IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NAND TODI,	:	**CIVIL ACTION**
Plaintiff,	:	
	:	
v.	:	
	:	
HENRY J. STURSBERG, and	:	
STURSBERG & FINE,	:	**NO. 01-2539**
Defendants.	:	
	:	

DUBOIS, J. **August 1, 2001**

MEMORANDUM

I. INTRODUCTION

Plaintiff Nand Todi ("Todi" or plaintiff) seeks preliminary injunctive relief in a dispute arising out of plaintiff's investment in reXnow.com, a company controlled by defendant Henry J. Stursberg ("Stursberg"). Plaintiff alleges that Stursberg controlled and operated three entities, reXnow.com ("reXnow" or "Rex"), an internet start-up company; J&C Publishing, Inc. ("J&C Publishing"), a company that publishes Commercial Realty Review ("CRR"), a magazine related to the real estate industry; and Stursberg & Fine ("S&F"), an investment banking company. It is plaintiff's position that these three entities were used interchangeably by Stursberg and that Stursberg improperly diverted plaintiff's investment in reXnow to the other entities he controlled and to himself for his own personal benefit. In support of these allegations, plaintiff avers that the companies shared employees, income and disbursements, and that in the course of managing the companies, Stursberg commingled funds of the three entities. On the basis of these claims,

plaintiff argues that the Court should pierce S&F's corporate veil; Stursberg should be found individually and personally liable to plaintiff; and S&F should be treated as the alter ego of Stursberg and held liable for his obligations to plaintiff.

Against both defendants, plaintiff requests injunctive relief (Count One) and an equitable trust (Count Two); he also alleges fraud (Count Four); civil conspiracy (Count Five); and fraudulent transfers (Count Six). Against Stursberg individually, plaintiff alleges violations of various securities laws (Count Three). In Count Seven, which names only S&F as defendant, plaintiff claims that S&F should be treated as Stursberg's alter ego and held responsible for all of Stursberg's debts and obligations.

Jurisdiction in this case is based on 28 U.S.C. § 1331; plaintiff claims that defendant Stursberg violated § 10(b) of the Securities Exchange Act, Rule 10b-5, and the applicable Pennsylvania securities laws by employing devices, schemes and artifices to defraud; making untrue statements of material fact and/or omitting to state material facts necessary to make statements not misleading; and engaging in acts, practices and a course of business which operated as a fraud and deceit upon investors in an effort to raise funds. See 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5.

Presently before the Court is plaintiff's Petition for Preliminary Injunction under Rule 65 of the Federal Rules of Civil Procedure. In it, plaintiff seeks an injunction preventing defendants from, inter alia, entering into any extraordinary transactions, making any expenditures in excess of $1,000 without plaintiff's prior approval, engaging in any transactions with each other or any other related entities, and altering any books and records of either defendant. Plaintiff also seeks an accounting and the creation of a constructive trust covering all of defendants' assets to be held

for the benefit of Nand Todi. For the following reasons, plaintiff's Petition for Preliminary Injunction will be denied.

II. STANDARD OF REVIEW

Preliminary injunctive relief is appropriate where "(1) the plaintiff is likely to succeed on the merits; (2) denial will result in irreparable harm to the plaintiff; (3) granting the injunction will not result in irreparable harm to the defendant; and (4) granting the injunction is in the public interest." Maldonado v. Houston, 157 F.3d 179, 184 (3d Cir. 1998) (citing Merchant & Evans, Inc. v. Roosevelt Bldg. Prods. Co., Inc., 963 F.2d 628, 632–33 (3d Cir.1992)). See also Wright v. Columbia Univ., 520 F. Supp. 789, 792–93 (E.D. Pa. 1981) ("To prevail on its motion for a temporary restraining order and a preliminary injunction, plaintiff must demonstrate that irreparable injury will occur if the relief is not granted until a final adjudication on the merits can be made, that there is a reasonable probability of success on the merits, and that the possibility of harm to the non-moving party will be minimal and that harm to the public, when relevant, will not be likely.").

III. ANALYSIS

A. Background

On June 9, 2000, plaintiff invested $300,000 in reXnow pursuant to a convertible note, payable within one year. See Ex. P-1 (Convertible Note dated June 9, 2000). Subsequently, plaintiff agreed to invest an additional $200,000 in reXnow for an equity stake in the company,

upon the completion of private placement funding.[1] The additional $200,000 investment was made in installments of $100,000 each, one in October 2000 and the other in December 2000. On February 9, 2001, Stursberg sent an e-mail message to Todi in which he stated that reXnow no longer had any employees. See Ex. P-4 (E-mail message from Henry J. Stursberg to Nand Todi, dated February 9, 2001) ("Effective today, there are no more reXnow employees. Sadly, we were forced to make this announcement at the close of business today."). Plaintiff argues that the e-mail amounted to a notice of a cessation of business—a default under the terms of Todi's initial note—and that the note became immediately payable to plaintiff.

After receipt of the e-mail, plaintiff demanded an accounting from reXnow. When such an accounting was not forthcoming, plaintiff filed a related action in this Court on March 30, 2001 against reXnow and CRR, alleging that the money invested in reXnow had been improperly diverted to CRR. See Todi v. reXnow.com, et al., Civil Action No. 01-1545. Both defendants in that case subsequently filed petitions in bankruptcy and the case was placed in civil suspense by Order of this Court dated May 1, 2001, pursuant to the automatic stay provision of the Bankruptcy Code, 11 U.S.C. § 362.

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[1] As set forth in a letter from defendant Stursberg to plaintiff dated October 10, 2000, plaintiff agreed to invest an additional $200,000 in reXnow under the following terms:

> Pursuant to your investment, you have agreed to convert your loan to reXnow.com of $300,000 (three hundred thousand dollars) to stock in reXnow.com. The additional $200,000 (two hundred thousand dollars) investment as outlined above will be equity of stock in reXnow.com. Therefore, your total investment of $500,000 (five hundred thousand dollars) will be equity in reXnow.com. . . .

Ex. P-3 (Letter from Henry J. Stursberg to Nand Todi, October 10, 2000).

Plaintiff then initiated this case by filing a Complaint and Petition for a Temporary Restraining Order on May 23, 2001. The Court held the first part of a hearing on the Petition for Temporary Restraining Order on May 23, 2001 and then entered an agreed-upon temporary restraining order ("TRO") on May 24, 2001. The Court concluded the hearing on plaintiff's Petition for Temporary Restraining Order on May 25, 2001 and issued a TRO on that date in which it granted in part and denied in part the relief sought by plaintiff. By request of the parties, the Court extended the TRO on two occasions until the hearing on plaintiff's Petition for Preliminary Injunction that was held June 14, 19 and 20, 2001.[2] It is to that Petition for Preliminary Injunction to which the Court now turns, first evaluating plaintiff's likelihood of success on the merits.

B. Likelihood of Success on the Merits

1. Commingling of Assets—reXnow and CRR

At the preliminary injunction hearing, plaintiff presented evidence that tended to show there was significant commingling of assets between two of the companies that Stursberg controls—reXnow and CRR. As evidence of the commingling, plaintiff presented defendants' accounting records, which demonstrated that monies invested in reXnow were often quickly dispersed to CRR. See, e.g., Ex. P-51 (reXnow.com Balance Sheet dated Dec. 31, 2000) (itemizing substantial transfers of funds from reXnow to CRR; showing $104,558.95 owed to

[2] As explained in the Court's Order of June 20, 2001, the Court intended to rule on the Motion for Preliminary Injunction shortly after the conclusion of the hearing held on June 14, 19 and 20, 2001. However, because of inconsistent records and reports produced by defendants, and the myriad of explanations given for the inconsistent records and reports, the Court was unable to do so. It is for this reason that the Court extended the provisions of the Temporary Restraining Order dated May 25, 2001 until the Court's ruling on the Motion for Preliminary Injunction.

reXnow from CRR as a current asset); Ex. P-55 (reXnow.com Balance Sheet dated Feb. 28, 2001) (detailing $82,250.57 owed from CRR to reXnow as a current asset); Ex. P-61 (Commercial Realty Review Audit Trail dated Apr. 23, 2001) (detailing monies due from reXnow); Ex. P-46 (invoices from CRR to reXnow for advertising costs totaling $209,500).

In addition, plaintiff presented evidence which supported his argument that Stursberg's bookkeeping methods were suspect—evidence of apportioning common expenses, such as rent, telephone, and postage machine and copier costs to the entities as he deemed appropriate long after the expenses were incurred. In response, Stursberg testified that the system of allocating these common expenses was suggested by Smart & Associates, an accounting firm, and that the allocation method was based on the percentage of payroll for which each entity was responsible. Hr'g Tr. at 102–03 (testimony of Henry J. Stursberg, June 14, 2001).

Stursberg's basis for allocating payroll expenses is, however, suspect as well. According to the evidence presented, there was one payroll for reXnow and CRR and Stursberg would allocate a percentage of each employee's salary to each company based upon the projects on which that employee was working. Hr'g Tr. at 104 (testimony of Henry J. Stursberg, June 14, 2001). Stursberg testified as to the reason for this practice as follows:

> The reason why we didn't have two payrolls is because there's two—its double taxation to the employee, in addition to which there's a matching piece of the company, so we'd have to match two different—and the employee would suffer as well as the employer. So there was one payroll and we couldn't have two sets of records. So all the payroll for all the employees, whether they worked exclusively on Rex or partially on Rex or completely for CRR, were all run through J&C Publishing.

Hr'g Tr. at 105 (testimony of Henry J. Stursberg, June 14, 2001). Examples of the employee salary apportionment were provided by the defense as Defense Exhibit D-T. Like the other common expenses, the allocation method used for the employee salaries supports plaintiff's argument that there was commingling of assets between reXnow and CRR.

2. Commingling of Assets—S&F and Stursberg

Plaintiff presented substantially less evidence of commingling of assets involving S&F and Stursberg. With respect to S&F, plaintiff presented no evidence of direct payments from reXnow or CRR to S&F. See Ex. D-Z, page entitled "Answer to Questions 2 & 4"; page entitled "Answer to Question 3." There were, however, indirect transfers of funds documented in Defense Exhibit Z, which detailed $164,779.84 in funds paid by CRR to third parties on behalf of S&F. See Ex. D-Z, page entitled "Answers to Questions 2 & 4." In addition, the accounting records produced by defendants documented $30,715.11 in funds paid from reXnow on behalf of S&F. Ex. D-Z, page entitled "Answer to Question 3." At the hearing, Stursberg explained that although these sums were noted in records as having been paid on behalf of S&F, the payments actually represented each entity's share of the rent, supplies, services, etc., for which that entity, not S&F, received the benefit.[3] Stursberg's testimony on that subject was as follows:

> The expenses that the magazine paid for Stursberg & Fine would have been expenses of items such as the lease on the premises of our offices is in the name of Stursberg & Fine.
>
> . . . [N]one of the charges on this statement were expenses related to Stursberg & Fine's business operations, nothing, because it wasn't in business from the standpoint of being operational, it was just dormant and idle. We didn't shut it down, it was just idle.

[3] At the hearing, Stursberg initially admitted that these columns reflected payments made by reXnow to third parties on behalf of S&F. Further development of this testimony established, however, that the payments were actually charges for which reXnow received the benefit.

> And the leases on the premises and for the mail and for the copier and telephone lines, et cetera, were paid by Commercial Realty Review and at times, not a great deal but at times by Rex.

Hr'g Tr. at 58 (testimony of Henry J. Stursberg, June 14, 2001).

Notwithstanding Stursberg's explanation, the propriety and accuracy of a number of expenditures and the exact allocation of many of the joint expenses charged to reXnow and CRR are not free from doubt. For example, with respect to certain common expenses such as rent and telephone service, Stursberg did not apportion any share of the rent or telephone charges to S&F on the theory that S&F was not operational, although S&F maintained a sign outside the office. The total rent for the office shared by all three entities was approximately $4,000 per month; the telephone bills were several hundred dollars a month. Assuming rent of $4,000 per month and telephone bills of $500 per month over the course of 12 months, even if the proper allocation of the rent and telephone bills to S&F was one-third of the total of these joint expenses, plaintiff's recovery as a result of these improper allocations would not exceed $18,000 (one-third of $54,000).

Plaintiff also questions the allocations of payroll expenses made by Stursberg. Specifically, plaintiff argues that some of the employees of the three entities worked for reXnow, CRR and S&F interchangeably; that there were periods when no payroll allocation was made to S&F despite that certain employees were working for S&F;[4] and that although CRR normally

[4] As an example, plaintiff points to Amy Doolittle, who Stursberg first identified as an employee of S&F and then as an employee for reXnow. Compare Hr'g Tr. at 66 (testimony of Henry J. Stursberg, June 19, 2001) and P-68 (Employer's Federal Tax Return for S&F dated Mar. 31, 2000) (identifying Amy Doolittle as an employee of S&F); with Hr'g Tr. at 44 (testimony of Henry J. Stursberg, June 20, 2001) (stating that Amy Doolittle was a reXnow employee).

