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

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PETER LENGYEL-FUSHIMI,

Plaintiffs, Decision and order

- against - Index No. 512764/2021

ANTHONY BELLIS, ZACHARY KINNEY, and KINGS COUNTY BREWERS COLLECTIVE, LLC,,

October 26, 2021

Defendants,

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved seeking to reargue a portion of a decision dated August 25, 2021. The defendant has moved seeking to compel the plaintiff to take certain actions sought by the remaining owners. The motions have been opposed respectively.

In the decision the court held that a unanimous vote was not required to remove the plaintiff as a manager. The plaintiff now seeks to reargue that determination. In the prior decisions the court has consistently held that the only matter which requires a unanimous vote is the change of ownership and since management is not ownership a unanimous vote was not required. Thus, even if true the agreement never spells out exactly how management may be changed, to the extent that management is different than an officer, in any event, the agreement clearly does not require a unanimous vote to change management. Article 4.1 of the agreement only confirms this understanding. Article 4.1 states that "the business of the Company shall be managed by the Class A Members. In the event of a dispute between Members, final

determination shall be made by a vote of the majority of the Class A Members (unless a greater percentage is required in this Agreement or under New York law). Any Class A Member may bind the Company in all matters in the ordinary course of business" (id). Thus, the agreement itself provides that any changes to the management can be done with a majority vote of the Class A Members. It is difficult to understand plaintiff's argument that "the removal of Plaintiff from corporate management by mere majority vote is a clear affront to Article 4.1 of the Operating Agreement" (see, Memorandum of Law, page 5) when that is precisely what Article 4.1 requires. Therefore, the motion seeking to reargue the determination the plaintiff could be removed as a manager by majority vote is hereby denied. The majority members, pursuant to the agreement did not violate the agreement by removing the plaintiff as a manager.

Turning to the defendant's motion, a mandatory injunction is rarely granted and only under unusual circumstances to maintain the status quo pending trial (Matos v. City of New York, 21 AD3d 936, 801 NYS2d 610 [2d Dept., 2005]). Thus, where a party is engaged in unlawful conduct which is continuous then a mandatory injunction is proper (Rosenthal v. Helfer, 136 Misc2d 9, 516 NYS2d 1020 [Civil Court New York County, 1987]). Moreover, where a party acts deliberately and intentionally a mandatory injunction requiring the party to cease is likewise

proper (Marcus v. Village of Mamaroneck, 283 NY 325, 28 NE2d 856 [1940]).

In this case the defendants have not presented any evidence the plaintiff failing to agree to loans that are available is of such unusual circumstances as to warrant the imposition of an injunction (Zoller v. HSBC Mortgage Corp., (USA), 135 AD3d 932, 24 NYS3d 168 [2d Dept., 2016]). It is true the approval of such loan was agreed upon by a majority of the members which did not include the plaintiff, however, as an owner the plaintiff's consent is required. The plaintiff's refusal to agree to such loans is not so unusual as to warrant a mandatory injunction. The defendants characterize the plaintiff's refusal as obstruction and suggests he should disassociate himself from the company. By the same token the defendants can likewise agree to accommodate the plaintiff. The failure of either side to engage the other does not justify motion after motion of marginal value. In any event, since the reluctance to agree to be liable for company loans is not so unusual, the motion seeking the injunction is denied.

Lastly, all motions seeking sanctions are denied.

So ordered.

ENTER:

DATED: October 26, 2021
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC

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