VERMONT SUPERIOR COURT
CHITTENDEN UNIT
CIVIL DIVISION

DANIEL BALDWIN Plaintiff v. MATTHEW BALDWIN Defendant	Docket No. S652-11 CnC

RULING ON CROSS-MOTIONS FOR PRELIMINARY INJUNCTION

This is an unfortunate fight between two young brothers, co-owners of a 363-acre hay farm in Hinesburg. Plaintiff Daniel filed this action seeking partition of the land and dissolution of the partnership. Defendant Matthew has counterclaimed for breach of contract, breach of the covenant of good faith and fair dealing, and breach of fiduciary duty.

The court granted Daniel a temporary restraining order on June 21 when the complaint was filed, based upon allegations that Matthew had interfered with haying by intentionally making farm equipment inoperable. Each party now seeks a preliminary injunction allowing him to manage the farm and barring the other from doing so. A preliminary injunction hearing was held on June 30. Plaintiff is represented by Matthew Daly, Esq.; Defendant is represented by Pamela Moreau, Esq.

Findings of Fact

The court finds that both parties were less than fully honest in their testimony. The court will not recite all the evidence due to the need for quick action here, but finds the following key facts established by a preponderance of the evidence.

The parties, who are in their twenties, have been running the farm together since 1999. It appears there has always been some tension, with Matthew (the older brother) running the show more than Daniel liked. Matthew was the public face of the farm, cultivating customers and arranging much of the deliveries, while Daniel did more of the daily operations work.

In the summer of 2010, Matthew's wife left him and returned to her family in Michigan with their young daughter (now two years old). In March of this year Matthew went to Michigan to seek reconciliation. He did a training program to be a stockbroker and obtained a job with Morgan Stanley. The couple shopped for a house, though they did not buy one. When he left he planned to come back when he could in the summer to help with the farm, and his new boss supported that idea. He did come back several weekends in May and June and did work on farm equipment as well as delivering hay. While in Michigan, he also continued to be the primary manager of customer contacts for the farm, relaying messages to Daniel about delivery requests. He was not certain whether he would stay in Michigan long-term because it depended on his success in reconciling with his wife.

Matthew and his wife withdrew the Michigan divorce proceedings and decided to return to Vermont. They returned for the parties' younger brother's graduation on June 18. Matthew then appeared at the farm on June 19, and demanded to take over the haying that day. Daniel drove the tractor away and then took the keys from all the tractors so Matthew could not drive them. Matthew then took the computer controls from the balers so Daniel could not bale hay. Later that day, they confronted each other at their parents' home. Matthew punched Daniel and Daniel ran his car into Matthew's car, causing damage. Each denied their misconduct to the police and in court, Matthew saying he "tapped" Daniel in the face and Daniel saying the ramming was an accident.

It is clear to the court that the brothers cannot continue to manage the farm together. They are extremely angry at each other, and Daniel pulled their mother into the dispute by having her testify at the hearing. Sadly, the family dynamic appears irreparably damaged.

Conclusions of Law

A party seeking a preliminary injunction must show that he is likely to succeed on the merits, that he is likely to suffer irreparable harm without preliminary relief, and that the equities are in his favor. Winter v. Natural Res. Def. Council, Inc., 129 S. Ct. 365, 374 (2008); *see also* State v. Glens Falls Ins. Co., 134 Vt. 443, 450 (1976) (preliminary injunction may issue "only upon a showing of irreparable damage during the pendency of the action."). "To establish irreparable harm, a party seeking a preliminary injunction must show that 'there is a continuing harm which cannot be adequately redressed by final relief on the merits' and for which 'money damages cannot provide adequate compensation.'" Kamerling v. Massanari, 295 F.3d 206, 214 (2nd Cir. 2002) (citations omitted). Moreover, the harm "must be shown to be actual and imminent, not remote or speculative." Id.

Likelihood of Success

Both parties seek partition. Partition of real estate is appropriate when co-owners can no longer peaceably share ownership, and is essentially automatic upon request of one owner. 12 V.S.A. § 5161. How the partition occurs—by sale, division, or award to one party—depends upon the facts, but partition is not denied merely because the defendant says "I don't agree." Thus, both parties are likely to succeed on this claim.

Plaintiff's next claim is for dissolution of the partnership. There is no written agreement, so this is a partnership at will. Although Matthew argues that without "notice" a partnership cannot be dissolved by one partner, the court concludes otherwise. First, the provision Defendant

cites refers only to notice, not any particular type of notice. The court finds that the complaint in this case seeking dissolution constitutes such notice. Second, the partnership statute says that a partnership "is dissolved, and its business must be wound up," when a partner gives notice of an intent to withdraw from the partnership. 11 V.S.A. § 3271(1). Even if the term "withdrawal" is ambiguous, the commentary to the Uniform Partnership Act (1997)[1] makes clear that "any member of an at-will partnership has the right to force a liquidation." Uniform Partnership Act § 801 cmt. 3 (1997); *see also* Callison and Sullivan, Partnership Law and Practice: General and Limited Partnerships § 16.4 (Westlaw through 2010) ("A partnership at will dissolves when any partner manifests an unequivocal election to effect dissolution."). The court therefore concludes that Daniel is likely to succeed on the merits of this claim.

However, Matthew argues that he is likely to succeed on the merits of his claims of breach of contract, breach of the covenant of good faith, and breach of fiduciary duty. The court finds that the evidence to support these claims is equivocal. For example, Matthew claims that Daniel took funds from a joint account last year and refused to let him continue working on the farm on June 19, but there is also evidence that Matthew took joint funds first (e.g. to pay his divorce lawyer), and that he was the one who started the dispute on June 19. Both parties have credibility issues, and based upon the brief hearing and limited evidence—lacking, for example, any bank records to corroborate the claims—the court cannot say whose story is closer to the truth. Thus, the court cannot say that Defendant is likely to succeed on these claims.

Irreparable Harm

Although injuries that can be remedied by money damages are not generally considered irreparable, injury that is likely to destroy a business is considered irreparable. Campbell Inns,

[1] The Vermont statute is modeled on that statute. *Compare* 11 V.S.A. § 3271, *with* Uniform Partnership Act (1997) § 801.

Inc. v. Banholzer, Turnure & Co., Inc., 148 Vt. 1, 7 (1987) ("The potential loss of a business satisfies the irreparable harm requirement for the issuance of an injunction, and demonstrates the inadequacy of a remedy at law."). In fact, both parties in this case argue that point. Both also argue that there is a risk of disaster for the business. Daniel argues that this is so because Matthew is violent and abusive and on June 19 created the dispute, and that he may do so again if he is free to come to the property. Daniel also argues that Matthew took the computer controls necessary to operate the haying machinery (on one of the few sunny days this season). Matthew argues that this is so because Daniel does not know how to manage the business end of the farm and is losing customers by failing to deliver hay as scheduled.

With respect to management of the business, the court found credible Daniel's testimony that the delivery issues had to do with fleas in the hay and poor-quality hay, and there is no convincing contrary evidence. In addition, whether any customers have been lost is hotly contested, and the court cannot currently determine that fact. Daniel also was credible when he said that the fact that an extension was needed for the taxes this year was no different from what happened every year, rather than it being due to his inability to collect the necessary records for the accountant. The parties' mother testified that both parties are able to manage the farm on their own.

Both parties contributed to the inability to hay on June 19, as both made it impossible for the other to run equipment necessary to the operations. The court concludes that regardless of whose behavior is the basis of the problems here, the parties' anger at each other is definitely interfering with the parties' ability to run the farm together. It is clear that if haying cannot be done when the sun shines because the parties are acting as childishly as they did on June 19, the

hay farm will fail. The court concludes that further such behavior is likely between the parties. This is sufficient to establish irreparable harm if the parties are both at the farm.

The Equities

There being similar relief sought by both sides, the balancing of the equities is key in this case. One party has to be given control of the farm for the time being. The court concludes that the evidence supports an award of preliminary relief to Daniel because he has actually remained in Vermont running the farm in the last year, while Matthew left in March to move to Michigan. Although the court finds credible Matthew's testimony that he always planned to come back frequently to help—and in fact did so in May and earlier in June—this is not the same as running day-to-day operations. Daniel was left to keep things running. Although Matthew points out that there was less to do when he was gone in March and April, he was only coming home on weekends in May and June. That still left Daniel running things the rest of the week, and haying is not merely a weekend business. While the court has sympathy for Matthew's reason for going to Michigan, he had a hard choice to make and he chose to leave the farm. To the extent that one party has a better claim to staying there on a temporary basis while this case proceeds, the court concludes it is the one who remained there.[2]

Order

For the reasons set forth above the court grants a preliminary injunction to Daniel on the terms set forth in the attached order. The court directs the parties to (a) engage in mediation within thirty days to attempt to reach agreement on partition and dissolution of the partnership, and (b) submit a stipulated discovery schedule (or, if no agreement can be reached, competing proposals) by that same date.

[2] The court notes that Daniel also left the state for a woman—now his fiancée—for periods in 2009 and 2010. However, the crucial period in the court's eyes is the current time period.

Dated at Burlington, Vermont this 1st day of July 2011.

Helen M. Toor, Superior Court Judge