

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

-----X  
PATRICIA DEERIN as Executor of the Estate of Douglas  
Deerin,

Plaintiff,

-against-

OCEAN RICH FOODS, LLC,S, a/k/a OCEAN EDGE  
FOODS, RICHARD MARINO, and DEAN BERMAN,

Defendants,  
-----X

Index No. \_\_\_\_\_

**AFFIRMATION IN SUPPORT  
OF ORDER TO SHOW CAUSE  
AND PRELIMINARY  
INJUNCTION**

Date Index No. Purchased:

Gregory Haber, an attorney duly admitted to practice law in the courts of the State of  
New York, affirms the following under penalties of perjury:

I am a member of The Haber Law Firm LLP, the attorneys for the Plaintiff, PATRICIA DEERIN as Executor of the Estate of Douglas Deerin ("Plaintiff" or the "Estate") and am fully familiar with the facts and circumstances herein by virtue of numerous discussions with Patricia Deerin regarding the Estate of Douglas Deerin. I certify that to the best of my knowledge, and upon information and belief, formed after an inquiry reasonable under the circumstances, the contentions made herein are not frivolous as defined in New York Court Rules §130-1.1(c).

**RELIEF REQUESTED**

1. Plaintiff seeks to enforce a Cross Purchase Agreement (the "Agreement") by and between OCEAN RICH FOODS, LLC (the "Company"), RICHARD MARINO ("Marino"), DEAN BERMAN ("Berman"), and DOUGLAS DEERIN ("Deerin").

2. Marino, Berman, and Deerin, were all members of the Company, until Deerin's death on January 28, 2013 at which time Deerin's Estate (the "Estate") became the owner of his interest.

3. Marino, Berman, and the Estate each currently own 1/3 of the Company.

4. In January 2009, Marino, Berman, and Deerin entered into the Agreement, a copy of which is annexed hereto as **Exhibit “A”**. The Agreement states that life insurance policies had been taken out in the amount of \$1.5 million on the lives of each of the 3 members of the Company, and that “The Company shall be the sole owner of the policies purchased by and issued to it”.

5. The Agreement states that the Company was the owner and beneficiary of John Hancock Policy No. 81 602 369 in the amount of \$1.5 million, insuring the life of Deerin.

6. The Agreement instructs that upon the death of a member “The Company shall pay such life insurance proceeds to the legal representative of the deceased Member as part payment or payment in full, as the case may be, on account of the purchase price of the interest of the deceased Member.”

7. Upon the death of Deerin, Marino and Berman refused to pay, and upon this filing are still refusing to pay, the life insurance proceeds to his Estate in exchange for its membership interest in the Company, and are therefore in breach of the Agreement.

8. While Deerin was alive he pledged his home, in which the Plaintiff currently lives, as collateral to assist the Company in obtaining a line of credit. The Defendants have refused to assist the Plaintiff in removing her home and any other assets Deerin pledged as collateral on the line of credit.

9. In addition, Defendants refuse to cooperate with Plaintiff regarding this matter, including refusing to assist Plaintiff in obtaining information regarding the Estate’s assets pledged as collateral, refusing to hand over information regarding the life insurance policy, and refusing to give any other information regarding the operations of Ocean Rich Foods, LLC, even

though Plaintiff is now responsible for a 1/3 interest of the LLC as Executor of the Estate of Douglas Deerin.

**THE PLAINTIFF IS ENTITLED TO A TEMPORARY RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION**

10. Plaintiff seeks a Temporary Restraining Order and Preliminary Injunction restraining, enjoining and prohibiting OCEAN RICH FOODS, LLC, RICHARD MARINO, and DEAN BERMAN and their agents or anyone acting on their behalf from spending, transferring, distributing, encumbering, secreting, liquidating, hypothecating, pledging, disbursing or otherwise disposing of the \$1.5 million of life insurance proceeds from the life insurance policy on the life of Douglas Deerin received by the Company and from impairing or otherwise placing in jeopardy any of the Estate's assets that are currently collateral for any loans or lines of credit the Company may have.

11. On a motion for a preliminary injunction, the applicant must prove three things, namely: (1) the likelihood of ultimate success on the merits, (2) irreparable injury absent the granting of the preliminary injunction, and (3) that the equities are balanced in his favor. *McLaughlin, Piven, Vogel, Inc. v. W. J. Nolan & Co.*, 114 A.D.2d 165, 172, 498 N.Y.S.2d 146, 1986 N.Y. App. Div. LEXIS 49965 (N.Y. App. Div. 2d Dep't 1986)

12. Here, as fully set forth herein and in the accompanying exhibits, the Plaintiff has established its entitlement to the injunctive relief it seeks.

