STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY
COMMERCIAL DIVISION

JUSTIN A. HELLER, as Executor of the Estate of G. Eric Lewis, Directly and Derivatively on Behalf of HYPERBARIC TECHNOLOGIES, INC.,

Plaintiff, **DECISION & ORDER**

-against-

PETER A. LEWIS, G. RICHARD LEWIS,

Defendants.

Index No. 901146-15

APPEARANCES:

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Hon. Richard M. Platkin, A.J.S.C.

Plaintiff Justin A. Heller, as executor of the Estate of G. Eric Lewis, brings this commercial action directly and derivatively on behalf of Hyperbaric Technologies, Inc. ("HTI"). By Order to Show Cause dated September 29, 2015, plaintiff seeks to: (i) restrain the payment of certain corporate funds to defendants Peter A. Lewis and G. Richard Lewis and to compel the payment of dividends to HTI shareholders; (ii) prohibit defendants from taking any action as officers and directors of a separate corporation, Breton Industries, Inc. ("Breton"), that would adversely affect HTI; and (iii) compel access to HTI's corporate books and records. Defendants oppose the motion and cross-move for dismissal of this case due to the alleged pendency of another action between the parties or, in the alternative, as barred by collateral estoppel.

BACKGROUND

HTI is a corporation engaged in the business of developing and distributing hyperbaric chambers. According to the Verified Complaint ("Complaint"), this work is based upon proprietary designs and trade secrets owned by the corporation. HTI's products are manufactured exclusively by Breton, a corporation owned and controlled by the two defendants, and sold by a distributor located in California.

Since its founding, three shares of HTI stock have been issued, each representing a one-third ownership interest in the corporation. The initial three shareholders and directors were: G. Eric Lewis ("decedent"); MaryRose Lewis (the mother of the decedent and wife of G. Richard Lewis); and Peter Lewis (the brother of G. Richard Lewis).

Under a written employment agreement effective in or about October 2007 ("Employment Agreement"), Peter Lewis was designated as HTI's president and chief executive officer, with an annual salary of $175,000. Sometime in or about 2007, G. Richard Lewis was designated as HTI's chief financial officer, a part-time position with an annual salary of $60,000. With the exception of a part-time administrative assistant, these individuals were the only employees of HTI.

Plaintiff alleges that, prior to execution of the Employment Agreement, Peter Lewis was taking almost $28,000 per week in purported salary payments from HTI without the knowledge, approval or authorization of the other shareholders or directors. G. Richard Lewis, as the chief financial officer, allegedly knew or should have known of these payments, which totaled $470,000 in 2007. Plaintiff alleges that defendants withheld this material information from HTI in order to fraudulently induce the execution of the Employment Agreement.

In 2014, Peter Lewis claimed that HTI owed him about $280,000 under the Employment Agreement. Upon review of his claim, the other two HTI directors allegedly discovered that Peter Lewis, with the approval and/or participation of G. Richard Lewis, had engaged in misappropriation and self-dealing of HTI assets. The wrongful conduct is alleged to have included unauthorized payments of Peter Lewis's personal and family expenses, payments of cash "bonuses" to both defendants, and HTI's payment of personal attorney's fees for Peter Lewis. In particular, the Complaint alleges that in December 2013 each defendant took an unauthorized cash bonus of $100,000. In December 2014, Peter Lewis allegedly took another

$120,000 bonus and G. Richard Lewis took $60,000. All of these bonuses allegedly were taken without the knowledge or consent of the other two HTI directors and shareholders.

After the death of G. Eric Lewis in November 2014, plaintiff succeeded to his interest in HTI as trustee of a family trust and executor of his estate. At a shareholders' meeting held in January 2015, plaintiff and M. Tracey Brooks (decedent's widow) were elected as directors of the corporation, and Peter Lewis was removed as an HTI director and his employment terminated.

In or about February 2015, Peter Lewis commenced an action in Supreme Court, Schenectady County, against HTI (Index No. 2015-138 ["Schenectady Action"]), alleging breach of the Employment Agreement. In its answer, HTI asserted counterclaims against Peter Lewis sounding in fraud, conversion, breach of contract, breach of fiduciary duty and misappropriation.

