

Rejwan v First Essentials Corp.
2022 NY Slip Op 32930(U)
August 25, 2022
Supreme Court, Kings County
Docket Number: Index No. 515253/2022
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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SHAUL REJWAN, derivatively on behalf of
BABY TIME INTERNATIONAL, INC.
Plaintiffs,

Decision and order

- against -

Index No. 515253/2022

FIRST ESSENTIALS CORP., FIRST ESSENTIALS LLC,
MENASHE BATTAT, and YAKIR BATTAT,
Defendant,

August 25, 2022

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PRESENT: HON. LEON RUCHELSMAN

The defendant Yakir Battat has moved seeking to reargue a portion of the decision dated June 23, 2022. The plaintiff 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 granted an injunction prohibiting the defendant Yakir Battat an employee of Baby Time from working with First Essentials on the grounds that Yakir maintained a duty not to directly compete with a company he works for. Yakir has now moved seeking to reargue that determination. He has presented evidence that he no longer works for Baby Time and moreover there is no non-compete clause preventing any such engagement by a competing company. Thus, even if the two entities sell the same goods, Yakir, who no longer maintains any connection with Baby Time, can now work for First Essentials. Thus, Yakir seeks to vacate the injunction preventing him from working with First Essentials. The plaintiff opposes the motion

on the grounds that permitting Yakir to work with First Essentials would effectively undermine the injunction against Manny since Manny really works together with Yakir and thus First Essentials would thereby benefit from Manny's "ongoing violations" (see, Memorandum of Law in Opposition, page 6). Thus, the opposition to the motion is based upon the belief that Manny is working in conjunction with Yakir and that if Yakir is allowed to work for First Essentials then Manny too will be working for First Essentials. First, there has been no evidence presented that Manny has violated any injunction imposed by the court. That serious allegation must be substantiated by some real proof, mere conjecture or casual assertions within larger arguments are insufficient to establish violations of court orders. More importantly, as conceded, Manny is not seeking to reargue the injunction placed against him. There is no basis to assume that if Yakir is permitted to work for First Essentials then Manny will work for them as well. An injunction cannot be maintained or extended based upon some fear of future violation by another party. There really is no argument asserted that Yakir should not be permitted to work for First Essentials in his own right. The only arguments raised concern Yakir's relationship with Manny and speculative fears that Manny will somehow violate a court order and engage in clear breaches of his fiduciary duty to Baby Time. There is no basis to deny Yakir the

ability to work based upon those unfounded fears. If there is evidence, supported by substantial proof, that Manny has violated a court imposed injunction, the plaintiff may seek the appropriate remedy. That possibility is not thereby increased by allowing Yakir to work for First Essentials.

Next, the plaintiff argues that there is evidence Yakir still works for Baby Time. Such evidence consists of an \$8,000 check written on July 1, 2022 from Baby Time to Manny. The plaintiff asserts that "given that this withdrawal was made without the consent of Rejwan and given that it is in the exact same amount as the payments previously made to Yakir, it raises the clear inference that these funds were taken to continue the payments to Yakir" (see, Memorandum in Opposition, page 7). Notwithstanding the coincidental amount of this check, there is no evidence the check was given to Yakir for work performed on behalf of Baby Time. The speculative nature of this assertion is not sufficient grounds to maintain an injunction against Yakir. Without sufficient evidence that Yakir still works for Baby Time, despite his resignation to the contrary, a continuing injunction remains improper.

The plaintiff also argues that lifting the injunction to Yakir will permit Manny to indirectly work for First Essentials and circumvent in a roundabout way what Manny may not do directly. However, as noted, there is no evidence of such

circumvention. Mere allegation and speculation that Manny may violate the injunction placed against him, for which remedies are available if he does so act, is not sufficient grounds to enjoin Yakir from seeking gainful employment. The case cited by plaintiff, ElPac Ltd., v. Keenpac N. Am., 186 AD2d 893, 588 NYS2d 667 [3rd Dept., 1922] does not demand a contrary result. In that case the court held that where there was no non-compete clause then a former employee of ElPac, a seller of European style shopping bags, could solicit ElPac's customers as soon as the employee left ElPac. The court noted that even if the employee improperly solicited customers while he still worked for ElPac that would not bar any subsequent solicitation. The court explained that "we are not persuaded on this record that the European-style shopping bag market is such that the individual defendants' wrongful diversion of one order would give defendants an unfair competitive edge in connection with subsequent orders from the same customer" (id). The court cannot comment on the nature of the market for baby clothes and other baby items, however, ElPac (supra) only supports the conclusions reached here that no injunction can remain upon Yakir who no longer works for Baby Time. Furthermore, ElPac also rejects the plaintiff's argument that the injunction should remain in place as a check upon Yakir's alleged wrongful solicitation when he was employed by Baby Time. As ElPac makes clear there is no such continuous injunction based upon alleged improper conduct.

Therefore, based on the foregoing, the motion seeking reargument is granted. Upon reargument the injunction imposed upon Yakir Battat is hereby vacated.

So ordered.

ENTER:

DATED: August 25, 2022
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC