

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

**HON. STEPHEN A. BUCARIA**

Justice

TRIAL/IAS, PART 1  
NASSAU COUNTY

INDEX No. 10451/13

MOTION DATE: Oct. 11, 2013  
Motion Sequence # 001, 002

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SCHRIER FISCELLA & SUSSMAN, LLC,  
RICHARD E. SCHRIER, individually and on  
behalf of SCHRIER FISCELLA & SUSSMAN,  
LLC, SCHRIER SHAYNE KOENIG SAMBERG  
& RYNE, P.C. and KOENIG AND SAMBERG,

Plaintiffs,

-against-

JAMES B. FISCELLA, AMY R. SUSSMAN,  
JAMES B. FISCELLA, ESQ., P.C., AMY R.  
SUSSMAN, ESQ., P.C. and FISCELLA &  
SUSSMAN LLC,

Defendants.

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The following papers read on this motion:

Order to Show Cause..... X  
Notice of Motion..... X  
Affidavit in Opposition..... X  
Affidavit in Reply..... X

Motion by plaintiffs for a preliminary injunction, restraining defendants from removing equipment, destroying books or records, assigning any rights, interfering with the business of plaintiff Schrier Shayne Koenig and Samberg & Ryne, PC, and other relief is **granted** to the extent that the temporary restraining order is continued pending final judgment. Motion by defendants to dismiss for lack of personal jurisdiction and to vacate the temporary restraining order is **denied**.

This action arises from the breakup of a law partnership. Plaintiff Richard Schrier is an attorney, as are defendants James Fiscella and Amy Sussman. Until recently, the parties practiced law as a partnership, plaintiff Schrier Fiscella & Sussman, LLC.

Plaintiffs allege that commencing January 1, 2011, and continuing through April 10, 2013, Fiscella deposited legal fees into a separate bank account which he controlled, rather than into the regular partnership bank account. Plaintiffs allege that Sussman also deposited the fees which she earned into a separate account. Plaintiffs allege that Schrier eventually deposited fees which he earned into a separate account, allegedly with the consent of the defendants.

Around May 2011, a dispute arose between Schrier and Fiscella concerning the distribution of the legal fee earned representing a client, Robert Denenberg. Plaintiffs allege that on December 28, 2012, Fiscella withdrew money from the firm's lawyer's account without Schrier's knowledge or consent. Plaintiffs further allege that Fiscella withdrew \$17,191.48 from Schrier's account, which he deposited into the firm account, but then withdrew the funds by a check payable to Fiscella. On April 15, 2013, Fiscella and Sussman began practicing as defendant Fiscella & Sussman, LLC. On May 15, 2013, Schrier formed a new firm known as plaintiff Schrier Shayne Koenig Samberg & Ryne, PC.

This action was commenced August 23, 2013. In the first cause of action, plaintiffs assert a claim for breach of fiduciary duty based upon unauthorized transfers from the Schrier account. The second cause of action is for conversion of funds from the Schrier account. The third cause of action is for unjust enrichment based upon withdrawal of funds from the former firm account. The fourth cause of action is for an accounting. The fifth cause of action is for a declaratory judgment with respect to ownership of firm phone and fax numbers. The sixth cause of action is for an injunction restraining interference with Schrier's telephone and fax numbers. The seventh cause of action is for specific performance of an alleged agreement with respect to disposition of the phone and fax numbers. The eighth cause of action is for a declaratory judgment as to the validity of a sublease, covering a portion the former firm's office space, with Schrier, Fiscella & Sussman as sublandlord and Schrier Shayne Koenig Samberg & Ryne as subtenant. The ninth cause of action is for an injunction restraining defendants from evicting Schrier, or his new associates, from the premises. The tenth cause of action is for breach of the lease by failing to return the \$5,000 security deposit. The eleventh cause of action is for tortious interference with Schrier's business relations with his clients. The court notes that plaintiffs do not seek dissolution of the limited liability company, Schrier, Fiscella & Sussman.

By order to show cause dated August 23, 2013, plaintiffs seek a preliminary injunction, restraining defendants from removing equipment owned by Schrier, Fiscella & Sussman, destroying its books or records, assigning any rights of the company, interfering with the business of Schrier Shayne Koenig and Samberg & Ryne, interfering with certain telephone and fax numbers, evicting Koenig or Samberg, assigning the lease to the premises, causing Schrier, Fiscella & Sussman to incur any expenses, entering Schrier or Koenig's individual office, or interfering with Schrier Fiscella & Sussman's website or email address.

In the order to show cause, the court temporarily restrained defendants from removing equipment, destroying business records, assigning company rights, interfering with the business of Schrier Shayne Koenig and Samberg & Ryne, evicting Koenig or Samberg, assigning the lease to the premises, causing Schrier, Fiscella & Sussman to incur any expenses, or interfering with Schrier Fiscella & Sussman's website or email address.

Defendants move to dismiss the complaint for lack of personal jurisdiction and to vacate the temporary restraining order.

"[C]ourts are generally loath to intercede in squabbles between partners that result in piece-meal adjudications, preferring that partners either settle their own differences amicably or dissolve and finally conclude their affairs by a full accounting" (*Gramercy Equities Corp. v Dumont*, 72 NY2d 560,564-65 [1988]). Plaintiffs may be reluctant to seek dissolution of Schrier, Fiscella & Sussman because of the effect that dissolution would have on the main lease to the premises, or for other reasons. Nevertheless, the court is loath to adjust the dispute between the members of the company, absent dissolution and a final accounting.

Plaintiffs' motion for a preliminary injunction is **granted** only to the extent that the temporary restraining order is continued pending final judgment. Defendants' motion to dismiss for lack of personal jurisdiction is **denied**, as defendants admitted service of the summons and complaint, which were annexed as exhibits to the order to show cause.

So ordered.

Dated NOV 12 2013

  
J.S.C.

**ENTERED**

NOV 14 2013

NASSAU COUNTY  
COUNTY CLERK'S OFFICE