

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE CARMEN R. VELASQUEZ IAS PART 38
Justice

CHING NOR YEE, ET AL.,

Index No. 704057/23

Plaintiffs,

Motion

Date: April 17, 2023

-against-

M# 1

XIUDONG CHEN, ET AL.,

Defendants.

The following papers numbered EF 5-38 read on this Order to Show Cause by the plaintiffs for a preliminary injunction enjoining the defendant Xiudong Chen from (i) misappropriating, converting or using any funds that are the property of Glamour Debut LLC ("Glamour") for personal use, (ii) holding herself out as the manager, director or majority member of Glamour, (iii) interfering with plaintiff's management of Glamour and/or the normal business operations of Glamour, (iv) starting new subsidiaries in violation of § 7.4(a)(I) of the March 23, 2022 Operating Agreement, (v) preventing plaintiff from accessing Glamour's bank accounts, (vi) retaining control and dominion over Glamour's Shopify account and/or excluding plaintiffs from accessing the account and funds derived therefrom and (vii) depositing Glamour assets into any bank account based in China and/or shipping inventory in China.

PAPERS NUMBERED

Table with 2 columns: Document Description and Page Range. Includes 'Order to Show Cause - Affidavits - Exhibits...' (EF 5-29) and 'Memorandum of Law in Opposition' (EF 31-38).

Upon the foregoing papers it is ordered that this Order to Show Cause by the plaintiffs for an order enjoining the defendant Xiudong Chen from (i) misappropriating, converting or using any funds that are the property of Glamour Debut LLC ("Glamour") for personal use, (ii) holding herself out as the manager, director or majority member of Glamour, (iii) interfering with plaintiff's management of Glamour and/or the normal business operations of Glamour, (iv) starting new subsidiaries in violation of § 7.4(a)(I) of the March 23, 2022 Operating Agreement, (v) preventing plaintiff from accessing Glamour's bank accounts, (vi)

retaining control and dominion over Glamour's Shopify account and/or excluding plaintiffs from accessing the account and funds derived therefrom and (vii) depositing Glamour assets into any bank account based in China and/or shipping inventory in China is decided as follows:

Plaintiffs and defendant Xiudong Chen ("Chen") formed a business, Glamour Debut LLC, and executed an Operating Agreement on March 23, 2022. The purpose of the business was to sell skin care and nutrition products based on individual needs and preferences. Under the agreement, defendant Chen was the managing member of the business. Plaintiff Ching Nor Yee avers that she was the Chief Financial Officer of the business, with the right to, *inter alia*, review Glamour's financial records. Plaintiff Yee also states that she drafted checks for company expenses, with the approval of defendant Chen.

Plaintiffs now claim that defendant Chen has misappropriated, converted and wasted the funds of the company for the benefit of herself and her husband, defendant Gary W. Myers. In addition, plaintiff Yee avers that defendant Chen has excluded plaintiffs from the operation and management of the business despite promises that they would be active participants. According to plaintiff, Chen created a new bank account in the name of Glamour, NY, a subsidiary of Glamour, that was created in violation of the Operating Agreement. Plaintiff states that Chen transferred over 90% of the company assets from Glamour into Glamour NY's bank account, which plaintiffs have no access to. Moreover, plaintiff Yee contends that defendant Chen transferred \$10,000.00 to her unrelated company, Oriental Herbal USA, Inc., to purchase a Shopify account. Plaintiff avers that the Shopify account was supposed to benefit Glamour, but in reality Glamour has never seen the profits of any of these sales. Further, plaintiff contends that Chen transferred \$76,101.00 of Glamour's funds to her personal account for "reimbursements." According to plaintiff Yee, Chen has failed to provide any explanation or details regarding these reimbursements.

Plaintiff Yee also alleges that on January 27, 2023, she and the co-plaintiffs unwittingly signed a second Operating Agreement, which gave Chen unsupervised control over the business. Yee states that Chen told her it was a contract for future growth of the company and she should "just sign it." Subsequently, after the plaintiffs commenced this action, Yee avers that Chen advised the plaintiffs that she was canceling the lease for the New York office. Yee states such action would be detrimental to the business since most of Glamour's inventory is shipped directly to New York.

Defendant Chen denies the plaintiffs' allegations and assert that under the January 27, 2023 Agreement, plaintiffs do not have any right to participate in Glamour's management. Chen further avers that the expenses referenced in plaintiffs' application were all for business purposes, and plaintiffs never previously objected to them.

Plaintiffs brought an Order to Show Cause seeking a temporary restraining order ("TRO") and preliminary injunction against the defendant Chen. The Hon. Kevin J. Kerrigan, as Emergency Justice, granted plaintiffs' request for a TRO to the extent that of enjoining defendant Chen from misappropriating, converting or using any funds that are the property of Glamour for personal use, interfering with plaintiffs' management of Glamour and/or the normal business operations of Glamour, starting new subsidiaries in violation of § 7.4(a)(i) of the March 23, 2022 Operating Agreement, preventing plaintiffs from accessing Glamour's bank accounts, retaining control and dominion over Glamour's Shopify account and/or excluding plaintiffs from accessing the account and funds derived therefrom and depositing Glamour assets into any bank account based in China and/or shipping inventory in China. The application for a preliminary injunction was thereafter submitted to this court for determination.

The decision to grant a preliminary injunction is a matter ordinarily committed to sound discretion of the court hearing the motion. (*Dixon v Malouf*, 61 AD3d 630, 630 [2d Dept 2009]; *Automated Waste Disposal, Inc. v Mid-Hudson Waste, Inc.*, 50 AD3d 1072, 1073 [2d Dept 2008].) In order to demonstrate entitlement to a preliminary injunction, the movant must establish (1) a probability of success on the merits, (2) the danger of irreparable injury in the absence of injunctive relief and (3) a balancing of the equities in favor of the movant. (*Aetna Ins. Co. v Capasso*, 75 NY2d 860, 862 [1990]; *Doe v Axelrod*, 73 NY2d 748, 750 [1988]; *Mangar v Deosaran*, 121 AD3d 650, 650 [2d Dept 2014].) The purpose of a preliminary injunction is to maintain the status quo and prevent the dissipation of property that could render a judgment ineffectual. (*1650 Realty Assocs., LLC v Golden Touch Mgt., Inc.*, 101 AD3d 1016, 1018 [2d Dept 2012]; *Ying Fung Moy v Hohi Umeki*, 10 AD3d 604, 604 [2d Dept 2004].) This is true even in situations where a factual dispute exists. (*Jones v State Farm Fire & Cas. Co.*, 189 AD3d 1565, 1567 [2d Dept 2020]; *Melvin v Union Coll.*, 195 AD2d 447, 448 [2d Dept 1993].)

At bar, the court finds that plaintiffs have established their entitlement to a preliminary injunction. Plaintiffs will suffer irreparable harm if defendants are not enjoined herein.

Indeed, plaintiffs allege they have been frozen out of the management of the business in violation of the March 2022 Operating Agreement. Moreover, as noted above, plaintiffs allege that assets of the company are being dissipated, which further constitutes irreparable harm. (see *Yemini v Goldberg*, 60 AD3d 935, 937 [2d Dept 2009]; *Mr. Natural v Unadulterated Food Prods.*, 152 AD2d 729, 730 [2d Dept 1989].)


Generally, to establish a likelihood of success on the merits, the movant must show its right to a preliminary injunction is plain on the facts of the case. (*Melvin v Union Coll.*, 195 AD2d 447, 448 [2d Dept 1993].) Despite the existence of factual issues herein, a preliminary injunction is still necessary to preserve the status quo, particularly since the defendant has not demonstrated she will suffer a great hardship if the injunction is granted. (*Melvin v Union Coll.*, 195 AD2d at 448 [2d Dept 1993].)

The court also finds that a balancing of the equities favors the plaintiffs. The harm to the plaintiffs should an injunction not be granted outweighs any potential harm to the defendant if an injunction is granted. (*Barbes Rest. Inc. V ASRR Suzer 218, LLC*, 140 AD3d 430, 432 [1<sup>st</sup> Dept 2016].) Both the business and any interest the plaintiffs have in the business could be harmed in the absence of an injunction.

Accordingly, this Order to Show Cause by the plaintiffs for a preliminary injunction is granted to the extent that defendant Xiudong Chen is enjoined from (i) misappropriating, converting or using any funds that are the property of Glamour Debut LLC for personal use, (ii) interfering with plaintiff's management of Glamour and/or the normal business operations of Glamour, (iii) starting new subsidiaries in violation of § 7.4(a)(i) of the March 23, 2022 Operating Agreement, (iv) preventing plaintiffs from accessing Glamour's bank accounts, (v) retaining control and dominion over Glamour's Shopify account and/or excluding plaintiffs from accessing the account and funds derived therefrom and (vi) depositing Glamour assets into any bank account based in China and/or shipping inventory in China.

The foregoing is conditioned upon the filing of an undertaking in accordance with CPLR 6312 in the amount of \$10,000.00 in the Office of the Clerk of the County of Queens, together with a copy of this order with notice of entry.

Dated: September 26, 2023

  
CARMEN R. VELASQUEZ, J.S.C.