**Plaintiff Will Likely Succeed On The Merits**

13. As set forth above, Plaintiff has shown that it will likely succeed on its claim for \$1.5 million in life insurance proceeds taken out on the life of Douglas Deerin and owed to his

Estate pursuant to the Agreement, or in the alternative receive 1/3 of the fair market value of the Company.

**Plaintiff Will Suffer Irreparable Harm Absent A Preliminary Injunction**

14. The purpose of a temporary restraining order and preliminary injunction is to prevent irreparable injury so as to preserve the Court's ability to render meaningful a decision on the merits. If the Defendants are allowed to spend the life insurance policy proceeds, then Ocean Rich Foods, LLC will not be able to pay a judgment awarded to Plaintiff.

15. In addition, if the Company borrows more money or further encumbers any property of the Estate that is currently collateral for any loans or line of credits the Company may have, the Company might not have the financial ability to reimburse the Estate for any losses it might incur.

16. The facts of this case warrant injunctive relief since the denial of such relief will provide the Defendants with the opportunity to spend or otherwise disburse the life insurance proceed and further impair or otherwise place in jeopardy any assets of the Estate that it will not be able to repay.

17. Given that the Plaintiff does not participate in and is not informed of the day to day operations of OCEAN RICH FOODS, LLC, Plaintiff has no means to prevent the Defendants from spending or otherwise disbursing the life insurance proceeds or further impairing or placing in jeopardy any of the Estate's assets that are collateral for the Company's loans or lines of credit. Plaintiff will most certainly sustain serious and irreparable harm if the Defendants are not enjoined by a Temporary Restraining Order and Preliminary Injunction.

### **The Balance of the Hardships Tips Decidedly In Plaintiff's Favor**

18. The balance of hardships undoubtedly favors Plaintiff. In balancing the hardships, the Court should consider whether the irreparable injury that may be sustained by Plaintiff is greater than the harm that a preliminary injunction will impose on the Defendants.

19. Plaintiff has not been paid the life insurance proceeds from the policy on the life of Douglas Deerin as the LLC's operating agreement requires. Plaintiff should not have its potential Judgment frustrated by the Defendants spending or otherwise disbursing of the life insurance proceeds.

20. Assets of the Estate have been used as collateral for outstanding loans or lines of credit on behalf of the Company. Plaintiff should not have to risk losing the Estate's assets on behalf of the Company, in which it has no control.

21. Because Plaintiff is simply requesting that the Court maintain the *status quo* the harm that will inure to Plaintiff should the Defendants be left unrestrained is far greater than any harm that they may suffer.

### **Plaintiff is Entitled to a Temporary Restraining Order**

22. When a party moves for a preliminary injunction, CPLR § 6313 confers upon the Court the ability to issue a temporary restraining order ("TRO") without notice to an adverse party to prevent "irreparable injury, loss, or damage." In this regard, CPLR §6313 provides, in pertinent part:

§ 6313. Temporary restraining order.

(a) Generally. If, on a motion for a preliminary injunction, the plaintiff shall show that immediate and irreparable injury, loss or damages will result unless the defendant is restrained before a hearing can be had, a temporary restraining order may be granted without notice. Upon granting a temporary restraining order, the court shall set the hearing for the preliminary injunction at the earliest possible time...

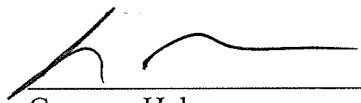
23. It is respectfully submitted that the Plaintiff has established a strong likelihood of irreparable injury, as the Plaintiff has no means of preventing the Defendants from spending or otherwise disbursing of the life insurance proceeds or protecting the Estate's assets from being used further on Company loans and lines of credit it may have.

24. No previous application for the relief sought herein has been made to this Court.

**WHEREFORE**, this Court is respectfully requested to:

- (i) issue a temporary restraining order and preliminary injunction restraining, enjoining and prohibiting spending, transferring, distributing, secreting, liquidating, hypothecating, pledging, disbursing or otherwise disposing of the \$1.5 million of life insurance proceeds from the life insurance policy on the life of Douglas Deerin received by OCEAN RICH FOODS, LLC;
- (ii) issue a temporary restraining order and preliminary injunction restraining, enjoining and prohibiting spending, transferring, distributing encumbering, secreting, liquidating, hypothecating, pledging, disbursing or otherwise disposing any Company assets and thereby impairing or placing in jeopardy the assets of the Estate that are currently being used as collateral for any loans or lines of credit the of the Company;
- (iii) together with such other and further relief as to this Court seems just and proper.

Dated: Forest Hills, New York  
February 5, 2014

  
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Gregory Haber