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**Please reply to Hackensack**

December 3, 2012

**HAND DELIVERED**

Honorable Robert P. Contillo, J.S.C.  
Bergen County Justice Center, Room 432  
10 Main Street  
Hackensack, New Jersey 07601

**Re: AYL, Inc. vs. Space Odyssey LLC, et al.**  
**Docket No.: C-365-12**  
**Plaintiff's Order to Show Cause Application for Temporary Restraints**  
**Hearing Date: December 4, 2012 @ 9:30 a.m.**

Dear Judge Contillo:

The defendants retained my firm today for the purpose of opposing plaintiff's order to cause seeking temporary restraints and other injunctive relief. It is my understanding [REDACTED] your Honor has scheduled a hearing tomorrow morning at 9:30 am. with regard to the temporary restraints application. Kindly accept this letter memorandum and Certification of James Grau ("Grau Cert.") in opposition to the temporary restraints component. Mr. Grau is the manager of the limited liability defendant Space Odyssey LLC d/b/a Space Odyssey USA ("Space Odyssey"), and is also a shareholder of Elvira Consulting, Inc., the majority member of Space Odyssey.

In the proposed Order to Show Cause, plaintiff seeks the following preliminary restraints:

1. Preliminary enjoining and restraining Defendants from selling or otherwise dissipating in any way assets of the company; and

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of clarity about whether there are other shareholders of the plaintiff AYL Inc. (“AYL”) who have no connection to the \$300,000 investment made by Albert and Yuri Galibov. As the Grau Cert. amply demonstrates, dating back to December 2010 he attempted to make arrangements with plaintiff’s counsel to secure a document inspection but was met with either silence or a refusal to confirm the identities of the shareholders of AYL.

It is beyond dispute that money damages is the primary relief sought by plaintiff. As the New Jersey Supreme Court succinctly stated in Evening Times Printing and Publishing Co. v. The American Newspaper Guild, 124 N.J. Eq. 71, 74 (E. & A. 1938):

The object of a preliminary injunction is to prevent some threatening, irreparable mischief which should be averted until opportunity is offered for a full and deliberate investigation of the case. (citations omitted). Acts destroying a complainant’s business, custom and profits do an irreparable injury and authorize the issue of a preliminary injunction.

“[J]ustice is not served if the subject-matter of the litigation is destroyed or substantially impaired during the pendency of the suit.” Haines v. Burlington County Bridge Commission, 1 N.J. Super. 163, 174 (App. Div. 1949) (internal citation omitted).

The object of temporary relief is to “maintain the parties in substantially the same condition ‘when the final decree is entered as they were when the litigation began.’” Crowe v. De Gioia, 90 N.J. 126, 134 (1982) (internal citation omitted). Where a party demonstrates wrongdoing on the part of a defendant on an application for an interlocutory injunction, the courts will take that into consideration when determining whether or not to issue the requested injunction. Whitmeyer Brothers, Inc. v. Doyle, 58 N.J. 25, 30-33 (1971).

The following elements must be established to award a litigant *pendente lite* relief pending adjudication of the merits of the underlying claim at trial: (i) irreparable harm; (ii) the legal right underlying the claim is settled; (iii) all material facts are uncontroverted, and thus there exists a reasonable probability that movant will succeed on the merits of the underlying

2. Taking any action whatsoever with respect to Plaintiff's shares in the company.

The first component of temporary restraints – to restrict any disposition of sale of assets – is completely unfounded. Space Odyssey operates as a family entertainment center and destination event for kids' birthday parties, adult parties, Bar and Bat Mitzvahs, corporate events, and Sweet 16's among other events. The company is located in Englewood and operates out of a 26,000 square foot facility. As the Grau Cert. recites, the company is solvent and employs approximately 40 people.

It appears that the thrust of the complaint is predicated on what plaintiff perceives to be Space Odyssey's refusal to turnover company books and records and issue distributions to its members. Plaintiff's application is bereft of any proof that should cause this Court to have any concern to doubt the validity of Space Odyssey's ongoing business operations, or that it is attempting to, or in the process of, conducting a fire sale of its assets. In point of fact, plaintiff has presented no proof that Space Odyssey is insolvent, has suspended its business operations for lack of funds, or is otherwise operating at a great loss that is prejudicial to the interests of its creditors or shareholders as required by N.J.S.A. 14A:14-2(a) which governs the appointment of corporate receivers.

Space Odyssey is a limited liability company, and as such it does not issue shares. In any event, Section V of the company's Operating Agreement annexed as Exhibit A to the Grau Cert. specifically prohibits any member from assigning, conveying, selling or encumbering membership interest in the company. There is no disputing that plaintiff owns a 10% interest in Space Odyssey. Defendants concede there is no right or ability on their part to attempt to cause any alienation in plaintiff's 10% ownership interest, nor have the defendants ever threatened to do so.

According to Mr. Grau, Space Odyssey is ready, willing and able to produce its financial records to plaintiff provided that there is a confidentiality order in place given the lack

claim; and (iv) the balance of hardships between the relative parties in granting or denying the relief weighs in favor of the movant. Crowe, 90 N.J. at 132-133. The Court should be circumspect in granting *pendente lite* relief where to do so would be tantamount to giving the moving party the full measure of relief to which they may be entitled at a final hearing. Aldrich v. Union Bag & Paper Co., 81 N.J. Eq. 244 (Ch. 1913). Not surprisingly then, "[A] party who seeks mandatory preliminary injunctive relief must satisfy a 'particularly heavy' burden." Rinaldo v. RLR Inv., LLC, 387 N.J. Super. 387, 396 (App. Div. 2006) (quoting Punnett v. Carter, 621 F.2d 578, 582 (3d Cir. 1980)). Thus, a successful applicant must demonstrate these elements by clear and convincing evidence. Am. Emp'rs' Ins. Co. v. Elf Atochem N. Am., 280 N.J. Super. 601, 610-611 n.8 (App. Div. 1995).

The first element of "substantial harm" is met if a plaintiff is threatened with substantial, immediate, and irreparable harm if the injunction does not issue. Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J. Eq. 299, 303-304 (E. & A. 1878). It has been held that destruction or significant impairment of the subject matter of the litigation constitutes irreparable harm. See Coleman v. Wilson, 123 N.J. Super. 310 (Ch. Div. 1973). It is axiomatic that harm is considered irreparable only if it cannot be adequately addressed by monetary damages. Crowe, 90 N.J. at 131. "[T]he possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm." Judice's Sunshine Pontiac, Inc. v. General Motors Corp., 418 F. Supp. 1212, 1222 (D.N.J.1976).

Here, it is not even necessary for the Court to look beyond the element of irreparable harm. Not only does plaintiff's Verified Complaint fail to even mention the words "irreparable harm", there can be no irreparable harm when plaintiff sat on its rights for almost 2 years. The fact that plaintiff took no action to advance its rights to inspect the company's books and records dating back almost 2 years go in December 2010, despite threatening Space Odyssey with filing

an order to show cause on at least 2 occasions, is ample proof that the alleged “urgency” was brought about by plaintiff’s own somnolence.

For the foregoing reasons and authorities cited, the Court should deny plaintiff’s application for temporary restraints and set a return date as to the balance of plaintiff’s Order to Show Cause. Simply stated, plaintiff has not carried its burden to obtain such extraordinary *pendent lite* relief.

Thank you for Your Honor’s consideration of my client’s response.

Respectfully,

*Glenn R. Reiser*

Glenn R. Reiser

Cc: Andrew Borsen, Esq. (Via Fax & E-Mail)