

PRESENT: MADDEN  
Justice

PART 11

MASTER NOTIONS INC,

- v -

TRANSFORMATION PRODUCTIONS INC,

INDEX NO. 116870102  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 001  
MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause - Affidavits - Exhibits ...

Answering Affidavits - Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED  
**SCANNED**

Cross-Motion:  Yes  NO

Upon the foregoing papers, it is ordered that this motion is in  
accordance with the annexed decision  
and order.

MOTION/CASE IS DESECTUALLY DEFERRED TO JUSTICE

Dated: August 28, 2007

[Signature]  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 11

..... X

MASTER NOTIONS, INC.,

Plaintiff,

INDEX NO. 116870/02

-against-

TRANSFORMATIONPRODUCTIONS, INC.  
and PETER HAAS,

Defendants.

..... X

JOAN A. MADDEN, J.:

Plaintiff moves by Order to Show Cause for an order pursuant to CPLR 6301 granting a preliminary injunction: 1) enjoining defendants from converting, transferring, withdrawing or disposing of any funds in any bank account or credit card batching account maintained by them, which were generated by defendants' video business or the sale of videos or DVDs; 2) compelling defendants to pay plaintiff 50% of the profits from defendants' video business pursuant to the calculation set forth in the parties' contract; 3) compelling defendants to furnish plaintiff with access to sales data and bank account information sufficient to enable plaintiff to determine the profits of defendants' video business and the disposition of monies generated by defendants' video business.

To be entitled to a preliminary injunction, plaintiff must demonstrate a probability of ultimate success on the merits, a danger of irreparable harm in the absence of an injunction, and a balance of the equities in its favor. Aetna Insurance Co. v. Capasso, 75 NY2d 860, 862 (1990);

Doe v. Axelrod, 73 NY2d 748, 750 (1988); W.T. Grant Co. v. Srogi, 52 NY2d 496 (1981); Asness v. Nelson, 273 AD2d 165 (1<sup>st</sup> Dept 2000). Generally, if an action involves a breach of contract, injunctive relief is not appropriate if the plaintiff has an adequate remedy at law for damages. Neos v. Lacey, 291 AD2d 434,435 (2<sup>nd</sup> Dept 2002); Amity Loans, Inc. v. Sterling National Bank & Trust Co., 177 AD2d 277 (1<sup>st</sup> Dept 1991); O'Neill v. Poitras, 158 AD2d 928 (4<sup>th</sup> Dept 1990).

Here, plaintiff has failed to make a sufficient showing to be entitled to a preliminary injunction. Plaintiff's action is essentially one for breach of the parties' contract for plaintiff to provide consulting services to defendants' video business, and for defendant to compensate plaintiff for those services. Plaintiff alleges that it provided consulting services to defendants in May, June and July 2002, and that defendants breached the contract by failing to pay plaintiff 50% of their profits and by failing to reimburse plaintiff for its expenses. The complaint seeks compensatory damages in the amount of \$500,000 based on defendants' breach of contract. As plaintiff has an adequate remedy at law and can be fully compensated by a monetary award of damages, injunctive relief is not appropriate. Neos v. Lacey, *supra*; Amity Loans, Inc. v. Sterling National Bank & Trust Co., *supra*; O'Neill v. Poitras, *supra*.

While plaintiff contends that given defendants' history of failure with their video business, **they are** likely to **convert** the funds **in** their **bank** and credit card **accounts**, and render any final judgment ineffectual, plaintiff has neither alleged nor produced any facts to establish any conversion or other wrongdoing on defendants' part. East Harlem Management Group., Inc. v. Silbermann, M.D., 263 AD2d 354 (1<sup>st</sup> Dept 1999); Rosenthal v. Rochester Button Co., Inc., 148 AD2d 375 (1<sup>st</sup> Dept 1989). The parties executed the contract on May 18, 2002, and less than

three months later, on July 30,2000, plaintiff secured the instant Order to Show Cause for injunctive relief. Plaintiff explicitly acknowledges that when it agreed to provide consulting services to defendants, it did so with full and complete knowledge of the financial instability of defendants' business and the risks involved. In his affidavit, plaintiffs president, Jason Buchtel explains that “[i]n May 2002, defendants . . . had the exact type of business we had targeted: a business which produced and sold videos. . . ,had significant market potential, but which -- due to complete mismanagement and virtual absence of an marketing strategy – was a complete failure, barely generating enough income to pay its bills.” Thus, from the outset of their contractual arrangement, plaintiff has been fully aware of the financial risks of contracting with a “failed” and “mismanaged” business, and the sole fact that defendants' business has now become profitable is insufficient to conclude that defendants will be converting their funds. See id at 377.

Additionally, defendants sharply dispute plaintiffs claims. Defendant Peter Haas submits **an** affidavit stating that any increased revenues for June 2002 are due to the issuance of two videos **as** opposed to the issuance of one video in June 2001, **as** well **as** a magazine cover article featuring his business, which he arranged in April 2002, prior to the parties' contract. Defendant Haas emphatically states that “since May 18,2002, the plaintiff has done little or nothing to which **any** increase of such sales can be attributed” and that prior to his contract with plaintiff, “I had conducted a successful, profitable, business. Indeed, I was induced to sign the Agreement upon the representations that my successful business could be made even more successful.” Defendant Haas also explains that “[t]he reason I had to change my internet codes is to protect my market, because the defendant, by its representative threatened ‘to ruin me.’ I

changed my bank account' only thereafter, those accounts are mine to deal with in any event.

They are in New York."

Finally, while the complaint seeks an award of "compensatory damages in an amount "not less than \$500,000," plaintiffs president states that at the time this action was commenced his company was entitled to 50% of defendants' profits for June and July 2002, along with reimbursement of its expenses. Plaintiff's president alleges that defendants' profits for June and July 2002, were \$12,000 and \$15,000, respectively; and plaintiffs expenses for this period were \$11,500. Thus, at best, plaintiff has established that it has been damaged in the total amount of \$25,000.

Therefore, under the circumstances herein, where plaintiff has an adequate remedy at law for damages, preliminary injunctive relief is not warranted.

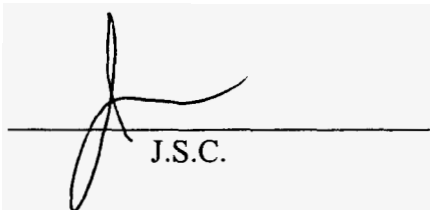
The parties are directed to appear for a Preliminary Conference on September 12, 2002 at 9:30 am, in Part 11, Room 351 at 60 Centre Street

Accordingly, it is hereby

ORDERED that plaintiffs motion for a preliminary injunction is denied in its entirety.

DATED: August 20, 2002

ENTER:

  
\_\_\_\_\_  
J.S.C.