

SUPREME COURT OF NEW YORK
COUNTY OF BRONX

WORBES CORPORATION and ZVI
SEBROW, individually and derivatively
as Stockholder of WORBES
CORPORATION,

Plaintiffs,

Index No.: 800583/2022E

-against-

BETTY SEBROW and BETTY
SEBROW as Administrator of the
Estate of DAVID SEBROW,

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION BY ORDER
TO SHOW CAUSE FOR A PRELIMINARY INJUNCTION**

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PRELIMINARY STATEMENT

The plaintiffs, Worbes Corporation (“Worbes”) and Zvi Sebrow, Individually and Derivatively As Stockholder of Worbes Corporation (collectively, “Plaintiffs”) submit this memorandum of law in support of their application for a preliminary injunction (the “Motion”). Plaintiffs seek to authorization for Plaintiff Zvi Sebrow to close on the contract of sale and sign deeds, or other documentation binding Worbes Corporation to a sale, contract of sale, or other disposition of property of the Worbes Corporation; and enjoining defendants Betty Sebrow and Betty Sebrow as Administrator of the Estate of David Sebrow (collectively, “Defendants”) from interfering with such sale or disposition. Plaintiffs seek this relief to protect the market value and assets of Worbes, in the interests of Worbes’ sole stockholder, Zvi Sebrow.

BACKGROUND

As set forth more fully in the Affidavit of Zvi Sebrow, the Plaintiff and his Cousin, David Sebrow, were each 50% shareholders in Worbes. Affidavit of Zvi Sebrow in support of the Instant Motion (the “Zvi Sebrow Affidavit”), ¶ 10. The exclusive business of Worbes was to hold, own, operate, and maintain certain improved real property located at 815 East 135th Street, Bronx, New York 10454 (the “Building”). Zvi Sebrow Affidavit, ¶ 8. Worbes is governed by a Stockholder Agreement, dated January 2, 1997. Zvi Sebrow Affidavit, ¶ 5 and Exhibit “A” thereto.

Paragraph 6 of the Stockholders’ Agreement provides as follows:

No stockholder of S&S, Worbes and WLC shall sell, transfer, assign, mortgage, hypothecate his shares in any of said corporations or enter into any agreement as the result of which some third party shall become a stockholder in any of said corporations without the unanimous consent of all the other stockholders ***with the sole exception that any stockholder may make a testamentary disposition of his***

shares to his issue in which event his issue shall own the shares of his deceased father but subject nevertheless to the terms and conditions contained in this agreement. ***Any other attempted transfer or disposition of such shares shall be a nullity and unenforceable.***

Zvi Sebrow Affidavit, Exhibit A at 3 (emphasis added).

Paragraph 5 of the Stockholders' Agreement provides as follows, in relevant part:

In the event of the death of a stockholder, his widow shall continue to receive his salary for a period of six (6) months following his death and shall be based on the deceased's average salary for the six (6) months prior to his death.

Paragraph 8 of the Stockholders' Agreement provides as follows:

This agreement may be amended only with the written consent of all of the stockholders and all notices and consents sent pursuant to this agreement shall in all cases be in writing.

Zvi Sebrow Affidavit, Exhibit A at 3.

Paragraph 9 of the of the Stockholders' Agreement provides as follows:

Any controversy arising out of or relating to this Agreement shall be resolved by Arbitration before a panel of three (3) arbitrators who shall consist of an orthodox rabbi, a lawyer and a layman. If the parties cannot agree on a panel, the panel shall be selected by the American Arbitration Association who shall choose the three individuals described herein. The findings of the arbitration panel shall be confirmed by the Supreme Court of the State of New York by the prevailing party. The costs of the arbitration panel shall be assessed by said panel and paid according to the panel's decision which shall be final and binding on all parties. A majority vote of the panel shall be sufficient, binding and enforceable.

Zvi Sebrow Affidavit, Exhibit A at 3-4.

Absent a court order, Betty Sebrow has indicated her intent to hold up the sale of the Building if her unreasonable demands are not met. Specifically, *inter alia*, Betty Sebrow is insisting that she receive a full 50% of the proceeds of the sale of the Building,

without any reductions for the payment of expenses associated with companies from “her share”. Zvi Sebrow Affidavit, ¶ 23.

If Betty Sebrow is permitted to continue to obstruct Zvi Sebrow’s ability to arrange for a free market sale of the Building, it will result in irreparable harm to the Plaintiffs. Specifically, (i) the tax liens will remain unsatisfied and Worbes will continue to incur high interest rates, late charges, and legal fees; (ii) Plaintiffs will be unable to forestall the pending foreclosure action on the Property; and (iii) the financial condition of Worbes will continue to deteriorate to such a point that Defendants will be unable to satisfy a judgment for the harm they caused. The Plaintiffs need the requested injunctive relief now and cannot await a final determination of all of the claims in the Complaint because Worbes will be unable to consummate a sale of the Property on the open market and will lose the Building to foreclosure, such that final judgment will be ineffectual.

ARGUMENT

Plaintiffs Are Entitled to a Preliminary Injunction.

A preliminary injunction may be granted in any action where (1) it appears that the defendant threatens to harm or is harming the plaintiffs rights in the subject of the action and such harm would render judgment ineffectual, or (2) the plaintiff seeks and is entitled to a judgment restraining the defendant from injurious conduct that would harm the plaintiff during the course of the action. See CPLR 6301.

In either type of action, a preliminary injunction is warranted when the movant has shown (a) a likelihood of success on the merits of the action; (b) a danger of irreparable injury in the absence of injunctive relief; and (c) that the balance of equities tips in favor of the moving party. See, e.g., *Nobu Next Door, LLC v. Fine Arts Housing, Inc.*, 4 N.Y.3d 839, 840 (2005). Moreover, a very strong showing on one or two factors may outweigh a

weaker showing on the remaining factor or factors. *See, e.g., Danae Art Int'l Inc. v. Stallone*, 163 A.D.2d 81, 82 (1st Dep't 1990) (strong showing on merits and balance of equities was in its favor was adequate for issuance of preliminary injunction).

A. Plaintiffs Are Likely to Succeed on Their Declaratory Judgment Claim.

As established in the prior action brought by Betty Sebrow, this case could not be simpler. Worbes is governed by the Stockholders' Agreement. Section 6 of the Stockholders' Agreement allows for a transfer or disposition of shares of the corporation *only* upon the consent of all stockholders *or* a testamentary disposition to the issue—not the widow—of a stockholder. Any other transfer or disposition of shares—whether a testamentary disposition to Betty Sebrow, or to the Estate of David Sebrow, purportedly by operation of the NY EPTL—are a “nullity” and “unenforceable.”¹ *See Sebrow v Sebrow*, 69 Misc 3d 1064, 1069-70 (Sup Ct, Bronx County 2020).

Contracts are interpreted “in accord with the parties’ intent,” the best evidence of which is the language of the contract itself, read as a whole. *Greenfield v Philles Records, Inc.*, 98 NY2d 562, 569, 572 (2002). “[A] written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms” (*id.* at 569). A contract is unambiguous if it has “a definite and precise meaning, unattended by danger of misconception in the purport of the [agreement] itself, and concerning which there is no reasonable basis for a difference of opinion.” *Breed v Ins. Co. of N. Am.*, 46 N.Y.2d 351, 355 (1978); *see Perella Weinberg Partners LLC v Kramer*, 153 A.D.3d 443, 446 (1st Dept 2017) (“To be found ambiguous, a contract must be susceptible of

¹ The intent to exclude spouses from ownership or control of Worbes (without the consent of all stockholders) is made doubly clear by the provision in Section 5 of the Stockholders' Agreement providing for the widows of stockholders to receive a pension for six months following the death of a stockholder.

more than one commercially reasonable interpretation”). Whether a contract is ambiguous “is a question of law to be resolved by the courts.” *W.W.W. Assocs., Inc. v Giancontieri*, 77 N.Y.2d 157, 162 (1990). Moreover, “provisions in a contract are not ambiguous merely because the parties interpret them differently.” *Mount Vernon Fire Ins. Co. v Creative Hous. Ltd.*, 88 N.Y.2d 347, 352 (1996).

Because the Stockholders’ Agreement unambiguously prevents **any** transfer or disposition of shares without, with one unrealized exception that was **never** fulfilled by the decedent David Sebrow, the shares of Worbes were forfeited back to the corporation, rendering Zvi Sebrow, to the exclusion of all others, the sole owner of Worbes. See *Sebrow*, 69 Misc 3d at 1069.

Moreover, even if the Defendants were to somehow succeed in claiming that Betty Sebrow is a shareholder of Worbes, contrary to the operative Shareholder Agreement, and contrary to the Order of the Court in the Prior Action, the Plaintiffs nonetheless are likely to succeed on the merits of this matter. If Betty Sebrow were found to be a shareholder, she would have a duty of care and a duty of loyalty to Worbes.

In this matter, in the unlikely event that Betty Sebrow were found to have any voting rights in Worbes, Betty Sebrow has violated her fiduciary duty to Worbes. “[T]he relationship between shareholders in a close corporation, vis-a-vis each other, is akin to that between partners and imposes a high degree of fidelity and good faith.” *Fender v. Prescott*, 101 A.D.2d 418, 422 (App. Div. 1st Dept. 1984). This includes the duty to not “plac[e] his [or her] private interests in conflict with those of the corporation.” *Id.* A shareholder in a closely held corporation may not act for “aggrandizement or undue advantage of the fiduciary to the exclusion or detriment of the stockholders.” *Alpert v.*

28 *Williams St. Corp.*, 63 N.Y.2d 557, 569, 483 N.Y.S.2d 667, 674, 473 N.E.2d 19, 25 (1984).

Betty Sebrow is not objecting to the sale of the Building because she does not believe such sale is in the best interests of Worbes. Instead, she is seeking to use the necessity of such sale as leverage for her personal financial gain, to the detriment of the Plaintiffs, the Corporation she purports to be a shareholder in and another shareholder. This bad faith is confirmed by the fact that Betty Sebrow, in the Prior Lawsuit, specifically sought the sale of the Building, yet is now refusing to cooperate with the sale of the Building unless unrelated financial concessions are made to her, personally. Accordingly, even in the unlikely event that this Court may ultimately find Betty Sebrow to be a shareholder of Worbes, there is nonetheless a likelihood that the Court will determine that Betty Sebrow, in refusing to consent to the sale of the Building, is violating her fiduciary duty to Worbes, and will order the sale to proceed, over her bad faith objection thereto.

Accordingly, Plaintiffs are more than likely to succeed on the merits of their declaratory judgment claim.

B. The Plaintiffs Will Suffer Irreparable Injury Absent a Preliminary Injunction.

Harm is irreparable if the plaintiff has no "adequate" remedy at law. *See Destiny USA Holdings, LLC v. Citigroup Global Markets Realty Corp.*, 24 Misc. 3d 1222(A), at *7 (N.Y. Sup. Ct. 2009). "Adequacy" is a flexible concept and legal remedies may be inadequate, for example, if damages are difficult to determine or cannot be promptly attained. *See Bd. of Higher Educ. of the City of New York v. Marcus*, 63 Misc. 2d 268, 272 (Sup. Ct. Kings County 1970). To be "adequate," the legal relief must be "as practicable and efficient as an equitable remedy." *Id.*

Betty Sebrow is irreparably harming Plaintiffs by incorrectly asserting that she has an ownership interest in or the right to control Worbes. Improper exertion of control over corporate governance matters is an appropriate target for a preliminary injunction. See *Louis Foodservice Corp. v. Vouyiouklis*, Index. Nos. 24890/02, 24888/02 2002 NY Slip Op 50448(U) (Sup. Ct. Kings County Aug. 26, 2002) (forbidding ex-officers lacking ownership interest from trying to carry out their former duties); *Vanderminden v. Vanderminden*, 226 A.D.2d 1037, 1041 (3d Dep't 1996) (opportunity for defendants to assume management and control of the company was irreparable injury); see also *Wisdom Import Sales Co. v. Labatt Brewing Co.*, 339 F.3d 101, 114 (2d Cir. 2003) (denial of controlling ownership interest in a corporation may constitute irreparable harm).

The Defendants' continued obstruction of the sale of the Building threatens the carrying out of Plaintiffs' plan to maximize the value of its sole asset. If Defendants are allowed to continue to obstruct, it will result in potentially irreparable harm to the Plaintiffs. Specifically, (i) the tax liens will remain unsatisfied and Worbes will continue to incur high interest rates, late charges, and legal fees; (ii) Plaintiffs will be unable to forestall the pending foreclosure action on the Property; and (iii) the financial condition of Worbes will continue to deteriorate to such a point that Defendants will be unable to satisfy a judgment for the harm they caused. See, e.g., *Street v. Vitti*, 685 F. Supp. 379, 384 (S.D.N.Y. 1988) (issuing a preliminary injunction because a monetary award was inadequate compensation); *Republic Aviation Corp. v. Republic Lodge Number 1987 Int'l Ass'n of Machinists*, 10 Misc. 2d 783, 797 (N.Y. Sup. Ct. 1957) ("An injury is irreparable when it cannot be adequately compensated in damages, or there is no certain pecuniary standard for the measurement of damages").

Further, the harm caused by Betty Sebrow's conduct may be difficult to ascertain. In addition to its cause of action for a declaratory judgment, Plaintiffs have asserted a cause of action for tortious interference with prospective business relations, given Plaintiffs' difficulties of selling the Building in light of the cloud on title cast by Betty Sebrow's baseless litigation. Doubtless, should this litigation proceed to summary judgment and trial, Betty Sebrow will contest whether any of those transactions would have been consummated absent her improper behavior. Plaintiffs' potential difficulty in proving such damages constitutes irreparable harm and weighs in favor of granting the requested preliminary injunction.

Plaintiffs cannot await a final determination of all of the claims in the Complaint. Defendants' continued prosecution of the Prior Action has undermined Plaintiffs' efforts to market and sell the Building on the open market to forestalling a foreclosure sale, such that final judgment will be ineffectual. Thus, an injunction prohibiting the Defendants from interfering with Zvi Sebrow's control of Worbes, and authorizing Zvi Sebrow to bind Worbes to a sale of the Building through his signature alone, is proper.

C. The Balance of the Equities Tips in Favor of the Plaintiffs.

The balance of equities tips in favor of a plaintiff if the harm to the plaintiff without injunctive relief will be greater than the harm to the defendant if the injunction is granted. See *Nassau Roofing & Sheet Metal Co. v. Facilities Dev. Corp.*, 70 A.D.2d 1021, 1021 (3d Dep't 1979). The balance of the equities in this case is decidedly in Plaintiffs' favor.

As explained above, the Plaintiffs will suffer irreparable injury absent injunctive relief. Defendants' obstruction of Plaintiffs' efforts to sell the Building harms his ability to manage the sale of the Building in the interests of its sole stockholder. See; *Vitti*, 685 F.

Supp. at 385 (balancing plaintiffs' injury of losing "their right to manage the company" and "protect their ownership interests" with defendant's failure to present "countervailing interests").

The Defendants, by contrast, will suffer little, if any, harm. Defendants expressly sought a sale of the Building in the Prior Action. Even assuming, for the sake of argument, that Defendants somehow have a 50% interest in Worbes, a sale of the Building will entitle them to 50% of the profits. The Order to Show Cause adequately protects this interest by depositing all funds from the sale, less amounts used by Plaintiffs to pay taxes on the property, tax liens, and closing costs, into the Court as an undertaking. Indeed, the only real benefit Defendants stand to lose is their leverage to extract unrelated concessions from Zvi Sebrow. Such illicit benefit should not weigh at all into the balance of equities.

Accordingly, this Court should grant the Plaintiffs' request for a preliminary injunction. *See, e.g. Vanderminden*, 226 A.D.2d at 1042 (noting balance of equities tips in plaintiffs' favor because absent preliminary injunction, plaintiffs were likely to lose control and ownership of the company, whereas the defendants would lose nothing).

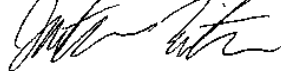
CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court issue an order in favor of Plaintiffs pursuant to CPLR § 6301 granting a preliminary injunction (1) authorizing Plaintiff Zvi Sebrow to sign any contracts, deeds, or other documentation binding Worbes Corporation to a sale, contract of sale, or other disposition of property of the Worbes Corporation; (2) enjoining Defendants from interfering with Worbes Corporation's sale of the assets of Worbes Corporation as authorized herein; and (3) any additional relief that the Court deems just and proper.

Dated: January 13, 2022

Respectfully submitted,

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INDEX NO.: ECFA20222000085

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