

Status conference August 23, 2010

To commence the 30 day statutory time period 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 ORANGE**

-----X  
PAUL TEUTEL,

Plaintiff(s),

-against -

PAUL M. TEUTEL, ORANGE COUNTY CHOPPERS HOLDINGS, INC. and ORANGE COUNTY CHOPPERS, INC.,

Defendant(s).

-----X  
**LUBELL, J.**

**DECISION/ORDER**

Index No. 13782-2009

Motion Date: 5-27-10

The following papers were considered in connection with **I.** the motion by plaintiff Paul Teutel ("Senior") for an Order (1) pursuant to CPLR §2221 issuing clarification of this Court's bench Order dated March 10, 2010 which granted defendant Paul M. Teutel ("Junior") limited access to the books and records of Orange County Choppers Holdings, Inc. and Orange County Choppers, Inc. (collectively "OCCHI") or (2), alternatively pursuant to CPLR §2201 staying the enforcement of that part of this Court's Order dated March 10, 2010 which directed OCCHI to grant limited access to Junior, (3) pursuant to CPLR §3103 for a protective order from certain demands served by Junior, (4) pursuant to CPLR Article 63 restraining and enjoining Junior from any direct or indirect contact with OCCHI, its headquarters, directors, officers, employees, vendors, clients, representatives and agents pending this Court's decision on Senior's motion for partial summary judgment, and (5) awarding such other and further relief as this Court may deem just, proper and equitable, and **II.** the cross-motion by Junior for (A) an Order denying in their entirety the requests for relief set forth in Senior's March 23, 2010 Order to Show Cause, (B) an Order, pursuant to CPLR 3124 and 3126, compelling Senior to comply with the discovery order made by this Court at the conference on March 10, 2010, and to comply with specific demands for discovery made in the wake of said discovery order, as set forth herein, (C) an Order, pursuant to CPLR 3025(b), granting the Junior leave to amend his Answer and Amended Counterclaims, and

deeming the proposed Answer and Further Amended Counterclaims attached hereto filed and served, (D) an Order, pursuant to CPLR 3212(b), granting summary judgment in favor of Junior and against Senior on Junior's Sixth, Seventh and Eighth Counterclaims, (E) an Order, pursuant to CPLR 3212(e), severing the Sixth, Seventh and Eighth Counterclaims from remaining causes of action in this case, and (F) such other and further relief as the Court deems just and proper:

<b>PAPERS</b>	<b>NUMBERED</b>
Motion/Affidavit/Affirmation/Exhibits	1
Cross-Motion/Affirmation/Affidavit/Exhibits	2
Affidavit in Opposition to Cross-Motion	3
Affirmation in Opposition to Cross-Motion/Exhibits	4
Affirmation in Opposition to Cross-Motion	5
Affidavit in Opposition to Cross-Motion/Exhibits	6
Reply Affirmation to Cross-Motion/Exhibits	7

**THE MOTION BY PLAINTIFF**

**(1) Clarification of this Court's bench Order dated March 10, 2010, or (2) alternatively, an Order staying the enforcement of that part of this Court's Order dated March 10, 2010 which directed OCCHI to grant limited access to Junior, (3) a Protective Order from certain demands served by Junior, (4) an Order pursuant to CPLR Article 63 restraining and enjoining Junior from any direct or indirect contact with OCCHI, its headquarters, directors, officers, employees, vendors, clients, representatives and agents pending this Court's decision on Senior's motion for partial summary judgment.**

The Court finds merit to Junior's argument that the aforementioned applications should have been brought by the corporate defendants as opposed to Senior.

Nonetheless, the Court will address these issues at the already scheduled Status Conference upon keeping in mind the Court's earlier discovery rulings and this Court's Decision & Order of April 21, 2010 and any Appellate Division ruling thereon.

Furthermore, it would appear that the Court, and perhaps as well the parties, should address the discovery issues upon consideration and a balancing of the competing interests which

derive from Junior's status as a corporate director, a corporate shareholder, and an individual who, by agreement, is permitted to operate a competing business. In the latter regard, it would appear to be important to recognize that the agreement to allow competition was negotiated with the best interests of all involved. Among other things, there seems to be no dispute that there would no longer be any agreement between the parties and the Discovery Channel had both Senior and Junior not agreed to participate in the television program, as competitors or otherwise.

**THE CROSS-MOTION BY DEFENDANT**

**(A) Order denying Plaintiff's Motion:**

This aspect of defendant's motion is granted or denied to the extent hereinabove noted.

**(B) Order compelling Senior to comply with the discovery Order made by this Court at the conference on March 10, 2010, and to comply with specific demands for discovery made in the wake of said discovery order.**

The Court will address these issues at the already scheduled Status Conference noted herein upon keeping in mind the Court's earlier discovery rulings and this Court's Decision & Order of April 21, 2010 and any Appellate Division ruling thereon.

**(C) Leave to Amend Junior's Answer and Amended Counterclaims, and deeming the proposed Answer and Further Amended Counterclaims attached hereto filed and served.**

Granted, on consent.

**(D) Order granting Summary Judgment in favor of Junior and against Senior on the Sixth, Seventh and Eighth Counterclaims.**

Summary judgment is denied at this juncture without prejudice to reapplication upon the close of disclosure.

The Court is either satisfied that there has been an adequate demonstration that facts essential to justify opposition may exist but cannot now be stated (see, CPLR 3212[f]) and/or that there currently exist material questions of fact that preclude summary judgment in favor of Junior and against Senior on the Sixth Counterclaim wherein Junior alleges that Senior took a disproportionately higher distribution for fiscal year ended December 31, 2007 in the amount of \$245,383.00 that belongs to

Junior, on the Seventh Counterclaim wherein Junior alleges that he is due \$100,000 in residual payments, and the Eight counterclaim wherein Junior contends that Senior failed to convey an additional 10% of the business over to him.

**(E) Severance**

Junior's motion to sever the Sixth, Seventh and Eighth Counterclaims from remaining causes of action in this case is denied, the Court not being satisfied that such is required or appropriate in the Court's discretion.

Based upon the foregoing, it is hereby

ORDERED, that the motion and cross-motion are decided as hereinabove indicated.

The parties are reminded of the already scheduled 9:00 A.M., August 23, 2010 Status Conference.

The foregoing constitutes the Opinion, Decision, and Order of the Court.

Dated: Goshen, New York  
July 26, 2010

S/ \_\_\_\_\_  
**HON. LEWIS J. LUBELL, J.S.C.**

TO: Michael Catania, Esq.  
Tarshis, Catania, Liberth, Mahon & Milligram, PLLC  
PO Box 1479  
Newburgh, New York 12550

James Alexander Burke, Esq.  
Larkin, Axelrod, Ingrassia & Tetanbaum, LLP  
34 Route 17K  
Newburgh, New York 12550

Richard Weiner, Esq.  
Nolan & Heller, LLP  
39 North Pearl Street  
Albany, New York 12207

Steven Markowitz, Esq.  
14 Crossroads Court  
Newburgh, New York 12550