

Palestine Monetary Auth. v Strachman
2005 NY Slip Op 30480(U)
December 27, 2005
Sup Ct, NY County
Docket Number: 107777/05
Judge: Shirley Werner Kornreich
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: SHIRLEY WERNER KORNREICH
Justice J.S.C.

PART 54

PALESTINE MONETARY AUTHORITY

INDEX NO. 107777/05

- v -

MOTION DATE _____

DAVID STRACHMAN

MOTION SEQ. NO. #003

MOTION CAL. NO. _____

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

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1

2

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, It is ordered that this motion

is denied in accordance with the annexed decision

FILED

JAN 10 2006

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 12/27/05

SHIRLEY WERNER KORNREICH
J.S.C.

Check one: ☐ FINAL DISPOSITION

☒ NON-FINAL DISPOSITION J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO
JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

----- X
PALESTINE MONETARY AUTHORITY,

Plaintiffs,

- against -

DECISION & ORDER
INDEX No.: 107777/05

DAVID STRACHMAN, as administrator of the Estate
of YARON UNGAR, PROFESSOR MEYER UNGAR,
JUDITH UNGAR, RABBI URI DASBERG, JUDITH
DASBERG, individually and in their capacity as legal
guardians of YISHAI UNGAR & DVIR UNGAR,
AMICHAH UNGAR, DAFNA UNGAR & MICHAEL
COHEN, & THE BANK OF NEW YORK,

Defendants.

----- X
THE ESTATE OF YARON UNGAR, by and through the
administrator of his Estate, DAVID STRACHMAN,
PROFESSOR MEYER UNGAR, JUDITH UNGAR,
RABBI URI DASBERG, JUDITH DASBERG, indivi-
dually and in their capacity as legal guardians of YISHAI
UNGAR & DVIR UNGAR, AMICHAH UNGAR, DAFNA
UNGAR & MICHAEL COHEN,

- against -

INDEX No.: 105521/05

THE PALESTINIAN AUTHORITY, a/k/a, THE PALESTIN-
IAN INTERIM SELF-GOVERNMENT AUTHORITY, THE
PALESTINE LIBERATION ORGANIZATION, YASSER
ARAFAT, JIBRIL RAJOUB, MUHAMMED DAHLAN,
AMIN AL-HINDI, TAWFIK TIRAWI, RAZI JABALI,
HAMAS-ISLAMIC RESISTANCE MOVEMENT, a/k/a,
HARAKAT AL-MUQAWAMA AL-ISLAMITYYA, AB-
DEL RAHMAN ISMAIL ABDEL RAHMAN GHANIMAT,
JAMAL ABDEL FATAH TZABICH AL HOR, RAED
FAKHRI ABU HAMDIYA, IBRAHIM GHANIMAT, &
IMAN MAHMUD HASSAN FUAD KAFISHE,

----- X
KORNREICH, J.:

On October 14, 2005, the Court issued an order, *inter alia*, granting plaintiff's application for release of the block on their funds, held in The Bank of New York ("BNY"), and directing BNY "to honor all pending and future incoming and outgoing transactions" by plaintiff, upon the condition that plaintiff post an undertaking in the amount of \$30,000,000. Plaintiff, now, moves to vacate the order directing the posting of an undertaking or, in the alternative, for a reduction in the amount of the undertaking. By stipulation of the parties, the suspension and time to post the undertaking has been extended to 15 days after service of this decision/order with notice of entry.

In support of its application, plaintiff argues that the Court, by its previous decision, has found that plaintiff ("PMA") had no interest in the restrained funds. Moreover, it contends that the amount of the undertaking is unreasonable, because the damages secured by the undertaking are far less than \$30,000,000. Also, it argues that it would be a hardship for PMA to post the undertaking. Specifically, PMA contends that, due to the nature of the risk involved, only two sureties were willing to extend a bond to it, that both required collateralization, and that the cost would exceed \$300,000 annually.

Defendants oppose the motion. First, they point out that the Court's October findings were not dispositive but, merely, were made in determining the request for and granting of the preliminary injunction. Additionally, defendants offer to agree to the PMA's posting the undertaking in an interest-bearing escrow account. Finally, they argue that the cost of the undertaking reflects the risk the PMA poses, that the PMA has the funds to post the bond set, that the amount is required to protect BNY, the stakeholder, from a Federal civil contempt ruling in the amount of \$30,000,000, and that reducing the bond would change the status quo.

The Court first notes that its prior findings of fact as to the preliminary injunction, were not preclusive, in that the matter was not finally decided. Rather, further discovery was ordered so that defendants could investigate the two questions Judge LeGueux, the Federal Court judge who issued the injunction blocking the funds, and the Court ruled were dispositive of the injunction requested by PMA to lift the block – whether PMA was the alter ego of the Palestinian Authority (“PA”) and whether any of the funds belonged to the PA or the PLO (“Palistinian Liberation Organization”). Discovery might result in further proceedings and other findings.

Nor is the amount of the ordered undertaking unreasonable or beyond the resources of PMA. The hearing evidence demonstrated that approximately \$18,000,000 was held by BNY in the suspense account. Two transactions amounting to \$12,000,000, however, were also suspended; due to insufficient funds the money was not frozen. But, once funds in that amount are made available, something which would happen in the normal course, the \$12,000,000 would be placed in the suspense account.

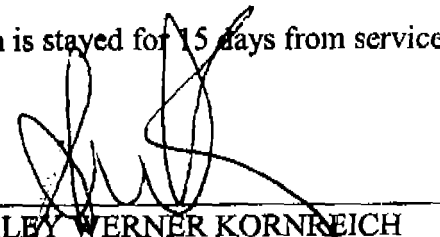
Moreover, plaintiff presented evidence demonstrating that PMA has nearly \$40,000,000 in its capital/reserve account. It, thus, has the funds to obtain the ordered undertaking. Accordingly, it is

ORDERED that plaintiff's motion to vacate or reduce the \$30,000,000 undertaking ordered by the Court, is denied; and it is further

ORDERED that the Court's October 14, 2005 decision is stayed for 15 days from service of this decision/order with notice of entry.

Dated: December 27, 2005
New York, New York

FILED
JAN 10 2006
COUNTY CLERK'S OFFICE
NEW YORK
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SHIRLEY WERNER KORNREICH