

World Global Fund LLC v Vintage Props. Group

2021 NY Slip Op 31454(U)

April 14, 2021

Supreme Court, Nassau County

Docket Number: 610597/2020

Judge: Sharon M.J. Gianelli

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU - IAS/TRIAL PART 11
Present: Hon. Sharon M.J. Gianelli

WORLD GLOBAL FUND LLC,
Plaintiff,

X

Index No. 610597/2020
Mot Seq. No. 001
Decision and Order

-against-

VINTAGE PROPERTIES GROUP and
CHALEA D’JENEA BAGNERISE,
Defendants.

X

Papers submitted on this motion:
Plaintiff’s Order to Show Cause with Exhibits _____ X

The electronic filing of a Summons and Verified Complaint, as well as a proposed Order to Show Cause with Temporary Restraining Order commenced the instant action on or about October 2, 2020.

In connection with the instant application, Plaintiff seeks a Preliminary Injunction pursuant to CPLR 6301, restraining all funds in any TD Bank, N.A. account titled to Vintage Properties Group (“Vintage”) or Chalea D’jenea Bagnerise (“Bagnerise”), including the account ending in 2706, up to the sum of \$103,686.25. This application is unopposed.

Underlying Facts

The underlying action is for breach of contract. Plaintiff states that the parties entered into a written agreement on September 25, 2020. Plaintiff further states that pursuant to the agreement, Defendant Vintage sold Plaintiff \$74,950.00 of its future receipts for the up front sum of \$50,000.00. According to Plaintiff, the agreement does not afford Plaintiff any recourse in the event Defendant Vintage declares bankruptcy. Additionally,

Plaintiff states that pursuant to the agreement, Defendant Bagnerise guaranteed the obligations of Defendant Vintage. According to Plaintiff, it paid Defendant Vintage the aforementioned purchase price, minus contractual fees, on September 29, 2020.

Plaintiff also states that pursuant to the agreement, Defendant Vintage agreed to pay the purchased amount to Plaintiff by paying 25% of its future receipts.

Plaintiff states that pursuant to the agreement, Defendant Vintage provided Plaintiff with its online banking login and password in order to collect the purchase amount.

Plaintiff also states that in the regular course of its business, it also logs into Defendant Vintage's account in order to monitor it. Plaintiff emphasizes that on September 30, 2020, immediately after it initiated its first collection of the purchase amount,

Defendant Vintage directed the bank to stop the payment (*see* Plaintiff's Exhibit "2").

According to Plaintiff, Defendants have ignored Plaintiff's "numerous attempts" to resolve the matter.

Plaintiff states that since receiving the purchase price on September 29, 2020,

Defendant Vintage withdrew \$10,000.00 from its account on September 29, 2020.

Plaintiff further states that Defendant Vintage made separate withdrawals of

\$40,000.00, \$25,000.00, and \$20,000.00 from its account on September 30, 2020,

and \$20,000.00 from its account on October 1, 2020. Plaintiff asserts that Defendants' account had a balance of \$165,368.12 after it made the September 29, 2020 payment

and is fast approaching zero.

Plaintiff states that as part of its application for funding, Defendant Vintage submitted its bank statements for June through September of 2020. Plaintiff alleges that a review of those records indicated that Defendants never made withdrawals of the size and frequency of those made after receiving the September 29, 2020 payment. The Court notes that Plaintiff has not submitted the June through September of 2020 bank statements.

Plaintiff alleges that the funds that were previously in Defendants' account were placed there for the sole purpose of making it appear that Defendant Vintage had sufficient cash-flow to justify receiving a merchant cash advance from Plaintiff. Plaintiff also alleges that it is evident that Defendants never intended to pay Plaintiff and only entered into an agreement with Plaintiff to steal the purchase price. Additionally, Plaintiff states that Defendants' bank activity reveals that Defendants are using Plaintiff's money to vacation at the W Hotel in Scottsdale, Arizona, at a cost of over \$1,000.00 per day, despite Defendants' claims that they are located in Philadelphia.

Plaintiff claims that if Defendants' bank account is not restrained and its withdrawals since September 30, 2020 are not reversed immediately, there will be no assets left to satisfy a final judgment and any final judgment will be rendered ineffectual.

Plaintiff claims that it anticipates obtaining a final judgment for at least \$ 103,686.25, consisting of \$82,949.00 in damages and \$20,737.25 in legal fees.

On October 2, 2020, this Court signed Plaintiff's proposed Order to Show cause ("OSC") with Temporary Restraining Order pending the determination of the instant application. This Court notes that the portion of the OSC that directed TD Bank, N.A. to

reverse the debits on Defendants' account ending in 2706 on September 30, 2020 was stricken.

On October 6, 2020, Defendants were served with the signed OSC and its supporting papers, as well as the Summons and Verified Complaint via certified mail, in accordance with the OSC (*see* Affidavits of Service).

Law/Analysis

CPLR 6301 states that a preliminary injunction is appropriate where (1) a defendant appears to threaten or is about to perform, or is performing an act that violates a plaintiff's rights with respect to the subject matter of an action, rendering a final judgment ineffective; or (2) a plaintiff has demanded and is entitled to a judgment restraining a defendant from committing or continuing an act which would cause injury to the plaintiff.

Whether a preliminary injunction is appropriate is within the sound discretion of the court (*see Doe v Axelrod*, 73 N.Y.2d 748 [1988]). In order to be successful when seeking preliminary injunctive relief, a movant must demonstrate: (1) likelihood of success on the merits; (2) irreparable injury absent the injunction; (3) the balance of equities in his favor (*Zoller v HSBC Mtge. Corp. (USA)*, 135 A.D.3d 932 [2d Dept. 2016]).

A *prima facie* showing of a right to a relief sought is sufficient to satisfy the likelihood of success on the merits prong, as actual proof should be established later on in court proceedings (*McLaughlin, Piven, Vogel, Inc. v W. J. Nolan & Co.*, 114 A.D.2d 165 [2d

Dept. 1986]). Generally, monetary damages are insufficient to satisfy the irreparable injury prong (*id.* at 174). The injury must be “imminent and nonspeculative” and a movant must establish that the injury cannot be compensable by money damages (*Rowland v Dushin*, 82 AD3d 738 [2d Dept. 2011]). It is worth noting that the First Department has held that a movant can satisfy the irreparable injury prong in a money judgment matter by demonstrating that if the requested relief is not granted, a substantial amount of money may be “dissipated or otherwise unavailable for recovery” (*Sau Thi Ma v Xaun T. Lien*, 198 A.D.2d 186 [1st Dept. 1993]). With respect to the balance of equities prong, a movant must demonstrate that the injury they would sustain from the denial of the preliminary injunction is substantially greater than the injury their adversary would sustain if the preliminary injunction were granted (*Fischer v Deitsch*, 168 A.D.2d 599 [2d Dept. 1990]).

A preliminary injunction is a drastic remedy and will only be appropriate where a movant demonstrates an undisputable right to it pursuant to the law and the facts stated in their motion (*Koultukis v Phillips*, 285 A.D.2d 433 [1st Dept. 2001]). Additionally, a preliminary injunction should be granted sparingly (*Fischer v Deitsch, supra*, at 601).

Here, the Court uses its discretion and finds that the sought relief is appropriate in the instant action based on the facts and arguments presented.

Accordingly,

It is

ORDERED, that Plaintiff WORLD GLOBAL FUND LLC's application for a Preliminary Injunction pursuant to CPLR 6301 restraining the funds in any TD Bank, N.A. account titled to Vintage Properties Group or Chalea D'jenea Bagnerise, including the account ending in 2706, up to the sum of \$103,686.25, pending the resolution of this action, is Granted; and

It is ORDERED, that Plaintiff is directed to serve Defendants with a copy of this Order within thirty (30) days of the date of this Order; and

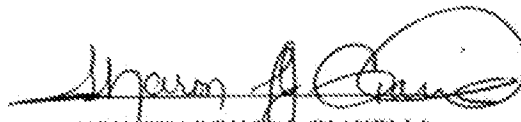
It is

ORDERED, that Defendants shall serve an Answer within forty-five (45) days of the date Plaintiff served a copy of this Order.

All applications not specifically addressed herein are denied.

This constitutes the Decision and Order of the Court.

DATED: Mineola, New York
April 14, 2021



HON. SHARON M.J. GIANELLI
Justice of the Supreme Court

ENTERED

May 03 2021

NASSAU COUNTY
COUNTY CLERK'S OFFICE

The conformed signature on this Order and copies thereof shall be deemed original.