

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

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LITTLE REST TWELVE, INC., and IMENDINVEST

Index No. 600676/2007

Plaintiff,

-against-

RAYMOND VISAN, GEORGE V. RESTAURATION,
S.A., CREATIVE DESIGN FOR RESTAURANTS
AND BARS LTD., JEAN-YVES HAOUZI, ET AL.

**AFFIDAVIT OF
MARTIN P. RUSSO**

Defendants.

-----X

STATE OF NEW YORK)

ss.:

COUNTY OF NEW YORK)

Martin P. Russo, being duly sworn, deposes and states that:

1. I am an attorney duly admitted to practice law in the State of New York and a member of the law firm Gusrae, Kaplan, Bruno & Nusbaum, PLLC (“Gusrae Kaplan”).

2. I submit this affidavit in opposition to the motion for a preliminary injunction brought on by order to show cause supported by the Affidavit of Nina Zajic dated April 1, 2010 (the “Zajic Affidavit”). Except for those facts stated upon information and belief, I have personal knowledge of the matters set forth herein.

3. Little Rest Twelve, Inc (“LR12”) is a New York corporation which was incorporated in 2004 by Jean-Yves Haouzi. See, Affidavit of Jean-Yves Haouzi dated March 31, 2010 (“Haouzi Aff”) ¶ 3. It is owned by Jean-Yves Haouzi (15%) and Grosvenor Trading House Limited (“GTHL”) (85%). See, Haouzi Aff. ¶¶ 4-7 and Affidavit of Andrew John Baker dated March 31, 2010 (“Baker Aff”) ¶¶ 2-3 and 15-16.¹

¹ The Haouzi Aff. is annexed to the Affidavit of Daniel Branower as Exhibit A. The Baker Aff. is annexed to the Affidavit of Daniel Branower as Exhibit B.

4. There can be no dispute that GTHL is a shareholder of LR12 because Nina Zajic, Joseph Kay, David Kay and Joseph Gil admitted as much in ¶¶ 2 and 10 of their Verified Answer And Counterclaim filed with this Court in this action in November 2008. A copy of the Verified Answer And Counterclaim is attached hereto as Exhibit A. Similarly, in March 2009, Mound Cotton Wollan & Greengrass (“Mound Cotton”) – the same attorneys that were representing Nina Zajic, Joseph Kay, David Kay and Joseph Gil – filed a Verified Answer and Counterclaim on behalf of GTHL which admitted that GTHL is a shareholder of LR12. A copy of the GTHL Verified Answer And Counterclaim is attached hereto as Exhibit B. For the Court’s convenience, a copy of the Amended Verified Third Party Complaint to which these aforementioned answers respond is annexed hereto as Exhibit C.

5. Based upon a ruling of the Gibraltar Court against Joseph Kay (Ms. Zajic’s brother), Andrew Baker has determined to take worldwide action to secure and protect certain assets. See Baker Aff. ¶¶ 22-23. Together with Mr. Haouzi, such action included the removal of the directors and officers of LR12 on March 30, 2010 and the retention of Gusrae Kaplan to file a lawsuit against specific individuals. Baker Aff. ¶¶ 24-27 and Haouzi Aff. ¶¶ 8-12. Mr. Haouzi was appointed Chief Operating Officer (“COO”) and authorized to act for the company. *Id.*

6. On March 30, 2010, by unanimous consent of the shareholders and vote of the Board of Directors of LR12, Mound Cotton was terminated as counsel to LR12 in this matter. Copies of the resolutions of the shareholders and board of directors are annexed hereto as Exhibit D. Gusrae Kaplan entered and appearance in this matter and filed a substitution of counsel on April 5, 2010.

7. On March 31, 2010, Gusrae Kaplan filed a lawsuit on LR12's behalf against Nina Zajic, Joseph Kay, David Kay, and Joseph Gil seeking more than \$10 million in damages. A copy of the Summons and Complaint is attached hereto as Exhibit E.

8. Upon information and belief, the lawsuit is well founded inasmuch as Ms. Zajic and her cohorts have engaged in substantial misconduct. Such conduct appears to have included neglect (e.g., failure to pay rent and vendors, failure to timely renew the liquor license, failure to renew insurance coverage) and self-dealing (e.g., personal expenses on credit cards, private residences in corporate name) in addition to the allegations specifically made in the complaint. See Affidavit of Thierry Pomies dated April 4, 2010 ("Pomies Aff.") ¶¶ 19, 20 and 21. It may also have included a direct disregard of this Court's orders regarding the "Buddha Bar" name. Justice Ramos recently signed an order to show cause directing that LR12 and Nina Zajic demonstrate why they should not be held in contempt of Court for noncompliance with its Orders. A copy of the Order to Show Cause with supporting papers is annexed hereto as Exhibit F.

The Terminations at Ajna Bar

9. On March 31, 2010, I accompanied Mr. Haouzi, a member of the Board of Directors, a restaurant consulting team, a security team, two videographers and a computer forensics team to the premises of Ajna Bar. At no time during the day did I observe any violence. At no time during the day did I observe the display of a weapon.

10. The front door was open and we entered the premises. We immediately identified ourselves and asked to speak with a manager. No manager could be located. Sometime later, we observed Joseph Gil walking around the premises and asked for his identity. When he identified himself, he was informed that he was terminated. Mr. Gil was provided with the shareholder and

board resolutions terminating his employment. Nevertheless, Mr. Gil was permitted to remain on the premises to wait for his attorney, who he identified as Michael Koblenz of Mound Cotton.

11. I immediately called Mr. Koblenz, who was ill and at home. Mr. Koblenz informed me that neither he nor, to his knowledge, his firm had been engaged to address the terminations.

12. In the interim, the security team notified the local police precinct that we would be terminating certain employees that day and that we might need their assistance. Two police officers came to the scene, were informed about the terminations and were shown the corporate resolutions. Mr. Gil was present when they arrived and spoke privately to the officers. The officers asked that Mr. Gil be permitted to remain on the premises until Ms. Zajic and her lawyer arrived. We agreed.

13. All regular employees of LR12 that had not been terminated (kitchen staff, chefs, cleaning personnel, runners, reservationists and waiters) were allowed to enter the premises and continue their business in the ordinary course throughout the entire day.

14. Shortly after the police left the premises, we discovered Mr. Gil and, upon information and belief as to the name, Robert Mingels attempting to access a room that had the main computers and safe. Mr. Mingels had keys in his hand and was very animated. He refused to identify himself and was aggressive. Our security team called the police to the premises. I witnessed the entire incident and there was no violence. The only one acting aggressively was Mr. Mingels. When the police arrived, Mr. Mingels falsely claimed that he had been assaulted. The police questioned him and determined that no assault had occurred. Accordingly, no arrests were made.

15. Lieutenant Seidel (uniformed) also responded to the call and asked to see proof of ownership. He met with Mr. Hauouzi, checked his identification and reviewed the liquor license

documentation in Mr. Haouzi's name. In addition, Lieutenant Seidel was shown (although he did not review) the Baker Affidavit and exhibits demonstrating GTHL's ownership. After a few minutes, Lieutenant Seidel indicated that he was satisfied with the documentation and the police asked Mr. Gil and Mr. Mingels not to return to the premises. We offered Mr. Gil the opportunity to retrieve his personal affects and he entered the premises one more time to do so. We asked Mr. Gil at that time for his keys, but he claimed not to have them.

16. About an hour later, Ms. Zajic arrived with a crew of private security and tried to force her way into the restaurant. She was permitted to enter. At that time she was informed that she had been terminated and was served with the aforementioned lawsuit. Ms. Zajic claimed that her attorney was on the way. She refused to stay in one place and appeared to be attempting to access records she was no longer entitled to have. She also became very aggressive, yelling and screaming, waving her arms and falsely claiming that she had been assaulted despite clear video to the contrary. When she refused to stay in one place waiting for her attorney, our security team called the police again. The responding officers asked Ms. Zajic to wait in one area until her attorney arrived, or otherwise leave the premises. There was no violence and no weapons were displayed at any time. In all, I estimate that Ms. Zajic was on the premises for less than thirty minutes. Ms. Zajic eventually went outside to speak with Lieutenant Ramirez (wearing civil clothes) and her attorney, who had since arrived (but never entered the premises).

17. I met with Lieutenant Ramirez and Mr. Haouzi. Lieutenant Ramirez asked to see papers demonstrating ownership beyond the liquor license. He was shown those exhibits to the Baker Aff. which would demonstrate ownership by GTHL and Haouzi as the shareholders entitled to sign the resolutions we presented. After reviewing the stock certificates and the resolutions, Lieutenant Ramirez told us that he was satisfied and proceeded to go outside to again speak with

Ms. Zajic and her attorney. He instructed Ms. Zajic not to try to re-enter the premises. No arrests were made.

18. I remained on the premises until approximately 5:00 pm. During that time the locks were changed to ensure security and lock down the corporate records. In addition, a computer forensic team began imaging the hard drives of the computers to preserve them for litigation. Upon information and belief, Mr. Mingels remotely accessed the computers before access could be severed and deleted a number of files. See Pomies Aff. ¶ 16.

Misrepresentations in the Zajic Affidavit

19. I have reviewed the Zajic Affidavit and determined that it contains numerous falsehoods. Nina Zajic was not present for most of the events she attempts to describe and has no personal knowledge of the same. She was not present when we entered the premises, never witnessed any conversation with employees and was not present when the safe was opened. Moreover, the police were present for more than half of the time Ms. Zajic was on the premises and ultimately asked her to leave. My best estimate is that Ms. Zajic was on the premises for seven to ten minutes before the police arrived at our request.

20. While it is true that Nina Zajic was the CEO of Little Rest Twelve, Inc. until March 30, 2010, on March 31, 2010 she was no longer employed by the company. Ms. Zajic was terminated by unanimous resolutions of both the shareholders and board of directors of Little Rest Twelve, Inc (“LR12”). Haouzi Aff., Ex. N. Copies of additional resolutions specifically terminating Ms. Zajic are annexed hereto at Exhibit G. The firing of officers wholly was consistent with the requirements of New York’s Business Corporation Law. The reasons for Ms. Zajic’s termination are set forth in the Complaint filed by LR12 against Nina Zajic, Joseph Kay, David Kay, Joesph Gill (Index No. 650209/2010). It alleges that these officers breached their

fiduciary duties to LR12 and diverted its profits for their own gain at the expense of the shareholders.

21. Nina Zajic's claim that Jean-Yves Haouzi and I carried out a "gangland" style "raid" accompanied by 20 armed men, wherein persons were threatened and the premises were ransacked wholly is false. Ms. Zajic was not present to observe any of this alleged activity and is an incompetent witness on the issue. We were not accompanied by 20 armed men. No physical force was used to enter the premises. No one was threatened. The premises were not ransacked. There was no violence at any time. The only aggression came from Ms. Zajic and Mr. Mingels as described above. When that occurred, the security team called the police. The police responded and asked them to leave the premises.

22. Expecting that the officers/employees would react poorly to their termination, the owners of LR12 and managers of Ajna Bar arranged for a security team (ten former law enforcement and correction officers) to be present when said officers/employees were informed of the decision. The team was explicitly told that there was to be no violence and that the police were to be called at the first sign of aggression. The purpose of the security team was to secure Ajna Bar's books and records as well as its assets on the premises. After entering the premises, we took steps to preserve all books and records and image computer files.

23. Ms. Zajic also falsely avers that the police were informed that the firings were pursuant to "authority from this court." To the contrary, I specifically informed every police officer with whom I discussed the matter that no court order was involved; rather, I told them that certain corporate officers and management had been terminated by unanimous vote of the shareholders and the Board of Directors. Accordingly, I showed the police documents indicating the corporate chain of ownership and corporate resolutions. Had I indicated that "authority of this

court” was involved, they certainly would have asked to seek the court order. They did not because no such thing was suggested. Most importantly, Ms. Zajic is incapable of credibly attesting to my discussions with the police because she did not participate in them or otherwise observe them.

24. Ms. Zajic’s claim that I was not authorized to represent LR12 similarly is uninformed and incorrect. As set forth above, Gusrae Kaplan acted with the authority of the shareholders and the Board of Directors of LR12. The corporate resolutions presented to the police are annexed to the affidavits of Jean-Yves Haouzi and Andrew Baker and are not false or bogus in any way. Notably, Ms. Zajic fails to aver that she has any authority from the owners of LR12 to bring this application. She does not have such authority. LR12 hereby withdraws the application which Ms. Zajic claims LR12 is bringing.

The Deficient Application

Argument

25. The movant’s request for a preliminary injunction should be denied. It is well settled that a party seeking a preliminary injunction must show the prospect of irreparable injury absent the grant of an injunction, the likelihood of ultimate success on the merits, and a balance of the equities in the movant’s favor. See e.g., Housing Works, Inc. v. City of New York, 255 A.D.2d 209, 213, 680 N.Y.S.2d 487, 491 (1st Dep’t 1998). Here, the movant altogether fails to even address these factors and in any event under the factual circumstances, is wholly unable to satisfy this standard.

26. The relief sought by the movant should be denied because it is made in derogation of the wishes of LR12’s true ownership and management. As set forth in the Haouzi Aff., and the Baker Aff., LR12 is owned by Mr. Haouzi and Grovesnor Trading House Limited (“GTHL”), a

private English company. The movant has not – because it cannot – demonstrated otherwise with respect to the ownership of LR12. Rather, movant has merely thrown out meaningless invective, speaking of “bogus” resolutions which are actually 100% legitimate.

27. Similarly, the movant is unable to demonstrate irreparable harm. Irreparable harm is harm of a sort that cannot be remedied by an award of money damages. See e.g., OraSure Technologies, Inc. v. Prestige Brands Holdings, Inc., 42 A.D.3d 348, 839 N.Y.S.2d 744, 745 (1st Dept 2007)(holding that monetary harm which can be compensated by money damages does not constitute irreparable harm). Here, the movant does not even attempt to allege irreparable harm. The only concrete fact that Ms. Zajic alleges in the Zajic Aff. that arguably constitutes any harm whatsoever, is the alleged taking of \$50,000 in cash from a safe at Ajna Bar. The improper taking of \$50,000 in cash, even if accepted as true (which is not at all conceded and which is controverted by videotaped evidence) is precisely the sort of harm which can be remedied by an award of money damages. Even assuming *arguendo* that the Shareholders and Board of Directors’ actions have been wholly improper, and that Mr. Haouzi has no right to operate Ajna Bar, there is still no harm to the movant that cannot be remedied by an award of money damages. Accordingly, the movant has utterly failed to demonstrate any risk of irreparable harm, absent preliminary injunction.

28. Finally, the balance of equities weighs against granting a preliminary injunction. Despite the movant’s attempt to smear Mr. Haouzi and others with salacious allegations of violence, the balance of the equities weighs against the grant of a preliminary injunction which would allow Ms. Zajic to remain as CEO of LR12 in contravention of the unanimous resolutions of LR12’s Shareholders and Board of Directors as authorized under BCL § 615 and BCL §708. Here, the movant has extremely unclean hands. It is well settled that an injunction should be denied where

the party seeking the injunction lacks equitable standing to obtain affirmative equitable relief. See Victor Fischel & Co. v. R.H. Macy & Co., 20 N.Y.2d 180, 187, 282, N.Y.S.2d 234, 239 (1967). As set forth in the Complaint filed on March 31, 2010, by LR12 against Ms. Zajic, Joseph Kay, David Kay and Joseph Gil, these former officers/managers have breached their duties to LR12 by mismanaging the company and failing to file K-1's for the past three (3) years.

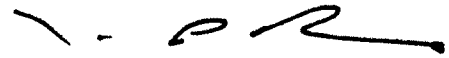
29. Moreover, in the days since their removal and termination (as set forth in the accompanying affidavit of Thierry Pomies dated April 4, 2010), the full extent of their mismanagement and misconduct has been discovered to be even greater than previously known. Indeed it has been discovered that Ajna Bar's rent has not been paid to the landlord for three (3) months; Ajna Bar's liquor license has expired without a timely renewal; vendors have not been paid on a timely basis; corporate credit cards have been used for personal expenses; at least one residential apartment has been leased in LR12's name and used by former officers of LR12 for no proper purpose; legitimate books and records were not maintained.

30. Moreover, it is suspected that persons acting at the behest of the recently terminated and removed Officers are attempting to and have accessed Ajna Bar's server and remotely accessed and deleted computer files.

31. All of this misconduct is on top of the failure to pay licensing fees for the internationally renowned Buddha Bar name. Not only did they fail to pay licensing for the Buddha Bar name, they have engaged in costly litigation with the owners of that name. Indeed, Justice Ramos recently signed an order to show cause directing that a hearing be held to determine whether LR12 and Ms. Zajic should be held in contempt for violating this Court's previous order regarding use of the Buddha Bar name. Accordingly, equity does not permit an injunction that

would defy the unanimous wishes of LR12's Shareholders and Board of Directors and return its control to the Officers who ran it into the ground by their mismanagement and self dealing.

32. Based upon the foregoing and the accompanying affidavits and memorandum of law, I respectfully request that the application for a preliminary injunction be denied.



Martin P. Russo, Esq.

Sworn before me this 5th
day of April, 2010



Notary Public

BRIAN D. GRAIFMAN
NOTARY PUBLIC, State of New York
No. 02GR4967055
Qualified in ~~Westchester~~ County
Commission Expires 05/21/2012



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