

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

VISION BIOBANC HOLDINGS LLC	INDEX NO.	<u>651706/2024</u>
Plaintiff,	MOTION DATE	<u>05/21/2024</u>
- v -	MOTION SEQ. NO.	<u>002</u>
DEREK R TALLER,	ORDER - OTHER (MOTION RELATED)	
Defendant.		

X

In its Decision and Order dated October 15, 2024, this court granted plaintiff's motion, by order to show cause, seeking a preliminary injunction against defendant (see NYSCEF # 25 – PI Order). As part of the preliminary injunction order (PI Order), the court directed the parties to meet and confer on a proposed undertaking that plaintiff shall post, and to submit a proposed undertaking order to the court by no later than October 30, 2024 (*id.* at 10). By letter, dated October 31, 2024, the parties jointly informed the court that the parties were unable to reach an agreement on the appropriate amount for the undertaking (NYSCEF # 27). Thus, on November 4, 2024, the parties submitted a joint status report setting for the parties' respective positions on an appropriate undertaking amount (NYSCEF # 28).

Plaintiff maintains that the court should fix an undertaking in the amount of \$1,000 arguing that defendant does not face any material harm or prejudice from the terms of the PI Order (NYSCEF # 28 ¶¶ 2, 5). Plaintiff explains that the order merely requires Taller to refrain from interfering in plaintiff's business operations and simply preserves the status quo (*id.* ¶ 5). Thus, plaintiff states, there is no damage or harm to Taller, particularly given the court's finding that he would otherwise suffer minimal prejudice with an injunction in place¹ (*id.* ¶ 6).

Defendant, on the other hand, argues that plaintiff's offer of a \$1,000 undertaking "barely scratches the surface of what Mr. Taller's reputational loss will be upon issuance of the preliminary injunction" (*id.* ¶ 18). Instead, defendant states, the court should fix the undertaking at \$200,000 based on defendant's view that he will suffer "incalculable reputational and monetary harm" due to the PI order (*id.* ¶ 9). As defendant posits, the PI Order is enjoining him from contesting managerial authority over plaintiff despite his position that the current Board has improperly

¹ Plaintiff references the PI Order addressing the balancing of equities of the PI motion: "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." (PI Order at 10).

taken control of the company (*id.* ¶¶ 10-12). Defendant further notes in support that he has been led to understand that members of the board have been internally and externally claiming that he was ousted from the Board due to his own purported malfeasance, and, according to defendant, the PI Order validates their claims (*id.* ¶¶ 13-14). Defendant posits that, because the PI Order legitimizes his ouster for the foreseeable future and prevents him from disputing the Board's claim of control over plaintiff, his ability to earn a living by doing business with investors and financial backers has been impacted, and thus he faces financial losses that could reach into the millions of dollars (*id.* ¶¶ 15-16, 19). For its part, plaintiff claims that Taller's request for a \$200,000 undertaking is based on nothing more than speculation (*id.* ¶¶ 7-8).

It is well settled that “[t]he fixing of the amount of an undertaking is a matter within the sound discretion of the court” (*Lelekakis v Kamamis*, 303 AD2d 380, 380 [2d Dept 2003]). The amount of an undertaking must be rationally related to the potential damages of the nonmoving party if the preliminary injunction later proves to have been unwarranted (see *Madison/Fifth Assoc. LLC v 1841-1843 Ocean Parkway LLC*, 50 AD3d 533, 534 [1st Dept 2008]). Speculative or conclusory claims of potential damages will not be considered in assessing the appropriateness of an undertaking amount (see *Ujueta v Euro-Quest Corp.*, 29 AD3d 895, 896 [2d Dept 2006]; *Visual Equities Inc. v Sotheby's, Inc.*, 199 AD2d 59, 59 [1st Dept 1993]).

Here, defendant has failed to establish beyond speculation that, because of the preliminary injunction, he has incurred or will incur damages in an amount remotely approaching his proposed \$200,000 undertaking. Nevertheless, in the court's view, plaintiff's proposal of an undertaking in the amount of \$1,000 also does not adequately account for any harm that defendant has incurred, or will incur, in light of the restraints that have been issued against him.

Instead, the court finds that, upon considerations of the scope of the preliminary injunction and the parties' positions, an undertaking of \$10,000 is rationally related to defendant's potential damages if the preliminary injunction later proves to be unwarranted. Accordingly, it is hereby

ORDERED that, pursuant to CPLR 6312(b), plaintiff shall post an undertaking in the amount of \$10,000 by November 22, 2024.

11/14/2024

DATE

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED
<input type="checkbox"/>	GRANTED
<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN

 DENIED

APPLICATION:

CHECK IF APPROPRIATE:

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	FIDUCIARY APPOINTMENT
<input type="checkbox"/>	OTHER
<input type="checkbox"/>	REFERENCE



MARGARET A. CHAN, J.S.C.