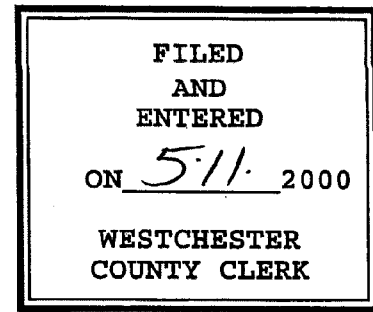


To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER  
PRESENT: HON. JOHN P. DiBLASI, J.S.C.

-----X  
ANNA GERAD, Individually and Derivatively on  
behalf of 45 SAW MILL RIVER ROAD CORP.,

Plaintiff,

Index No. 18246/98

-against-

Motion Date: 3/1/00

45 SAW MILL RIVER ROAD CORP., LEON ZANGER,  
JONATHAN ZANGER, WALKER & ZANGER, INC., H&Z  
MARBLE WORKS, INC., MARBLE WORKS, INC. and  
WESTCHESTER MARBLE & GRANITE, INC.  
Defendants.

-----X  
The following papers numbered 1 to 8 were read on a motion for the appointment of a temporary receiver and for related relief.

PAPERS NUMBERED

Order to Show Cause/Affidavit/Memorandum of Law	<u>1-3</u>
Affidavit/Affirmation/Memorandum of Law in Opposition	<u>4-6</u>
Reply Affidavit/Memorandum of Law	<u>7-8</u>

Upon the foregoing papers it is ordered that this motion is granted solely to the extent set forth below.

Plaintiff Anna Gerad, who is a 50% shareholder in 45 Saw Mill River Road Corp. (SMR), has commenced this suit seeking money damages and injunctive relief based upon a variety of claims sounding in breach of fiduciary duties and breach of contract. By decision and order entered August 3, 1999 this Court dismissed certain of the claims and counterclaims set forth in the complaint and answer, respectively, and disqualified the law firm of Colamarino & Sohns, LLP (C&S) from continuing to represent SMR.

Now before the Court is plaintiff's motion for the appointment of a temporary receiver and certain preliminary injunctive and other interim relief. Plaintiff's requests for relief are all founded upon her core complaint that Leon and Jonathan Zanger

(together "the Zangers") have improperly expended approximately \$30,000 from the funds remaining in the account of SMR.

Based upon the papers presented, the Court does not agree with plaintiff that she has sufficiently set forth a case for the appointment of a receiver. Nevertheless, in view of the fact that SMR is not an ongoing concern, that its assets consist solely of the approximately \$170,000 balance in its account, and that the Zangers have not provided plaintiff with monthly statements and back-up documents related to that account, the Court concludes that some relief must be fashioned to ensure that the status quo is maintained pending the outcome of the action. This may be accomplished with the entry of a preliminary injunction which restricts the use of the monies in SMR's account without incurring the additional expense involved in the appointment of a receiver.

To the extent that plaintiff seeks an order which, at this time, directs that the funds paid to C&S be returned to SMR, that application is denied. It is clear that there are factual issues that must be resolved before it may be determined that SMR's former counsel was not entitled to any payment for its services.

Nor is the Court persuaded that the Zangers must provide a full accounting to plaintiff for all expenditures made by SMR since this dispute first arose. Nevertheless, in order to ensure that plaintiff is apprised of the expenditures made by the Zangers in behalf of SMR during the period of the dispute and pending the outcome of the action, the Court concludes that the Zangers should be directed to provide copies of monthly bank statements and cancelled checks to plaintiff.

Accordingly, it is hereby

ORDERED that pending the final disposition of this action or further order of the Court, defendants Leon Zanger and Jonathan Zanger, and their agents, employees and anyone acting in their behalf, are prohibited and restrained from removing, withdrawing or disbursing any funds from the account of 45 Saw Mill River Road Corporation maintained at the Bank of New York, with the exception of payments for the taxes of 45 Saw Mill River Road Corporation or for accounting services provided to 45 Saw Mill River Road Corporation, except with the consent of all shareholders of 45 Saw Mill River Road Corporation or upon order of the court; and it is further

ORDERED that the aforesaid preliminary injunction shall continue in effect on condition that by no later than May 31, 2000, plaintiff shall post an undertaking in the sum of \$50,000 against which defendants shall recover their costs, expenses and damages in the event that it is later determined that the aforesaid preliminary injunction should not have been issued; and it is further

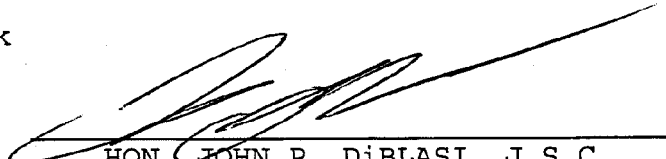
ORDERED that by no later than May 31, 2000 defendant Leon Zanger shall provide plaintiff with copies of the monthly bank statements and cancelled checks for the account of 45 Saw Mill River Road Corporation maintained at the Bank of New York for the period from June 1999 through April 2000; and it is further

ORDERED that pending the final disposition of this action or further order of the Court, defendant Leon Zanger shall provide plaintiff, by no later than the last day of each month commencing with May 2000, with a copy of the monthly bank statement and cancelled checks for the account of 45 Saw Mill River Road Corporation maintained at the Bank of New York, for each such month; and it is further

ORDERED that in all other respects the motion is denied.

The foregoing shall constitute the decision and order of the Court.

Dated: White Plains, New York  
May 8, 2000



HON. JOHN P. DiBLASI, J.S.C.

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