

Eagle Advance, LLC v Relik Realty
2022 NY Slip Op 33006(U)
August 19, 2022
Supreme Court, Nassau County
Docket Number: Index No. 608198/22
Judge: James P. McCormack
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SUPREME COURT - STATE OF NEW YORK

PRESENT:

Honorable James P. McCormack
Justice of the Supreme Court

EAGLE ADVANCE, LLC,

Plaintiff(s),

-against-

RELIK REALTY and ROBERT JAY LOPES,
Defendant(s).

x

TRIAL/IAS, PART 9
NASSAU COUNTY

Index No.: 608198/22

Motion Seq. No.: 001
Motion 001 Submitted: 8/18/22

The following papers read on this motion:

- Order to Show Cause/Memorandum of Law/Supporting Exhibits.....X
- Affirmation in Opposition/Memorandum of Law/Supporting Exhibits.....X

Plaintiff, Eagle Advance, LLC (Eagle), moves this court, by order to show cause, for preliminary injunctive relief against Defendants, Relik Realty (Relik) and Robert Jay Lopes (Lopes). Lopes opposes the motion.

Eagle entered into a contract with Relik whereby Eagle purchased \$179,880.00 worth of Relik’s future receivables in return for an up front payment of \$120,000.00. Eagle would receive its money by taking 25% of Relik’s daily receivables deposited in a specific bank account. Lopes, as owner of Relik, personally guaranteed the contract. Eagle made the up-front payment, but after making a few payments, Defendants blocked

Eagle's access to the bank account and made no further payments. This motion ensued.

Eagle presented an order to show cause to this court on June 24, 2022, seeking a temporary restraining order (TRO) on Relik's and Lopes' funds at Wells Fargo Bank, including the account which Eagle was supposed to be able to access, up to the amount of \$204,958.44. Because Defendants cut off access to the bank account mere days after accepting the funds, the court granted the TRO, and it remains in effect. Eagle now seeks a preliminary injunction keeping the restraint on the bank accounts while the action is pending.

It is well established that to prevail on a motion for preliminary injunctive relief, the movant must clearly demonstrate a likelihood of success on the merits, the prospect of irreparable harm or injury if the relief is withheld and that a balance of the equities favors the movant's position (*see Wheaton/TMW Fourth Ave., LP v. New York City Dept. of Bldgs.*, 65 AD3d 1051 [2d Dept. 2009]; *Pearlgreen Corp. v. Yau Chi Chu*, 8 AD3d 460 [2d Dept. 2004]). The decision to grant a preliminary injunction is committed to the sound discretion of the court (*see Tatum v. Newell Funding, LLC.*, 63 AD3d 911 [2d Dept. 2009]; *Bergen-Fine v. Oil Heat Inst., Inc.*, 280 AD2d 504 [2d Dept. 2001]), as the remedy is considered to be a drastic one (*see Doe v. Axelrod*, 73 NY2d 748 [1988]). Consequently, a clear legal right to relief which is plain from undisputed facts must be established (*see Wheaton/TMW Fourth Ave., LP v. New York City Dept. of Bldgs.*, 65 AD3d 1051, *supra*; *Gagnon Bus Co., Inc. v. Vallo Transp., Ltd.*, 13 AD3d 334 [2d Dept

2004]; *Blueberries Gourmet v. Aris Realty*, 255 AD2d 348 [2d Dept 1998]).

Article 63 of the CPLR governs the issuance of preliminary injunctions and temporary restraining orders. Pursuant to CPLR § 6301, a preliminary injunction may be granted in an action for permanent injunctive relief to restrain the defendant, during the pendency of said action, from doing that which the plaintiff seeks to enjoin permanently, by the final judgment. In addition, a preliminary injunction may be granted in any action where it appears that a defendant threatens, or is about to do, or is doing, or procuring to be done, an act in violation of the plaintiff's rights, respecting the subject of the action, which is likely to render the judgment ineffective. To constitute the "subject of the action" within the contemplation of CPLR § 6301, the property or assets for which restraint is sought must be unique or sufficiently specific and the very object of the claim giving rise to the demand for preliminary injunctive relief (*see Credit Agricole Indosuez v. Rossiyskiy Kredit Bank*, 94 NY2d 541 [2000]; *Coby Group, LLC v. Hasenfeld*, 46 AD3d 593 [2d Dept 2007]).

In opposition to the motion, Defendants make some valid arguments, but also see fit to lecture the court on the evils of the receivables purchase industry, an argument that at times seems contradictory when considering Lopes' actions. Initially, it appears clear that some of the restrained accounts contain funds of unrelated parties. Relik is in the business of property management, and some of restrained accounts contain funds from properties that are not related to this action. The restraints shall be released on those

accounts forthwith.

As for the account that Eagle was to have access to, Defendants argue that the restraint on that should be lifted, and the entire TRO vacated, because Eagle is a predator who took advantage of Relik. There are a couple of problems with painting Relik as an innocent victim. The first is that Lopes, in his affidavit, describes himself as a savvy businessman having built Relik himself “from the ground up” from a company that had one employee to one that now has over 250 employees. Relik is “award-winning” and “nationally-recognized” which would argue against it being easy to take advantage of him. Second, Eagle was actually the *third* receivables purchase company with whom he signed a contract and from which he accepted money. He cannot claim surprise about the way Eagle’s contract operated. He likens these companies to payday lending companies that prey upon consumers, but a savvy, successful, award-winning businessman is a bit different from a consumer looking to leverage their paycheck into some quick cash.

As for Eagle it appears that its Principal sent Lopes a series of threatening, offensive text messages which seem to imply that he was using the court to strong-arm Lopes into making payments. His threats only lend credence to Defendants’ arguments that instead of being a business providing a service, Eagle is a predatory lender. Some of these text messages include: “I’m going to have a judge...freeze your account,” “Should I file a lawsuit now since you’re completely broke [sic] this will go against you your business and personally. Or should I call your accounts receivable?”, “so obviously you know I froze your account the next thing I’m going to do is contact every LLC that you do work for and let them now what’s going on...I will get a judgment in five days and

then just the money.” There are more.

The motion will be denied and the TRO vacated. The court finds, as related to seeking the preliminary injunction and TRO, Eagle is guilty of unclean hands. Eagle’s conduct in trying to collect its money was unconscionable, particularly in its references to the court. Though Defendants did not raise the defense of unclean hands, the court may do so *sua sponte* to protect the integrity of the proceedings. (*Simmons v. Benn*, 96 AD2d 507 [2d Dept 1983]). However, even if the court was not relying on unclean hands, the motion would still be denied due to Eagle’s inability to establish irreparable harm.

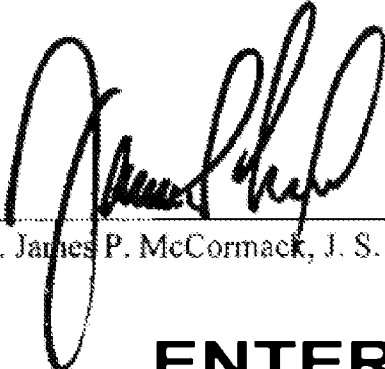
Accordingly, it is hereby

ORDERED, that Eagle’s motion for a preliminary injunction is DENIED; and it is further

ORDERED, that the TRO granted on June 24, 2022 is vacated in its entirety.

This foregoing constitutes the Decision and Order of the Court.

Dated: August 19, 2022
Mineola, N.Y.



Hon. James P. McCormack, J. S. C.

ENTERED

Aug 24 2022

NASSAU COUNTY
COUNTY CLERK’S OFFICE