SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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In the Matter of the Application of MENASHE BATTAT, Individually, and Derivatively on Behalf of BABY TIME INTERNATIONAL, INC., as the Holder of 50% of all outstanding shares of BABY TIME INTERNATIONAL, INC.

Petitioners,

Decision and order

For Dissolution of BABY TIME INTERNATIONAL, INC., a domestic corporation

- against - Index No. 516774/2022

SHAUL REJWAN, Individually, and as the holder of 50% of all outstanding shares of BABY TIME INTERNATIONAL, INC.,

Respondents, September 19, 2023

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PRESENT: HON. LEON RUCHELSMAN Motion Seq. #3 & #4

The respondent Shaul Rejwan has moved seeking to enforce a settlement agreement entered into between the parties on January 16, 2023. The petitioner Menashe Battat has cross-moved seeking the appointment of a receiver. The motions are opposed respectively. Papers were submitted by the parties and after reviewing all the arguments this court now makes the following determination.

Shaul Rejwan and Menashe Battat were each half owner of an entity called Baby Time International Inc. In a related action the respondent sued the petitioner alleging breach of a fiduciary duty, and aiding and abetting such breach, misappropriation, unjust enrichment, misappropriation of trade secrets and the aiding and abetting of such misappropriation, unfair competition and the breach of the faithless servant doctrine. The respondent

[* 1]

alleged that petitioner was selling Baby Time products under a different name and was essentially competing with Baby Time. The petitioner commenced this action seeking a dissolution of Baby Time. On January 16, 2023 the parties entered into a settlement agreement which resolved both lawsuits. This motion has now been filed by the respondent seeking enforcement of that agreement. Specifically, the respondent argues that the petitioner has received approximately $90,000 for payments from receivables and has failed to forward those funds to an escrow account established to deal with all funds pursuant to the settlement agreement. The petitioners oppose the motion on two grounds. First, they allege the respondent breached the settlement agreement so there is no need for petitioner to honor any of its terms. Moreover, they assert that the parties did not establish a joint escrow agreement as outlined in the settlement agreement and until such time one is established any funds in petitioner's possession will not be deposited into an escrow funds controlled solely by respondent's counsel.

Conclusions of Law

It is well settled that a stipulation or settlement agreed in open court should not thereafter be disturbed by the court (Itoko Suzuki v. Peters, 12 AD3d 612, 784 NYS2d 393 [2d Dept., 2004]). Indeed, a court should not disturb a settlement unless

some fraud or mistake or some other significant reason presents itself mandating changing the settlement terms (Maury v. Maury, 7 AD3d 585, 776 NYS2d 489 [2d Dept., 2004]). The petitioner in this case has not presented any reason why the settlement should be cancelled.

First, there is no merit to any argument the respondent breached the agreement by establishing a new entity engaged in selling baby products. There is nothing in the agreement prohibiting either party from so engaging. Further, there is no proof supporting any allegations the respondent took any escrow funds at all once the settlement agreement had been executed. Therefore, there is no basis to assert the respondent breached the settlement agreement.

Next, Paragraph 3 of the settlement agreement states that "any accounts receivables recovered, and upon final adjustment of the insurance claim, the insurance proceeds shall be deposited into a joint escrow account ("Escrow Account") established by respective counsel for Rejwan, Manny, and Baby Time, for ultimate division between the parties subject to payment of Baby Time's debts as determined by a neutral third-party accountant..." (see, Confidential Settlement Agreement, ¶3 [NYSCEF Doc. No. 84]). The evidence establishes that although the escrow account was created by counsel for the respondent, the petitioner's counsel and indeed all parties to the two lawsuits consented to such an

account. Thus, while the requirement the account be "joint" might require an actual joint account of all parties, as noted, all parties conceded to an account created by respondent's counsel. Thus, there was no breach of the settlement agreement due to the failure to maintain such joint account. This is further supported by the fact respondent's counsel has made all bank statements available thereby preserving the transparency of the account.

To be sure if it is possible to open a joint escrow account then the parties should do so. There is a factual dispute whether a joint escrow account is even possible. On July 10, 2023 Ivi Pashollari, a business relationship manager at JP Morgan Chase sent an email to all counsel in this case explaining that the settlement agreement was not "sufficient" to open a joint escrow account (see, Email sent July 10, 2023 at 5:46 PM [NYSCEF Doc. No. 112]). On July 24, 2023 counsel for the petitioner sent an email that stated that the petitioner visited a Chase branch in Brooklyn and that such branch would permit the opening of a joint escrow account by merely filling out forms. The email concluded that "in any event the person at Chase familiar with this is Louis Choy of Chase and he operates at 6510 Avenue U, Brooklyn. NY. You and/or your client can stop by the branch or perhaps a more convenient branch and sign a W9 after conferring with Mr. Choy. The joint escrow agreement can go forward as envisioned by the settlement agreement as written" (see, Email

sent July 24, 2023 at 2:57 PM [NYSCEF Doc. No. 103]). As noted, there is a disagreement whether a joint escrow account can even be opened. The respondent cannot be faulted for failing to act upon an email containing assurances from a litigant about the unsubstantiated statements of a bank official. If a joint account can be opened then the account must be opened jointly. Therefore, the motion is resolved as follows: the motion seeking to enforce the settlement agreement is granted. The petitioner must deposit all accounts receivables in its possession and any other funds that are the subject of the dissolution into the escrow account. The parties may endeavor to open a joint account if possible. If not possible the current escrow account remains valid and the respondent's counsel shall continue to provide account information upon request.

Turning to the cross-motion seeking a receiver, it is well settled that "a temporary receiver should only be appointed where there is a clear evidentiary showing of the necessity for the conservation of the property at issue and the need to protect a party's interests in that property" (see, Quick v. Quick, 69 AD3d 828, 893 NYS2d 583 [2d Dept., 2010]). Thus, a temporary receiver is appropriate where the party has presented "clear and convincing evidence of irreparable loss or waste to the subject property and that a temporary receiver is needed to protect their interests" (Magee v. Magee, 120 AD3d 637, 990 NYS2d 894 [2d

Dept., 2014]). Moreover, a receiver is charged with the responsibility to "preserve and protect the property for the benefit of all persons interested in the estate" and the receiver's allegiance is only to the court (Bank of Tokyo Trust Company v. Urban Food Malls Ltd., 229 AD2d 14, 650 NYS2d 654 [1st Dept., 1996]). In this case there are no substantiated allegations of any need to preserve the property and there is no evidence of any loss or waste to any of the escrow funds. The petitioner has leveled numerous allegations against the respondent. They are all conclusory and without any evidence or substantiation. Consequently, the settlement agreement will not be vacated. Further, the motion seeking a receiver is denied.

So ordered.

ENTER:

DATED: September 19, 2023
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC