

Gonzalez v Stephan

2007 NY Slip Op 30253(U)

March 14, 2007

Supreme Court, New York County

Docket Number: 0108771

Judge: Jane S. Solomon

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

PRESENT: JANE S. SOLOMON Justice

PART 5

Index Number : 108771/2006
GONZALEZ, JOAQUIN J.
vs
STEPHAN, BARBARA LEE
Sequence Number : 001
DISMISS ACTION

INDEX NO. _____
MOTION DATE 11/15/06
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

... read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...
Answering Affidavits — Exhibits _____
supplemental
Replying Affidavits _____

PAPERS NUMBERED

1-3
4-6
7-9


Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion *is decided in accordance with the enclosed memorandum decision and order.*

FOR THE FOLLOWING REASON(S):

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MAR 21 2007
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 3/14/07



JANE S. SOLOMON J.S.C.
~~JANE S. SOLOMON~~

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Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 55

-----X

JOAQUIN J. GONZALEZ,

Plaintiff,

DECISION AND ORDER

-against-

INDEX NO. 108771/06

BARBARA LEE STEPHAN and C.E. UNTERBERG
TOWBIN,

Defendants.

JANE S. SOLOMON, J.

Defendant Barbara Lee Stephan ("Stephan") moves to dismiss this action by her former husband, plaintiff Joaquin J. Gonzalez ("Gonzalez"), by which he seeks a declaration of his and Stephan's rights to assets in a brokerage account held by defendant C.E. Unterberg Towbin ("UT"), and to partition those assets accordingly. UT is sued in its capacity as a stakeholder; it has not appeared and does not oppose the motion to dismiss. The motion is granted as follows.

Gonzalez and Stephan are residents of Virginia. They married in 1997. In 2000, Gonzalez invested in a hedge fund created by UT. UT is a brokerage firm organized under the laws of Delaware that has its principal office in New York City. The investment involved purchasing an interest in a limited partnership called "UT Technology Partners II, L.P." Gonzalez signed a new subscription agreement in 2002, adding Stephan as a joint holder in the limited partnership investment. The limited

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partnership's assets were sold and the limited partnership was dissolved, with the funds deposited in a brokerage account held by UT. Gonzalez claims that the initial investment in 2000 was made with his personal funds, to which Stephan has no claim.

Gonzalez commenced a divorce proceeding in the Circuit Court of Fairfax County, Virginia ("Virginia Court") in 2005. After a hearing, the Virginia Court granted a judgment and divorce decree ("Decree") which incorporates the terms of an ante-nuptial agreement dated September 5, 1997, and a property settlement agreement dated October 8, 2004. The terms of the ante-nuptial and settlement agreements have not been disclosed in connection with this motion.

The Decree is dated June 20, 2006. Gonzalez filed this action two days later. In August 2006, Stephan filed an action in the Virginia Court seeking to determine the same issues as in this action. That lawsuit is stayed pending a decision on the present motion. Stephan submitted the affidavit of UT's general counsel, Howard R. Sutherland, in which he states that UT will abide by the ruling of either a New York or Virginia court, and distribute the funds accordingly.

Stephan argues that this action should be dismissed on the grounds that the disposition of funds in the UT account should be decided by the Virginia Court because she and Gonzalez are Virginia residents; UT has no interest in the outcome and is

sued only as a stakeholder; Virginia law applies to the dispute; both parties seek to enforce the Decree issued by the Virginia Court; Virginia is more convenient for the appearing parties; and there is an action for the same relief pending in Virginia.

In opposition, Gonzalez contends that this action involves the disposition of a New York investment, and the court has in rem jurisdiction over the funds held in the UT account. He also argues that the Virginia Court does not have personal jurisdiction over UT, so its judgment cannot bind UT. He further states that a Virginia judge declined to consider the funds in the UT account during a hearing, stating that the issue was "for another court at another time." But there is no order carving the funds in the UT account from the matrimonial action, and Gonzalez articulates no reason why there might be. Indeed, the only issue in this action is how to distribute those funds between Gonzalez and Stephan in light of their divorce.

Under CPLR 327(a), the court is authorized to stay or dismiss an action upon the motion of any party when the court finds that, in the interest of substantial justice, the action should be heard in another forum. A motion to dismiss under CPLR 327(a) is committed to the court's discretion. Among the factors the court should consider are the burden on New York courts, potential hardship to defendant, whether plaintiff and defendant are nonresidents, and the unavailability of an alternative forum.

Islamic Republic of Iran v Pahlavi, 62 NY2d 474, 479 (1984).

"The rule rests upon justice, fairness and convenience and we have held that when the court takes these various factors into account in making its decision, there has been no abuse of discretion . . ." Id. In this case, these factors weigh in favor of granting the motion.

Here, the only party that may have an interest in retaining a New York venue is the defaulting UT, whose general counsel states that it will abide by the ruling of a Virginia court. Both Stephan and Gonzalez are Virginia residents, and this action involves distribution of assets that are subject to matrimonial dispute in the Virginia Court. The existence of money held in an account by a brokerage firm with a New York address does not create a substantial New York contact. And if it did, Virginia's interest in administering its domestic relations policies would far outweigh this State's interest in the brokerage account.

Finally, Gonzalez's concern that UT may nonetheless choose not to abide by the judgment of the Virginia Court is unfounded, because the judgment of a sister State's court of competent jurisdiction is enforceable in the New York courts. Article IV, § 1 of the United States Constitution. Accordingly, it hereby is

ORDERED that Stephan's motion to dismiss is granted,
and the complaint is dismissed, with costs and disbursements to
Stephan as taxed by the Clerk of the Court; and the Clerk is
directed to enter judgment accordingly.

Dated: March 14, 2007

ENTER:



J.S.C.

JANE S. SOLOMON

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