This has nothing whatsoever to do with the issue whether legal expenses can be deemed necessary living expenses to allow such payments as irreparable injury.

Ms. Eikenberry presented a list of necessary expenses. Mr. Lamsom has agreed to the generous amounts in these areas sought

by Ms. Eikenberry which essentially includes all the expenses sought by her except for the legal fees. The request requiring Mr. Lamson to increase the monthly expenses is denied. The court hereby accepts Mr. Lamson's representation that he will continue to pay \$33,246 for the continuation of the lawsuit. Thus, the defendant must make that payment for each month beginning November 2020 to the extent not already made. Further, the plaintiff's request the funds should come from cash accounts in efforts not to be forced to sell securities is a reasonable one. This is particularly true since the amount per month will remain at \$33,246 thereby alleviating defendant's depletion concerns at the account for 330 Atlantic. Thus, the funds should be paid per month from that account. If these monthly payment will impede the defendant's construction projects then the parties should contact the court for a further conference on the source of such payments.

Concerning the remaining requests, namely access to what she terms partnership property and access to certain email accounts and the defendant's transfer of funds out of a Fairmont Industries Supply account, the procedural posture of the request must be explored.

The request to visit partnership property is based upon the argument that as a partner she has equal rights which may not be curtailed. Even if the property can be classified as partnership

property, a contention the defendant disputes, the plaintiff cannot prevail upon this request at this stage of the litigation. It is well settled that absent extraordinary circumstances a preliminary injunction is improper where to grant such relief the movant would thereby obtain the ultimate relief she would receive in a final judgement (Zoller v. HSBC Mortgage Corp. (USA), 135 AD3d 932, 24 NYS3d 168 [2d Dept., 2016]). Thus, arguments the plaintiff is entitled to access the alleged partnership properties because they are "her" properties is precisely what this lawsuit is about. Permitting the plaintiff the rights she seeks to ultimately vindicate at this point obviates the entire need for the lawsuit at all. It is true there are other issues that require adjudication, however, an injunction is not designed to afford the plaintiff the ultimate relief she seeks which is a determination she is a partner with the defendant. Her insistence that she is a partner are mere claims. They may prevail, however, that does not entitle her to assert partnership authority until that time. During the pendency of the lawsuit she may be entitled to injunctive relief as outlined in the previous order and this order. There is no injunctive relief that can grant her what she ultimately seeks. To the extent the request for access to the alleged partnership homes is a marital dispute that dispute is surely beyond the purview of this lawsuit.

Similarly, concerning the issue regarding the Fairmont account, any transfer of funds from the account occurred before the initial decision was rendered and is not subject to judicial review. Further, there is no dispute those funds are being utilized for ongoing projects which may be maintained by Mr. Lamson. In addition, as noted, permitting the plaintiff unfettered access to that account would resolve an ultimate issue in the lawsuit, namely whether Ms. Eikenberry is a full partner with the Mr. Lamson. The disputed nature of these issues and the lack of any irreparable harm demands these requests must be denied.


As noted in the prior order the defendant should grant access to the plaintiff's email to the extent not already provided.

Thus, the motion seeking to enforce the prior injunction order is denied to the extent indicated. Any requests for legal fees are denied.

So ordered.

ENTER:

DATED: January 19, 2021
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC