

Vance v Polyakov

2015 NY Slip Op 30496(U)

April 1, 2015

Sup Ct, New York County

Docket Number: 452927/14

Judge: Martin Shulman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 1

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CYRUS R. VANCE, JR.,
District Attorney for the County of New York,
as Claiming Authority,

Index No. 452927/14

Plaintiff,

Interim Decision & Order

-against-

Vadim Polyakov, Daniel Petryszyn, Laurence
Brinkmeyer, Bryan Caputo, Christopher
Rivera and Pallavi Yetur,

Defendants.

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HON MARTIN SHULMAN, J.S.C.

Plaintiff, Cyrus R. Vance, Jr., District Attorney for the County of New York,
as Claiming Authority ("plaintiff" or "DA"), commenced this CPLR Article 13-A civil
forfeiture action against the above-named defendants seeking the forfeiture of
\$1,859,000 of the criminal defendants'¹ assets as well as forfeiture of certain
specifically identified financial accounts in the names of the criminal defendants
and/or non-criminal defendants. The verified complaint alleges that these assets
constitute the proceeds, substituted proceeds and/or instrumentalities of the
criminal defendants' alleged felony crimes.²

¹ Defendants Polyakov, Petryszyn, Brinkmeyer and Caputo are named as
criminal defendants in this action. Defendant Yetur is named as a non-criminal
defendant. Plaintiff discontinued this action against non-criminal defendant
Rivera.

² Each of the criminal defendants is variously charged with differing
degrees of money laundering and criminal possession of stolen property.
Defendant Polyakov is also charged with grand larceny and identity theft.

This action arises from the criminal defendants' alleged participation "in an international cybercrime ring that allegedly took over StubHub, LLC ("StubHub")³ user accounts, stole personal identifying information, used stolen credit card information to purchase tickets to shows, sporting events and other entertainment events offered on the StubHub website, sold the tickets to others and transferred the proceeds to themselves and to third parties in the United States, United Kingdom, Germany and elsewhere." See Goodman Aff. in Supp. at ¶2. Through their alleged actions, the DA contends that from December 2012 through March 2014 the criminal defendants "unlawfully obtained event tickets through StubHub valued at approximately \$1,859,000" and moved the proceeds therefrom into and out of various financial accounts in their names and those of the non-criminal defendants. *Id.*

The DA moves by order to show cause ("OSC") seeking an order of attachment pursuant to CPLR §§ 1312 and/or 1316 and discovery in aid of attachment pursuant to CPLR §1326. On December 11, 2014, this court issued a temporary restraining order ("TRO") restraining and enjoining defendants and any garnishees "from transferring, assigning, disposing of, encumbering, or secreting" their assets pending the hearing of the OSC. In support of the OSC, plaintiff submits detailed affidavits from Foster (Exh. C to OSC) and Michael

³ Meredith Foster ("Foster"), an analyst within the DA's Cybercrime and Identity Theft Bureau, states in her affidavit in support of plaintiff's OSC that: "Stub Hub LLC is an eBay, Inc. subsidiary that operates a public website and digital marketplace through which members of the general public may buy and sell tickets to various entertainment events." Foster Aff. at ¶ 6, Exh. C to OSC.

Vecchio (“Vecchio”), a Principal Financial Investigator within the DA’s Forensic Accounting and Financial Investigations Bureau (Exh. D to OSC).

In particular, the OSC seeks an order authorizing plaintiff to attach and levy upon certain specifically identified bank accounts, including but not limited to a JPMorgan Chase Bank account held jointly by criminal defendant Daniel Petryszyn and his wife, non-criminal defendant Pallavi Yetur (“Chase Account”). The Chase Account was seized pursuant to a search warrant issued on July 2, 2014 in the underlying criminal matter, at which time it contained \$30,618.62. This interim decision and order solely addresses non-criminal defendant Yetur’s opposition to plaintiff’s OSC.

The verified complaint’s sixth cause of action seeks forfeiture of the Chase Account as an instrumentality of criminal conduct and is the sole cause of action alleged against Yetur. With respect to Yetur, plaintiff’s complaint alleges that she “knew that Petryszyn was or would be using [the Chase Account] to contribute to the commission of the crimes described herein.” Verified Complaint at ¶60, Exh. B to OSC.

Discussion

CPLR §1312(3) provides in pertinent part that a provisional remedy may be granted where:

- (a) there is a substantial probability that the claiming authority will prevail on the issue of forfeiture and that failure to enter the order may result in the property being destroyed, removed from the jurisdiction of the court, or otherwise be unavailable for forfeiture;

(b) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order may operate;⁴

See also, *Morgenthau v Citisource, Inc.*, 68 NY2d 211, 218 (1986); *Morgenthau v Figliola*, 4 Misc3d 1025A, 798 NYS2d 346 [*2] (NY Sup Ct 2004).

In opposition to the OSC, Yetur argues that the DA's request for provisional relief should be denied as to her because plaintiff cannot meet the foregoing statutory requirements. First, Yetur contends plaintiff fails to establish a substantial probability of prevailing against her on the issue of forfeiture because the moving papers contain no evidence of the DA's ability to prove by a preponderance of the evidence that the Chase Account was an instrumentality of a crime and that Yetur knew the account was associated with criminal activity. See CPLR § 1311(3)(b)(iv).⁵ Characterizing the OSC's allegations as conclusory, Yetur argues that plaintiff merely asserts that transfers were made

⁴ Yetur's opposition does not address any potential hardship. For its part, the DA contends that there is no prejudice to Yetur because the Chase Account is her only asset that has been restrained.

⁵ CPLR § 1311(3)(b)(iv) provides as follows with respect to forfeiture actions against non-criminal defendants:

if the action relates to an instrumentality of a crime, except as provided for in subparagraph (i) hereof, the burden shall be upon the claiming authority to prove by a preponderance of the evidence the facts necessary to establish a claim for forfeiture and that the non-criminal defendant either (A) knew that the instrumentality was or would be used in the commission of a crime or (B) knowingly obtained his or her interest in the instrumentality to avoid forfeiture.

between the Chase Account and accounts controlled by Petryszyn without stating the context of the transfers, dates, etc.

In reply, the DA submits further affidavits from Foster and Vecchio together with supporting exhibits. Plaintiff's reply papers bolster the OSC's allegations, elaborating the following additional facts as to Yetur:

- in December 2012 and January 2013 Yetur deposited at least four checks from StubHub into the Chase Account;
- Yetur has her own StubHub account and her e-mail address linked to this account was involved in nine transactions for the sale of 18 tickets in March and April 2013 which StubHub identified as fraudulent (these tickets were resold using Yetur's StubHub account and e-mail address);
- on five occasions between July and September 2013, money from Yetur's PayPal account was transferred to defendant Polyakov, who allegedly is the prime source of illegally obtained tickets.

As to the sufficiency of the DA's OSC, Yetur correctly observes that the vast majority of the OSC's allegations are directed to the criminal defendants.

The specific claims against non-criminal defendant Yetur are in fact sparse.

However, the DA is not required to allege every fact within its knowledge.

As found in *Morgenthau v A.S. Goldmen & Co., Inc.*, NYLJ, October 4, 1999, at 28, col. 4 *affd* 283 AD2d 212 (1st Dept 2001):

[W]hile [plaintiff] could have additional facts, [plaintiff's showing] is not rebutted by any facts presented by any defendant. Plaintiff could provide additional details. However, it is not necessary to identify each and every transaction that each individual defendant engaged in at this stage. To satisfy his burden, plaintiff must support his contentions "by affidavit and such other written evidence as may be submitted", CPLR 1334.

Here, Foster's affidavit alleges that Yetur's StubHub account was used to resell tickets identified as having been obtained through alleged account takeover

fraud. Exh. C to OSC, at ¶19. Vecchio's affidavit discusses the sums that were transferred between the Chase Account and Petryszyn's individually maintained accounts. *Id.* at Exh. D, ¶6(g). These allegations are elaborated upon in reply and, from all of the foregoing, Yetur's knowledge of the alleged criminal scheme and use of the Chase Account as a conduit to move funds to Petryszyn's accounts and ultimately to Polyakov can be readily inferred. Accordingly, plaintiff has made a sufficient showing of substantial probability of prevailing on forfeiture as to Yetur.

Next, Yetur argues that plaintiff fails to establish that an order of attachment is necessary to ensure that the funds in the Chase Account will be available for forfeiture. Specifically, Yetur notes that in attempting to satisfy this element the DA again makes only conclusory statements directed to the criminal defendants, thus failing to establish any propensity on her part to render the funds in the Chase Account unavailable for forfeiture. However, as the DA observes, "[a] high degree of proof is not necessary to demonstrate that the failure to enter the order may result in the property being destroyed or otherwise unavailable for forfeiture." *Kuriansky v Natural Mold Shoe Corp.*, 133 Misc2d 489 (Sup Ct, Westchester County, 1986).


Yetur also argues it is impossible for these funds to be dissipated or removed from the court's jurisdiction because they are already in the DA's possession pursuant to the July 2, 2014 search warrant in the criminal action. The OSC states that, upon this court granting an order of attachment, plaintiff intends to apply to the Criminal Court for an order turning over the seized

accounts to this court's jurisdiction so the funds may be disposed of in the context of this forfeiture action. Goodman Aff. in Supp. at ¶21. In reply,⁶ plaintiff argues that if the criminal defendants were to successfully challenge the search warrant, the seized funds might become unavailable for forfeiture if this court denies the OSC.

In light of the seizure of the Chase Account pursuant to a search warrant, issuance of an order of attachment at this juncture would be premature since a sheriff would be unable to levy upon it. However, this court finds that the Chase Account should remain subject to the TRO to safeguard this asset in the event the search warrant is challenged. Accordingly, as to Yetur, the portion of the DA's OSC seeking an order of attachment is denied without prejudice and the portion thereof seeking a TRO is granted and the TRO shall remain in effect.

The foregoing is this court's interim decision and order.

Dated: New York, New York
April 1, 2015



Hon. Martin Shulman, J.S.C.

⁶ Plaintiff's reply to Yetur's opposition does not expressly address her argument regarding the seizure of the Chase Account pursuant to a search warrant. However, the DA does address this issue in its reply to co-defendants Petryszyn and Brinkmeyer's opposition to the OSC and its reply to Yetur refers to same.