MaryRose Lewis died in June 2015, and G. Richard Lewis succeeded to her interest in HTI. As majority shareholders, defendants noticed a special meeting for August 18, 2015. At the meeting, defendants voted to replace plaintiff and M. Tracey Brooks as directors. Defendants then convened a special directors meeting at which the Schenectady Action purportedly was settled. A Settlement Agreement was executed, general releases given, and a Stipulation of Discontinuance of All Claims and Counterclaims ("Stipulation of Discontinuance") signed by counsel for Peter Lewis and HTI's new counsel, Arkley L. Mastro, Esq. The settlement also provided for reinstatement of the Employment Agreement and the payment of back pay and benefits to Peter Lewis.

On September 10, 2015, a hearing was held in the Schenectady Action on, *inter alia*, the application of HTI to substitute Attorney Mastro for the corporation's prior counsel, Daniel Sleasman, Esq. The Court (Caruso, J.) orally granted the substitution motion and indicated that it was prepared to accept the Stipulation of Discontinuance. The parties were directed to settle a written order allowing substitution of counsel and discontinuing the action with prejudice. Due to certain objections lodged by Attorney Sleasman, however, the order submitted by the parties had not been signed when defendants' cross motion to dismiss was made.

The Complaint alleges ten causes of action. Seven of the claims are derivative claims brought on behalf of HTI: fraud; misappropriation; breach of fiduciary duty; breach of contract (against Peter Lewis only); and conspiracy. Plaintiff also seeks a judgment invalidating the Settlement Agreement and an order removing HTI's officer and directors. The final cause of action alleges breach of a dividend plan approved by HTI's directors on June 16, 2015.

Oral argument on plaintiff's motion for a preliminary injunction and defendants' cross motion to dismiss the action was held on December 11, 2015. This Decision & Order follows.

MOTION TO DISMISS

A. Pendency of Another Action

CPLR 3211 (a) (4) authorizes the dismissal of an action on the ground that "there is another action pending between the same parties for the same cause of action". The Court "need not dismiss upon this ground but may make such order as justice requires" (*id.*).

Subsequent to the return date of defendants' cross motion, the Court was provided a copy of an Order signed on October 30, 2015 in the Schenectady Action, granting HTI's motion for

substitution of counsel. With respect to the settlement, the Court struck proposed language providing that all "claims and counterclaims shall be discontinued on the merits, with prejudice" and substituted the following language: "[I]nasmuch as the parties herein have apparently executed a Stipulation of Discontinuance on August 18, 2015, the Court makes no findings as to the merits of any claims or counterclaims asserted in this action".

As the Schenectady Action no longer is pending, the branch of defendants' motion seeking the dismissal of this action under CPLR 3211 (a) (4) is denied. The Court further finds that defendants have failed to establish a persuasive basis for transferring this action to Supreme Court, Schenectady County.

B. Collateral Estoppel

Alternatively, defendants contend that this action is subject to dismissal pursuant to CPLR 3211 (a) (5) under the doctrine of collateral estoppel. Specifically, defendants argue that the issues and contentions raised by plaintiff in this action should have been raised in the Schenectady Action. According to defendants, "September 10, 2015 in Supreme Court, Schenectady County was the time and place for Plaintiff and his counsel to make the arguments attempting to be advanced at present. Having declined to take advantage of that opportunity, Plaintiff should not be rewarded by being allowed to advance those arguments in this Court" (Defendants' Reply Memorandum of Law, at 4).

"Collateral estoppel, or issue preclusion, prevents a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party" (*Pinnacle Consultants, Ltd. v Leucadia Natl. Corp*., 94 NY2d 426,

431-432 [2000] [internal quotation marks and citations omitted]). "It is a doctrine intended to reduce litigation and conserve the resources of the court and litigants and it is based upon the general notion that it is not fair to permit a party to relitigate an issue that has already been decided against it" (*Kaufman v Eli Lilly & Co.*, 65 NY2d 449, 455 [1985]). "The party seeking to invoke collateral estoppel has the burden to show the identity of the issues, while the party trying to avoid application of the doctrine must establish the lack of a full and fair opportunity to litigate" (*Matter of Dunn*, 24 NY3d 699, 704 [2015]).

