

Strachman v Palestinian Auth.

2008 NY Slip Op 33602(U)

May 5, 2008

Supreme Court, NY County

Docket Number: 102101/2006

Judge: Shirley Werner Kornreich

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

PRESENT: HON. SHIRLEY WERNER KORNREICH

PART 54

Index Number : 102101/2006

YARON UNGAR

vs

PALESTINIAN AUTHORITY

Sequence Number : 009

STRIKE

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

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

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

FILED
MAY 07 2008
COUNTY CLERK'S OFFICE
NEW YORK

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION AND ORDER.

Dated: 5/5/08

HON. SHIRLEY WERNER KORNREICH

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON FINAL DISPOSITION

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

-----X

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,

Index No. 102101/2006

DECISION AND ORDER

Plaintiffs,

- against -

THE PALESTINIAN AUTHORITY, d/b/a, THE
PALESTINIAN AUTHORITY, d/b/a, PALESTINIAN
PENSION FUND OF THE STATE ADMINISTRATIVE
EMPLOYEES and/or PALESTINIAN PENSION
FUND FOR THE STATE ADMINISTRATIVE
EMPLOYEES OF THE GAZA STRIP, & THE
INSURANCE AND PENSION FUND,

Defendants.

-----X

KORNREICH, SHIRLEY WERNER, J.:

This is one of many cases instituted by plaintiffs in an attempt to collect on an \$116,000.000 federal judgment entered, upon default, in Rhode Island. The Palestinian Authority (PA) and the Palestinian Liberation Organization (PLO), among others, were named as defendants in the Rhode Island action. Plaintiffs allege, *inter alia*, that The Palestinian Pension Fund (PPF) is an alter ego of the PA and seek to execute against PPF assets in New York. The PPF has filed a motion to strike plaintiffs' demand for a jury trial. Plaintiffs oppose the motion and, in the alternative, seek an advisory jury by cross-motion. The court will assume the parties'

familiarity with the procedural and factual background of this case, as well as pending related matters.

Discussion and Ruling

Plaintiffs' complaint alleges a single cause of action for declaratory judgment. The PPF argues that due to the underlying nature of the claim, plaintiffs are not entitled to a jury trial. CPLR 4101 provides for a jury trial on demand in an action "in which a party demands and sets forth facts which would permit a judgment for a sum of money only," or in any other action "in which a party is entitled by the constitution or by express provision of law to a trial by jury." The declaratory judgment action was created in New York in 1921 with the adoption of the Civil Practice Act. Civ Prac Act, § 473; Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR 3001:2. It is not, in and of itself, of a legal or equitable nature. In order to determine whether a party is entitled to a jury trial on such a claim, it is necessary to examine which of the traditional common law actions would most likely have been used to present the instant claim had the declaratory judgment action not been created. Siegel, New York Practice, § 439; *James v. Powell*, 25 A.D.2d 1 (1st Dep't 1966), *appeal dismissed by* 17 N.Y.2d 812 (1966), *revd on other grounds by* 19 N.Y.2d 249 (1967).

PPF argues that plaintiffs are seeking a declaratory judgment "concerning the Pension Fund's ownership of more than \$100 million of securities held in a custodial account at Swiss American Securities Inc. ("SASI")." PPF memo of Law at p.2. Because the claim involves a dispute "over the ownership of securities," a claim treated as equitable in nature at common law [citing *DeForest v. Walters*, 153 N.Y. 229, 242-43 (1897), *et seq*], then PPF concludes that plaintiffs are not entitled to a jury trial. Plaintiffs disagree with this analysis, and instead

characterize their claim as one for “unlawful interference with enforcement of judgment” (Tolchin Affirm. at p. 8.), which at common law was actionable for damages. *Findlay v. McCallister*, 113 U.S. 104 (1885); see *James v. Powell*, 25 A.D.2d 1, *supra*.

At the outset, the impetus for plaintiffs’ action is the refusal by the PA and the PLO to satisfy the federal judgment for money damages awarded to plaintiffs in 2004. This action therefore must be viewed as a means of executing the money judgment, which is the relief being sought by plaintiffs. Traditionally, judgments have been divided for enforcement purposes into law and equity, with law judgments enforceable by execution and equity judgments by contempt. Siegel, *New York Practice*, § 476. Since the underlying judgment is a “law judgment,” satisfaction of which is being sought through execution, the court is inclined to treat the declaratory judgment action as one requiring a jury trial.

The allegations in plaintiffs’ complaint further support a jury trial as they would support claims that if proven could result in money damages, such as fraud and conversion. In essence, the complaint alleges that the PA and the PLO purchased millions of dollars in securities and debt instruments and deposited them with the New York brokerage firm SASI under the name of “Palestinian Pension Fund for the State Administrative Employees of the Gaza Strip,” a fictitious entity and an alias for the PA and PLO. Complaint at ¶¶ 39-58. This scheme was allegedly part of a broader scheme by which the PA [and PLO] used a number of aliases and fictitious entities “to shield its assets from creditors, law enforcement agencies and tax authorities, and to mislead banks, brokerages and other financial and/or investment institutions....” Complaint at ¶ 3.

Although not identical, this claim appears similar to an action in tort for unlawful interference with enforcement of judgment, as plaintiffs argue. Although that claim was viable at

common law, its continuing viability, however, is in question. See e.g. *Federal Deposit Ins. Corp. v. Porco*, 147 A.D.2d 422, 423 (1st Dept. 1989) (discussing history of tort). Regardless, the tort involved actions undertaken by a judgment debtor after entry of judgment, designed to thwart execution of judgment by an identified judgment creditor. *Id.* Here, the alleged overall scheme was designed to hide the PA's and the PLO's assets for all purposes, and not solely to thwart execution of plaintiffs' judgment.

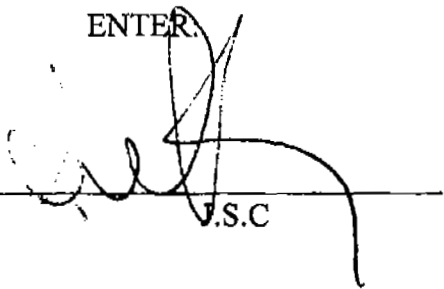
Nor is plaintiffs' claim analogous to a simple action to "quiet title," as the PPF argues. Plaintiffs are not asserting an ownership interest in the property being held by SASI, but rather to assert their legal right to execute their money judgment against it. This will necessarily require resolution of factual issues determinative of ownership, but only as part of the broader claim that the PPF is a fictitious entity set up to hide the PA's and the PLO's assets. This broader claim is at the heart of plaintiffs' declaratory judgment action. Accordingly, it is

ORDERED that the PPF's motion to strike plaintiffs' demand for a jury trial is denied; and it is further

ORDERED that plaintiffs' cross-motion for an advisory jury is denied as moot.

Date: May , 2008
New York, N. Y.

FILED
MAY 07 2008
COUNTY CLERK'S OFFICE
NEW YORK

ENTER.


J.S.C