

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

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	:	
GOLDIN AUCTIONS, LLC,	:	
	:	
Plaintiff,	:	Case No. 13 Civ. 2816 (RMB/JS)
	:	
-against-	:	
	:	
KOBE BRYANT,	:	
	:	
Defendant.	:	
-----	X	

**DEFENDANT KOBE BRYANT’S MEMORANDUM OF LAW
IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION,
TEMPORARY RESTRAINING ORDER, AND EXPEDITED DISCOVERY**

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Defendant Kobe Bryant respectfully submits this memorandum of law in opposition to Plaintiff's motion, filed by Order to Show Cause, seeking a temporary restraining order, preliminary injunction, and expedited discovery.

PRELIMINARY STATEMENT

This case concerns the unlawful efforts of Goldin Auctions, LLC ("Goldin") to sell at auction unique and irreplaceable sports memorabilia owned by professional basketball player Kobe Bryant ("Bryant"), including items of sentimental value from Bryant's past, such as his high school basketball jerseys and state championship rings. Goldin filed its Verified Complaint and its motion for a preliminary injunction with temporary restraints in the District of New Jersey seeking to prevent Bryant from interfering with its upcoming auction of his personal memorabilia by asserting his rights in this property.

Goldin's motion should be denied in its entirety. First, Bryant, a California resident, is plainly not subject to personal jurisdiction in this District. Indeed, Goldin's Complaint does not even attempt to set forth any basis for the exercise of jurisdiction. For this reason alone, Goldin's motion should be denied.

Second, putting aside the lack of jurisdiction, Goldin cannot demonstrate a likelihood of success on the merits because Goldin's "rights" in the property are, at best, questionable and Bryant's claim of ownership is compelling.

Third, Goldin cannot demonstrate irreparable harm in the absence of an injunction where its submission acknowledges that monetary damages would be more than sufficient redress for any harm in the event, however unlikely, that Goldin prevails.

Finally, unlike Goldin, for whom money damages would clearly suffice, Bryant is facing the prospect of irreparable injury if these priceless personal possessions are sold without his consent.

STATEMENT OF FACTS RELEVANT TO THE MOTION

Defendant Kobe Bryant is a professional basketball player for the Los Angeles Lakers, residing in Orange County, California. Declaration of Kobe Bryant (“Bryant Decl.”) ¶¶ 1-2.¹ Bryant does not own any property in New Jersey, and he does not conduct business in New Jersey. *Id.* ¶ 3. In the past, Bryant’s sole contacts with New Jersey related to the approximately once-a-year trips he would make with the Los Angeles Lakers when the Lakers would play against the former New Jersey Nets (now the Brooklyn Nets, located in New York). *Id.* Bryant last visited New Jersey in December 2010 for a basketball game against the New Jersey Nets. *Id.*

¹ The Declaration of Kobe Bryant and the Declaration of Vanessa Bryant are attached as Exhibits 1 and 2 to the Declaration of Jodi R. Sarowitz filed in support of this opposition.

According to its Complaint, Goldin is a Nevada limited liability company doing business in New Jersey as an auction house, auctioning sports memorabilia, among other things. Goldin further alleges that, on or about December 27, 2012, Bryant's mother Pamela Bryant offered to sell or consign to Goldin over one hundred items of sports memorabilia from Bryant's basketball career such as Bryant's high school basketball uniforms, varsity letters, and awards (collectively, the "Kobe Bryant Collection"). Complaint ¶ 8. However, the items in the Kobe Bryant Collection were and are Bryant's personal property, which Bryant has always claimed as his own, with the exception of two NBA Championship rings, which Bryant had custom made for his parents. Bryant Decl. ¶¶ 6, 9; Declaration of Vanessa Bryant ("V. Bryant Decl.") ¶¶ 5-6. Both Bryant and his wife Vanessa Bryant specifically requested that Pamela Bryant return Bryant's property, so that they would be able to give those family heirlooms to their children. Bryant Decl. ¶ 9; V. Bryant Decl. ¶¶ 3-4. At least two items in the Kobe Bryant Collection, a Teen Choice Award Surfboard and one of Bryant's trophies, were last seen by Bryant and his wife in their California home, and they do not know how or when Pamela Bryant or Goldin obtained possession of these items, but it was without Bryant's or his wife's permission. Bryant Decl. ¶¶ 7-8; V. Bryant Decl. ¶¶ 5-6. Bryant did not authorize his mother to sell or consign the Kobe Bryant Collection,

which is unique and irreplaceable and has tremendous sentimental value to Bryant. Bryant Decl. ¶¶ 5, 9, 11.

On April 30, 2013, Goldin issued a press release (Complaint, Ex. C) announcing a June 2013 auction of the Kobe Bryant Collection, which included “100+ unique items from Kobe Bryant’s childhood, high school career and entry into the NBA including championship rings, game worn high school uniforms, and much more.” See Bryant Decl. ¶¶ 4-5. Immediately upon learning of Goldin’s planned (but unauthorized) auction, Bryant directed his attorneys to send a cease-and-desist letter to Goldin at its offices in West Berlin, New Jersey, notifying Goldin that the Kobe Bryant Collection was Bryant’s personal property, demanding that Goldin stop advertising the June 2013 auction, and demanding the return of Bryant’s property. *Id.* ¶ 5.

Goldin filed its Complaint and the instant motion two days after receipt of the letter from Bryant’s counsel, on May 2, 2013. The motion was accompanied by a statement by Pamela Bryant, “certifying” that Bryant gave her the Kobe Bryant Collection. That same day, Pamela Bryant called Bryant, and when confronted about her efforts to sell Bryant’s property, acknowledged that she was never granted any rights to his property. Bryant Decl. ¶ 10.

On May 5, 2013, seeking immediate relief and to ensure protection of his property, Bryant commenced an action against Goldin before the Superior Court of

the State of California, County of Orange, where Bryant is a resident and where Goldin is subject to jurisdiction based on its systematic and continuous contacts with and activities purposefully directed at the state of California. Bryant's California action seeks, among other things, a temporary restraining order enjoining Goldin from selling, disposing of, or destroying any items in the Kobe Bryant Collection. That action is scheduled to be fully briefed and heard by the California Court on Friday, May 10, 2013.

ARGUMENT

I. GOLDIN'S REQUEST FOR A TRO AND PRELIMINARY INJUNCTION MUST BE DENIED BECAUSE THIS COURT LACKS PERSONAL JURISDICTION OVER BRYANT.

Plaintiff Goldin's motion for a TRO and preliminary injunction must be denied because this Court lacks personal jurisdiction over Bryant, a California resident with no existing contacts with this District. *See Dollar Sav. Bank v. First Sec. Bank*, 746 F.2d 208, 214 (3d Cir. 1984) (vacating preliminary injunction against non-resident debtor, finding that the debtor did not subject itself to personal jurisdiction solely by accepting a loan from a resident bank). Goldin bears the burden of establishing personal jurisdiction over Bryant, and must demonstrate that Bryant has sufficient minimum contacts with New Jersey "such that the maintenance of the suit does not offend 'traditional notions of fair play and

substantial justice.’”² *Fisher v. Teva PFC SRL*, 212 F. App’x 72, 75 (3d Cir. 2006). This requires Goldin to establish either a general or specific basis for exercising jurisdiction over Bryant. *See Kehm Oil Co. v. Texaco, Inc.*, 537 F.3d 290, 300 (3d Cir. 2008). It can do neither.

General jurisdiction requires a showing that Bryant has “systematic and continuous contacts” with New Jersey and that these contacts are a “central part” of Bryant’s business. *Fisher*, 212 F. App’x at 75. Specific jurisdiction requires that Bryant “purposely directed” conduct toward New Jersey, and that Goldin’s claim arises from that specific conduct. *Kehm Oil*, 537 F.3d at 300. The Complaint is devoid of *any* jurisdictional allegations of either type. Because Goldin cannot establish the requisite contacts between Bryant and New Jersey, the Court lacks jurisdiction over Bryant and must deny Goldin’s motion.

First, Bryant does not maintain the type of “systematic and continuous contacts” with New Jersey that the Third Circuit has previously found sufficient to establish general jurisdiction. *See Abel v. Kirbaran*, 267 F. App’x 106, 108 (3d Cir. 2008) (general jurisdiction did not exist where plaintiff failed to show that defendant resided or worked within the forum state). Bryant is domiciled in California and does not maintain a residence or business or own any real property in New Jersey. Bryant Decl. ¶¶ 1-3. He does not regularly visit New Jersey or

² New Jersey’s long arm jurisdiction is coextensive with constitutional due process. *See IMO Indus. v. Kiekert AG*, 155 F.3d 254, 257 (3d Cir. 1998).

transact business within New Jersey. *See id.* ¶ 3. Although Bryant has previously played professional basketball games with the Los Angeles Lakers in New Jersey against the New Jersey Nets approximately once per year, *see id.* ¶ 3, the Third Circuit has deemed such intermittent contact with the forum state to be insufficient to establish general jurisdiction. *See Fisher*, 212 F. App'x at 75-76 (defendant's past sales within the forum and prior visits by defendant's employees did not establish general jurisdiction where defendant did not maintain an office, employees, a bank account, facilities, or a telephone number within the state).

Second, the Complaint is similarly devoid of allegations that Bryant “purposefully directed” any activity toward New Jersey that would justify requiring him to defend a lawsuit in this District. Goldin's only allegation that even suggests contact between Bryant and New Jersey states that Bryant's counsel “sent a cease and desist letter to Goldin Auctions representing that the auction items are the property of Kobe Bryant and that no one in the Bryant family has the right to the items” (Complaint ¶ 18). However, the mere act of sending a cease and desist letter – which gives notice that the recipient's conduct is unlawful and demands that the recipient discontinue its unlawful conduct – does not establish minimum contacts for purposes of personal jurisdiction. Courts in the Third Circuit have routinely held that similar cease and desist letters do not give rise to specific jurisdiction over the sender. *See, e.g., Kehm Oil*, 573 F.3d at 301 (“a cease

and desist letter does not give rise to the level of purposeful availment for the purposes of [personal] jurisdiction . . .”); *see also JAKKS Pac., Inc. v. Conte*, Civ. A. No. 11-479 (ES), 2011 U.S. Dist. LEXIS 149796, at *18 (D.N.J. Dec. 30, 2011) (“the law is clear: ‘cease-and-desist letters alone do not suffice to justify personal jurisdiction . . . [because] such letters cannot satisfy the second prong of the Due Process inquiry.”); *Database Am. Inc. v. Bellsouth Adver. & Publ’g*, 825 F. Supp. 1195 (D.N.J. 1993) (“the Cease and Desist Letter is, by itself, insufficient to establish either the minimum contacts or purposeful availment necessary for specific personal jurisdiction over [defendant] in New Jersey.”).

Because Goldin has not and cannot establish the requisite contacts necessary to permit this Court’s exercise of personal jurisdiction over Bryant, the Court must deny Goldin’s request for preliminary injunctive relief and expedited discovery. *See Dollar Sav. Bank*, 746 F.2d at 214 (district court should not have proceeded to the merits where plaintiff failed to establish personal jurisdiction).

II. GOLDIN’S REQUEST FOR A TRO AND PRELIMINARY INJUNCTION MUST BE DENIED BECAUSE GOLDIN FAILS TO ESTABLISH ANY OF THE REQUISITE ELEMENTS TO SUPPORT THE ISSUANCE OF A PRELIMINARY INJUNCTION OR TEMPORARY RESTRAINING ORDER.

Independently, Goldin fails fundamentally to demonstrate that it is entitled to a preliminary injunction on the merits. Preliminary injunctions and TROs are “extraordinary remed[ies]” that should be granted only in “limited circumstances.”

Ward v. Aviles, Civ. A. No. 11-6252, 2012 U.S. Dist. LEXIS 84764, 2012 U.S. Dist. LEXIS 84764, at *3-4 (D.N.J. June 18, 2012). “In order to obtain the ‘extraordinary remedy’ of a preliminary injunction [or a TRO], the moving party must demonstrate: ‘(1) a likelihood of success on the merits; (2) that [it] will suffer irreparable harm if the injunction is denied; (3) that granting preliminary relief will not result in even greater harm to the nonmoving party; and (4) that the public interest favors such relief.’” *Smith v. Meyers*, 285 F. App’x 843, 844 (3d Cir. 2008) (internal citations omitted); *Ward*, 2012 U.S. Dist. LEXIS 84764, at *3-4.

Goldin is required to satisfy all four elements for a preliminary injunction and “failure to establish *any* element in its favor renders a preliminary injunction inappropriate.” *ACE Am. Ins. Co. v. Wachovia Ins. Agency Inc.*, 306 F. App’x 727, 730-31 (3d Cir. 2009) (emphasis added) (because plaintiff failed to establish irreparable harm, the district court was not required to reach the remaining factors in denying preliminary injunction); *see Ward*, 2012 U.S. Dist. LEXIS 84764, at *3-4. Goldin’s submissions in support of its motion fall far short of its burden to establish each of the required grounds for a preliminary injunction, and thus the Court must deny Goldin’s motion in its entirety.

