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John Souza, Order on Plaintiff's Motion for Temporary Restraining Order

Elizabeth E. Long

Fulton County Superior Court, Judge

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**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**



JOHN SOUZA,)

Plaintiff,)

v.)

JOHN BERBERIAN,)

Defendant, and)

PINNACLE MSO, LLC,)

Nominal Defendant.)

Civil Action File No.
2015CV257652

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ORDER

Before this Court is Plaintiff John Souza's Motion for Temporary Restraining Order. Souza alleges that he brought together Dr. Jeffrey Gallups, who was looking to expand the services he offered, and Defendant John Berberian, who offers allergy testing through a company called WellCorp. Souza claims that he and Berberian agreed to form a company called Pinnacle MSO, LLC ("Pinnacle"). Pinnacle would enter into a three party agreement with an allergy testing service and Dr. Gallup and would be paid a percentage of all income generated by Dr. Gallup from allergy testing. However, Souza claims that Berberian shut him out, established Pinnacle without him, and has possibly collected money through Pinnacle from the proposed allergy testing venture with Dr. Gallup and his medical practice, Milton Hall Surgical Associates. Although Souza is unclear if money has been collected on behalf of or distributed by Pinnacle, he seeks an order that requires a) a new bank account to accept all funds on behalf of Pinnacle; b) a full accounting, c) disgorgement by Berberian of any funds used; and d) appointment of a receiver.

“A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if [i]t clearly appears from specific facts showing by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition.” O.C.G.A. § 9-11-65(b)(1). “An ex parte temporary restraining order is a harsh remedy and statutes authorizing such a remedy must be strictly construed.” *United Food & Commercial Workers Union v. Amberjack Ltd.*, 253 Ga. 438, 438, 321 S.E.2d 736, 737 (1984). At this early stage, Plaintiff has failed to clearly show that he is entitled to any of the proceeds from Pinnacle, much less that he will suffer irreparable harm that cannot adequately be cured through the award of money damages or other future relief. As such, Plaintiff John Souza’s Motion for Temporary Restraining Order is **DENIED**.

Defendant filed his Verified Answer on April 6, 2015. Now that Defendant has appeared, this Court shall hold a hearing on Plaintiff John Souza’s Motion for Preliminary Injunction and Appointment of Receiver on May 19, 2015 at 10:00 a.m. in Courtroom 9J of the Fulton County Courthouse, 9th Floor, 136 Pryor Street, SW, Atlanta, Georgia 30303.

SO ORDERED this 7th day of April, 2015.


ELIZABETH E. LONG, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

Copies to:

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