SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49M

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VISION BIOBANC HOLDINGS LLC,

Plaintiff,

- v -

DEREK R. TALLER,

Defendant.

INDEX NO. 651706/2024

MOTION DATE 05/21/2024

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

----------X

HON. MARGARET A. CHAN:

The following e-filed documents, listed by NYSCEF document number (MS002) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23
were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

Plaintiff Vision BioBanc Holdings LLC (Vision or the Company) brings this action against defendant Derek R. Taller (Taller) seeking declaratory judgment as to who may manage and control Vision and its operations (NYSCEF # 1 – Complaint or compl). Now before the court is Vision's motion, by order to show cause, seeking a preliminary injunction against Taller (NYSCEF # 13 - OSC).[1] Taller opposes the motion. For the following reasons, Vision's motion is granted.

Background

The following facts are drawn from the pleadings and materials submitted in connection with Vision's motion.

Vision is a Puerto Rican limited liability company formed to serve as a holding company for an international bank that would offer both traditional and equity-linked loans to a portfolio of healthcare industry companies (compl ¶ 7). The terms of Vision's internal governance and management are delineated by a Limited Liability Company Agreement of Vision BioBanc Holdings, LLC, dated May 5, 2022 (the Operating Agreement) (NYSCEF # 11 –OA; *see also* NYSCEF # 10 – Saxe aff ¶¶ 2-4). Pursuant to Section 5.1 of the Operating Agreement, Vision is managed by a Board of Managers (the Board) vested with "all management powers over the business and affairs" of the Company, as well as the authority to "conduct, direct and exercise full control over all activities of the Company" (OA § 5.1; Saxe aff ¶ 2).

[1] On April 16, 2024, following a hearing, the court granted Vision's application for a limited temporary restraining order (the TRO Order), as set forth in the OSC (*see* NYSCEF # 13).

The Board's members (Managers and each a Manager) are elected by Vision's members and serve a one-year term unless they resign or are removed from the Board prior to the expiration of their term (OA §§ 5.3, 5.4; Saxe aff ¶ 3). As relevant here, a Manager can be removed in two ways under the terms of the OA: (i) by "affirmative vote of Units entitled to vote to elect the Managers in person or by proxy, at any meeting of Unitholders called for said purpose"; or (ii) by "written consent of all of the Unitholders entitled to vote for the Managers" (OA § 5.4).

The Operating Agreement requires the Board to designate a Manager to serve as Chairperson of the Board (OA § 5.3; Saxe aff ¶ 4). Consequently, Taller, the Company's founder, was named Company's initial Chairperson and Chief Executive Officer (*see* compl ¶¶ 3, 8; Saxe aff ¶ 5). By 2023, however, Taller's relationship with Vision and its members began to sour (*see* Saxe aff ¶ 5). Specifically, Barry Saxe, Vision's largest investor and its Board's current purported Chairman, affirms that, in addition to being "consistently derelict" in providing the Vision's members with business, financial, and tax updates, Taller's behavior had become "increasingly alarming" after Vision was denied a banking license by Puerto Rican regulators in the spring of 2023 (*id.* ¶ 6). Saxe explains that Taller had claimed that the license was denied due to turmoil in the United States regional banking market (*id.* ¶ 7). But Saxe later learned that regulators actually denied the license because of Taller's alleged dishonesty and conduct (*id.* ¶¶ 6-7). After Vision's banking license was denied, Saxe states, Taller began making "outlandish claims and unfulfilled promises of get-rich-quick schemes completely unrelated to the Company's stated purpose," and he attempted to enlist Saxe in gathering support to move the Company and all of its assets to Dubai (*id.* ¶¶ 7-8). Meanwhile, with these issues surrounding Taller emerging, three Managers resigned from the Board in the summer of 2023, with one filing an investor complaint against Taller (*id.* ¶ 9).

Concerned with Taller's alleged conduct, Saxe, along with other members of the Company, began considering the removal of Taller and the Board (Saxe aff ¶ 11). Pursuant to those discussions, Saxe circulated a Member Resolution, dated December 20, 2023 (the Resolution), which would, pursuant to Section 3.4 of the Operating Agreement,[2] allow a majority of Vision's members to (i) act as if at a meeting of the Company's members, (ii) waive notice and consent of such meeting, (iii) remove all existing Managers from the Board, including Taller, and (iv) appoint

[2] Section 3.4(c) of the Operating Agreement provides, in full, that "[t]he actions taken by the Members holding Units entitled to vote or consent at any meeting (as opposed to by written consent), however called and noticed, shall be as valid as actions taken at a meeting duly held after regular call and notice if, either before, at or after the meeting, the Members holding Units entitled to vote or consent each sign a written waiver of notice or a consent to the holding of such meeting or an approval of the minutes thereof. The actions by the Members holding Units entitled to vote or consent may be taken by vote of the Members holding Units entitled to vote or consent at a meeting or by written consent (without a meeting, without notice and without a vote) so long as such consent is signed by the Members having not less than the minimum percentage of Company voting power or votes that would be necessary to authorize or take such action at a meeting at which all Members holding Units entitled to vote thereon were present and voted" (OA § 3.4 [c]).

five new Managers, namely Saxe, who would act as Chair, Donald Garlikov, Stormy Adams, Joseph Taussig, and Ruben Neftali Gety Rodriguez (*see id.* ¶¶ 12-13; compl ¶¶ 14-15; NYSCEF # 12; *see also* NYSCEF # 15 – Taller aff ¶ 4; NYSCEF # 19 – Hill aff ¶ 3). On January 1, 2024, a majority of Vision's members had approved the Resolution (Saxe aff ¶ 14). And by the end of the week, members holding over 75% of Vision's membership interests had signed the Resolution and thus purportedly approved removing Taller from his positions as CEO and Chairperson of the Board (*see id.* ¶ 14; compl ¶ 13; *see also* Hill aff ¶ 3).

Eventually, on January 10, 2024, Taller learned of his ouster (Saxe aff ¶ 16) In response, Taller purportedly (1) attempted to withdraw approximately $550,000 from the Company's main custody account at Millennium Trust Company, (2) refused to assist the new Board with its transition, (3) threatened financial institutions holding the Company's assets, as well as the Company's providers of essential services, (4) harassed the Company's members, and (5) interfered with the Company's information technology (IT) systems and infrastructure through various purported hijacking attempts (*see id.* ¶¶ 16-20; *see also* Hill aff ¶ 9).

For his part, Taller retorts that that the Resolution was invalid and failed to comply with the requirements of the Operating Agreement (Taller aff ¶ 4). Taller further asserts that the new Board had "wrongfully accessed and disseminated the Company's intellectual property and emails" to bolster its claim of control over Vision (*id.* ¶ 5). Given his apparent position on the validity of the Resolution, on January 19, 2024, Taller caused Vision to file an action before this court, captioned *Vision BioBanc Holdings, LLC v. Barry Saxe et al.*, No. 650288/20218 (the Prior Action), and Vision, in turn, moved to enjoin and temporarily restrain the new Board from "conducting business on behalf of the Company" (*see* Saxe aff ¶ 21; compl ¶¶ 3, 16). After a hearing, the court denied that portion of Vision's application seeking a temporary restraining order and ordered briefing on Vision's then-pending application for a preliminary injunction (*see* Saxe aff ¶ 21; compl ¶ 17).

Following the court's hearing, the Company held a special meeting of Vision's members (the Special Meeting) (Saxe aff ¶ 15; compl ¶ 18). At the Special Meeting, members holding more than 70% of the Company's outstanding membership interests purportedly voted directly or by proxy to remove Taller, establish the new Board, and ratify and affirm the new Board's actions since January 1, 2024 (Saxe aff ¶ 15; compl ¶ 18). In his opposition, Taller now disputes the veracity of Saxe's representation that 70% of the Company's outstanding membership interests voted for his removal and appointment of the new Board (*see* Taller aff ¶¶ 6-9).[3] Yet on February 19, 2024, counsel representing Vision in the Prior Action filed a notice of discontinuance and advised the court that it was satisfied that a supermajority of the shareholders had supported the new Board and therefore it could no longer

[3] Hill represents that he is maintaining a schedule of all members who attended and/or voted at the Special Meeting, as well as a file of their ballots and proxies (Hill aff ¶ 8).

continue the case on behalf of Vision (*see* Saxe aff ¶ 21; compl ¶ 19; *see also* Hill aff ¶ 10). On February 21, 2024, the court dismissed the Prior Action and did so over Taller's objections (*see* compl ¶¶ 20-21).

Saxe contends that, notwithstanding the results of the Special Meeting and the subsequent withdrawal of the Prior Action, Taller continues harm the Company's assets, impede its operations, and threaten its viability as a going concern (Saxe aff ¶¶ 22-28). Saxe maintains that Taller is preventing Vision from accessing its bank and custody accounts, which is restricting the Company from conducting basic operations, paying essential vendors, and pursuing accounts receivable (*see id.* ¶¶ 23, 26-27). Saxe also avers that Vision's transfer agent recently quit, purportedly because of Taller, and as a result, members cannot transfer their interests in the Company (*id.* ¶ 24). Finally, Saxe claims, Taller's conduct has resulted in Vision being in technical violation of an SEC subpoena to provide documents related to Taller (*id.* ¶ 25).[4]

Taller counters Saxe's narrative by maintaining that Vision's expenses are limited to a small number of vendors and total $128,671.90 (Taller aff ¶ 11 & Ex. 1). Taller further maintains that, although he disagrees that the new Board should have control over the Company's assets, he agrees that Vision's expenses should be paid and receivables collected, albeit with numerous conditions in place that provide Taller with input and oversight authority (*see id.* ¶¶ 12-19). In reply, Hill retorts that the expenses identified by Taller in his affidavit are "far from the Company's only outstanding payables" (Hill aff ¶¶ 11-12). Hill also questions the legitimacy of the six payable identified by Taller because, among other things, certain of the listed entities did not have any contractual or recorded communication with Vision prior to January 2, 2024 (*id.* ¶¶ 13-14).

Legal Standard

"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]). It is a "drastic" remedy that "should be used sparingly" (*McLaughlin, Piven, Vogel, Inc. v Nolan & Co.*, 114 AD2d 165, 172 [2d Dept 1986]). Indeed, "[a] preliminary injunction substantially limits a defendant's rights and is thus an extraordinary provisional remedy requiring a special showing" (*1234 Broadway LLC v West Side SRO Law Project, Goddard Riverside Community Ctr.*, 86 AD3d 18, 23 [1st Dept 2011]). For that reason, an injunction "will only be granted when the party seeking such relief demonstrates [1] a likelihood of ultimate success on

[4] In a letter, dated May 23, 2024, Vision also apprised the court that, notwithstanding the TRO Order enjoining Taller from providing instructions, directions, or orders on behalf of the Company to any of its service providers, counterparties, consultants, advisors, or legal counsel, or from accessing Company funds and assets, Taller recently retained a law firm to represent Vision in an ongoing SEC investigation (NYSCEF # 21).

the merits, [2] irreparable injury if the preliminary injunction is withheld, and [3] a balance of equities tipping in favor of the moving party" (*id.*, citing *Doe v Axelrod*, 73 NY2d 748, 750 [1988]). Whether to grant a preliminary injunction is "committed to the sound discretion of the motion court" (*Harris v Patients Med., P.C.*, 169 AD3d 433, 434 [1st Dept 2019]).

Discussion

In its motion, Vision contends that it has established its entitlement to a preliminary injunction against Taller. *First*, Vision avers that it has provided sufficient evidence that the new Board was validly elected and vested with management authority in place of Taller (NYSCEF # 9 – MOL at 7-8; NYSCEF # 20 – Reply at 4-6). Specifically, Vision contends, it has demonstrated that more than 70% of Vision's members have twice acted to remove Taller and the prior Board, including through a vote at the Special Meeting (MOL at 8; Reply at 4-6). *Second*, Vision argues that it and its members will suffer irreparable harm in the absence of any injunction because (1) Taller's conduct effectively strips Vision's members of their rights under the Operating Agreement to choose the Board, and (2) Taller's interference is blocking the Company from performing its necessary operations (MOL at 8-9; Reply at 6-7). *Finally*, Vision maintains that the balance of equities lies in its favor because an injunction will respect the will of Vision's members and enable the Company to operate productively for their benefit (MOL at 10; Reply at 7-8).

Taller opposes Vision's application. At the outset, Taller argues that this action must be dismissed because Vision lacks standing to pursue this action because it must remain neutral in a dispute regarding who controls the Company (NYSCEF # 18 – Opp at 3-6). Turning to merits of Vision's preliminary injunction motion, Taller first contends that Vision has failed to establish a likelihood of success on the merits because (a) it failed to attach any documentary proof to support its claim that Taller and the prior Board were removed by Vision's members; and (b) Vision's members did not properly remove Taller and the prior Board pursuant to the Operating Agreement because they failed to do so without unanimous consent of all Unitholders (*id.* at 8-15). As for irreparable harm, Taller maintains that there is no evidence substantiating the claim that Vision's members voted to replace Taller (*id.* at 15-16). In any event, Taller contends, because he agrees that the Company should pay its vendors and collect its receivables, there is no threat of irreparable harm to Vision at this time (*see id.* at 16-17). Finally, turning to the balance of equities, Taller reiterates that Vision has failed to provide documentary evidence that Vision's members voted to remove Taller and replace the prior Board, and that, as a result, his and the prior Board's claim of rightful control is stronger than the new Board's claim (*see id.* at 18-19).

The court considers each of these contentions below.

I. Vision's Standing to Pursue this Action

Before turning to the substance of Vision's preliminary injunction application, the court first addresses Taller's challenge to Vision's standing to bring this lawsuit. Taller contends in his opposition that this litigation involves a "clash between competing slates of board members" as to who is the "legitimate" Board (*see* Opp at 3-6). Thus, Taller argues, under a so-called "neutrality principle," dismissal is warranted because the Company must avoid appearing as a litigant and choosing one side over another (*see id.*). Vision retorts that, to the extent this action involves a dispute over the removal and appointment of a Manager for the Company, the Company has standing to protect its members' actions under the Operating Agreement (Reply at 2-3). The court agrees that Taller has not established, at this juncture, that Vision lacks standing to maintain this declaratory judgment action.

Taller chiefly relies on *In re Aerojet Rocketdyne Holdings, Inc.* (2022 WL 2180240 [Ch Ct, Del June 16, 2022]), a recent, unpublished opinion from the Delaware Court of Chancery, in support of his standing challenge. This reliance is ultimately misplaced because the circumstances underlying the *Aerojet* decision are plainly distinct from those at issue here.

In *Aerojet*, the court was confronted with a dispute between members of a board of directors with an even number of directors (2022 WL 2180240 at *1). Plaintiffs, on one hand, represented one competing slate of directors for an upcoming board election, while defendants represented the other slate (*id.*). After defendants issued a press release on behalf of the company expressing disappointment with the nomination of certain proposed directors, plaintiffs sued for a declaration that the principle of corporate neutrality prevented defendants from using the company's name and resources to promote their director nominations ahead of the upcoming corporate elections (*see id.* at *1-2, *10-11). After trial, the court agreed with plaintiffs (*id.* at *17). In so holding, the court explained that "a Delaware corporation must remain neutral when [] there is a legitimate question as to who is entitled to speak or act on its behalf" (*id.* at *13). It further observed that "[w]here a board cannot validly exercise its ultimate decision-making power, neither faction has a greater claim to the company's name or resources," and thus the corporation cannot "take sides" until the control dispute is unresolved (*id.*). Put differently, the court continued, "[w]here a control dispute prevents the board . . . from validly acting," the question of "who may act for the entity must first be resolved" (*id.* at 13 n.163). Applying these principles, the court determined that, given the *Aerojet* board's deadlock on the nomination on a slate of director ahead of the company's elections, "defendants—irrespective of their beliefs that they acted in [the company's] best interest—had no more right to draw upon corporate resources to advance their cause than the plaintiffs" (*id.* at *16). And, in the absence of any evidence of impropriety, defendants' "good faith intentions" were "irrelevant" when the issue is who should comprise the board (*id.*).

Here, contrary to Taller's suggestion (*see* Opp at 3), there is no active "control dispute" between two boards—at least in the traditional sense at issue in *Aerojet*—preventing the Board from validly acting through Vision. Rather, as alleged, Vision purportedly has an established Board in place, which it argues was formally constituted, at minimum, following the Special Meeting (*see* Saxe aff ¶ 15; compl ¶ 18). Although Vision is now seeking a declaration as to the validity of the new Board's appointment and Taller's removal, it is doing so because, in a purported blatant disregard of Vision's members' will, Taller has engaged, and is continuing to engage, in disruptive conduct harming the Company (*see* compl ¶¶ 22-24; Saxe aff ¶¶ 16-20). Consequently, insofar as Delaware (and by extension Puerto Rico) has adopted a so-called principle of corporate neutrality, there is no basis on the present record to conclude that Vision ran afoul of it by commencing this lawsuit.[5] Such a conclusion is further buttressed by the fact that Taller, through Vision, previously commenced a similar action just months prior to this lawsuit (*see* Saxe aff ¶ 21; compl ¶¶ 3, 16).

As Taller has fails to establish that Vision lacks standing to pursue this lawsuit, the court declines his invitation to dismiss this action at this time. The court turns to the substance of Vision's preliminary injunction motion.

II. Likelihood of Success on the Merits

In determining whether a party has established a likelihood of success, "the threshold inquiry is whether the proponent has tendered sufficient evidence demonstrating ultimate success in the underlying action" (*1234 Broadway LLC*, 86 AD3d at 23). Although the movant "need not tender conclusive proof beyond any factual dispute," a preliminary injunction does require movant to establish "a clear right to that relief under the law and the undisputed facts upon the moving papers" (*id.*, quoting *Gagnon Bus Co., Inc. v Vallo Transp., Ltd.*, 13 AD3d 334, 335 [2d Dept 2004]). Here, Vision has met this burden.

As the record before the court establishes, through two separate votes, members holding more than 70% of the Company's outstanding membership interests purportedly voted to remove Taller and vest the new Board with authority to act on Vision's behalf (*see* Saxe aff ¶¶ 12-13, 15; *see also* compl ¶¶ 14-15, 18; Taller aff ¶ 4; Hill aff ¶ 3). Despite these votes, Taller has repeatedly engaged in conduct harming the Company's assets, impeding its operations, and threatening its viability as a going concern (Saxe aff ¶¶ 21-28; compl ¶ 19; *see also* Hill aff ¶ 10).

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[5] For similar reasons, Taller's invocation of Section 3655(a) of Title 14 of the Laws of Puerto Rico—which addresses contexts in which the Court of First Instance in Puerto Rico may hear and determine the (1) "validity of any election, appointment, removal or resignation of any director, member of the governing body, or officer of any corporation" and (2) "the result of any vote of stockholders or members, as the case may be, upon matters other than the election of directors, officers or members of the governing body" (*see* Opp at 5-6)—also fails to support his challenge to Vision's standing to maintain this declaratory judgment action.

These facts amount to sufficient evidence demonstrating that Vision has a clear right to the relief it seeks.

To avoid this conclusion, Taller primarily advances two arguments. Neither are compelling. First, Taller chides Vision for solely relying on the Saxe affidavit and failing to annex any other documents concerning the Special Meeting, such as meeting minutes, copies of resolutions, proxy authorizations, or vote recordings (*see* Opp at 9-10). But there is nothing in New York law that prohibits Vision from solely relying on an affidavit in support of its application to establish a clear right to relief. To the contrary, Vision is only "required to submit affidavits in support of an application for a preliminary injunction and 'may' submit 'other evidence' if it so chooses" (*Park S. Assoc. v Blackmer*, 171 AD2d 468, 469 [1st Dept 1991]). Here, in his affidavit, Saxe represents that he has personal knowledge of the matter stated in his affidavit (*see* Saxe aff ¶ 1), and through that affidavit, he thoroughly recounts the circumstances of the votes to oust Taller and install the new Board, as well as Taller's alleged misconduct undermining those results. Hence, in relying on the Saxe affidavit, Vision has sufficiently tendered the requisite evidence that is required to support a preliminary injunction application (*see generally* CPLR 6312 [a] ["On a motion for a preliminary injunction the plaintiff shall show, by affidavit and such other evidence as may be submitted, that there is a cause of action . . . ."]).

Taller next contends that Vision fails to establish a likelihood of success on the merits because neither he nor the prior Board could be removed by a written resolution unless there was unanimous consent of all the Unitholders (Opp at 11-12). True as that may be under the plain terms (*see* OA § 5.4(ii)), this contention flatly ignores the existence of the Special Meeting, during which, both Saxe and Hill affirm, more than 70% of Vision's outstanding membership interests (a total of 4,777,646 Membership Units) voted to remove Taller, establish the new Board, and affirm the actions of the new Board since January 1, 2024 (*see* Saxe aff ¶ 15; Hill aff ¶¶ 6-8). Although Taller cries foul over the fact that Vision did not submit specific documentary evidence about the Special Meeting as part of its application (*see* Opp at 11), as explained above, Vision nonetheless provided sworn statements confirming the existence and results of the Special Meeting (*see* Saxe aff ¶ 15; Hill aff ¶¶ 6-8). That the Special Meeting took place was further confirmed by Vision's counsel in the Prior Action, who represented that it was satisfied that a supermajority of the shareholders had supported the appointment of the new Board (*see* Saxe aff ¶ 21; compl ¶ 19). Given this record, Vision has sufficiently established that, for purposes of its injunction application, Taller's removal and the new Board's installation complied with Section 5.4(i) of the Operating agreement.

III. Irreparable Harm

Vision maintains that it will suffer irreparable harm if Taller is not enjoined (*see* MOL at 8-9). The court agrees. As set forth by Saxe, since Taller's purported ouster, he has continued to engage in disruptive behavior that has prevented Vision

from accessing its accounts, impeded its ability to make payments to its vendors and collect funds from other third parties, deprived the Company of access necessary funds through unauthorized withdrawals, and caused chaos and confusion as to who is in control of the Company (*see* Saxe aff ¶¶ 16-20, 22-28; *see also* Hill aff ¶ 9). This conduct, Saxe maintains, purportedly puts the Company at great risk of insolvency and corresponding creditor collection actions, and it also seemingly undermines its business reputation and good will (*see* Saxe aff ¶¶ 26-27). Considering these facts, which are not seriously controverted by Taller, there is a sufficient basis to conclude that, without an injunction, the status quo, which Vision is attempting to maintain, will be disrupted and Vision and its members will suffer irreparable harm as a result (*see Second on Second Café, Inc. v Hing Sing Trading, Inc.*, 66 AD3d 255, 272 [1st Dept 2009] [explaining that a "loss of the goodwill of a viable, ongoing business" constitutes irreparable harm]; *Rockwood Pigments NA, Inc. v Elementis Chromium LP*, 124 AD3d 509, 511 [1st Dept 2015] [concluding irreparable harm established where respondent's conduct "threatened petitioner's business operations and its creditworthiness"]).

To avoid this conclusion, Taller retorts that there is no risk of irreparable harm because he is willing, if Vision and the Board agree to certain enumerated conditions, to "provide whatever assistance he can to facilitate [] payments" of certain bills and invoices, as well as the collection of account receivables (Opp at 16-17; Taller aff ¶¶ 12-19). The parties, however, fiercely dispute the legitimacy of the payables and receivables that Taller is agreeing to pursue. For example, Hill replies in his affidavit that the list of payables identified by Taller do not properly account for the full universe of Vision's unpaid obligations (Hill aff ¶ 12). And more concerningly, Hill notes, there is reason to question the veracity of the payables identified by Taller because (a) at least two of the entities identified by Taller never had any contractual relationship or recorded communication with Vision prior to January 2, 2024, and (b) five out of the six invoices provided by Taller are dated after he was removed from Vision's email and server systems on January 2, 2024 (*id.* ¶¶ 13-14). In light of these thorny disputes underlying Taller's conditional offer, the court concludes that Taller has not advanced a sufficient basis to overcome Vision's strong showing of irreparable harm.

IV. Balance of the Equities

"To obtain an injunction, the plaintiff [must] show that the irreparable injury to be sustained is more burdensome to [such plaintiff] than the harm that would be caused to the defendant through the imposition of the injunction" (*Lombard v Station Sq. Inn Apts. Corp.*, 94 AD3d 717, 721-22 [2d Dept 2012]; *accord Ma v Lien*, 198 AD2d 186, 187 [1st Dept 1993] [holding that the "balancing of the equities" requires the court to assess "the relative prejudice to each party accruing from a grant or a denial of the requested relief"]). Vision maintains that the balance of equities tips in its favor because an injunction would respect the will of Vision's members and enable to Company to operate productively for the benefit of its

members (MOL at 10; Reply at 7). The court agrees. As has been sufficiently established, an injunction would prevent interruption and disruption to Vision's ability to, among other things, maintain its operations, pay its liabilities, collect its receivables, and respond to government inquiries during the pendency of this litigation (*see* Saxe aff ¶¶ 22-28; *see also* Hill aff ¶¶ 12, 18).

That Vision should be able to maintain its operations by, at the very least, paying its liabilities and collecting its receivables during the pendency of this litigation is not seriously disputed by Taller (*see* Taller aff ¶¶ 10-19). Instead, the only apparent prejudice arising from an injunction that Taller can seriously insinuate is that he would not have any control or say in Vision's operations and management while the litigation is ongoing (*cf. id.* ¶¶ 12-19; *see also* Opp at 18). Put bluntly, the relative harm to which Taller alludes is minimal in comparison to the overall disruption of the status quo, including Vision's business operations, that would occur in the absence of an injunction. The balance of equities therefore decidedly tips in Vision's favor (*see Uber Tech., Inc. v NYC Dept of Consumer & Worker Protection*, 80 Misc3d 1221[A], at *19 [Sup Ct, NY County, 2023], citing *Gramercy Co. v Benenson*, 223 AD2d 497, 498 [1st Dept 1996] [holding that balance of equities favored petitioner where petitioner sought to "maintain the status quo pending the ultimate determination of this controversy"]).

Conclusion

For the foregoing reasons, it is hereby

ORDERED that plaintiff Vision BioBanc Holdings LLC's motion for a preliminary injunction (MS002) is granted to the extent of ordering the available relief set forth in the Order to Show Cause, dated April 16, 2024; and it is further

ORDERED that, as a result, defendant Derek R. Taller and anyone acting in concert with defendant are temporarily enjoined and restrained from (1) purporting to provide instructions, directions, or orders on behalf of plaintiff to any of its service providers, counterparties, consultants, advisors, or legal counsel; (2) accessing, using, or moving any money or assets belonging to plaintiff; and (3) accessing or interfering with any of plaintiff's confidential or proprietary information or plaintiff's IT systems and infrastructure; and it is further

ORDERED that, pursuant to CPLR 6312(b), the parties shall meet and confer on a proposed undertaking that plaintiff shall post and submit a proposed undertaking order to the court by no later than October 30, 2024; and it is further

ORDERED that the temporary restrictions imposed in the court's temporary restraining order, dated April 16, 2024 (NYSCEF # 13) are lifted; and it is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon defendant and the Clerk of the Court within ten days of the date of this order; and it is further

ORDERED that within 30 days of the e-filing of this order, defendant shall file an answer or otherwise respond to plaintiff's Verified Complaint.

This constitutes the Decision and Order of the court.

10/15/2024
DATE

MARGARET A. CHAN, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
	X	GRANTED		DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE