

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA

Justice

TRIAL/IAS, PART 1
NASSAU COUNTY

INDEX No. 001732/13

MOTION DATE: Oct. 17, 2013
Motion Sequence # 005

STEVEN GOLDSTEIN, individually and as a
Shareholder of GALAXY CUSTOM HOUSE
BROKERS, INC. and GALAXY FREIGHT
SERVICE, LTD.,

Plaintiffs,

-against-

EDWIN GOLDSTEIN, GALAXY CUSTOM
HOUSE BROKERS, INC., GALAXY FREIGHT
SERVICE, LTD. and GALAXY WORLDWIDE
LOGISTICS, INC.,

Defendants.

The following papers read on this motion:

- Order to Show Cause..... X
- Affirmation in Support..... X
- Affidavit in Opposition..... X
- Supplemental Affidavit in Limited Opposition... X
- Affidavit in further Support..... X
- Affidavit in further Opposition..... X
- Memorandum of Law..... X

Motion by plaintiff Steven Goldstein for an order appointing a receiver for defendants Galaxy Custom House Brokers Inc., Galaxy Freight Service, Ltd., and Galaxy Worldwide Logistics, and non-party Logistical Data Solutions, Inc. is **denied**.

This action arises from a dispute between the shareholders of a group of affiliated close corporations. Plaintiff Steven Goldstein, and his brother, defendant Edwin Goldstein are each 50 % shareholders of plaintiffs Galaxy Custom House Brokers Inc. and Galaxy Freight Service, Ltd. The corporations are engaged in the world-wide heavy freight and trucking business. Steven and Edwin are also each 1/3 shareholders of non-party Logistical Data Solutions, Inc., a corporation whose principal place of business is in the Ukraine. Logistical Data Solutions provides back office support to Galaxy Freight.

Steven alleges that on October 12, 2012, Edwin and non-party Josh Reichman formed a new company, defendant Galaxy Worldwide Logistics, Inc., which competes with Galaxy Custom House Brokers and Galaxy Freight Service in the international freight business. Steven alleges that Edwin has misappropriated the trade secrets and assets of the latter companies.

This action was commenced around February 7, 2013. Plaintiffs assert claims for breach of fiduciary duty, breach of the duty of loyalty, diversion of corporate opportunity, fraud, and conversion. The court notes that plaintiffs do not seek the judicial dissolution of any of the jointly owned companies.

Plaintiff moves for the appointment of a receiver for defendants Galaxy Custom House Brokers Inc., Galaxy Freight Service, Ltd., and Galaxy Worldwide Logistics, and non-party Logistical Data Solutions, Inc. Steven argues that Edwin is making unnecessary expenditures by offering Logistical Data employees free travel to the United States, and offering higher salaries and benefits to Galaxy Custom House employees, if they switch to Galaxy Worldwide. Additionally, Steven claims that Edwin is exposing the Galaxy companies to liability by authorizing the release of goods without the original bill of lading.

In opposition to the motion for a receiver, Edwin asserts that the Galaxy companies earned over \$90,000 during July 2013 and that Edwin continues to operate them profitably.

Business Corporation Law § 1113 provides that at any stage of an action or special proceeding seeking judicial dissolution of a corporation, the court may, in its discretion, make all such orders as it may deem proper in connection with preserving the property and carrying on the business of the corporation, including the appointment of a receiver, who may be a director, officer, or shareholder of the corporation.

A party moving for the appointment of a temporary receiver must submit clear and

convincing evidence of irreparable loss or waste to the subject property and that a temporary receiver is needed to protect their interest (*Bd of Managers v Nob Hill Condominium*, 100 AD3d 673 [2d Dept 2012]). The appointment of a receiver is a drastic remedy; the court should exercise extreme caution in the appointment of receivers, which should never be made until a proper case has been clearly established (*Matter of Armienti & Brooks*, 309 AD2d 659 [1st Dept 2003]). The use of corporate funds without authorization does not establish a risk of potential loss and may be addressed in the final accounting between the shareholders (*Matter of Harrison Realty Corp.*, 295 AD2d 220 [1st Dept 2002]). The court concludes that plaintiff has failed to make the necessary showing of danger of irreparable loss or waste to the Galaxy corporations.

“[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]). The court is loath to adjust the dispute between the shareholders of the Galaxy companies, absent dissolution and a final accounting. Plaintiff’s failure to move for the dissolution of the Galaxy companies is further grounds for denying his application for the appointment of a receiver. Finally, because plaintiff is not a shareholder of defendant Galaxy Worldwide Logistics, Inc, he does not have standing to seek a receiver of that company. Plaintiffs’ motion for the appointment of a receiver for defendants Galaxy Custom House Brokers Inc., Galaxy Freight Service, Ltd., and Galaxy Worldwide Logistics, and non-party Logistical Data Solutions, Inc. is denied.

So ordered.

Dated NOV 12 2013


J.S.C.

ENTERED

NOV 14 2013

NASSAU COUNTY
COUNTY CLERK'S OFFICE