

**Lorret v Kosachuk**

2013 NY Slip Op 32844(U)

November 1, 2013

Supreme Court, New York County

Docket Number: 103896/04

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: DEBRA A. JAMES  
*Justice*

PART 59

EUGENIA LORRET and NINA GOGITIDZE,

Index No.: 103896/04  
~~103895/2004~~

Plaintiffs,

Motion Date: 06/14/13

- v -

Motion Seq. No.: 12

CHRIS KOSACHUK and NLG, LLC,

Defendants.

The following papers, numbered 1 to 4 were read on this order to show cause to amend caption \_\_\_\_\_

Order to Show Cause -Affidavits -Exhibits  
Answering Affidavits - Exhibits  
Replying Affidavits - Exhibits

**FILED**

NOV 07 2013

No (s) .	1
No (s) .	2, 3
No (s) .	4

Cross-Motion:  Yes  No COUNTY CLERK'S OFFICE  
NEW YORK

Upon the foregoing papers, it is ordered that this motion shall be granted to the extent that it seeks to amend the caption of the action and compel the deposition of defendant Chris Kosachuk.

In this post-judgment dispute, plaintiff-assignee 9197-5904 Quebec, Inc. (Quebec) moves, by order to show cause, for orders: (1) changing the caption to reflect the assignment of judgment from original plaintiffs Eugenia Lorret (Lorret) and Nina Gogitidze (Gogitidze) to Quebec; (2) directing pro se defendant Chris Kosachuk (Kosachuk) to respond to plaintiff's

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

- CHECK ONE:  CASE DISPOSED  NON-FINAL DISPOSITION
- CHECK AS APPROPRIATE: MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- CHECK IF APPROPRIATE:  SETTLE ORDER  SUBMIT ORDER  
 DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

discovery requests; (3) granting a charging order based on an order entered by the Circuit Court of the State of Florida, against Kosachuk's interest in defendant NLG, LLC (NLG); (4) pursuant to CPLR 5225, granting plaintiff a "delivery," or "turnover" order against Kosachuk, directing that his member shares in NLG be turned over to plaintiff; or in the alternative, (5) pursuant to CPLR 5228, appointing a receiver; and (6) granting sanctions against Kosachuk for arguing that a bankruptcy stay was in effect on November 20, 2012. Kosachuk cross-moves for an order striking the assignment of judgment and enforcing a written satisfaction of judgment.

Underlying the current dispute were claims brought by Lorret and Gogitidze to recover funds which they alleged had been diverted from their account to that of Kosachuk and/or NLG. The action as against NLG was dismissed and after a three-day, non-jury trial in Supreme Court, New York County before the Honorable Walter B. Tolub, between September 12-14, 2006, a verdict and judgment was entered in favor of Lorret and against Kosachuk in the amount of \$108,293.54, plus interest from November 25, 2002, plus costs and disbursements in the sum of \$1,050.00. The judgment was filed and entered in the New York County Clerk's office on February 22, 2007 (Original Judgment).

On or about March 7, 2008, Kosachuk served a motion, by

order to show cause, seeking a modification of the judgment. A hearing on the motion was scheduled for March 21, 2008. When no one appeared on plaintiff's behalf, the court issued a default. Plaintiff's counsel moved to vacate the default, and by decision and order dated May 7, 2008 and filed on May 12, 2008, Justice Tolub consolidated and resolved both motions. He vacated the default, based on his finding that plaintiff counsel's failure to appear was inadvertent and based on his stated preference for deciding issues on their merits. Justice Tolub then granted the requested modification. Explaining that the judgment erroneously included plaintiff's claim for \$60,000, which had been expressly excluded from consideration at trial, Justice Tolub declared the error to have been clerical and ministerial, rather than substantive (CPLR 5019), and modified the judgment by reducing it by \$60,000 (Modified Judgment), and directed the Clerk of the Court to enter the corrected judgment. The Modified Judgment was recorded on September 3, 2008.

Lorret assigned the Modified Judgment, in the amount of \$48,293.54, plus costs of \$1,505.00, plus interest from November 25, 2002, to Quebec pursuant to a written assignment of judgment, dated December 15, 2009 (Assignment of Judgment). The Assignment of Judgment was filed in the office of the New York County Clerk on March 21, 2011.

By order to show cause, dated July 12, 2012, Kosachuk moved for orders: (1) vacating the Original Judgment; (2) declaring that the Modified Judgment, recorded on September 3, 2008, in favor of Lorret and against Kosachuk only, in the amount of \$48,293.54, is the only valid and enforceable judgment in this action; and (3) that any and all assignments of the Original Judgment are vacated with prejudice.

On September 6, 2012, Kosachuk filed a satisfaction of judgment in the office of the New York County Clerk (Satisfaction of Judgment). The Satisfaction of Judgment, which was executed by "M. Gogitidze as executor of the estate of Eugenia Lorret," states:

KNOW ALL MEN BY THESE PRESENTS that EUGENIA LORRET, the Plaintiff in the above action, wherein an original judgment was confirmed and entered on February 22, 2007 for \$108,293.54 against the Defendant, CHRIS KOSACHUK, and subsequently modified on May 12, 2008 to \$48,293.54 and a modified judgment was recorded in New York on September 3, 2008, and said judgment being recorded in the minutes of said court and a copy thereof having been recorded in Official Records of the public records of New York County, NY, does hereby acknowledge full payment and satisfaction thereof and hereby consents that the same shall be satisfied of record here and everywhere. Witness our hand and seal this 26 day of July 2012

Based on this document, Kosachuk moved, by order to show cause dated July 12, 2012, for an order vacating, with prejudice, any collections actions taken with respect to the judgment against it. By order dated July 31, 2012, this court

granted on default the motion and declared: that the original judgment recorded on February 22, 2007, was void, having been duly modified by order dated May 7, 2008, and recorded on September 3, 2008; that the Modified Judgment was satisfied; and that the case was forever closed. On September 6, 2012, Kosachuk filed a consent order, executed by Kosachuk and "M. Gogitidze," recognizing that the judgment had been satisfied and closing the case.

Thereafter, by order to show cause, dated November 15, 2012, plaintiff sought an order vacating the court's order of July 31, 2012. More specifically, "Plaintiff-Assignee/Judgment-Creditor 9197-5904 Quebec, Inc." moved for orders: vacating the July 31, 2012 order and consent order; striking the Satisfaction of Judgment; referring Kosachuk to the New York County District Attorney's office for investigation for perjury; referring his attorney James Costo, Esq. to the disciplinary committee for perpetrating a fraud upon the court; and granting an injunction restraining and enjoining Kosachuk from asserting that the judgment had been satisfied. By decision and order dated December 21, 2012, this court granted the motion to the extent of vacating the July 31, 2012 order and declaring that the Modified Judgment remains unsatisfied, nunc pro tunc. This court also stated its recognition of the Assignment of Judgment and that such assignment vests in Quebec, as assignee, all remedies for

enforcement of the judgment that were available to Lorret, as assignor, and that Kosachuk was, and is, charged with notice of the assignment upon its filing (March 21, 2011), pursuant to CPLR 5015 (a). Accordingly, Kosachuk's failure to serve the July 12, 2012 show cause order upon Quebec, as assignee, mandated vacatur of the July 31, 2012 order. By decision and order dated April 30, 2012, this court denied Kosachuk's ensuing motion to vacate/renew/reargue the December 21, 2012 order.

It is undisputed that, almost immediately after the Original Judgment was entered, then counsel for plaintiff Lorret, David M. Blum, Esq., commenced proceedings to domicile the judgment in Miami-Dade County, Florida based on Kosachuk's ties to that location. The intent was for Lorret to obtain a charging order -- a remedy available to judgment-creditors in Florida -- against Kosachuk's interest in NLG. The Florida proceedings encompassed extensive motion practice involving, among other things: a substitution of plaintiff and change of caption based upon the Assignment of Judgment; post-judgment discovery proceedings, including a deposition of Kosachuk; protective orders; civil contempt proceedings; a civil writ of bodily attachment which ultimately resulted in the imposition of certain restrictions on Kosachuk's movement, mandated answers to interrogatories and production of records; a motion to transfer the matter to another judge; and a stipulated agreement that

Kosachuk owed, and would pay, the Modified Judgment, plus interest, to the court registry within 30 days of July 2, 2012, with the imposition of sanctions in the event that he failed to pay; and a motion to set off of the amount owed under the Modified Judgment against a judgment obtained by NLG in a separate proceeding pending in Florida Circuit Court for the 11<sup>th</sup> Judicial District, docketed under case No. 07-19532 CA 11, and entitled *NLG, LLC, a Delaware Limited Liability Company v Elizabeth Hazan*.

Plaintiff also domiciled the Modified Judgment in Pennsylvania, based on Kosachuk's residence in that state, and on NLG's location at the same address as Kosachuk, in West Chester, Pennsylvania. Like the Florida proceedings, post-judgment discovery, including another deposition of Kosachuk, was pursued in the Pennsylvania courts and the remedy of a charging order was granted in plaintiff's favor, which, based on issues concerning the caption and the improper identification of NLG as a judgment-debtor along with Kosachuk on the domiciled judgment, was later vacated without prejudice. Also unsuccessful was plaintiff's pursuit of involuntary bankruptcy proceedings against Kosachuk in the United States Bankruptcy Court, Eastern District of Pennsylvania.

With respect to the instant motion, served on or about

December 18, 2012 (while the above-referenced motion, dated November 15, 2012, was still pending), to change the caption to reflect the Assignment of Judgment and for relief related to enforcement of the Modified Judgment, Kosachuk responded with opposition and by cross-moving for relief which, if granted, would render plaintiff's motion moot. However, as noted by this court in its order dated December 21, 2012, the Assignment of Judgment is valid, and despite Kosachuk's continued attempt to relitigate the issues surrounding the assignment, there exists no basis to question its validity.<sup>1</sup> Kosachuk's assertion that the court should deny the request to change the caption because the case is closed, as the judgment is satisfied and the assignment invalid, is contrary to the record and without merit.<sup>2</sup> Having presented no valid basis to deny plaintiff's motion to change the caption to reflect the Assignment of Judgment and replacing plaintiff Lorret's name with that of Quebec, that aspect of the motion is granted (see CPLR 5019 [c]).

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<sup>1</sup> Although plaintiff objects to pro se litigant Kosachuk's service of his motion papers by email after 5 p.m. (at 5:27 p.m.) on the day they were due, the court's decision as to both the Assignment of Judgment and Satisfaction of Judgment, was on the merits, and the court adheres to that determination.

<sup>2</sup> Kosachuk acknowledged the Assignment of Judgment on several occasions in the Florida proceeding, including his March 8, 2010 sworn motion for a protective order, and his June 23, 2011 sworn motion for a set off order.

Kosachuk seeks, as an alternative to payment of the Modified Judgment, an offset of his obligation to pay the money judgment in this action in the amount of the judgment rendered in the *NLG, LLC, a Delaware Limited Liability Company v Elizabeth Hazan* action referenced above. However, Kosachuk may not represent NLG, LLC, as judgment creditor in NLG/s action against defendant judgment debtor Hazen or as judgment debtor in the instant action, or NLG's interest in either action. Nor has defendant NLG, LLC appeared by counsel in the action at bar as required pursuant to CPLR 321(a), to make arguments on such corporation's behalf. Kosachuk's application is therefore without merit, and like the balance of the cross motion, shall be denied.

Article 52 of the CPLR extends broad discretionary power to the court to control and regulate the enforcement of a money judgment. CPLR 5223 provides:

[a]t any time before a judgment is satisfied or vacated, the judgment creditor may compel disclosure of all matter relevant to the satisfaction of the judgment, by serving upon any person a subpoena, which shall specify all of the parties to the action, the date of the judgment, the court in which it was entered, the amount of the judgment and the amount then due thereon, and shall state that false swearing or failure to comply with the subpoena is punishable as a contempt of court.

Included is the authority to compel compliance with procedures and mechanisms needed to uncover information relevant

to the satisfaction of a judgment, as well as to prevent unreasonable and overly intrusive pursuits (see *JPMorgan Chase Bank, N.A. v Motorola, Inc.*, 47 AD3d 293, 307 [1<sup>st</sup> Dept 2007]). A judgment creditor may seek discovery from anyone who may have information regarding the location of the judgment debtor's assets, including the judgment debtor himself who may be compelled to disclose, under oath, information about his property for the express purpose of ascertaining precisely what property exists which can be applied toward satisfying the judgment. This is "especially significant where creditors seek disclosure of fraudulently concealed property, or seek to reach recalcitrant or dishonest debtors who are able but unwilling to satisfy judgments against them" (30 Am Jur 2d, Executions and Enforcement of Judgments § 617).

Kosachuk, according to Quebec, falls within this latter category, and to aid it in enforcing the Modified Judgment, it seeks an order compelling compliance with its post-judgment: subpoena to take Kosachuk's oral deposition; information subpoena; and subpoena duces tecum requiring the production of certain financial documents, including Kosachuk's federal, state and local tax returns from 2007 to the present.

New York has long recognized that:

[t]here is nothing in the Internal Revenue Code . . .

which confers upon a judgment-debtor any privilege against disclosure by him of the contents of such returns. . . . There is no sound public policy against such disclosure by the judgment-debtor; on the contrary, public policy seems to be the other way, to put no obstacle in the path of one seeking to secure the enforcement of a judgment of a court of competent jurisdiction

(*Leonard v Wargon*, 55 NYS2d 626, 627 [Sup Ct, Bronx County 1945]).

New York courts, especially in situations where the judgment-debtor has not been forthcoming about finances, have a history of permitting the use of tax returns, in addition to other financial documents, to assist the judgment debtor efforts to uncover any hidden and/or concealed assets of a judgment debtor (see *Matter of Aaron v Patrick McIntyre, CPA, P.C.*, 15 AD3d 475, 476 [2<sup>nd</sup> Dept 2005]; see also *Rozzo v Rozzo*, 274 AD2d 53, 55-56 [2<sup>nd</sup> Dept 2000]). Mandatory compliance with this discovery tool has often involved denials of motions to quash subpoenas specifically aimed at acquiring tax returns to aid in the enforcement of a judgment (see *Siemens & Halske, GmbH. v Gres*, 77 Misc 2d 745, 745 [Sup Ct, NY County 1973], *affd* 43 AD2d 1021 [1<sup>st</sup> Dept 1974]).

More recently, in *Alfred E. Mann Living Trust v ETIRC Aviation S.a.r.L* (35 Misc 3d 1228[A], 2009 NY Slip Op 52837[U], \*4 [Sup Ct, NY County 2009], *affd* 78 AD3d 137 [1<sup>st</sup> Dept 2010]), the Honorable Eileen Bransten denied an application to quash a post-judgment subpoena duces tecum for documents relating to, among

other things: assets or the transfer of assets; debts; bank account statements; and tax returns, on the grounds that the requests were "reasonably calculated to obtain information relevant to the judgment."

Given that plaintiff's efforts to enforce the judgment have been frustrated time and time again by Kosachuk's repeated failure to abide by various court orders, here, as well as in Florida and Pennsylvania, neither the use of subpoenas, nor the information and documentation they seek, can be considered overly broad or intrusive (see CPLR 5420; *Guardian Loan Co. v Early*, 47 NY2d 515, 519 [1979]).

With respect to its efforts to access enforcement remedies that involve NLG as well as Kosachuk, it is plaintiff's contention that Kosachuk is the sole owner and operator of this entity, holding 100% of the interest in NLG. Therefore, because the judgment remains unsatisfied, plaintiff seeks, alternatively, a charging order against Kosachuk's interest in NLG; a turnover order, ordering Kosachuk to turn over to Quebec his stock or member certificates in NLG; or an order appointing a receiver to take possession and auction the stock of NLG for Quebec's benefit.

In New York, a judgment creditor is authorized, under CPLR 5225 (a), to move against the judgment debtor to compel a

delivery, or turnover, of an asset of the judgment debtor, or so much of it as necessary to satisfy the outstanding judgment, "where it is shown that the judgment debtor is in possession or custody of money or other personal property in which he has an interest . . . ." When the assets/property are not in the possession of the judgment debtor, CPLR 5225 (b) requires the commencement of a special proceeding against the garnishee that holds the assets "where it is shown that the judgment debtor is entitled to the possession of such property or that the judgment creditor's rights to the property are superior to those of the transferee". Upon such showing, the garnishee will be directed to:

pay the money, or so much of it as is sufficient to satisfy the judgment to the judgment creditor and, if the amount . . . is insufficient to satisfy the judgment, to deliver any other personal property, or so much of it as is of sufficient value to satisfy the judgment, to a designated sheriff" Failure to comply with a turnover order constitutes contempt of court and is punishable as such.

(CPLR 5225 [b]).

Additionally, "disobedience of a turnover order is contempt of court and punishable as such" (*Koehler v Bank of Bermuda Ltd.*, 12 NY3d 533, 537 [2009]).

As indicated above, Quebec is entitled to disclosure to aid it in uncovering Kosachuk's assets, hidden or otherwise,

in order to determine whether to seek enforcement of the judgment pursuant to CPLR 5225 (a), CPLR 5225 (b), or pursuant to any other Article 52 remedy which can be shown to be more likely to result in a satisfied judgment. Furthermore, because this court has jurisdiction over Kosachuk as the judgment debtor, it can order him to turn over property/assets which he owns or has an interest in, regardless of whether the court has jurisdiction over that particular property or entity (*Starbare II Partners v Sloan*, 216 AD2d 238, 239 [1<sup>st</sup> Dept 1995]).

Alternatively, Quebec seeks the appointment of a receiver for the enforcement of a money judgment, under CPLR 5228, which is a matter of the court's discretion (*Booth v Ling-Shan Li*, 36 Misc 3d 1212[A], 2012 NY Slip Op 51256[U], \*5 [Sup Ct, Kings County 2012] citing *United States v Zitron*, 1990 WL 13278 [SD NY 1990]). "The factors which the court must consider when making this determination are: (1) whether there are alternate remedies available to the [judgment] creditor; (2) the degree to which receivership will increase the likelihood of satisfaction [of the judgment]; (3) the risk of fraud or insolvency if a receiver is not appointed;" (*id.* [internal quotation marks and citation omitted]) and (4) whether the judgment creditor has "demonstrate[d] a 'special reason' to justify the appointment of a receiver" (*Galen Tech. Solutions*,

*Inc. v VectorMAX Corp.*, 107 AD3d 435, 435-436 [1<sup>st</sup> Dept 2013]).

Based on a review of the evidence and current arguments, plaintiff has not yet made this showing, and the appointment of a receiver at this juncture is premature.

The record reveals that Kosachuk held a 100% interest in NLG at the time that entity was formed in 2002. According to his post-judgment sworn testimony in both Florida and Pennsylvania, Kosachuk held that interest continuously until 2007, when he transferred 100% of it to another entity, and that since that time, he has not held either an interest or membership role in NLG. On April 27, 2010, he testified in the Florida proceedings that in 2007, he transferred his interest in NLG to a company in Moscow, Russia called "Luxcom Financial" (Kosachuk Florida deposition, at 55-57). Two years later, on April 12, 2012, Kosachuk testified before the Honorable Edward Griffith, Judge of the Court of Common Pleas of Chester County, Pennsylvania, that in 2007, he transferred his interest in NLG to a company in the British Virgin Islands called "Meridian Trust." In both proceedings, he testified that he continued to work as a manager for NLG after the transfer of ownership, and steadfastly refused to answer questions about NLG.

During the Pennsylvania proceeding, when cross-examined about the testimony he gave in Florida, Kosachuk denied any

knowledge or any recollection of having previously testified in that jurisdiction that he had transferred his interest to Luxcom Financial (see Kosachuk Pennsylvania transcript at 19, 21). Then, when asked basic questions about Meridian Trust, he could not provide even rudimentary information about his day-to-day relations with this entity. Kosachuk was unable to give Meridian Trust's address, phone number, fax number, or email address, nor could he state which island it was located on, confirm whether Meridian Trust has a website, or provide the name of any one person at Meridian Trust with whom he supposedly worked (*id.* at 12, 14-16).

Kosachuk's testimony prompted plaintiff to commence a formal inquiry into both Luxcom Financial and Meridian Trust. The result of the research, according to Quebec, is that there is no registered company by the name of "Luxcom Financial" in Russia, and there is no company registered in the British Virgin Islands by the name of "Meridian Trust" (see plaintiff's exhibits P and Q). In opposition to the motion, Kosachuk fails to address Quebec's investigation results, nor does he provide evidence, probative or otherwise, confirming that a transfer of interest was, in fact, made, despite his insistence that he has not held an interest in NLG since 2007.

Considering the amount of time and degree of difficulty

plaintiff has encountered in pursuing post-judgment discovery, here, as well as in Florida and Pennsylvania, in its effort to enforce the Modified Judgment, plaintiff is entitled to the sought-after discovery, including all tax returns from 2007 forward. That aspect of the motion in which plaintiff seeks a turnover and/or for the appointment of a receiver is denied with leave to renew upon completion of a reasonable period of discovery. In view of the remedies available to plaintiff in New York under CPLR Article 52 for enforcement of a judgment, which do not include a "charging order," as it is utilized in Florida and/or Pennsylvania, the motion to grant a charging order is denied.

Finally, with respect to plaintiff's motion for sanctions against Kosachuk based upon an argument he made regarding a supposed bankruptcy stay, the motion is denied as the motion papers are inadequate in this respect. Nevertheless, Kosachuk is cautioned against taking any further measures to hinder post-judgment discovery. Any additional failure to comply with mandated disclosure orders may, upon proper notice and warning, result in civil contempt proceedings.

Accordingly, it is

ORDERED that the motion of plaintiff is granted to the extent that, within 10 (ten) days of receipt of a copy of this

order with notice of entry, Chris Kosachuk shall comply with the subpoena duces tecum dated April 5, 2012, and the information subpoena dated April 6, 2011; and it is further

ORDERED that Chris Kosachuk shall appear for an oral deposition within 30 days of receipt of a copy of this order with notice of entry, or provide proof to the court that such deposition has been completed; and it is further

ORDERED that the caption be amended to reflect the Assignment of Judgment and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for plaintiff shall serve a copy of this order, together with a copy of the Assignment of Judgment, with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158), who are directed to mark the court's records and docket of the judgment to reflect the change in the caption herein; and it is further

ORDERED that the portion of the motion that seeks an order granting a turnover order against Chris Kosachuk directing that his member shares in NLG, LLC be turned over to 9197-5904 Quebec, Inc. is denied without prejudice; and it is further

ORDERED that the aspect of the motion that seeks an order appointing a receiver is denied without prejudice; and it is further

ORDERED that the balance of relief demanded in plaintiff's motion is denied; and it is further

ORDERED that the cross motion of defendant Kosachuk is denied in its entirety.

This is the decision and order of the court.

Dated: November 1, 2013

ENTER:

**FILED**

NOV 07 2013

COUNTY CLERK'S OFFICE  
NEW YORK

*[Handwritten signature]*  
**DEBRA A. JAMES** J.S.C.