

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA

Justice

REINA V. CARRILLOS,

Plaintiff,

-against-

SUYAPA GOMEZ and ARLINGTON
BODDEN CORP.,

Defendants.

TRIAL/IAS, PART 1
NASSAU COUNTY

INDEX No. 023142/10

MOTION DATE: April 29, 2011
Motion Sequence # 001

The following papers read on this motion:

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

Motion by plaintiff for a preliminary injunction is granted and denied to the extent indicated below.

This is an action for a declaratory judgment. Plaintiff Reina Carrillos and her husband, Orlando, were the owners of a corporation, La Esquina Restaurant, Inc, which operated a bar and restaurant at 387 Fulton Avenue in Hempstead. On October 28, 2008, plaintiff and her husband sold the corporation to Oscar Montiel. Montiel died on May 18, 2010.

In June of 2010, plaintiff learned that the premises where La Esquina had been

operated were vacant. Plaintiff contacted the owner of the property, ADM Properties, LLC, in an effort to negotiate a lease for the premises. ADM's attorneys, Goldstein & Rodriguez, LLP, introduced plaintiff to another of their clients, defendant Suyapa Gomez.

Plaintiff alleges that the parties agreed that they would form a joint venture to lease the bar and that a corporation previously formed by Gomez, Arlington Bodden Corp, would be the tenant. Plaintiff further alleges that the parties agreed that Arlington Bodden Corp would be owned on an equal basis. The bar opened for business in November 2010 under the name of Gusto Latino Bar & Restaurant, but a dispute soon arose between the parties.

This action was commenced on December 17, 2010. Plaintiff seeks a declaratory judgment that she is a 50 % shareholder of Arlington Bodden and an accounting with respect to the affairs of the corporation.

Plaintiff moves for a preliminary injunction restraining defendants from wasting Arlington Bodden's assets and impeding plaintiff from performing her duties as a shareholder of the corporation. Plaintiff also seeks an order directing defendants to disclose to plaintiff the current financial status of the corporation.

While Gomez does not dispute agreeing to form a joint venture with plaintiff, Gomez asserts that she was to be the majority shareholder with a 60 % interest in the corporation. Gomez further asserts that the liquor license application, tax forms, and other documents showing Carillos as being a 50 % shareholder were prepared by attorney Lawrence Goldstein without Gomez' knowledge and in violation of Goldstein's professional obligation.

In order to be entitled to a preliminary injunction, defendants must show a likelihood of success on the merits, danger of irreparable injury in the absence of an injunction, and a balance of the equities in their favor (*Aetna Ins. Co. v Capasso*, 75 NY2d 860 [1990]).

The indicia of the existence of a joint venture are: acts manifesting the intention of the parties to be associated as joint venturers; mutual contribution to the undertaking through a combination of property, financial resources, effort, skill, or knowledge; a measure of joint proprietorship and control over the enterprise; and a provision for the sharing of profits and losses (*Richbell Information Services v Jupiter Partners*, 309 AD2d 288, 298 [1st Dept 2003]). Complete equality among the members with respect to these required elements is not necessary to establish a joint venture (Id).

Plaintiff has established a likelihood of success on her claim that Gusto Latino was to be operated as a joint venture. However, she has not established a likelihood of success with respect to her claim that the venture was to be owned and operated on a 50-50 basis. Plaintiff's motion for a preliminary injunction restraining defendants from impeding plaintiff from performing her duties as a shareholder of Arlington Bodden Corp is denied. Plaintiff offers no evidence that defendant Gomez has wasted corporate assets. Thus, plaintiff's motion for a preliminary injunction restraining defendants from wasting Arlington Bodden's assets is similarly denied.

Plaintiff's motion for an order directing defendants to disclose to plaintiff the current financial status of the corporation is granted to the extent that defendants shall permit plaintiff to inspect the books and records of Arlington Bodden Corp. and/or Gusto Latino Bar & Restaurant upon five days written notice to the corporation.

A status conference is scheduled for August 29, 2011 at 9:30 a.m. in Chambers of the undersigned.

So ordered.

Dated JUN 22 2011


J.S.C.

ENTERED
JUN 24 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE