

At an IAS Commercial Part 12 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 30th day of January 2025.

P R E S E N T:

Honorable Reginald A. Boddie
Justice, Supreme Court

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KELLY WINRICH, individually and derivatively
on behalf of BK MADE LLC, WMP BROOKLYN
LLC, 427 TROUTMAN LLC, and 444
JEFFERSON LLC,

Plaintiff,

-against-

ANTHONY MAKES and ASHLEY MAKES, f/k/a/
ASHLEY KNOTTS,

Defendants,

BK MADE LLC, WMP BROOKLYN LLC, 427
TROUTMAN LLC and 444 JEFFERSON LLC,

Nominal Defendants.

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The following e-filed papers read herein:

MS 1
MS 2
MS 3
MS 4

Index No. 529818/2024

Cal. No. 18-21 MS 1-4

Decision and Order

NYSCEF Doc Nos.

44-77
78-81; 104-105; 108-116
82-83; 106-107; 117-126
86-102; 197-198; 202-203

This case arises out of an alleged fraudulent inducement, breach of fiduciary duties, and other misconduct by defendant Anthony Makes (“Mr. Makes”) and his wife, Ashley Makes (“Ms. Makes”), that led plaintiff and his family to purportedly invest over \$75 million in multiple live

music-related ventures in Bushwick, Brooklyn. Plaintiff contends that defendants falsely promised lucrative partnerships, including an imminent investment by Spotify, to secure long-term leases and drive more capital into the businesses. Plaintiff argues that defendants then mismanaged the ventures, diverted company funds for personal use, locked plaintiff out of the finances and operations, and ultimately destroyed the ventures' financial viability and plaintiff's substantial investments.

Plaintiff's Motion for Preliminary Injunction (motion sequence 1)

Plaintiff moves by Order to Show Cause for temporary and preliminary injunctive relief against defendants, seeking an order enjoining defendants from: (1) carrying out any "Major Decisions" or material transactions on behalf of the jointly owned entities (WMP Brooklyn LLC, BK Made LLC, 427 Troutman LLC, and 444 Jefferson LLC) without Plaintiff's consent; (2) transferring or selling any of the companies' assets; (3) taking any further actions to remove plaintiff from management or otherwise exclude him from the businesses; and (4) harming the companies' good will and financial health through unauthorized transactions. Plaintiff also seeks an order compelling defendants to reinstate his access to corporate bank accounts and company premises, and to respect his right to act as Managing Member of WMP Brooklyn.

Plaintiff argues he will suffer irreparable harm if no injunction is granted because defendants' unilateral attempt to "remove" him from WMP Brooklyn, lock him out of the live music venue, and terminate his bank access rights jeopardizes not only his contractual and fiduciary rights, but also his business reputation and control of a multi-million-dollar venture. Plaintiff contends that under New York law, the deprivation of a partner's or member's bargained-for management rights constitutes irreparable injury. Additionally, plaintiff asserts that the companies' day-to-day operations—and their ability to pay debts, manage bookings, and handle

finances—are imperiled by defendants’ alleged mismanagement and self-dealing, with little chance for recovery given their purported precarious financial standing. Furthermore, plaintiff contends that he is likely to succeed on the merits of his underlying claims—including fraudulent inducement, breach of contract, breach of fiduciary duty, and unjust enrichment—given the substantial evidence of misrepresentations by defendants, and that the balance of equities favors protecting his management rights and the status quo rather than allowing defendants to continue the alleged looting or further destabilizing the businesses.

In opposition, defendants argue that the court lacks jurisdiction as the case must be arbitrated, not litigated, given that the controlling WMP Brooklyn LLC Operating Agreement requires that all disputes—including any challenge to plaintiff’s removal as a managing member—be resolved in confidential arbitration before the American Arbitration Association. Defendants assert that plaintiff’s key factual allegations that (a) plaintiff was removed from the BK Made LLC bank account; (b) plaintiff remains locked out of social media accounts linked to the businesses; (c) plaintiff was physically prevented from accessing the 428 Troutman venue; and (d) defendants “stole” plaintiff’s 50% membership interest in WMP Brooklyn are inaccurate. Defendants argue that the only bank access change was removing plaintiff from WMP Brooklyn’s account, as permitted by the operating agreement after his removal as a managing member, not from BK Made’s account. Defendants also contend plaintiff has keys or can otherwise access the venue, and that plaintiff’s 50% ownership interest remains intact—only his management role was revoked through the operating agreement’s prescribed procedure. Defendants also argue that plaintiff’s narrative of imminent irreparable injury is greatly overstated or outright false, and that plaintiff’s motion is simply an attempt to avoid his agreed-upon obligation to arbitrate. Defendants assert

that the court must either dismiss the case or deny Plaintiff's request for injunctive relief in light of the mandatory arbitration provisions.

“Although the purpose of a preliminary injunction is to preserve the status quo pending a trial, the remedy is considered a drastic one, which should be used sparingly” (*Alayoff v Alayoff*, 112 AD3d 564, 565 [2d Dept 2013] [citation omitted]). “To obtain a preliminary injunction, a movant must establish, by clear and convincing evidence, (1) a likelihood of success on the merits, (2) irreparable injury absent a preliminary injunction, and (3) a balancing of the equities in the movant's favor” (*id.*). “The movant must show that the irreparable harm is imminent, not remote or speculative” (*Family-Friendly Media, Inc. v Recorder Tel. Network*, 74 AD3d 738, 739 [2d Dept 2010] [citations and internal quotation marks omitted]). “Moreover, [e]conomic loss, which is compensable by money damages, does not constitute irreparable harm” (*id.*). “The decision to grant or deny a preliminary injunction lies within the sound discretion of the Supreme Court” (*id.*).

“With respect to likelihood of success on the merits, the threshold inquiry is whether the proponent has tendered sufficient evidence demonstrating ultimate success in the underlying action” (*1234 Broadway LLC v W. Side SRO Law Project*, 86 AD3d 18, 23 [1st Dept 2011]). “While the proponent of a preliminary injunction need not tender conclusive proof beyond any factual dispute establishing ultimate success in the underlying action, [a] party seeking the drastic remedy of a preliminary injunction must [nevertheless] establish a clear right to that relief under the law and the undisputed facts upon the moving papers” (*id.* [citations and internal quotation marks omitted]). “Even when the facts are in dispute, a court may find a likelihood of success on the merits; conclusive proof is not required” (*Ruiz v Meloney*, 26 AD3d 485, 486 [2d Dept 2006] [citations omitted]).

Here, plaintiff established a likelihood of success on his breach of contract cause of action. “The essential elements of a cause of action to recover damages for breach of contract are (1) the existence of an enforceable contract, (2) the plaintiff’s performance pursuant to that contract, (3) the defendant’s breach of the contract, and (4) damages resulting from that breach” (*Nassau Operating Co., LLC v DeSimone*, 206 AD3d 920, 926 [2d Dept 2022]). The record includes an executed operating agreement for WMP Brooklyn LLC—an enforceable contract—that designates plaintiff as a managing member and requires unanimous consent for “Major Decisions” defined in section 5.3(a). Plaintiff has tendered evidence indicating that he performed his obligations under this agreement by contributing capital and aiding with development of the venue, while he was involuntarily removed by defendant from WMP Brooklyn’s management role, his access to certain corporate accounts blocked, and otherwise excluded from oversight and decision-making. Plaintiff has offered sufficient evidence, at this preliminary stage, that defendants’ unilateral actions amounted to a breach of the operating agreement.

With regard to irreparable harm, the inquiry is whether in the absence of a preliminary injunction to maintain the status quo, any judgment in the underlying action would be rendered ineffectual (*see Ying Fung Moy v Hohi Umeki*, 10 AD3d 604, 604 [2d Dept 2004] [citation omitted]). When this is the case, the proponent of a preliminary injunction has demonstrated irreparable harm (*id.*). Here, plaintiff contends that defendants have effectively locked him out of WMP Brooklyn’s daily management by removing his access to corporate bank accounts, excluding him from financial oversight, and changing the locks to the physical premises. Plaintiff asserts that defendants have engaged in unauthorized transfers and expenditures, using company funds in ways that may never be recoverable given the company’s precarious finances. Additionally, plaintiff submitted evidence that he has effectively been removed from participating in the

management of WMP Brooklyn, a harm that cannot be rectified by a mere award of money damages. Accordingly, plaintiff demonstrated that denying its preliminary injunction would likely render any final judgment ineffectual, thereby establishing irreparable harm.

Moreover, the balance of the equities also favors preserving the status quo so as to avert the risk of irreparable damage to WMP Brooklyn. On the one hand, plaintiff has demonstrated that immediate relief is necessary to prevent further dissipation of corporate assets, loss of crucial management rights, and harm to business goodwill in an industry where timing and relationships are key. On the other hand, requiring defendants to refrain from unilateral “Major Decisions” or asset transfers outside the ordinary course of business imposes only a minimal burden and does not preclude them from continuing routine operations.

Based on the foregoing, plaintiff’s motion is granted to the extent that defendants are hereby enjoined from engaging in or effectuating any “Major Decisions” or other material decisions with respect to WMP Brooklyn LLC, including any sale, assignment, or transfer of the company’s assets except for transactions in the ordinary course of business, and from removing or attempting to remove plaintiff from WMP Brooklyn’s management or otherwise blocking plaintiff’s access to any of WMP Brooklyn’s premises, corporate bank accounts, books and records, or ongoing operations. It is further ORDERED that defendants shall also reinstate Plaintiff’s access to WMP Brooklyn’s assets of any kind, and Plaintiff shall post an undertaking pursuant to CPLR 6312(b) in the amount of \$5,000 within 30 days of service of this Decision and Order with notice of entry. The remainder of the motion is denied. Any argument not explicitly addressed herein was considered and deemed to be without merit or unnecessary to address given the court’s determination.

Mr. Makes' Motion to Compel Arbitration and Dismiss (motion sequence 2) & Ms. Makes'


Motion to Dismiss (motion sequence 3)

On consent of all parties, motion sequences 2 and 3 are marked withdrawn in light of defendants' subsequent motions, motion sequences 5 and 6.

Plaintiff's Motion to Disqualify Defendants' Counsel (motion sequence 4)

The court hereby adjourns, sua sponte, motion sequence 4 to be returnable on February 6, 2025, to be determined with motions sequence 5 and 6.

ENTER:



Honorable Reginald A. Boddie
Justice, Supreme Court

HON. REGINALD A. BODDIE
J.S.C.