At a Special Term of the Supreme Court of the State of New York, held in the County of Chenango at the Court House in Norwich, New York, on the 21st day of April, 2008.

PRESENT: HON. KEVIN M. DOWD
JUSTICE PRESIDING

STATE OF NEW YORK
SUPREME COURT: COUNTY OF OTSEGO

COOPERSTOWN CAPITAL, LLC,

Plaintiff,

vs.

Index # 2008-0294

RJI # 2008-0099

MARTIN P. PATTON, BRENDA PATTON, MARCO LIONETTI, COOPERSTOWN ALL STAR VILLAGE, LLC and ABNER DOUBLEDAY, LLC,

Defendants.

MEMORANDUM DECISION AND ORDER

Plaintiff has moved by way of an Order to Show Cause for injunctive relief in this case. In support of its application, Plaintiff submitted the Affidavits of Richard Harlem, Esq., Joseph Ferrara, and Richard Gabriele, Esq., the Reply Affidavit of attorney Gabriele, and the Supplemental Affidavits of attorney Gabriele, Anthony Turzo and Robert Giola, all with attached exhibits. In opposition to the motion, the Pattons have presented two Affidavits from Martin Patton, an Affidavit from Edward Gozigian, Esq., and the Supplemental Affidavit of Martin Patton. The remaining Defendants have submitted the Affidavit of Marco Lionetti, the Affirmation of Joseph Maniscalco, Esq.,

the Reply Affirmation of attorney Maniscalco, together with attached exhibits, and a Memorandum of Law. The Court heard oral argument on April 21, 2008, at the Chenango County Court House, in Norwich, New York.

As the Court has noted in the two related actions already before the Court, the parties are involved in very complex and sophisticated business dealings. In summary, Cooperstown All Star Village, LLC (hereinafter CASV) owns and operates a baseball camp in Oneonta, New York. Abner Doubleday, LLC (hereinafter Abner) owns the real property upon which the camp is located. Plaintiff and its principal, Joseph A. Ferrara, assisted in obtaining the initial financing. As a result, Plaintiff became 35% owner of both CASV and Abner. The Pattons have a 35% ownership interest in the companies and Defendant Lionetti has the remaining 30% ownership interest.

This action and motion are the result of a capital call made by Abner on Plaintiff. On February 4, 2008, a notice of a special meeting was sent to Plaintiff and Defendant Lionetti. Plaintiff objected when it received the notice of the meeting to vote on the request for an additional capital call on Plaintiff. At the special meeting on February 11, 2008, the capital call was voted upon and approved. A Contribution Notice was sent the same day. The Contribution Notice required Plaintiff to pay $454,742.95 by February 27, 2008. The Notice stated that the additional capital was necessary to pay outstanding Operating Expenses consisting of unpaid interest and principal payments under promissory notes payable to the Pattons.

Pursuant to the Abner operating agreement, other members may make a capital contribution if a requested party fails to do so. Such action is treated as a loan for a

period of 90 days. Thereafter, if the loan is not repaid, the defaulting member's interest may be decreased and the contributing member(s)' interest increased accordingly. It is alleged that such a loan was made when Plaintiff did not pay the capital call. Plaintiff commenced this action and brought this motion to prevent its loss of all or most of its ownership interest.

Specifically, Plaintiff's seek a preliminary injunction preventing Defendants from taking any action to implement the contribution notice, taking any action to penalize Plaintiff for not complying with said notice, reducing or otherwise altering Plaintiff's equity interest in both companies, and other related relief. Plaintiff claims that it is entitled to the requested relief because the capital call was made in violation of the operating agreements of both companies and the call was done in a procedurally incorrect manner. The defendants deny these allegations and assert that Plaintiff has failed to establish that it is entitled to injunctive relief.

To be entitled to a preliminary injunction, a movant must demonstrate a probability of success, danger of irreparable injury absent the injunction and a balance of the equities in their favor. See Vanderminden v. Vandermindon, 226 AD2d 1037 (3rd Dept. 1996). Plaintiff has satisfied this three prong test.

Plaintiff has shown a probability of success on the merits. The operating agreement for Abner states in Section 5.2, "The Members shall contribute such additional capital on a pro rata basis in proportion to their respective "Membership Interests,"..." Section 5.8 further states that in determining the amount of any additional capital contribution the members shall consider all of the operating expenses. Operating

expenses are defined by Section 13.13 of the Operating Agreement to include payments of principal and interest due under the Patton notes. Based upon these sections, there appears to be no basis to make a capital call on Plaintiff alone.

Defendants' assertion in the Contribution Notice and their opposition papers that all other members are current in Patton payments and the entire additional capital contribution is due from and payable by Plaintiff appears to be in contradiction to the express terms of the operating agreement. Additionally, the Court notes that the rider to the lease between CASV and Abner provides that the rent payable to Abner shall be sufficient to pay the Patton notes. It is therefore questionable that Abner cannot pay its operating expenses without a capital call.

Plaintiff has also established that it will suffer irreparable harm if the injunction is not issued. The reduction of Plaintiff's equity interest would shift the balance of power and control of the companies in a manner that could cause irreparable injury. See Vanderminden, 226 AD2d at 1041. The aforesaid consequence of not issuing a preliminary injunction also makes the equities weigh in Plaintiff's favor.

CPLR 6312(b) provides for a plaintiff to post an undertaking prior to the granting of a preliminary injunction. Defendants have requested that the undertaking be one and half times the amount of the capital call. Plaintiff has requested a nominal amount for the undertaking. As previously stated the contribution call Abner wanted was in the amount of $454,742.95. According to the submissions, Abner will have net income this year of at least $238,156.51. The Court, therefore, finds that an undertaking in the amount of the difference between these two figures, or $216,585.44, shall be sufficient.

Based upon the foregoing, Plaintiff's motion is granted as set forth below, upon the giving of an undertaking by Plaintiff in the amount of $216,585.44. Defendants shall be preliminarily enjoined from taking any action to implement the contribution notice dated February 11, 2008. Defendants shall be further preliminarily enjoined from reducing, decreasing, modifying or otherwise altering Plaintiff's 35% equity interest in Abner or CASV, as a result of Plaintiff's non-compliance with the aforesaid contribution notice. Defendants shall also be preliminarily enjoined from interfering with or otherwise preventing Plaintiff from exercising its rights as a 35% member of Abner and CASV, as a result of Plaintiff's non-compliance with the aforesaid contribution notice.

This Decision shall constitute the Order of the Court.

Dated: May 28, 2008
Norwich, New York

Justice Supreme Court