

Abacus Federal Savings Bank v Lim

2003 NY Slip Op 30056(U)

June 21, 2003

Supreme Court, New York County

Docket Number:

Judge: Leland G. DeGrasse

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: LELAND DeGRASSE
Justice

PART 25

Abacus Federal Savings Bank

- v -

Carol John Mee Lim

INDEX NO. 108378/03
MOTION DATE JUN 02 2003
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

SCANNED

The following papers, numbered 1 to _____ were read on this motion to/for JUN 27 2003

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

Motion is decided in accordance with accompanying Memorandum Decision.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

JUN 21 2003

Dated: _____

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

..... X
ABACUS FEDERAL SAVINGS BANK,

Plaintiff,

-against-

Index No. 108378/03

CAROL JOHN MEE LIM, ZHONG GUI MO, ZHONG
CHENG MO, FRANCES ENG, MIKATA JAPANESE
CUISINE, INC., TIFFANY INTERNATIONAL TRADING,
INC., WORLD STARS ENTERTAINMENT GROUP, NA
FONG MO, ATLANTIC SHORE TOUR LTD., JONNEX
TRADING CO., ORIENTAL GEM FINE ARTS & CRAFTS,
C & G PRIME REALTY, LLC, JOHN DOES 1 through 10 and
COMPANIES A through Z,

Defendants.

-----X

DeGrasse, J., :

Plaintiff, Abacus Federal Savings Bank, moves for an order of attachment pursuant to CPLR 6201 (3), an order preliminarily enjoining defendants from disposing of certain assets and other relief. According to the complaint defendant Carol John Mee Lim, plaintiffs branch manager, has through various schemes embezzled more than \$6,000,000 from the accounts of plaintiffs customers. As part of one such scheme, in February 2003, Lim allegedly caused the account of one of plaintiffs commercial customers to be credited with checks drawn on an account maintained by Lim's husband, defendant Zhong Gui Mo, at another bank. Although Zhong Gui Mo's account was insufficiently funded, Lim caused the commercial account to be immediately credited with the amounts of the checks and withdrew the same before the checks were dishonored. Plaintiff alleges that similar fraudulent deposits were made with checks drawn on the

accounts of defendants Mikata Japanese Cuisine, Inc. and Frances Eng, Lim's sister. Jill Sung, plaintiffs Executive Vice President, conducted an investigation by which she discovered that Lim had taken possession of more than \$500,000 in cash and checks which was intended for deposit into the commercial account. As the investigation unfolded, Thomas Sung, plaintiffs President, confronted Lim with evidence of the missing \$500,000 deposits. Lim allegedly admitted her wrongdoing and promised to return the money to plaintiff. Subsequently, she brought \$260,000 to plaintiffs branch. The sum, however, did not include any of the deposits stolen in March 2003. Instead it consisted of deposits which had apparently been stolen in April 2003. Plaintiff asserts that Lim and the other individual defendants own or operate the seven corporate defendants named in the complaint. Plaintiff seeks provisional relief in order to ensure that a judgment in its favor can be enforced.

To obtain an order of attachment under CPLR 6201 (3), a plaintiff must demonstrate that a defendant has concealed or is about to conceal property in one or more of several enumerated ways, and has acted or will act with the intent to defraud creditors, or to frustrate the enforcement of a judgment that might be rendered in favor of the plaintiff (*see Societe Generale Alsacienne De Banque, Zurich*, 118 AD2d 769, 772). The *Societe Generale* case involved a fraud also committed through the issuance of bad checks. There the court issued an order of attachment after noting conduct on part of the defendant which demonstrated an intent to secrete its assets (*id.* at 773). Such concealment can be inferred from Lim's conduct in passing of the deposits she stole in April as those she stole in May. Plaintiff has not, however, made a showing of concealment or the secretion of assets on part of any other defendant. Plaintiff is therefore entitled to an order attaching the bank accounts maintained in Lim's name at the Chinese


American Bank and Asia Bank. Plaintiff also seeks the attachment of real property owned by Lim and located at 133-20 39th Avenue Flushing, New York (the “Flushing property”). The said property was allegedly conveyed to Jacky Liang, Thomas Fung, Wai Kwai Li and Chun Yang Wong (the “Flushing purchasers”) by a deed dated and recorded approximately two weeks after Sung confronted plaintiff with the evidence of her theft. Attachment of the Flushing property is warranted in light of the evidence that Lim fraudulently conveyed it shortly after criminal prosecution and litigation became imminent (*see Maro Hosiery Corp. v Hann*, 59 AD2d 674). Plaintiff also alleges that Lim owns real property located at 2025 East 19th Street Brooklyn, New York (the “Brooklyn property”). Zhong Gui Mo refutes this assertion with a copy of a printout from the New York City Department of Finance which shows that in 1996 the Brooklyn property was conveyed to him alone. Absent documentary proof of Lim’s ownership plaintiff is not entitled to an attachment of the Brooklyn property. Attachment is also unavailable with respect to a condominium allegedly owned by Lim in Florida. **An** order of attachment of a court of this state cannot affect real property situated in another state (*see Runk v St. John*, 29 Barb. 585). Plaintiffs conclusory allegations that Lim and the other individual defendants owned and operated the corporate defendants provide no basis for the attachment of any other property. **An** order of attachment must be based on evidentiary facts, as opposed to conclusions, proving the fraud (*Benedict v Browne*, 289 AD2d 433).

An examination of the complaint reveals that a money judgment is the true object of this action. Plaintiffs claims for a permanent injunction and the imposition of a constructive trust are incidental to and purely for the purpose of enforcing a money judgment. Plaintiff claims to be seeking injunctive relief to prevent the harm it will sustain should defendants be permitted to

dispose of their assets. The mere danger of asset-stripping, however, provides no exception to the general rule that an unsecured creditor suing to collect a debt is not entitled to preliminary injunctive relief to prevent the debtor's dissipation of an asset prior to judgment (*Credit Agricole Indosuez v Rossiyskiy Kredit Bank*, 94 NY2d 541, 548). Accordingly, plaintiff is not entitled to a preliminary injunction.

For the foregoing reasons, plaintiffs motion for an order of attachment is granted only with respect to the Flushing property and the accounts maintained by Lim at Chinese American Bank and Asia Bank. Plaintiff shall give an undertaking in the sum of \$150,000. In all other respects the motion for an order of attachment is denied. The branch of the motion by which plaintiff seeks a preliminary injunction is denied. The branch of motion by which plaintiff seeks the issuance of restraining notices and information subpoenae is denied. No judgment has been entered. The branch of the motion by which plaintiff seeks discovery is denied. Plaintiff has not submitted an affidavit of good faith as required by 22 NYCRR 202.7. Plaintiff shall serve and file an amended complaint setting forth claims against the Flushing purchasers within 10 days after entry of the order to be settled. On the court's initiative, all disclosure shall be supervised by a special referee pursuant to CPLR 3104. Pursuant to the statute all discovery motions shall be made to the special referee in the first instance. Plaintiff shall file a copy of the order to be settled with the IAS Judicial Support Office within 10 days after entry for the purpose of effectuating the assignment. Settle order.

Dated: June 21, 2003



JSC