paid the payroll, S&F paid some of reXnow's payroll expenses. See, e.g., Hr'g Tr. at 82–83 (testimony of Henry J. Stursberg, June 19, 2001) (stating that S&F paid salary to Tim Sawyer and Gary Durfee in January 2001). Stursberg's testimony on the issue of payroll allocations to S&F was somewhat inconsistent and the evidence presented at the hearing suggests that some employees did perform work for the benefit of S&F in months when no payroll allocation was made to that entity. On the present state of the record, however, it is impossible to determine the amount of the benefit received by S&F as a result of these indirect payments. No evidence was presented at the hearing regarding the number of employees who worked for S&F or CRR prior to reXnow's founding; the Court thus cannot evaluate plaintiff's likelihood of success on this issue as it is impossible to assess the propriety of any payroll allocations that were made between the entities.

Based on all of the evidence presented, the Court concludes that S&F might owe reXnow and/or CRR money because there was no allocation of a number of expenses to S&F. However, the amount of money that may have been improperly diverted to S&F in this fashion is probably not substantial. Ultimately, the propriety of the expenses charged to reXnow and CRR and the question whether funds were improperly diverted to S&F will be for the trier of fact.

With respect to defendant Stursberg personally, the evidence presented establishes that substantial funds were paid by reXnow and CRR to him, or on his behalf. For example, CRR paid $142,543.50 to, or on behalf of, Stursberg from approximately February 2000 through February 2001. See Ex. D-Z, page entitled "Answers to Questions 2 & 4"; Hr'g Tr. at 63 (testimony of Henry J. Stursberg, June 14, 2001) (admitting that $142,543.50 was paid by CRR to, or on behalf of, Stursberg); Ex. D-Z, page entitled "Answer to Question 3" (documenting

$35,548.22 paid by reXnow to, or on behalf of, Stursberg personally). Stursberg offered explanations of many of the payments made to him directly, or made on his behalf. For example, he testified that the payments made to him or on his behalf actually covered a number of business expenditures, such as checks made out to him personally that he cashed in order to supply the office with petty cash, entertainment expenses, business expenses charged to his personal credit cards for which he was reimbursed, etc. See Hr'g Tr. at 66–71 (testimony of Henry J. Stursberg, June 14, 2001). On the present state of the record, it is impossible to determine the amount of the benefit to Stursberg as a result of these payments. As with the payments made on behalf of S&F, the ultimate determination as to whether these expenses were proper will be for the trier of fact.

3. Piercing the S&F Corporate Veil

Finally, with respect to S&F, plaintiff argues that the corporate veil of S&F should be pierced and S&F should be held liable as an alter ego of Stursberg. As explained by the Third Circuit, the "court may only pierce the [corporate] veil in 'specific, unusual circumstances', lest it render the theory of limited liability useless." American Bell, Inc. v. Federation of Tel. Workers, 736 F.2d 879, 886 (3d Cir. 1984) (quoting Zubik v. Zubik, 384 F.2d 267, 272 (3d Cir. 1967)). A court must look at the following factors to determine whether the alter ego theory of corporate veil piercing should apply:

> gross undercapitalization, failure to observe corporate formalities, nonpayment of dividends, insolvency of debtor corporation, siphoning of funds from the debtor corporation by the dominant stockholder, nonfunctioning of officers and directors, absence of corporate records, and whether the corporation is merely a facade for the operations of the dominant stockholder.

Pearson v. Component Tech. Corp., 247 F.3d 471, 484–85 (3d Cir. 2001) (citing American Bell, 736 F.2d at 886). The test is essentially an inquiry into whether or not the debtor corporation is a legal fiction; the burden of proof is thus "notoriously difficult for plaintiffs to meet." Id. at 485. "[I]n order to succeed on an alter ego theory of liability, plaintiffs must essentially demonstrate that in all aspects of the business, the two corporations actually functioned as a single entity and should be treated as such." Id.

Some of the evidence presented at the preliminary injunction hearing weighs in favor of piercing the corporate veil in this case. It is undisputed, for example, that the debtor corporation (reXnow) is in bankruptcy, and the corporate records of all of Stursberg's entities are a shambles. However, there is insufficient evidence to establish that there was a complete failure to observe corporate formalities with respect to S&F; nor can the Court conclude, based on the evidence presented at the preliminary injunction hearing, that the corporations Stursberg controlled were merely operating as a single entity. Accordingly, the Court concludes that disregarding the corporate form of S&F and granting relief on an alter ego theory is not warranted at this stage in the proceedings.

4. Conclusion

Having determined that there were questionable inter-company transfers and improperly allocated joint expenses, the Court concludes that plaintiff has shown some likelihood of success on the merits. The sums traceable to S&F and Stursberg on the present state of the record, however, do not appear to constitute the hundreds of thousands of dollars that plaintiff claims were improperly diverted and the evidence presented thus far does not warrant piercing the corporate veil. Moreover, as discussed below, plaintiff has failed to demonstrate that defendants

are likely to further dissipate their assets to prevent plaintiff from any monetary recovery to which he may be entitled pending a trial on the merits in this case.

C. Irreparable Harm to Plaintiff

Having concluded that plaintiff has shown some likelihood of success on the merits, the Court will next address the question whether plaintiff has established irreparable harm. As explained by the Third Circuit in Hoxworth v. Blinder, 903 F.2d 186 (3d Cir. 1990), "the unsatisfiability of a money judgment can constitute irreparable injury" under certain circumstances. Id. at 206. Based on the facts presented at the hearing, the Court concludes that, although plaintiff has established some commingling of assets, and substantial evidence of poor record-keeping, extraordinary injunctive relief is not warranted in a case such as this where plaintiff has an adequate remedy at law in the form of a money judgment. Thus far, plaintiff has not presented any evidence to demonstrate that the money judgment he seeks would be unsatisfiable.

In addition, the injunctive relief plaintiff seeks is extremely overbroad. As discussed above, plaintiff seeks comprehensive injunctive relief, whereby defendants would be restrained in their activities and prevented from making any expenditures in excess of $1,000 without plaintiff's prior approval, and all assets of S&F and Stursberg would be held in a constructive trust for the benefit of plaintiff. The Third Circuit explained in Hoxworth that "[i]f a court imposes a preliminary injunction encumbering a defendant's assets in order to protect a potential future money judgment, the court must make some attempt reasonably to relate the value of the assets encumbered to the likely value of the expected judgment." Id. at 198. Under Hoxworth, an injunction that orders a constructive trust of all of defendants' assets for the benefit of Todi

would be fatally overbroad on the present state of the record and plaintiff's request for such relief will be denied.

Plaintiff's only argument in support of his position that the Court should order a constructive trust is that Stursberg has a history of commingling assets. Plaintiff did not present any evidence, however, that Stursberg has attempted to transfer assets out of plaintiff's reach—all of the transfers of assets occurred between the defendants in the two lawsuits[5]—nor did plaintiff demonstrate that defendants have attempted to disguise assets in an effort to conceal them from plaintiff and thus prevent a monetary recovery in this case. See generally Hoxworth, 903 F.2d 186; In re Feit & Drexler, Inc., 760 F.2d 406, 416 (2d Cir. 1985) ("[E]ven where the ultimate relief sought is money damages, federal courts have found preliminary injunctions appropriate where it has been shown that the defendant 'intended to frustrate any judgment on the merits' by 'transfer[ring its assets] out of the jurisdiction.'") (quoting Productos Carnic, S.A. v. Central Am. Beef & Seafood Trading Co., 621 F.2d 683, 686 (5th Cir. 1980)) (modification in original); Star Creations Inv. Co., Ltd. v. Amron Dev., Inc., 1995 WL 495126 (E.D. Pa. Aug. 18, 1995) (finding irreparable harm where plaintiff demonstrated that defendant was likely to engage in fraudulent transfers, with actual intent to defraud or hinder creditors).[6]

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[5] As discussed supra, plaintiff filed a related case against reXnow and CRR on March 30, 2001, see Todi v. reXnow.com, et al., Civil Action No. 01-1545.

[6] The Court notes that the primary cases on which plaintiff relies in support of his argument that a constructive trust should be ordered are distinguishable from the facts of this case. In American Express Travel Related Servs. Co., Inc. v. Laughlin, 424 Pa. Super. 622, 623 A.2d 854 (Pa. Super. Ct. 1993) ("AMEX"), American Express sought a constructive trust over funds received by defendant as proceeds from the sale of American Express money orders; defendant was authorized to sell such money orders pursuant to a trust agreement executed with plaintiff. Because plaintiff and defendant were in a trust relationship, the court concluded that defendant had no interest in the funds he had received from the sale of the money orders and that

Rather than attempting to hide and/or dissipate assets, S&F's bank records showed recent deposits in excess of $170,000 as payments for S&F services. See Ex. D-A1 (Commerce Bank statements for S&F dated April 12, 2001 and May 14, 2001). With respect to defendant Stursberg, there was no evidence presented at the hearing that he is in a financially precarious position or that a money judgment ordered against him would not be satisfied. In fact, no evidence about Stursberg's personal wealth and/or finances was presented at all. As such, the evidence presented at the preliminary injunction hearing simply failed to show that plaintiff would suffer irreparable harm in the absence of an injunction. In light of this conclusion, the Court declines to reach the remaining requirements for the issuance of a preliminary injunction.[7]

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a constructive trust was therefore an appropriate remedy. As explained by the AMEX court, "[s]ince [defendant's] relationship with AMEX is that of trustee, rather than debtor, the existence of a remedy at law is irrelevant." Id. at 627, 623 A.2d at 856. Because the unique relationship of the parties in AMEX was created by virtue of a trust agreement, plaintiff's reliance on AMEX is inapposite.

Likewise, reliance on F.T. Int'l, Ltd. v. Mason, 2000 WL 1514881 (E.D. Pa. Oct. 11, 2000), is misplaced. In F.T. Int'l, plaintiff had asserted "a cognizable equitable claim, ha[d] demonstrated a sufficient nexus between that claim and specific assets of the defendant which are the target of the injunctive relief, and ha[d] shown that the requested interim relief [was] a reasonable measure to preserve the status quo . . . ." Id. at *1. In this case, as discussed above, plaintiff's request for preliminary injunctive relief is overly broad and there is no evidence to suggest that the funds plaintiff seeks to freeze and/or place in a constructive trust are sufficiently linked to his claims.

[7] Another aspect of the relief plaintiff seeks is an accounting. As discussed supra, evidence presented at the preliminary injunction hearing demonstrated that the books and records of the defendants in this case and the other entities that Stursberg controls—reXnow and CRR—are in a state of disarray and that the records document innumerable inter-company transfers of assets and payments made by one entity to, or on behalf of, another entity. A full accounting was ordered in discovery for the preliminary injunction hearing and, to the extent that the accounting provided by defendants was incomplete and/or inaccurate, defendants must complete and/or correct the accounting during discovery.

IV. CONCLUSION

For the foregoing reasons, Plaintiff's Petition for Preliminary Injunction (Document No. 2) will be denied. An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NAND TODI,	:	**CIVIL ACTION**
Plaintiff,	:	
	:	
v.	:	
	:	
HENRY J. STURSBERG, and	:	
STURSBERG & FINE,	:	**NO. 01-2539**
Defendants.	:	
	:	

O R D E R

AND NOW, this 1st day of August, 2001, upon consideration of Plaintiff's Petition for Preliminary Injunction (Document No. 2, filed May 23, 2001), Plaintiff's Brief in Support of Petition for Preliminary Injunction (Document No. 8, filed May 30, 2001), Defendants' Response in Opposition to Plaintiff's Petition for Preliminary Injunction (Document No. 16, filed May 31, 2001), Reply Memorandum of Defendants in Further Support of Why the TRO Should be Dissolved and Why Plaintiff's Motion for an Injunction Should be Denied (Document No. 50, filed July 10, 2001), Plaintiff Nand Todi's Post-Hearing Memorandum (Document No. 46, filed June 29, 2001), Post-Injunction Hearing Submission of Defendants Stursberg & Fine, Inc. and Henry Stursberg to Support Why the Temporary Restraining Order Should be Resolved and Why Plaintiff's Motion for an Injunction Should be Denied (Document No. 44, filed June 29, 2001), and Response of Plaintiff Nand Todi to Defendants' Post-Injunction Hearing Submission (Document No. 49, filed July 9, 2001), the Court having conducted a hearing on Plaintiff's

Petition for Preliminary Injunction on June 14, 19 and 20, 2001, for the reasons stated in the attached Memorandum, **IT IS ORDERED** that Plaintiff's Petition for Preliminary Injunction is **DENIED**.

IT IS FURTHER ORDERED that a preliminary pretrial conference will be scheduled in due course.

BY THE COURT:

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JAN E. DUBOIS, J.