A. Goldin Fails to Establish A Likelihood of Success on the Merits

Goldin's motion must be denied because Goldin fails to meet its burden of establishing a "reasonable probability of eventual success in the litigation." *Oburn v. Shapp*, 521 F.2d 142, 148 (3d Cir. 1975) (preliminary injunction denied where plaintiffs failed to establish substantial likelihood of success on the merits of their employment discrimination claim). Goldin has not come forward with evidence demonstrating that it is entitled to the declaratory relief it demands, to wit, a declaration that it has legal ownership of the Kobe Bryant Collection. "[A] preliminary injunction cannot be issued when there are disputed issues of fact." *Apollo Techs. Corp. v. Centrosphere Indus.*, 805 F. Supp. 1157, 1191 (D.N.J. 1992) (denying preliminary injunction where plaintiff failed to resolve factual issues necessary to establish its unfair competition claim). Although Goldin claims to establish ownership pursuant to its consignment agreement with Bryant's mother (Complaint ¶¶ 11-13), Goldin offers insufficient evidence that Bryant's mother actually owned the sports memorabilia at the time of consignment, and the evidence Goldin does offer is flatly contradicted by both Bryant's and his wife's sworn declarations that she did not.

Goldin does not appear to dispute that Bryant owned the Kobe Bryant Collection at one time. Indeed, the memorabilia would otherwise have no value to collectors at auction. However, Goldin fails to provide any evidence that Bryant

transferred ownership to his mother prior to the consignment. Pamela Bryant's certification, which Goldin offers in support of its claim, is replete with non-specific and self-serving allegations. For example, Pamela Bryant asks this Court to accept that over fifteen years ago, when Bryant was a teenager at the beginning his professional basketball career, Bryant gave her 70-100 items (ranging from his sweat suit tops and varsity letters to his championship rings) over several transactions, stating in each case "here mom, these are for you" (P.B. Cert. ¶¶ 4, 10). She says nothing about the circumstances of these purported transactions with her son, nor does she allege any facts evincing Bryant's intent to transfer ownership to his mother rather than mere possession. Pamela Bryant also avers that she last inquired as to whether Bryant wanted to take his belongings "approximately 7-8 years ago," and at the time only spoke to Bryant's wife. P.B. Cert. ¶¶ 12-13. However, when confronted about her statement that that Bryant had given the memorabilia to her, Pamela Bryant acknowledged that Bryant had never told her she could have the memorabilia. Bryant Decl. ¶ 10.³ Pamela Bryant's vague and contradicted assertions are insufficient to establish her ownership at the time of the consignment.

³ On May 2, 2013, Pamela Bryant called Bryant's cell phone. Bryant said to her: "Mom, you know I never told you that you could have the memorabilia." Her response was "yes, but you never said you wanted it either." However, Bryant and his wife had in fact requested that she return the memorabilia several years earlier. Bryant Decl. ¶ 10.

Similarly, Goldin's argument that Bryant "abandoned" his property by leaving it in his mother's possession is also unconvincing. Bryant asserts that he demanded the return of his property from his mother and that he had always intended to leave the Kobe Bryant Collection to his children. Bryant Decl. ¶ 9. Although Pamela Bryant denies that her son demanded the return of his property (P.B. Cert. ¶ 14), she admits that she received a \$450,000 advance from Goldin and will presumably be required to repay such advance should a court ultimately determine that she did not own the Kobe Bryant Collection. Without more, Bryant did not demonstrate an intent to abandon his personal property by leaving it in the possession of his mother upon moving out of his childhood home. In order to support a finding of abandonment, Goldin must show that Bryant "has intentionally given up possession under circumstances evincing intent to give up ownership." N.J. Stat. § 46:30C-1(a); *see, e.g., Arguello v. Behmke*, Docket No. HNT-C-14002-06, 2006 N.J. Super. Unpub. LEXIS 2977 (Ch. Div. Jan. 26, 2006) (plaintiff's dog was not abandoned property where there was no indication plaintiff intended to abandon her pet); *Porter v. Porter*, Docket No. 5:05CV212, 2008 U.S. Dist. LEXIS 27663, at *32-35 (W.D.N.C. Apr. 4, 2008) (child did not abandon personal items left at her parents' home after leaving the home where she continued to claim ownership and did not show intent to abandon by positive and unequivocal conduct). In light of the substantial factual issues as to the ownership

of the Kobe Bryant Collection, the Court should deny Goldin's request for preliminary injunction.

B. Goldin Fails to Establish Imminent Irreparable Harm

Neither Goldin's motion nor its Complaint establish any facts demonstrating imminent, irreparable harm to Goldin. In order to demonstrate irreparable harm, Goldin is required to show a "potential harm which cannot be redressed by a legal or an equitable remedy following a trial," and which is "of a peculiar nature, so that compensation in money cannot atone for it." *Johnson v. Guhl*, 91 F. Supp. 2d 754, 776 (D.N.J. 2000) (citing *Acierno v. New Castle County*, 40 F.3d 645, 653 (3d Cir. 1994)). Irreparable injuries must also be "imminent," and not merely "possible," in order to support preliminary injunction. *Id.*

First, Goldin improperly purports to establish irreparable harm based on unsupported speculation and conclusions. Goldin claims that it will suffer irreparable harm if its June 2013 auction were to be cancelled because Goldin would be unable to auction the "unique and irreplaceable" items in the Kobe Bryant Collection (Mov. Br. p. 6). However, Goldin offers no explanation as to how the "unique" and "irreplaceable" nature of items in the Kobe Bryant Collection, which can have no personal or sentimental value to an auction house, results in a non-compensable harm to Goldin. Goldin further speculates that its reputation would suffer if it were to cancel the auction (*id.*), but offers no credible

or admissible evidence to support such a claim. Even if such harm to its reputation could be established, evidence of some potential harm to reputation does not establish irreparable harm. *Acierno*, 40 F.3d at 654 (“showing some potential harm to reputation is usually insufficient to support a conclusion that irreparable harm exists”) (citations omitted).

Second, Goldin alleges potential injuries that are readily compensable by money damages. Goldin claims that it faces the potential loss of its \$450,000 advance to Pamela Bryant, the potential loss of its “expected” profits from the auction of the Kobe Bryant Collection, and the potential reduction in profits on the purported \$1.5 million in other collectible items not in the Kobe Bryant Collection, but planned for sale at the June 2013 auction (Mov. Br. p. 6). However, as the Third Circuit held in *Morton v. Beyer*, 822 F.2d 364, 372 (3d Cir. 1987), a case cited by Goldin (Mov. Br. p. 5), potential loss of income does not constitute irreparable harm. Even if the amount of the potential loss is uncertain, the inability to precisely measure a financial harm does not render it irreparable. *Johnson*, 91 F. Supp. 2d at 776. Goldin’s failure to demonstrate irreparable harm is sufficient grounds for the Court to deny Goldin’s motion.

C. The Irreparable Harm to Bryant and Potential Harm to the Public Militate Against A Preliminary Injunction

Finally, because a preliminary injunction would result in the auction and sale of the Kobe Bryant Collection to the public, Bryant and any members of the public

who participate in the June 2013 auction will face imminent and irreparable harm. Goldin concedes that the memorabilia contained in the Kobe Bryant Collection are “unique and irreplaceable” (Mov. Br. p. 6), and once they are auctioned and sold to the public, it will become highly unlikely, if not impossible, for Bryant to recover them. The Kobe Bryant Collection includes items from Bryant’s childhood, high school career and entry into the NBA, items which have tremendous sentimental value for Bryant and which he desires to hand down to his children. Bryant Decl. ¶ 11. Because the items are irreplaceable, money damages will not be sufficient to compensate Bryant for his loss. *Id.*

Moreover, because Goldin fails to resolve the issue of ownership indisputably in its favor, any participant in the June 2013 auction would risk bidding on and paying for memorabilia without acquiring any right, title, or interest in such memorabilia. Goldin’s arguments that the public interest will be served by bolstering public faith in contracts and preventing interference with public auctions are specious. *See* Mov. Br. p. 8. Among other things, Goldin willfully placed itself in the precarious position it now rests. Prior to entering into the consignment agreement with Bryant’s mother, Goldin was on notice that the Kobe Bryant Collection may be subject to a competing claim by Bryant because such items were only valuable due to Bryant’s ownership. Bryant was not a party to the consignment transaction, and Goldin made no attempt to consult Bryant

prior to the consignment transaction. Accordingly, Goldin could not reasonably rely on Bryant's mother's unsupported representation that she was the rightful owner of Bryant's memorabilia. Because the balance of the public and private harms tips decidedly in Bryant's favor and Goldin has otherwise failed to demonstrate its entitlement to a preliminary injunction, the Court must deny Goldin's motion in its entirety.

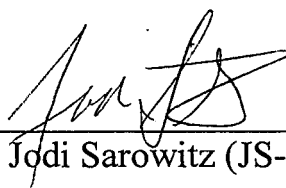
CONCLUSION

For each and all of the foregoing reasons, Defendant Kobe Bryant respectfully submits that Goldin's motion for a temporary restraining order, preliminary injunction, and expedited discovery must be denied.

Dated: May 7, 2013

Respectfully submitted,

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