

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS
Part 38

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HEALTH PEAK INC.,

Plaintiff(s)

Index no. 501396/16

-against-

DECISION/ORDER

YOEL TORIM, SHEINDEL TORIM,
and LIPA TORIM,

Defendant(s)

-----X
Recitation, as required by CPLR 2219(a), of the papers considered on the review of this motion for a preliminary injunction

PAPERS

NUMBERED

- Order to Show Cause and Affidavits Annexed 1
- Answering Affidavits 2
- Replying Affidavits
- Sur-Reply Affidavits

Upon the foregoing cited papers, the Decision/Order on this motion is as follows:

Plaintiff brings this motion to enjoin defendants from disputing charges on their credit cards, enjoining defendants from withdrawing or transferring monies from plaintiff's bank accounts and/or online merchant accounts, enjoining defendants from use of plaintiff's Amazon accounts, and restoring plaintiff's access and use of its Amazon accounts and compelling defendants to disclose the Amazon account information, including all user names and passwords.

According to the submissions, Yoel Torim (Yoel) was employed by plaintiff as a manager of three of plaintiff's health food stores. As part of his duties, Yoel purchased goods for those stores. While there is a dispute as to whether it was requested by plaintiff or Yoel, there is no dispute that for a period of about one year purchases for plaintiff were made on the credit card accounts of defendants Sheindel Torim and Lipa Torim, and that for some period the charges were, more or less, paid on time by plaintiff.

Toward the end of 2015, Yoel's employment with plaintiff was terminated. Shortly thereafter, Sheindel Torim and Lipa Torim began contesting charges on their cards, made in connection with plaintiff's stores, as unauthorized. They now say that plaintiff was not covering these charges in a timely fashion or was not paying them at all. Plaintiff asserts that the disputed charges have resulted in charge backs to merchants, creating difficulties in obtaining supplies.

Plaintiff also asserts that defendant Yoel continues to transact business and transfer funds from an Amazon account that plaintiff claims was set up by Yoel on its behalf. Yoel disputes that the account was set up for plaintiff and asserts that it was active for years prior to his relationship with plaintiff. Plaintiff seeks to enjoin Yoel from using or transferring funds from this account and to compel Yoel to turn over the accounts information including user names and passwords.

“To obtain a preliminary injunction, the moving party must establish, by clear and convincing evidence, (1) a likelihood of success on the merits, (2) irreparable injury absent a preliminary injunction, and (3) that the equities balance in his or her favor (see CPLR 6301; *Matter of Armanida Realty Corp. v Town of Oyster Bay*, 126 AD3d 894 [2015]; *M.H. Mandelbaum Orthotic & Prosthetic Servs., Inc. v Werner*, 126 AD3d 859, 860 [2015]; *Mangar v Deosaran*, 121 AD3d 650 [2014]).” (*Zoller v HSBC Mortgage Corporation (USA)*, 135 A.D.3d 932, 24 N.Y.S.3d 168, 2016 N.Y. Slip Op. 00495 [2d Dept. 2016]).

Applying this law to the facts in this matter, in regard to defendants disputing the charges on their credit cards made in connection with purchases for plaintiff's stores as unauthorized, the injunction is granted. The affirmations of Sheindel Torim and Lipa Torim essentially concede that these charges were authorized. Their justification is that plaintiff failed to pay the charges in a timely fashion.

Disputing the charges involves innocent third parties, plaintiff's suppliers and the credit card companies, in the parties dispute. There is nothing in the submissions that contradicts the affirmation of Nathan Zahler that disputing the charges is damaging plaintiff's business relationships with its suppliers, as it results in charge backs to the suppliers.

The case stands on a different footing in regard to the Amazon account. Other than Zahler's affirmation, there is no evidence that this account is the property of the plaintiff. In fact, the relief plaintiff seeks regarding disclosure of the user names and passwords for the account, strongly suggests that plaintiff is not the owner of the account.

"A mandatory injunction, which is used to compel the performance of an act, is an extraordinary and drastic remedy which is rarely granted and then only under unusual circumstances where such relief is essential to maintain the status quo pending trial of the action" (*Matos v City of New York*, 21 AD3d 936, 937 [2005] [citation omitted]; see *Village of Westhampton Beach v Cayea*, 38 AD3d 760, 762 [2007]; *Rosa Hair Stylists v Jaber Food Corp.*, 218 AD2d 793, 794 [1995]). (*Zoller v HSBC Mortgage Corporation (USA)*, 135 A.D.3d 932, 24 N.Y.S.3d 168, 2016 N.Y. Slip Op. 00495 [2d Dept. 2016]). (Id.)

The status quo is that Yoel is and has been in control of the Amazon account. To the extent that Yoel has made sales of plaintiff's products through the account and may be obligated to and failed to account for or credit plaintiff with the profits from the sales, plaintiff's remedy is a claim for money damages.

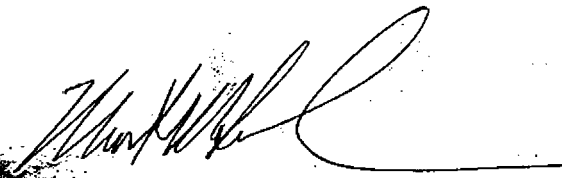
For the foregoing reasons, the motion for an injunction is granted only to the extent that

defendants Sheindel Torim and Lipa Torim from disputing as unauthorized charges on their credit cards relating to purchases for plaintiff's stores and is otherwise denied.

Motion granted in part.

Settle order.

Dated: March 21, 2016



Hon. Martin M. Solomon
J.S.C.