

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

PRESENT: Schweitzer, J.
Justice

PART 45

Niket K. Jain

INDEX NO. 109920/2009

MOTION DATE _____

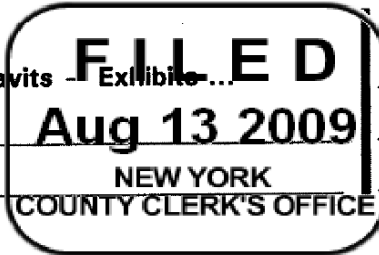
MOTION SEQ. NO. 001

MOTION CAL. NO. _____

- v -

A. James Rasteh and
White Eagle Partners, LLC

The following papers, numbered 1 to _____ were read on this motion to/for _____



PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits _____

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this ^{plaintiff's} motion for a preliminary injunction is denied and defendants' cross-motion to dismiss the complaint is granted without prejudice to replead in accordance with this court's Decision and Order entered hereto. Plaintiff is directed to serve and file his amended complaint within thirty days of the entry of the Order and Decision.

Dated: August 13, 2009

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

that Rasteh is entitled to 83% of the net profits of the company, and that Jain is entitled to 17% of the net profits of the company. See attached Exhibit A.

Jain has not committed any act whatsoever that would allow Rasteh to discharge Jain “for cause”.

Thereafter, on or about February 11, 2009, defendant Rasteh sent plaintiff Jain an e-mail stating “you will be escorted out if you come in tomorrow”, in complete violation of the aforesaid Limited Liability Company Agreement, Section 12 (a)(ii).

Thereafter, plaintiff retained counsel and demanded of defendant Rasteh his appropriate share of the capital and profits of defendant White Eagle Partners, LLC, or, in the alternative, to be allowed back into the company offices and to continue to work at the company, and to have full access to the books and records, bank accounts and stock and bond accounts of the company. Rasteh refused all of these reasonable requests by Jain.

Plaintiff has no adequate remedy at law.

Defendants oppose the motion for preliminary injunction on several grounds and cross move to dismiss the complaint. The court denies plaintiff’s motion for preliminary injunction and grants defendants’ cross-motion to dismiss the complaint.

Defendant contends that service of the Order to Show Cause on Rasteh was invalid because it was not “personal service” as directed by the court in the Order to Show Cause.¹ The Order to Show Cause and the papers in support, including the summons and complaint, were left with the doorman at Rasteh’s residence. The court deems the service to be adequate in that there is no dispute that defendants were made aware of the claim and order (*cf. Jubilee v Haslacha*, 270 AD2d 34 [1st Dept 2000]) and service on a doorman has been held to be sufficient as a

¹ Defendants do not contest this court’s jurisdiction on the basis of the service of the summons and complaint on the doorman, but contend that the court should not be permitted to address the preliminary injunction motion because the order to show cause bringing on the motion was not served by personally delivering the papers to Mr. Rasteh as they say was required by the terms of order to show cause.

“person of suitable age and discretion” to receive service at a party’s residence under CPLR 308 (2). *See Charnin v Logan*, 250 AD2d 513, 517 (1st Dept 1998). In light of this, the court will assume that the service of the order to show cause was sufficient to bring on this motion.

Assuming the court has jurisdiction to hear the motion for a preliminary injunction, the court concludes that there is no basis to grant the equitable relief requested by plaintiff. First, the complaint itself alleges that plaintiff was locked out of the premises on February 11, 2009 after which he attempted to negotiate the dispute. Thus, there is no legitimate need for immediate relief, especially one as drastic as that sought in this case, which would amount to a mandatory reinstatement with full access to White Eagle’s books and records. In the event plaintiff can carry his burden of proving that he was wrongfully forced out of his position in White Eagle, damages would be an adequate remedy. Furthermore, at this juncture plaintiff has failed to make a showing of the likelihood of success with respect to his contention that he was improperly terminated from working at White Eagle in breach of the May 2008 Operating Agreement. The court notes that defendants have submitted an affidavit from Mr. Rasteh setting forth in considerable detail conduct on the part of plaintiff that justifies plaintiff’s being terminated “for cause” under the Operating Agreement. At the very least, this is sufficient to raise a legitimate issue as to whether plaintiff will be able to sustain his burden of showing that he was terminated without cause.

Turning to defendants’ motion to dismiss the complaint, defendants argue that it does not contain particulars sufficient to give defendants notice of the transactions intended to be proven or the material elements of the causes of action to be proven. Defendants point out that the

complaint does not contain separately numbered and stated causes of action, as required by CPLR 3014. Moreover, although two Defendants are named in the caption, the complaint fails to allege which defendant committed which acts and which defendant is liable for a particular cause of action. Defendants contend that because one cannot tell what causes of action are being alleged against which defendants and what elements of particular causes of action have been pled, the complaint must be dismissed. *See Gall v Summit, Rovins & Feldesman*, 222 AD2d 225 (1st Dept 1995) (dismissing claim that appeared to sound in breach of contract as insufficiently pled). In any event, at a conference before the court's law clerk, plaintiff's counsel agreed not to oppose defendant's cross-motion to dismiss the complaint with the understanding that plaintiff may amend his complaint. Accordingly, the court grants defendants' cross-motion to dismiss the complaint without prejudice and directs plaintiff to file and serve his amended complaint within 30 days of the entry of this Order and Decision.

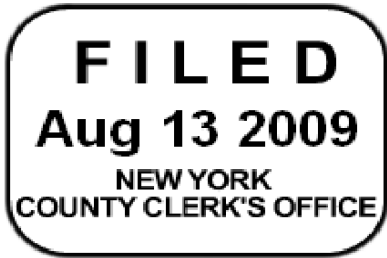
Accordingly, it is

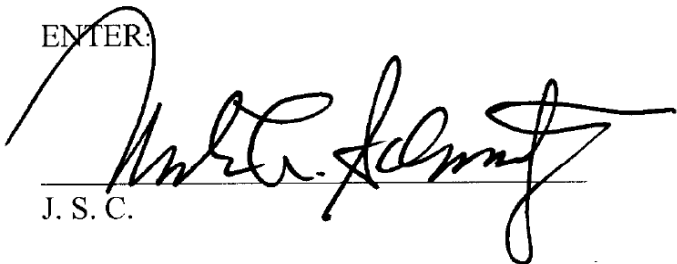
ORDERED that plaintiff's motion for a preliminary injunction is denied; and it is further

ORDERED that defendants' cross-motion to dismiss the complaint is granted without prejudice; and it is further

ORDERED that plaintiff is to file and serve his amended complaint within thirty (30) days of the entry of this Order and Decision.

Dated: August 13 2009



ENTER:

J. S. C.