

**Arencibia v SilverLining, Inc.**

2024 NY Slip Op 34434(U)

December 13, 2024

Supreme Court, New York County

Docket Number: Index No. 659588/2024

Judge: Andrew Borrok

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SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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JOEL ARENCIBIA		INDEX NO.	<u>659588/2024</u>
	Plaintiff,	MOTION DATE	<u>12/12/2024</u>
	- v -	MOTION SEQ. NO.	<u>001</u>
SILVERLINING, INC.,		<b>DECISION + ORDER ON MOTION</b>	
	Defendant.		

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3 were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR.

Upon the foregoing documents and for the reasons set forth on the record (*tr.* 12.13.24), Joel Arencibia’s motion for a temporary restraining order is GRANTED.

**DISCUSSION**

A party seeking a preliminary injunction must demonstrate (i) a probability of success on the merits, (ii) danger of irreparable harm in the absence of an injunction, and (iii) a balance of the equities in their favor (*Nobu Next Door, LLC v Fine Arts Housing, Inc.*, 4 NY2d 839, 840 [2005]).

**1. Mr. Arencibia Has Demonstrated a Likelihood of Success on the Merits**

Reference is made to (i) a certain Employment Agreement (the **Employment Agreement**; NYSCEF Doc. No. 6), dated April 30, 2015, by and between SilverLining Interiors, Inc, (**SilverLining**) and Mr. Arencibia, (ii) a certain first termination notice (the **First Notice**;

NYSCEF Doc. No. 7), dated December 2, 2024, sent from SilverLining to Mr. Arencibia and (iii) a certain second termination notice (the **Second Notice**; NYSCEF Doc. No. 8), dated December 2, 2024, sent from SilverLining to Mr. Arencibia.

Pursuant to Section 6.04 of the Employment Agreement the parties agreed that SilverLining could terminate Mr. Arencibia's employment without cause on thirty days *prior* written notice:

Section 6.04. By the Company without Cause. The Company may terminate the Term and the Executive's employment hereunder at any time without Cause effective upon thirty (30) days' prior written notice to the Executive.

(*id.* § 6.04).

They also agreed that the parties could not disparage one another:

Section 8.05. Non-Disparagement Covenant. The Executive will not at any time (during or after Executive's employment with the Company) knowingly disparage the reputation of the Company, its subsidiaries, its affiliates, its clients, customers and/or its or their respective affiliates or any of its or their respective shareholders, partners, members, directors, officers, employees, agents or representatives. The Company will not at any time (during or after the Executive's employment with Company) knowingly disparage the reputation of the Executive.

(*id.* § 8.05).

Finally, as relevant, they agreed that Mr. Arencibia would be paid severance during a forbearance period:

Section 7.02. Termination without Cause or following Death or Disability. In the event the Term of this Agreement or the Executive's employment by the Company hereunder is terminated due to the death of the Executive or by the Company without Cause or by the Company at any time after the Executive has suffered a Disability due to such Disability, the Executive, or the Executive's estate or beneficiary, as applicable, shall receive, as the Executive's exclusive

right and remedy in respect of such termination, (a) the Executive's Accrued Benefits, except that, for this purpose, Accrued Benefits shall not include (i) any entitlement to severance under any Company severance policy generally applicable to the Company's salaried executives or (ii) except as otherwise provided below in clause (c)(II) below, any portion of the Annual Bonus with respect to the year in which the Termination Date occurs, (b) by the later of sixty (60) days after the Termination Date and the date that is thirty (30) days after the Company's receipt of its annual reviewed financial statements from the Company's accountants with respect to the calendar year immediately prior to the Termination Date, an amount equal to one hundred percent (100%) of the Executive's Specified Retained Earnings, and (c) provided that (i) the Executive does not violate in any material respect any of the terms, provisions and/or covenants contained in Section 8 of this Agreement, and (ii) the Executive executes and delivers to the Company, no later than 45 days after the date of Termination Date, a

(*id.* § 7.02).

On December 2, 2024, SilverLining sent the First Notice to Mr. Arencibia purporting to terminate his employment as of December 27, 2024 (NYSCEF Doc. No. 7). This is facially defective because it does not provide for the 30 days prior written notice to which the parties agreed.

Subsequently, SilverLining sent the Second Notice to Mr. Arencibia purporting to terminate his employment as of December 31, 2024 (NYSCEF Doc. No. 8). This too is facially defective because it too does not provide for the agreed upon 30 days *prior* written notice. To wit, 30 days prior written notice as to a notice issued and received on December 2, 2024 is January 1, 2025. Thus, Mr. Arencibia has demonstrated a likelihood of success that SilberLining has not properly complied with the Employment Agreement that his employment was not properly terminated.<sup>1</sup>

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<sup>1</sup> For completeness, the Court notes Mr. Arencibia also alleges potential violations of the non-disparagement provision (NYSCEF Doc. No. 9 at 1).

## **2. Mr. Arencibia Has Demonstrated Irreparable Harm**

Mr. Arencibia alleges both the premature loss of his health insurance to him and his family and also disparaging remarks about him in his business. Both will satisfy this element warranting a TRO.

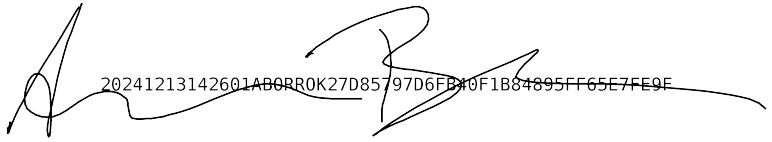
## **3. The Balance of the Equities Favors Granting the Injunction**

Under the circumstances, the balance of the equities favors granting the injunction particularly because nothing prevents SilverLining from properly terminating Mr. Arencibia's employment pursuant to the terms of the Employment Agreement and otherwise merely indicating to clients that Mr. Arencibia no longer works there *after the required 30 days prior written notice has lapsed*.

Accordingly, the motion for a temporary restraining order is granted; and it is further

ORDERED that SilverLining shall file any opposition papers on or before January 13, 2025; and it is further

ORDERED that a preliminary injunction hearing is scheduled on January 23, 2025 @ 11 am at 60 Centre Street, Room 238.



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12/13/2024  
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE