

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

**HON. STEPHEN A. BUCARIA**

Justice

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JOSEPH JOSEPH, VIM REALTY LLC,  
THE JOSEPH JOSEPH GENERATION  
SKIPPING TRUST, THE JOSEPH JOSEPH  
2004 IRREVOCABLE TRUST, FAMOUS  
HORSE, INC. and KENT REALTY  
ASSOCIATES, LLC,

Plaintiffs,

-against-

ELAZAR JOSEPH, THE ELAZAR JOSEPH 1997  
IRREVOCABLE LIVING TRUST, THE ELAZAR  
JOSEPH 2001 IRREVOCABLE LIVING TRUST,  
BROADWAY AND MERMAID ASSOCIATES,  
VIM MERMAID, INC., FEJ, LLC, PITKIN REALTY  
ASSOCIATES, LLC, 2701 FDOUGLAS TRADING  
LLC, THE RINAT JOSEPH 2004 TRUST and  
TZACHI JOSEPH 2004 TRUST,

Defendants.

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Application of ELAZAR JOSEPH,

Petitioner,

-against-

JOSEPH JOSEPH and FAMOUS HORSE, INC.,

Respondents,

For the Judicial Dissolution of Famous Horse, Inc.  
a/k/a V.I.M. and d/b/a VIM Stores, Inc.

TRIAL/IAS, PART 2  
NASSAU COUNTY

INDEX No. 16982/09

MOTION DATE: June 21, 2013  
Motion Sequence # 007

INDEX No. 019224/09

The following papers read on this motion:

Order to Show Cause..... X  
Affidavit in Opposition..... X  
Emergency Affirmation in Support..... X  
Reply Affirmation..... X  
Memorandum of Law..... X

Motion by defendant Elazar Joseph for a preliminary injunction, directing plaintiff Joseph Joseph and the other plaintiffs to pay back rent on leases entered into between the parties, resume making payments to Elazar's children, and for other interim relief is **denied**.

This action arises from a dispute between brothers in a family owned business. Plaintiff Joseph Joseph and his brother, defendant Elazar Joseph, own 32 retail shoe and clothing stores in the New York area. The stores operate under the name VIM Mermaid and carry a brand known as "Famous Horse." Elazar and Joseph each hold a 50 % membership interest in the limited liability companies which own the real estate on which the stores are located. The parties have entered into a series of leases whereby the limited liability companies, as landlord, lease the stores to Famous Horse, Inc. Joseph owns 2/3 of Famous Horse, and Elazar owns 1/3 of the corporation. Elazar is no longer employed by Famous Horse, and Joseph Joseph has been in control of the corporation since August 2009. Pursuant to the operating agreement of Junction Trading, one of the limited liability companies owned by the parties, Elazar is the managing member.

After a dispute arose, Joseph Joseph brought the present action for breach of fiduciary duty and an accounting. Joseph alleges that Elazar, while acting as chief financial officer of Famous Horse, collected a 6 % service charge on rents which were paid by Famous Horse to a trust owned by Elazar. Joseph further alleges that Elazar imposed a 6 % commission on income paid to Joseph's generation skipping trust. Joseph alleges that Elazar used Famous Horse funds to repay Elazar's shareholder loans, also to Joseph's detriment.

Elazar Joseph responded by commencing a proceeding seeking the judicial dissolution of Famous Horse, Inc. pursuant to BCL § 1104-a on the ground of oppressive conduct towards the minority shareholder (Index No 19224/09). Elazar also claims that the stores are operated as franchises. Both cases are scheduled for trial on September 17, 2013.

By order to show cause dated May 8, 2013, Elazar moves for a preliminary injunction 1) directing Joseph to pay all back rent on the leases, 2) declaring any lease modifications entered into by Joseph without Elazar's consent void, 3) directing Joseph to reinstate Elazar's salary from Famous Horse, 4) directing Joseph to resume making payments to Elazar's children, and 5) restraining Joseph from holding any funds, which Joseph claims are owed to Famous Horse for personnel, material, and warehouse services, in excess of 6 % of VIM Mermaid's net sales. Elazar alleges that in 2010 Joseph unilaterally modified the lease

between Junction Trading and Famous Horse to reduce the rent payable to Junction Trading. In opposition to the motion, Joseph alleges that Elazar has been paid over \$8.2 million from the family owned business since the commencement of the litigation.

Business Corporation Law § 1115 provides that at any stage of a dissolution proceeding, the court may, in its discretion, grant an injunction restraining the corporation, and its officers and directors, from transacting any unauthorized business and from exercising any corporate powers, except by permission of the court. The statute affords the court broad supervisory and injunctive powers to protect the interests of minority shareholders during the pendency of a dissolution proceeding (Matter of HGK Asset Mgmt, Inc., 238 AD2d 291 [1<sup>st</sup> Dep't 1997]).

In view of the unrebutted showing that Elazar is receiving substantial distributions from the family business, defendants have failed to show that they will suffer irreparable injury if preliminary injunctive relief is not granted (Joseph v Joseph, 2013 N.Y. App. Div. LEXIS 5103 [2d Dept 2013]). Defendant Elazar Joseph's motion for a preliminary injunction is **denied**.

So ordered.

Dated JUL 16 2013

  
J.S.C.

**ENTERED**

JUL 18 2013

NASSAU COUNTY  
COUNTY CLERK'S OFFICE