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

VISION BIOBANC HOLDINGS, LLC, Plaintiff, v. DEREK R. TALLER, Defendant.	Index No. 651706/2024 Hon. Margaret A. Chan, J.S.C. **JOINT STATUS REPORT**

Plaintiff Vision Biobanc Holdings Inc. ("Vision") and Defendant Derek R. Taller ("Taller"), by their respective counsel, respectfully submit this Joint Status Report pursuant to the Court's October 15, 2024 Order (NYSCEF Doc. No. 25; the "Order") granting Vision's Motion for Preliminary Injunction (Motion Seq. No. 002) and directing the parties to submit a proposed undertaking order pursuant to C.P.L.R. 6312(b).

1. Counsel for the parties have met and conferred but have been unable to reach an agreement on the appropriate amount of the undertaking. The parties' respective positions are set forth below for the Court's consideration.

Vision's Position

2. Vision respectfully submits that the Court should fix the undertaking in the modest amount of $1,000 in view of the fact that Taller does not face any material harm or prejudice from the terms of the Order.

3. An undertaking is required simply to "compensate the defendant for damages incurred *by reason of the injunction* in the event it is determined that the plaintiff was not entitled

to the injunction." *Tahmin v Interlaken Owners,* 215 N.Y.S.3d 359, 361 (2d Dep't 2024) (emphasis added); *see also* C.P.L.R. 6312(b).

4. Courts have wide discretion to require an undertaking in only a nominal amount where the enjoined party faces no real harm or has offered only speculative argument as to damages that might be suffered. *See Daytop Village v Con. Edison Co. of New York*, 61 A.D.2d 933, 934 (1st Dep't 1978) (affirming $1,000 undertaking where enjoined party made no showing of damages resulting from preliminary injunction); *Sardino v Scholet Family Trust*, 145 N.Y.S.3d 636, 639 (3d Dep't 2021) (affirming $1 undertaking where enjoined party offered only speculative argument as to damages resulting from preliminary injunction).

5. Here, the Order merely requires Taller to refrain from interfering with Vision's ordinary course business operations during the pendency of this action and is intended to preserve the status quo for the benefit of all interested parties. *See* Order at 9-10 (injunction needed to ensure Vision can "maintain its operations," and "without an injunction, the status quo, which Vision is attempting to maintain, will be disrupted"); *see also id.* at 10 (enjoining Taller from "purporting to provide instructions, directions, or orders on behalf of [Vision]"; "accessing, using, or moving [Vision's] money or assets"; and "accessing or interfering with [Vision's] confidential proprietary information or . . . IT systems and infrastructure").

6. Complying with the terms of the Order does not cause damage or harm to Taller, and the Court already has found that any prejudice to him would be "minimal." *See id.* at 10 ("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" during its pendency). Accordingly, a modest undertaking of $1,000 is appropriate. *See, e.g.*, *Daytop Village*, 61 A.D.2d at 934.

7. Taller's speculative and wholly unsupported claims that he will suffer reputational harm from the injunction do not justify his request for a $200,000 undertaking. Indeed, while Taller cites cases involving "loss of the goodwill of a viable, ongoing business," *Advent Software, Inc. v. SEI Global Services, Inc.*, 195 A.D.3d 498, 499 (1st Dep't 2021), Taller faces no such harm. Quite the opposite, the Court expressly acknowledged that the injunction was entered to prevent exactly that type of harm *to Vision* by enjoining Taller from interfering with its operations. *See* Order at 8-9 (Taller's conduct "undermines [Vision's] business reputation and good will").

8. Finally, *Marriott International, Inc. v. Eden Roc, LLP*, 2012 WL 5451640 (Sup. Ct. N.Y. Cty. Nov. 7, 2012), also does not support Taller's request for a $200,000 undertaking. The injunction in *Marriott* required that Marriott be permitted to continue to manage the Eden Roc Renaissance Hotel notwithstanding Eden Roc's attempts to terminate Marriott's management contract. *See id.* (directing Eden Roc "to allow [Marriott] to perform its role as Manager of the Hotel in accordance with the Management Agreement"). As a result, Eden Roc was obligated to pay $300,000 per month in management fees to Marriott that it would not pay absent the injunction. *See id.* ("We pay them somewhere around $300,000 a month that we would not have to pay them if they weren't entitled to this injunction."). Here, in contrast, the Order does not require Taller to bear any costs.

Taller's Position

9. Mr. Taller respectfully submits that the Court should fix the undertaking in the amount of two hundred thousand ($200,000) dollars in view of the fact that he will suffer incalculable reputational and monetary harm as a result of the issuance of the preliminary injunction.

10. In essence, the Order enjoins Mr. Taller from contesting the managerial authority over Vision of Barry Saxe, Donald Garlikov, Stormy Adams, Joseph Taussig, and Ruben Neftali

Gety Rodriguez (collectively, the "Saxe Board") for the foreseeable future, functionally ousting him as Chairman of the Vision – a company that he founded himself.

11. The Court is respectfully reminded that to date, no members of the Saxe Board has ever provided any evidence (other than self-serving and conclusory testimony) to either the Court or counsel for Defendant that a special meeting was ever properly noticed or held, much less that a vote was properly taken, replacing Mr. Taller and the company's board of directors with the Saxe Board.

12. Mr. Taller's position continues to be that what the Saxe Board claims to have been a "special meeting" did not comply with the requirements of Vision's operating agreement and that the vote taken was improper, if not outright fraudulent. In this regard, the Saxe Board's continued refusal to share any documentary evidence to establish that the "special meeting" and concomitant vote was done in accordance with the requirements of the company's operating agreement speaks volumes, because it could easily bring a swift end to this dispute if such evidence actually existed.

13. Defendant has been led to understand that, since the issuance of the temporary restraining order, members of the Saxe Board have been publicly claiming that Mr. Taller has been ousted as Chairman of Vision due to his own malfeasance and that the Court's issuance of the temporary restraining order proves and/or validates their claims.

14. Defendant has been led to understand that the Saxe Board's claims about Mr. Taller in this regard have been made internally (to holders of membership interests in Vision) as well as externally (to third-parties who had pre-existing contractual, business, financial and banking relationships with both Vision and Mr. Taller).

15. The preliminary injunction, in essence, constrains Mr. Taller from disputing the Saxe Board's claims to rightful control of Vision, leaving him unable to contest their claims of his ouster or otherwise defend his business reputation.

16. Mr. Taller's concern about his reputational damage since the issuance of the temporary restraining order his only become more acute since the Court's most recent Order (which, again, was based only on the self-serving affidavit from Mr. Saxe and without any documentary evidence at all) which concluded that Plaintiff had preliminary established that more than 70% of the company voted to remove him as chairman of Vision and, further, that he "engaged in conduct harming [Vision's] assets" and was "threatening its viability," (*see* NYSCEF Doc. 25 at p. 7), which the Saxe Board are sure to share with Vision's members and other third-parties.

17. New York Courts have consistently held that the damage that flows from loss of goodwill and harm to his business reputation – such as that which Mr. Taller will likely suffer because of the Order that ratifies his ouster as Chairman for the foreseeable future – may be incalculable. *See Advent Software, Inc. v SEI Global Servs., Inc*., 195 AD3d 498, 499 (1st Dep't 2021)(the harm that results from a loss of good will in business may be "irreparable"); *see also Marriott Intl., Inc. v Eden Roc, LLLP*, 2012 NY Slip Op 33278(U) at *12-13 (Sup Ct N.Y. Cty Nov. 7, 2012)(Schweitzer, J)("damage to business reputation and good will can be difficult or impossible to quantify").

18. It is thus respectfully submitted that the Saxe Board's request for a $1,000 undertaking barely scratches the surface of what Mr. Taller's reputational loss will be upon the issuance of the preliminary injunction and falls well below what courts have required in similar circumstances.

19. Rather the issuance of the preliminary injunction which, in effect, legitimizes Mr. Taller's ouster for the foreseeable future is likely to have significant effects on Mr. Taller's reputation and, concomitantly, his ability to earn a living by doing business with investors and financial backers. Under the circumstances, his potential financial losses could reach into the millions of dollars and it is respectfully submitted that a $200,000 undertaking is more than appropriate.

20. For example, in one case involving a dispute over who was entitled to manage a business, the court required (and the First Department affirmed) a $400,000 undertaking in conjunction with its issuance of a preliminary injunction prohibiting the defendant from interfering with plaintiff's management and operation of the business. *See Marriott Intl., Inc. v. Eden Roc, LLLP*, 2012 NY Slip Op 33278(U) at *12-13 (Sup Ct N.Y. Cty Nov. 7, 2012)(Schweitzer, J), *aff'd* 104 A.D.3d 583 (1st Dep't 2012). Notably, court in that case considered and rejected the same argument that Plaintiff makes here – *e.g.*, that Taller's future damages are "too speculative."

21. The cases on which Plaintiff relies to support its request for a $1,000 undertaking are completely inapposite. While the First Department in *Daytop Village v. Con. Edison Co. of New York*, (61 A.D.2d 933 [1st Dep't 1978]), modified an undertaking to $1,000 (about $5,000 in 2024 money), that case involved a situation where Con Edison was restrained from shutting off a customer's power where the parties were litigating over whether a one-time bill generated by a faulty meter was due and owing but the customer was otherwise "paying all current bills." It has no application here.

22. Likewise, *Sardino v. Scholet Family Trust*, (145 N.Y.S.3d 636 [3rd Dep't 2021]), involved a real property dispute concerning a 50-year-old easement with no parallels to this case at all.

23. Accordingly, it is respectfully requested that the Court fix the undertaking in this matter at the sum of two hundred thousand ($200,000) dollars notwithstanding Mr. Taller's good-faith belief that his damages will far exceed that amount.

Conclusion

24. The parties appreciate the Court's consideration of this matter and will make themselves available for further discussion if helpful to the Court.

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