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Order Denying Preliminary Injunction (MIRKO DI GIACOMANTONIO AND ROSA INC.)

Alice D. Bonner
Superior Court of Fulton County

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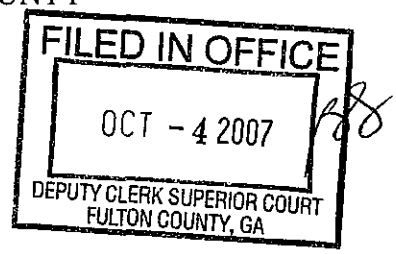
IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA



MIRKO DI GIACOMANTONIO and ROSA INC.,

Plaintiff,

v.

SANDRO ROMAGNOLI, ET AL.,

Defendants,

Civil Action File No. : 2007CV133477

ORDER DENYING PRELIMINARY INJUNCTION

Counsel in the undersigned case appeared before the Court on September 27, 2007, to present oral argument on Plaintiff's Motion for Preliminary Injunction and Alternatively for Appointment of a Receiver. After reviewing the briefs filed on the motion, the record of the case, and the arguments presented by counsel, the Court finds as follows:

This case involves the dissolution of a business relationship formed between Plaintiff Mirko Di Giacomantonio (herein referred to as "Plaintiff") and Defendants Romagnoli and Penn regarding of the local restaurant chain, commonly known as "Figo Pasta". The Figo Pasta brand is compromised of several interlocking limited liability companies referred to herein as the "FIGO entities".

Plaintiff and Defendants Romagnoli and Penn executed reorganization documents for the FIGO entities on March 1, 2007. Defendants claim that such reorganization documents, which granted Plaintiff an interest in certain FIGO entities (Certo and Spiga), triggered Plaintiff's 2005 divorce decree granting his ex-wife a fifty percent (50%) ownership interest in those entities. Thus, Defendants claim, Plaintiff breached the FIGO operating agreement provisions prohibiting ownership transfers and triggered an involuntary transfer provision forcing Plaintiff to sell his FIGO shares back to the company at a discounted price.

Plaintiff petitions the court to reinstate him as a fifty percent (50%) owner in the FIGO entities and to restore his access to the premises or, in the alternative, to appoint a receiver to manage the FIGO entities' funds. Plaintiff additionally seeks an equitable accounting and an injunction preventing Defendants from paying the costs of this litigation with the FIGO entities' money.

To prevail on a motion for preliminary injunction, Plaintiffs must demonstrate 1) evidence supporting the merits of their claims, 2) that granting the motion would prevent greater harm that it would cause, and 3) that no adequate remedy at law exits. Slautterback v. Intech Mgmt. Servs., 247 Ga. 762, 766 (1981); O.C.G.A. § 9-5-1. Preliminary injunctions are utilized to maintain the status quo and prevent future harms, not to remedy past harms. Catrett v. Landmark Dodge, Inc., 253 Ga. App. 639, 644 (2002).

Under O.C.G.A. § 9-8-1, a receiver is appointed under narrow circumstances upon a showing that the rights of the parties could not be protected otherwise by presenting evidence of waste, insolvency, mismanagement, or misappropriation of assets. Patel v. Patel, 280 Ga. 292 (2006).

Equitable accountings are available under O.C.G.A. § 23-2-70 for complicated and intricate accounts or for accounts between partners when there is no adequate remedy at law. The party seeking the accounting must demonstrate why the remedy at law is inadequate. Peeples v. Peeples, 193 Ga. 358 (1942).

Plaintiff put forth no evidence of waste, abuse, mismanagement of, or harm to the FIGO entities as a result his removal from the operations of the business. Nor has Plaintiff demonstrated that the remedies available to him at law are inadequate. As stated above, preliminary injunctions are appropriate to preserve the status quo, not to repair past wrongs. Similarly, Plaintiff has failed to demonstrate that an equitable accounting available under O.C.G.A. § 23-2-70 is required in this case

appropriate to preserve the status quo, not to repair past wrongs. Similarly, Plaintiff has failed to demonstrate that an equitable accounting available under O.C.G.A. § 23-2-70 is required in this case

Accordingly, Plaintiff's Motion for Preliminary Injunction, or, in the Alternative, the Appointment of a Receiver, is hereby **DENIED**.

SO ORDERED this 4 day of October, 2007.

Alice D. Bonner
ALICE D. BONNER, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

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