Defendants' invocation of collateral estoppel is without merit. "[C]ollateral estoppel effect will only be given to matters actually litigated and determined in a prior action. If the issue has not been litigated, there is no identity of issues between the present action and the prior determination. An issue is not actually litigated if, for example, there has been . . . a stipulation" (*Kaufman*, 65 NY2d at 456-457 [internal quotation marks and citations omitted]). Indeed, the Order entered in the Schenectady Action expressly recites that no factual findings were made by the Court "as to the merits of any claims or counterclaims". As a result, the Order is not entitled to preclusive effect under the doctrine of collateral estoppel.

MOTION FOR PRELIMINARY INJUNCTION

To obtain a preliminary injunction, the moving party has the burden of demonstrating: (1) a likelihood of ultimate success on the merits; (2) the prospect of irreparable harm in the absence of the requested injunctive relief; and (3) a balance of the equities tipping in favor of the movant (*see* CPLR 6301; *Nobu Next Door, LLC v Fine Arts Hous., Inc.*, 4 NY3d 839, 840

[2005]; *Confidential Brokerage Servs., Inc. v Confidential Planning Corp*., 85 AD3d 1268, 1269 [3d Dept 2011]).

A. Likelihood of Success

1. Settlement Agreement

Plaintiff contends that defendants' August 18, 2015 actions on behalf of HTI to settle the Schenectady Action are void (or voidable) under Business Corporation Law § 713 as the product of improper self-dealing. On the basis of these allegations, plaintiff seeks an order preliminarily enjoining the payment of compensation, bonuses or benefits to defendants.

At a meeting held on August 18, 2015, defendants, constituting the HTI board of directors, voted unanimously to: (a) appoint Peter Lewis as president/CEO and G. Richard Lewis as treasurer; (b) authorize settlement of the Schenectady Action; (c) reinstate Peter Lewis's Employment Agreement with certain modifications; and (d) hire G. Richard Lewis as HTI's chief financial officer. Under the Settlement Agreement, also executed on August 18, 2015, HTI and Peter Lewis agreed to execute general releases and execute a Stipulation of Discontinuance of the Schenectady Action. The Settlement Agreement further provides that Peter Lewis shall receive $114,119 in back pay and execute an amendment to his Employment Agreement reducing his annual salary from $175,000 to $125,000.

Under Business Corporation Law § 713 (b), a transaction between a corporation and one or more its directors may be held void or voidable where the transaction is not approved in compliance with the requirements of subdivision (a) of the statute. Under Business Corporation Law § 713 (a), such a transaction is authorized:

> (1) If the material facts as to such director's interest in such contract or transaction . . . are disclosed in good faith or known to the board or committee, and the board or committee approves such contract or transaction by a vote sufficient for such purpose without counting the vote of such interested director or, if the votes of the disinterested directors are insufficient to constitute an act of the board as defined in section 708 (Action by the board), by unanimous vote of the disinterested directors; or
>
> (2) If the material facts as to such director's interest in such contract or transaction and as to any such common directorship, officership or financial interest are disclosed in good faith or known to the shareholders entitled to vote thereon, and such contract or transaction is approved by vote of such shareholders.

Defendants do not dispute that Peter Lewis had a substantial financial interest in the actions taken by the HTI board of directions ("Board") on August 18, 2015, but they argue that the actions were properly approved by the vote of HTI's sole disinterested director: G. Richard Lewis.

"Directors are self-interested in a challenged transaction where they will receive a direct financial benefit from the transaction which is different from the benefit to shareholders generally" (*Marx v Akers*, 88 NY2d 189, 202 [1996] [citations omitted]). A director's interest "can be either self-interest in the transaction at issue or [the result of] a loss of independence because a director with no direct interest in a transaction is controlled by a self-interested director" (*Park River Owners Corp. v Bangser Klein Rocca & Blum, LLP*, 269 AD2d 313 [1st Dept 2003]). A director who is complicit in another director's alleged wrongdoing or who was a beneficiary of the alleged wrongdoing may be deemed an interested director (*see Tsutsui v*

Barasch, 67 AD3d 896, 897-898 [2d Dept 2009]; *Matter of Comverse Tech., Inc. Derivative Litig.*, 56 AD3d 49, 54 [1st Dept 2007]).

Applying these principles, the Court finds that plaintiff has demonstrated a fair likelihood of success in establishing that G. Richard Lewis had a substantial interest in the Board's determination to settle the Schenectady Action. One such interest appears to have based upon G. Richard Lewis's desire to return to compensated employment with HTI, a decision that rested solely with Peter Lewis. A further interest arises out of the allegations that G. Richard Lewis was complicit in Peter Lewis's alleged misappropriation of HTI funds and engaged in similar misappropriations with his brother's cooperation. As a result, G. Richard Lewis appears to have had a substantial financial interest in discontinuing the Schenectady Action so as to avoid disclosure of his alleged wrongdoing and the prospect of legal liability therefor.

Even where a transaction between a corporation and one or more interested directors is not approved in compliance with Business Corporation Law § 713 (a), the transaction will stand if the proponents "establish affirmatively that the contract or transaction was fair and reasonable as to the corporation at the time it was approved" (*id.* [b]). In extolling the benefits of the Settlement Agreement, defendants focus on the reduced level of compensation provided to Peter Lewis and the benefits allegedly accruing to HTI through Peter Lewis's renewed employment with the corporation. Defendants also emphasize that settlement of the Schenectady Action allows HTI to avoid the considerable time and expense of litigation and move ahead productively with its business.

While these factors all warrant consideration in assessing whether the Settlement Agreement was fair and reasonable to HTI, the merits of the allegations of wrongdoing against Peter Lewis must also play an important role. If Peter Lewis did, in fact, defraud HTI, engage in the continuing misappropriation of HTI funds and breach his fiduciary duties to the corporation, the propriety of his renewed employment and its long-term benefit to HTI are questionable. Moreover, the potential monetary recovery from Peter Lewis foregone by HTI also is critical to the fairness inquiry.

As the present record is insufficiently developed to fully assess the merits of plaintiff's claims of past misconduct, the Court has no basis upon which to conclude that defendants' determination to authorize settlement of the Schenectady Action was fair and reasonable to HTI.

Based on the foregoing, the Court finds that plaintiff has demonstrated a fair (but not overwhelming) likelihood of success on its eighth cause of action, seeking a declaration that defendants' August 18, 2015 actions on behalf of HTI to settle the Schenectady Action are void (or voidable) under Business Corporation Law § 713 as the product of improper self-dealing.

2. Payment of Dividends

The second branch of plaintiff's motion seeks to compel HTI to pay dividends to shareholders in accordance with a resolution of the Board dated June 16, 2015 ("Resolution"). This claim for preliminary injunctive relief is predicated upon the tenth cause of action, by which plaintiff brings a direct claim as a shareholder seeking to enforce the Resolution under a contractual theory as an alleged third-party beneficiary.

As pertinent here, the Resolution authorizes and directs HTI to pay cash dividends of $14,500 per month to each shareholder, so as to provide each shareholder with an annual dividend of $175,000. Under the Resolution, "[t]he directors shall review the dividend payment formula and payment schedule . . . on a quarterly basis to ensure that, in the best business judgment of the directors exercised in good faith and based on all then current circumstances, [HTI] will have sufficient capital and/or surplus as may be required to satisfy its current obligations and to maintain its business operations." In the event that the Board deems it necessary to reduce the monthly dividend payment, the Resolution calls for advance written notice to the shareholders "with a detailed explanation for [the] adjustment". The Resolution states that it is "intended to be binding on [HTI] for the benefit of each of the shareholders" and "may be rescinded only by the unanimous approval of the directors and shareholders". Finally, "in order to secure the foregoing resolutions and ensure dividends payable to the shareholders, any employment or other remuneration to any shareholder or immediate family member of any shareholder . . . will require unanimous shareholder approval".

The Court concludes that plaintiff has not demonstrated a likelihood of success in compelling the defendants to authorize the payment of dividends pursuant to the Resolution under a contractual theory or otherwise.[1] As the Court of Appeals held in *Lindgrove v Schluter & Co.* (256 NY 439, 444-445 [1931]):

[1] Insofar as plaintiff seeks to compel the corporation to pay dividends, the Court observes that HTI has not been joined as a party to this action.

> Even if the [Resolution's] words disclosed the assumption of such an obligation [to pay dividends], the plaintiff would not be helped. The directors of a corporation owe a duty to their stockholders to exercise an impartial judgment in reference to the declaration of dividends, and to declare them only when, under the existing circumstances, a declaration will seem best to serve the corporate interests; and no contract, engaging them unrestrictedly to declare dividends, can have any legal force. Such an agreement would be dishonest and illegal; it would be an agreement to commit a breach of trust. What is true of contracts by directors is true of contracts by corporations, which may act only through directors. Consequently, the plaintiff has no contract right to have dividends declared, which may be enforced herein.

In addition, the Resolution appears to suffer from certain procedural infirmities, including the absence of shareholder approval (*see* Business Corporation Law §§ 601 [requiring shareholder approval for changes in voting requirements]; 713 [providing a safe harbor for transactions in which directors are interested]) and the lack of compliance with Business Corporation Law § 510.

The payment of corporate dividends lies in the sound business judgment and discretion of the Board, and a minority shareholder challenging the actions (or inactions) of a board must demonstrate "that the directors have acted in bad faith, fraudulently or dishonestly in establishing the dividend policy of the corporation[]" (*Cashman v Petrie*, 14 NY2d 426, 428 [1964]; *City Bank Farmers' Trust Co. v Hewitt Realty Co.*, 257 NY 62, 66 [1931] [actions of directors must be shown to be "inimical to the welfare of the corporation and all its stockholders"]).

Plaintiff does not seem likely to succeed in making such a showing here. He complains principally that the resumption of payments to the defendants under their employment

agreements will leave no surplus from which equitable dividend payments can be made to all shareholders. But the potential lack of corporate funds sufficient to pay discretionary dividends at the end of the fiscal year – the long-standing custom and practice of HTI prior to the June 2015 Resolution – is not a persuasive argument in favor of granting an injunction compelling the mandatory payment of dividends on a monthly basis.

3. Breton

The third branch of plaintiff's motion seeks a preliminary injunction restraining defendants "from taking any action as officers or directors of [Breton] to increase or otherwise adversely affect HTI costs or fees to be paid to Breton". In this connection, the Complaint alleges that, as a result of defendants' joint control of HTI and Breton and "the complete control and dominion that Breton has over the day to day operations of HTI's business", HTI is "vulnerable to the whims of Peter Lewis and Richard Lewis" as the controlling shareholders and directors of both corporations. Plaintiff further alleges that Breton and its controlling shareholders and directors have a fiduciary duty to HTI "to exercise the utmost care and loyalty and to refrain from action that is adverse to the interests or damaging to the assets, good will or enterprise value of HTI".

In arguing that defendants owe fiduciary duties to HTI as the owners and directors of Breton, plaintiff cites cases holding that determination of whether a fiduciary relationship exists is a fact-specific inquiry that looks to the elements of reliance, de facto control and dominance (*Marmelstein v Kehillat New Hempstead*, 11 NY3d 15 [2008]; *see also AG Capital Funding Partners, L.P. v State St. Bank & Trust Co.*, 11 NY3d 146, 158 [2008], quoting *Northeast Gen.*

Corp. v Wellington Adv., 82 NY2d 158, 173 [1993] [Hancock, J., dissenting]; *see Murphy v Kuhn*, 90 NY2d 266, 270-271 [1987]).

But the fact that HTI may have left itself vulnerable to Breton by outsourcing the manufacturing, sales and shipping work of its products does not transform the business relationship between the two corporations into a fiduciary relationship:

> A fiduciary relationship exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation. . . . Such a relationship, necessarily fact-specific, is grounded in a higher level of trust than normally present in the marketplace between those involved in arm's length business transactions. . . . Generally, where parties have entered into a contract, courts look to that agreement "to discover the nexus of the parties' relationship and the particular contractual expression establishing the parties' interdependency. . . . If the parties do not create their own relationship of higher trust, courts should not ordinarily transport them to the higher realm of relationship and fashion the stricter duty for them. . . . However, it is fundamental that fiduciary liability is not dependent solely upon an agreement or contractual relation between the fiduciary and the beneficiary but results from the relation.

EBC I, Inc. v Goldman Sachs & Co. (5 NY3d 11, 19-20 [2005] [internal citations omitted]). There is no allegation that Breton undertook any advisory role for HTI, and no proof that the relationship between the two corporations is anything other than "an arm's length commercial relation from which fiduciary duties may not arise" (*id.* at 21-22).

As a result, plaintiff has not shown a likelihood of success in establishing defendants owe fiduciary duties to HTI in their capacity as shareholders and directors of Breton.[2]

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[2] Defendants do, of course, owe fiduciary duties to HTI and to plaintiff in their capacities as shareholders and directors of HTI.

