CITATION: Corbiere v. Corbiere, 2020 ONSC 4363
COURT FILE NO.: CV-20-00640041-00CL
DATE: 20200716

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Tyler Corbiere, Plaintiff

AND:

Aaron Corbiere, Curtis Corbiere and E. Corbiere and Sons Contracting, Defendants

AND BETWEEN:

Aaron Corbiere, Curtis Corbiere and E. Corbiere and Sons Contracting, Plaintiffs by Counterclaim

AND:

Tyler Corbiere and Jackie Wilson, Defendants by Counterclaim

BEFORE: C. Gilmore, J.

COUNSEL: *M. Veneziano* and *A. Quinn,* Counsel for the Plaintiff/Defendant by Counterclaim

P. Fruitman and *L. Brusven,* Counsel, for the Defendants/Plaintiffs, by Counterclaim

J. Spotswood and *E. Nicholl,* Counsel for Jackie Wilson, Defendant by Counterclaim (taking no position on the motion)

HEARD: July 15, 2020

ENDORSEMENT ON MOTION

OVERVIEW

[1] This is the Plaintiff's motion for a mandatory injunction to compel interim payments of $6,500 per month to be paid to him until the final disposition of this action. He claims that there was an oral compensation agreement between him and his brothers, the Defendants Aaron and Curtis Corbiere ("Aaron" and "Curtis"), that he would be paid $60,000 per year plus certain monthly expenses from their Defendant business, E. Corbiere & Sons Contracting ("the business"). The Plaintiff (or "Tyler") claims that his brothers unilaterally terminated these payments in January 2020 while still profiting from the use of his lands and equipment and earning significant income from the business.

[2] Aaron and Curtis dispute any such agreement. While they concede that in November 2016 they agreed that $250,000 may be a fair price to buy out Tyler's 1/3 interest in the properties owned by the business based on a set off arrangement, no formal agreement to this effect was signed. In any event, Tyler has been advanced more than $835,000 by the business since 2017. This money

was advanced by the brothers' aunt, the Defendant by Counterclaim, Jackie Wilson while she was working in the business and without the knowledge of either Aaron or Curtis.

BACKGROUND

[3] Aaron and Curtis are the partners in the family construction business. They, along with their brother Tyler each had their own company but effectively worked together as one business, paying expenses and using one another's equipment as needed. The three brothers purchased two workshops and a gravel pit all located on separate properties in M'Chigeeng, Ontario ("the properties").

[4] Since 2016 Aaron and Curtis have operated without Tyler. Aaron and Curtis registered the business as a partnership on February 2, 2017. Aaron and Curtis submit that they agreed to loan their brother up to $250,000 which would be paid back or applied against Tyler's ownership interest in the properties. They told their bookkeeper Jackie Wilson to ensure that payments made to Tyler did not exceed $250,000.

[5] Tyler's position is that his brothers agreed to buy him out of his interest in the properties and equipment. The buyout never occurred. Tyler submits that the business generates $40,000 to $50,000 a month in cash profits and that the quarry and workshops are worth up to $4,000,000. Aaron and Curtis do not deny Tyler's ownership in the properties but deny he has any interest in the business. They also deny the revenues alleged by Tyler to be earned by the business. Aaron and Curtis rely on a text message from Tyler on December 13, 2018 in which he agrees to be bought out for his interest in all properties (including "Dad's house" and "Big Lake") for $312,200.

[6] Jackie Wilson was employed as bookkeeper for the business between 2017 and 2020. Aaron and Curtis allege that Jackie transferred hundreds of thousands of dollars to Tyler without their authorization. In her affidavit sworn July 9, 2020 Ms. Wilson denies any knowledge of an arrangement whereby Tyler was not to receive loans of more than $250,000 from the business.

[7] Tyler claims that he and his brothers agreed that he would receive regular payments totalling $60,000 per year in the form of profits from the business and payment of certain expenses including his child support payments, cell phone and vehicle financing payments.

[8] In January 2020 the business was experiencing problems meeting its payroll. An investigation by Aaron and Curtis revealed that Jackie had paid Tyler advances of more than $731,000 since 2017 including credit cards debts, airline tickets, legal fees and cash advances. Added to this were various other loans which Aaron and Curtis were aware of for a total of $835,991. Aaron and Curtis did not authorize advances to Tyler of more than $250,000 and have commenced a counterclaim in that regard.

[9] There is a dispute about the exact amount advanced to Tyler. That dispute is not before the court, but Tyler does not agree that he was advanced the amount alleged by his brothers. Tyler submits he has not received any amounts from the business since January 2020. He has no savings, CRA has frozen his bank account and his construction equipment is being used by the business. He has been able to work only sporadically and requires funds from the business to pay basic living expenses, his child support payments, cell phone and vehicle financing payments. If matters continue without any funds from the business, Tyler may have to declare bankruptcy.

THE ISSUES AND THE LAW

[10] The Defendants submit that it is not necessary for the court to consider the test on an injunction in this case. This is because what the moving party is really seeking is a form of partnership distribution without having pleaded such relief in his Statement of Claim. The *Partnership Act* does not contain any right to distributions unless there is a Partnership Agreement which specifies such distributions. No such agreement exists or was pleaded, only the alleged Compensation Agreement which everyone concedes was never reduced to writing and which was also not pleaded.

[11] I agree with the Defendants that the motion should be dismissed on this basis alone as an historic "practice" of making certain payments is insufficient to ground the Plaintiff's motion. However, if I am wrong and an interlocutory injunction should be considered based on an oral agreement to pay, I would dismiss the Plaintiff's motion for the following reasons.

[12] The Plaintiff seeks a form of mandatory injunction. Such an injunction requires more than a *prima facie* case, a **strong** *prima facie* case must be shown. Tyler has no inherent right to payments under a partnership. He has a right to receive his share of interest in the jointly owned properties. That interest is not able to be determined at this stage. That interest is also subject to advances already received by Tyler, another amount which cannot be determined at this stage.

[13] Tyler's case is grounded in an alleged oral agreement which is denied by his brothers. No particulars of the agreement are given other than Tyler saying that he was paid approximately $60,000 per year plus expenses which accorded with the terms of that agreement. Aaron and Curtis deny that any such agreement existed other than two approved loans made to Tyler totalling just over $100,000. No other payments were authorized by them.

[14] Tyler estimates the value of the properties at over $4M yet in December 2018 he offered to sell his interest to his brothers for $312,200. This contradiction was not addressed in Tyler's Reply affidavit.

[15] I reject the Plaintiff's view that Tyler would simply be receiving money he is already entitled to, just on an earlier date. The evidence is either not available or entirely contradictory as to what Tyler may be entitled to with respect to his interest in the properties and whether he has been overpaid or underpaid for that interest to date. If he has been overpaid, his brothers stand little chance of recovery given Tyler's statements concerning his impecuniosity.

[16] As for irreparable harm to Tyler, the harm is monetary and therefore fully compensable. As per *2169205 Ontario v. Ontario (Liquor Control Board)* 2010 ONSC 5382 (ON Div Ct) at para 18:

> In this case, the only harm that has been alleged by the applicant is financial harm. That is readily calculable because full records are required to be kept by agency stores. It is fully compensable in damages in the event that the application is ultimately successful.

[17] While Tyler claims he will not be able to meet his expenses, he has not provided proof of this allegation. The fact that he is homeless or may go bankrupt are not considerations for the court at this stage. Further, Tyler has provided no evidence of his earnings in 2020, his prospects for

employment or his actual financial circumstances from which I infer that any irreparable harm is speculative.

[18] In *Burkes v. Canada Revenue Agency*, 2010 ONSC 3485, the court held that "the evidence about irreparable harm must be clear and not speculative. It is not enough to show that the moving party is "is likely" to suffer irreparable harm; one must establish that he or she "would suffer" irreparable harm (para 18).

[19] While Tyler did not delay to the extent alleged by the Defendants, I conclude that makes little difference in the context of this motion as Tyler has failed to meet the test for irreparable harm in any event.

[20] With respect to the balance of convenience, little need be said in relation to this part of the test given the lack of irreparable harm. Tyler's bald statement that the business is earning significant revenue and he should share in it is not sufficient to ground his argument that the balance of convenience favours payments to him. It also fails to take into account the significant claims made in the counterclaim against him which could mean that his interest has already been completely paid out or that he has been overpaid.

ORDERS AND COSTS

[21] Given all of the above, I make the following orders;

a. The Plaintiff's motion is dismissed.

[22] With respect to costs, the case law is clear that costs should be ordered in favour of the Defendants following an unsuccessful motion for an injunction (see *Cana International Distributing Inc. v. Standard Innovation Corp.*, 2011 ONSC 752). Further, costs should be ordered on a partial indemnity scale as there are no extraordinary circumstances that would dictate otherwise.

[23] The Defendants shall therefore be paid their partial indemnity all-inclusive costs of $30,000 forthwith.

C. Gilmore, J.

Date: July 16, 2020