Fulton County Superior Court
EFILEDQW
Date: 3/18/2022 5:39 PM
Cathelene Robinson, Clerk

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

DAMON HARRIS, Plaintiff, WALTER JORDAN Intervenor Plaintiff, v. SLUSH CORPORATION, BQE HOSPITALITY GROUP, INC. KENYA AMOS, and DARRYL BROWN, Defendants.	CIVIL ACTION FILE NO. 2021CV358056

ORDER GRANTING PLAINTIFFS' MOTION FOR TEMPORARY INJUNCTION

The above-styled case is before the Court on Plaintiff Damon Harris' Emergency Motion for Temporary and Permanent Injunction and Declaratory Judgment filed on December 20, 2021. Plaintiff-Intervenor Walter Jordan joined the motion and submitted Intervenor Walter Jordan's Brief in Support of Plaintiff Damon Harris' Emergency Motion for Temporary and Permanent Injunction on February 22, 2022. On February 23, 2022, the Court held a hearing on Plaintiffs' Motion for Temporary Injunction at the time which counsel for all parties was present. Upon consideration of the pleadings, the entire record, the applicable authority, hearing testimony, and the argument of counsel, the Court hereby makes the following findings of fact and conclusions of law and, for the reasons discussed more fully below, **GRANTS** Plaintiff's Motion for Temporary Injunction.

I. FINDINGS OF FACT

The evidence shows that in 2020 Plaintiff Damon Harris ("Harris"), Plaintiff-Intervenor Walter Jordan ("Jordan"), and Defendant BQE Hospitality Group, Inc. ("BQE"), entered into a partnership or joint venture to open and operate Slush Restaurant and Bar (the "Business"). On

April 21, 2021, the Business was officially opened by Harris, Jordan and BQE. It was and is located at 327 Edgewood Ave, Atlanta, GA, 30312.

On December 17, 2020, articles of incorporation for Defendant Slush Corporation were filed with the Georgia Office of the Secretary of State with Kenya Amos as incorporator. The principal office location was listed as 327 Edgewood Ave, Atlanta, GA, 30312, which is the location of the Business.

On July 11, 2021, attorney Winston Denmark distributed a document labelled as the bylaws for Slush, Inc. ("Bylaws Document"). The parties dispute which person or entity Winston Denmark represented in drafting the Bylaws Document. The Bylaws Document states that Harris, Jordan, and BQE are the sole – and equal – shareholders of Slush, Inc. The Bylaws Document was signed by Harris and Jordan on July 24, 2021, and it was returned to Winston Denmark by both Harris and Jordan. As they had done before executing the Bylaws Document, the parties continued to operate under the belief that Harris, Jordan, and BQE were equal, one-third partners in the Business.

The parties held a meeting on October 8, 2021, where BQE first asserted it was the majority owner in the Business. Specifically, BQE claimed that it was a 65% owner of Slush based on its alleged financial investment into the Business and that Jordan and Harris were minority partners. BQE, through its agent Kenya Amos ("Amos"), proceeded to bar Jordan from management of the Business and barred him from entry by changing the locks.

Harris and Jordan requested financial disclosures from BQE concerning the Business, including proof of all monies allegedly invested by BQE, all revenues received by Slush, and all payouts authorized by BQE, among other things. On October 10, 2021, just two days after meeting, counsel for Harris again requested financial disclosures by close of business on October 20, 2021.

No information was disclosed. Counsel for BQE promised to provide financial disclosures in advance of a November 22, 2021 meeting, but counsel for BQE informed Jordan and Harris that the meeting would be postponed because they were still working to gather the requested documents. As it stands, Slush and BQE have failed to provide any financial disclosures to Harris and Jordan for the Business.

The evidence also shows that Defendants are dissipating resources of the Business and not properly maintaining the Business. For example, a Notice to Submit Return was mailed to the Business on January 18, 2022, for failing to file a tax return for the September 30, 2021 period. Additionally, there was testimony that Defendants are not paying the requisite liquor taxes on time, which places the Business at risk of forfeiting a substantial portion of its sales and its liquor license. Similarly, the Business has received correspondence regarding an inactive music license. In spite of this failure to pay taxes properly, Defendants have continued to enrich themselves by taking distributions from the Business proceeds.

Amos claims to be the representative, but not owner, of BQE. She also asserts 100% ownership of Slush. BQE, however, asserts 65% ownership of Slush. During the hearing, BQE conceded that Harris and Jordan are owners of the Business but not the corporate entity.

The Court has insufficient evidence to determine the true ownership of Slush Corporation and if/how that corporate entity could properly enact bylaws, change ownership, issue stock, or otherwise operate. Moreover, the Court has insufficient evidence to determine whether the parties ever intended to create a legal entity to memorialize their business venture. However, even if the Business and the corporate entity are separable, they share the same address and their assets and liabilities, including for taxes and music licensing, appear to be intertwined, if not identical.

Further, there is ample evidence – through writings and actions – that Harris, Jordan, and BQE intended to be one-third equal partners in the creation and operation of a restaurant, the Business. It is conceded that Jordan and Harris invested into the Business. Based on the evidence before the Court at this stage of the case, Harris and Jordan have a viable claim to the Business. Accordingly, this Court preliminarily finds that the Harris, Jordan, and BQE are equal one-third owners of the Business.

II. CONCLUSIONS OF LAW

The purpose of an interlocutory injunction is to preserve the status quo, as well as balance the conveniences of the parties, pending final adjudication of a case on its merits. See West v. Koufman, 259 Ga. 505, 505 (1989); Owens v. Ink Wizard Tattoos, 272 Ga. 728, 729 (2000). To achieve this goal, the Court considers the following four factors: (1) whether there is a substantial threat that the movant will suffer irreparable injury if injunction is not granted; (2) that the threatened injury to movant outweighs the threatened harm that the injunction may do to the party being enjoined; that there is a substantial likelihood that the movant will prevail on the merits of the claims at trial; and, (4) whether granting the interlocutory injunction will not disserve the public interest. City of Waycross v. Pierce Cnty. Bd. of Comm'rs., 300 Ga. 109, 111 (2016) (citation omitted). The moving party need not show all four factors to succeed. Id. at 112; SRB Inv. Servs., LLLP v. Branch Banking & Trust Co., 289 Ga. 1, 5 n.7 (2011); Jackson v. Delk, 257 Ga. 541, 43 (1987). Moreover, this Court must weigh "whether greater harm might be done by refusing than by granting the injunction." Maddox v. Willis, 205 Ga. 596, 597 (1949).

In Georgia, "[t]o constitute a valid contract, there must be parties able to contract, a consideration moving to the contract, the assent of the parties to the terms of the contract, and a subject matter upon which the contract can operate." O.C.G.A. § 13-3-1. "When the parties intend

to memorialize with a formal document an agreement that they have already reached, [...] the execution of the document is not an act necessary to the creation of an enforceable contract." Doss & Assoc. v. First American Title Ins. Co., 325 Ga. App. 448, 452 (2013); Greene v. Colonial Stores Inc., 144 Ga. App. 645 (1978). Further, "attorneys have authority to bind their clients in any action or proceeding by any agreement in relation to the cause, made in writing ...". O.C.G.A. § 15-19-5. Lastly, the elements of a breach of contract claim are "(1) breach and the (2) resultant damages (3) to the party who has the right to complain about the contract being broken." SAWS at Seven Hills, LLC v. Forestar Realty, Inc., 342 Ga. App. 780, 784 (2017).

Here, BQE, through counsel, submitted the Bylaws Document to both Harris and Jordan. Although BQE failed to sign the document, that failure does not mean that an agreement was not made. The evidence shows that the parties had been operating as one-third business owners until BQE unilaterally and improperly asserted that it was a majority owner of the Business. In addition, the Court finds that the Business, Harris, and Jordan will suffer immediate and irreparable harm if Harris and Jordan are barred from Business management and operations. Any harm from the injunction sought by Harris and Jordan is minimal.

As an owner of the Business with managing control, BQE owes a fiduciary duty to Harris and Jordan, but BQE breached this fiduciary duty by failing to provide financial transparency and assuming unilateral control of the Business. A claim for breach of fiduciary duty consists of "(1) the existence of a fiduciary duty; (2) breach of that duty; and (3) damage proximately caused by the breach." Wimpy v. Martin, 356 Ga. App. 55, 57 (2020). Partners owe fiduciary duties to one another and must act in the "utmost good faith" and with the "finest loyalty." AAF-McQuay, Inc. v. Willis, 308 Ga. App. 203, 211 (2011). "Furthermore, the fiduciary duty of good faith prohibits a partner from improperly ousting another partner and appropriating for himself the assets and the

property of the partnership, and from withholding financial information from other partners for purposes of self-dealing." Id. (citations omitted).

Based on the evidence currently before the Court, Plaintiffs are likely to demonstrate that Slush, BQE, and Amos breached their fiduciary duties to the Defendants. Even if the Court accepted BQE's contention that it or Amos was a majority owner and entitled to control Slush, a majority owner of a business would still owe a fiduciary duty to minority shareholders. See Marshall v. W.E. Marshall Co., 189 Ga. App. 510, 512 (1989) (holding that majority stockholder status imposed duty to treat minority shareholders fairly and equitably). By assuming majority control of the Business and failing to provide any financial disclosures in spite of receiving multiple requests, BQE, including its agent Amos, the Court is likely to find that BQE breached its fiduciary duty to Plaintiffs.

Further, to the extent that BQE has received any payouts or distributions that exceed those paid to Harris and Jordan, such payouts have been excessive because it appears that all partners in the Business are entitled to equal distributions of profits.

III. CONCLUSION

Having considered Plaintiffs' Emergency Motion for Temporary and Permanent Injunction and Declaratory Judgment, all related submissions, and the argument and evidence presented, the Court **GRANTS** Plaintiffs' Motions.

The Court hereby **ORDERS** that BQE and Kenya Amos are enjoined from making any unilateral decisions on behalf of Slush – the corporation and the Business.[1] BQE and its owners and agents who are Defendants in this action are ORDERED AND DIRECTED to cease and desist from exercising exclusive control over the management and operations of Slush – the corporation

[1] To have any effect, this injunction must apply to both the Business and the corporation, to the extent that they are not identical.

and the Business. This includes, but is not limited to, exerting unilateral control over the distribution of funds and payouts. In addition, no financial decisions shall be made for the company or the Business without the approval of the majority of the Harris, Jordan, and BQE/Amos.

Harris and Jordan are authorized to receive a distribution of funds equal to the payouts already received by BQE before BQE may receive any additional payouts. After Jordan and Harris have been made whole, any subsequent payouts of profits to the partners must be made on an equal one-third basis to Jordan, Harris, and BQE.

Slush, BQE, and Amos are ORDERED to immediately provide Harris and Jordan full access to the physical premises of Slush, including any security access codes and keys.

Slush, BQE, and Amos are ORDERED to provide an immediate accounting of all of the financial records of the Business from December 2020 until present. This includes providing copies of and access to any records in possession of agents of BQE, Amos, Brown, and Slush regarding any financial information concerning Slush whatsoever. Slush, BQE, and Amos shall have **14 days** from the date of this Order to distribute the financial accounting to Jordan and Harris. Such an accounting must show all income generated and expenses incurred in connection with the operation of the Business since December 2020. As a part of the accounting, Defendants must also provide all bank statements of Slush and BQE and any of their businesses; bank statements relating to the Business; all documents reflecting revenue and expenses for Slush and the Business; all documents relating to payouts, payment of employees, and distribution of funds related to Slush and the Business; and full and unfettered access to the point-of-sale system and all financial institutions that have a relationship with the Business.

Slush, BQE, and Amos are further ORDERED to direct the accountant for the Business to provide full access to all of her records concerning the Business and to provide the accountant's contact information to Plaintiffs within **14 days** of this Order.

SO ORDERED this 18th day of March, 2022.

RACHELLE L. CARNESALE, JUDGE
Fulton County Superior Court
Atlanta Judicial Circuit

Filed and served electronically via Odyssey eFileGA