B. Irreparable Harm

Having concluded that plaintiff has shown a likelihood of success on his claim to set aside the August 18, 2015 transactions, the Court must consider the issue of irreparable harm. In this context, irreparable harm means any injury for which a monetary award alone cannot be adequate compensation (*see Town of Liberty Volunteer Ambulance Corp. v Catskill Regional Med. Ctr.*, 30 AD3d 739, 740 [3d Dept 2006]). Further, the movant must show that the claimed injury is more than just a mere possibility and, in fact, is imminent and likely to occur absent the requested injunctive relief (*Golden v Steam Heat*, 216 AD2d 440, 442 [2d Dept 1995]).

The Court finds that plaintiff has not made a sufficient showing of irreparable harm as to warrant the requested injunctive relief. To the extent that payments made to defendants by HTI during the course of this litigation are found to be wrongful, plaintiff possesses an adequate remedy at law: money damages. Given that each defendant is a one-third owner of HTI and a co-owner of Breton, there has been no showing that a money judgment would be ineffectual.

Insofar as plaintiff seeks the return of monies already paid, the application is in the nature of a mandatory injunction – one that alters the status quo to grant plaintiff the ultimate relief it seeks in the action (*see SHS Baisley, LLC v Res Land, Inc.*, 18 AD3d 727, 728 [2d Dept 2005]). "A mandatory injunction should not be granted, absent extraordinary circumstances, where the status quo would be disturbed and the plaintiff would receive the ultimate relief sought, *pendente lite*" (*St. Paul Fire & Mar. Ins. Co. v York Claims Serv.*, 308 AD2d 347, 349 [1st Dept 2003] [internal quotation marks and citations omitted]).

Finally, the Court notes that HTI has had a compensated president/CEO and part-time chief financial officer from at least 2007 through January 2015, and there has been no showing that HTI does not require compensated management or that the compensation paid to defendants for their services is excessive. Moreover, notwithstanding the allegations of wrongdoing against Peter Lewis, it does appear from the record that he possesses the requisite experience and credentials to serve in a management role with respect to hyperbaric technologies.

Under the circumstances, the Court believes that it would be an improvident exercise of discretion to grant the injunctive relief requested by plaintiff on a preliminary basis.

C. Books & Records

Finally, plaintiff seeks an order pursuant to Business Corporation Law § 624 providing him with access to HTI's books and records and disclosure of all agreements between HTI and defendants and payments made by HTI to defendants on and after August 18, 2015. "Under New York law, shareholders have both statutory and common-law rights to inspect a corporation's books and records so long as the shareholders seek the inspection in good faith and for a valid purpose" (*Retirement Plan for Gen. Empls. of the City of N. Miami Beach v McGraw-Hill Cos., Inc*., 120 AD3d 1052, 1055 [1st Dept 2014] [citations omitted]). Thus, Business Corporation Law § 624 allows a shareholder, upon at least five days' written demand, access to certain corporate books and records, including meeting meetings, annual balance sheets and profit and loss statements. Investigating alleged misconduct and obtaining information that may aid in legitimate litigation are proper bases for a Business Corporation Law § 624 request (*id*. at 1055).

Even assuming that plaintiff's application under Business Corporation Law § 624 properly is directed at defendants, rather than the non-party corporation itself, the motion must be denied due to plaintiff's failure to make a proper written demand under Business Corporation Law § 624 (b). Plaintiff has failed to demonstrate that such a demand would be futile.

CONCLUSION

Based on the foregoing, it is

ORDERED that defendants' cross motion is denied; and it is further

ORDERED that plaintiff's motion for a preliminary injunction is denied; and it is further

ORDERED that plaintiff's motion for access to HTI's books and records pursuant to Business Corporation Law § 624 is denied without prejudice; and finally it is

ORDERED that counsel shall appear for a preliminary conference in the Chambers of the undersigned on January 29, 2016 at 9:30 a.m., after having conferred in good faith as required by the Rules of the Commercial Division.

This constitutes the Decision & Order of the Court. The original Decision & Order is being transmitted to counsel for Peter Lewis for filing and service. The signing of this Decision & Order shall not constitute entry or filing under CPLR Rule 2220. Counsel is not relieved from the applicable provisions of that Rule respecting filing, entry and Notice of Entry.

Dated: Albany, New York
December 21, 2015

/s/
RICHARD M. PLATKIN
A.J.S.C.

Papers Considered:
NYSCEF Nos. 1-62