

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM

Justice

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JONATHAN ROSEN

Plaintiff,

- v -

GEORGE TRIEBENBACHER,

Defendant.

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INDEX NO. 656493/2020

MOTION DATE 12/10/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61 were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR.

Upon the foregoing documents, for the reasons set forth on the record (1-19-2021) and as otherwise set forth below, the plaintiff’s motion for a preliminary injunction is granted.

A preliminary injunction may be entered where the movant shows (i) a likelihood of success on the merits, (ii) irreparable injury in the absence of the sought relief, and (iii) a balance of the equities in its favor (CPLR § 6301; *Manhattan Real Estate Equities Group LLC v Pine Equity, NY, Inc.*, 16 AD3d 292 [1st Dept 2005]). The plaintiff has satisfied these requirements by sufficiently demonstrating that the parties entered into a binding agreement for the plaintiff to purchase the defendant’s interests in Barrier Island Enterprises, LLC (the **BIE**) for \$1.8 million pursuant to Section 11 of the Operating Agreement and that the business of BIE was to managed by the managers which included the plaintiff, the defendant’s refusal to provide plaintiff with certain access to all the books and records of the business and or to exclude the plaintiff from the co-management of the business would cause irreparable harm, and that the balance of the equities favors the granting of injunction because the injunction only grants the plaintiff rights

that he otherwise should have in the ordinary course under the Operating Agreement and certainly in that the plaintiff will be the future sole owner of the business and exclusion of the plaintiff from the business would frustrate the Deadlock buyout provision.

Accordingly, it is

ORDERED that the plaintiff is directed to post a bond of \$25,000.00 no later than 21 days from this decision and order; and it is further

ORDERED that the defendant is restrained from (i) unilaterally taking any actions respecting the management of Barrier Island Enterprises, LLC (the **BIE**), including but not limited to BIE's business known as Kubel's Too Restaurant and Bar, and the adjacent liquor store, located at 8200 Long Beach Avenue, Long Beach Township, New Jersey 08008 (the **K2**), and BIE's property located at 13301 Long Beach Blvd., Long Beach Township, New Jersey 08008, which is the location on which a business known as M&M Steam Bar formerly operated (the **M&M Property**); (ii) interfering with the plaintiff's management rights of BIE, K2, and the M&M Property, as set forth in the Operating Agreement for BIE, dated September 26, 2017; (iii) interfering with the orderly closure of K2 (including the restaurant, bar and liquor store) due to both the pendency of the COVID-19 pandemic and that it is currently the off-season, both generating risk to the business, its employees, and its patrons, including serious health risks due to COVID-19, until at least March 31, 2021 (and subject to all regulations, laws, rules, and ordinances relating to opening the business), and (iv) the parties are further ordered to enter into a protocol with respect accessing the books and records of the business and submit same to the court to be so-ordered.



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1/19/2021
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE