

**SHORT FORM ORDER**

**SUPREME COURT - STATE OF NEW YORK  
COUNTY OF NASSAU - PART 22**

**Present: HON. WILLIAM R. LaMARCA  
Justice**

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**SLANT/FIN CORPORATION,  
Plaintiff,**

**Motion Sequence # 001  
Submitted November 28, 2005**

**-against-**

**INDEX NO: 17969/05**

**NORTH FORK PLUMBING & HEATING  
DISTRIBUTORS, INC., NORTH FORK  
PLUMBING & HEATING SUPPLY CORP.,  
and THOMAS GOELTZ,**

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**The following papers were read on this motion:**

**Notice of Motion/Order to Show Cause.....1  
Affirmation and Affidavit in Opposition.....2**

Plaintiff, SLANT/FIN CORPORATION (hereinafter referred to as "SLANT FIN") moves for an order granting a preliminary injunction, pursuant to CPLR §§6311 and 6313, enjoining and restraining defendants, NORTH FORK PLUMBING & HEATING DISTRIBUTERS, INC. (hereinafter referred to as "NFD") and NORTH FORK PLUMBING & HEATING SUPPLY CORP. (hereinafter referred to as "NFS"), from withdrawing any funds from the accounts of NFD or NFS, other than for expenses in the ordinary course of business, and from making any payments to defendant, THOMAS GOELZ s/h/a THOMAS

GOELTZ (hereinafter referred to as "GOELZ"). A Temporary Restraining Order was issued in the initiating Order to Show Cause, dated November 17, 2005. Counsel for respondents and GOELZ oppose the motion, which is determined as follows:

In this action, SLANT/FIN seeks to set aside an alleged fraudulent conveyance. The complaint alleges that in July 2005, NFD, acting through GOELZ, transferred all of its assets to NFS for no consideration and for the express purpose of preventing SLANT/FIN from obtaining payment of its judgment in the amount of \$33,130.95, entered in favor of SLANT/FIN and against NFD on or about July 28, 2005. Counsel for SLANT/FIN relates that, in August 2003, it commenced an action against NFD to recover \$27,713.93, plus interest, based upon NFD's failure to pay for goods sold and delivered. Counsel states that, on March 10, 2005, on the eve of the Preliminary Conference in Court, NFD consented to the entry of a default judgment and, on March 15, 2005, SLANT/FIN moved the Court for entry of a default judgment, which was granted and entered on July 22, 2005. Thereafter, in September 2005, it appears that SLANT/FIN served a Restraining Notice and an Information Subpoena on North Fork Bank where NFD had a checking account and North Fork responded that NFD had closed its accounts on June 15, 2005. On September 27, 2005, NFD responded to the Information Subpoena and stated that it had no bank accounts, no gross revenue, no net profit and no equipment.

SLANT/FIN now moves for a preliminary injunction and asserts that GOELZ diverted all of NFD's assets to NFS in a blatant attempt to avoid payment of SLANT/FIN's judgment against NFD, in violation of Debtor Creditor Law §§273, 273(9) and 274. SLANT/FIN points out that NFS has the same address, phone number and fax number as NFD and that its letterhead and logo are identical. Counsel for SLANT/FIN states that the NFD sign

is still displayed at the Riverhead location of the corporation and that the same employees of NFD continue to work there. Counsel states that phone calls to the corporate number are answered "NORTH FORK" and that he was told that "NFD" is now "NFS". SLANT/FIN urges that a preliminary injunction at this time is necessary to prevent defendants from taking further steps to frustrate enforcement of its judgment and to avoid irreparable injury in the form of an unsatisfied judgment.

In opposition to the motion, counsel for defendants states that, based upon conversations with the defendants' accountant, no actual intent to defraud existed when defendants closed down the old corporation and opened the new corporation. Counsel states that the new corporation began operating on or about April 15, 2004, that the opening of the new entity was for tax compliance purposes and that the granting of a preliminary injunction would prevent defendants from operating in the ordinary course of business. GOELZ avers that the opening of NFS was upon the advice of their accountant and that there was no transfer of value to him or to NFS. No affidavit of the accountant is annexed nor is the affirmation of counsel probative as the facts are not of his personal knowledge.

It is well settled that to be entitled to a preliminary injunction, the movant must establish (1) the likelihood of success on the merits, (2) irreparable injury absent granting the preliminary injunction, and (3) a balancing of the equities in the movant's favor. *Nobu Next Door, LLC. v Five Arts House, Inc.*, 4 NY3d 839, 800 NYS2d 48, 833 NE2d 191 (C.A. 2005); *Ying Fung Moy v Hohi Omeki*, 10 AD3d 604, 781 NYS2d 684 (2<sup>nd</sup> Dept. 2004); *Singer v Riskin*, 304 AD2d 554, 755 NYS2d 902 (2<sup>nd</sup> Dept. 2003); *cf.*, *Pellicoro's Dance*

*Sport International, Inc. v Levy*, 266 AD2d 305, 729 NYS2d 389 (1<sup>st</sup> Dept. 2001). After a careful reading of the submissions herein, it the judgment of the Court that a balancing of the equities tip in SLANT/FIN's favor and a preliminary injunction is warranted. However, in the event that it is later determined that a preliminary injunction was erroneously granted, SLANT/FIN shall give an undertaking in the sum of \$35,000.00, pursuant to CPLR §6312(b). See, *Margolies v Encounter, Inc.* 42 NY2d 475, 398 NYS2d 877, 368 NE2d 1243 (C.A. 1977); *Catalogue Service of Westchester v Henry*, 107 AD2d 783, 484 NYS2d 615 (2<sup>nd</sup> Dept. 1985). Accordingly, it is hereby

**ORDERED**, that plaintiff, SLANT/FIN CORPORATION, is granted a preliminary injunction, pursuant to CPLR §§6311 and 6313, enjoining and restraining defendants, NORTH FORK PLUMBING & HEATING DISTRIBUTERS, INC. and NORTH FORK PLUMBING & HEATING SUPPLY CORP., from withdrawing any funds from their accounts, other than for expenses in the ordinary course of business, and from making any payments to defendant, THOMAS GOELZ; and it is further


**ORDERED**, that plaintiff, SLANT/FIN CORPORATION, shall give an undertaking in the sum of \$35,000.00, pursuant to CPLR §6312(b); and it is further

**ORDERED**, that the parties shall appear for a Preliminary Conference on March 28, 2006, at 2:30 P.M. in Differentiated Case Management Part (DCM) at 100 Supreme Court Drive, Mineola, New York, to schedule all discovery proceedings. A copy of this order shall be served on all parties and on DCM Case Coordinator Richard Kotowski. **There will be no adjournments**, except by formal application pursuant to 22 NYCRR §125.

All further requested relief not specifically granted is denied.

This constitutes the decision and order of the Court.

Dated: February 23, 2006

  
WILLIAM R. LaMARCA, J.S.C.

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**ENTERED**

FEB 28 2006

NASSAU COUNTY  
COUNTY CLERK'S OFFICE

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