

<b>Sheppard, Mullin, Richter &amp; Hamilton LLP v Strenger</b>
2015 NY Slip Op 30696(U)
April 28, 2015
Supreme Court, New York County
Docket Number: 653911/2014
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 15

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SHEPPARD, MULLIN, RICHTER & HAMILTON LLP,

Plaintiff,

Index No.  
653911/2014

**ORDER AND  
DECISION**

- against -

Mot. Seq.: 001

LAURENCE N. STRENGER; COUNTY HOLDING,  
INC., LAURENCE N. STRENGER, A CORPORATION;  
LAURENCE N. STRENGER, LLC; and 118<sup>TH</sup> AVENUE  
ASSOCIATES,

Defendants.

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EILEEN A. RAKOWER, J.S.C.

This is an action for breach of contract, replevin of the initial collateral, foreclosure, conversion, and specific enforcement. The Complaint alleges that Defendants have defaulted on their express written promise to deliver collateral to Plaintiff that Defendants pledged as security for the payment of substantial legal fees owed to Plaintiff.

Sheppard, Mullin, Richter & Hamilton LLP (“Plaintiff” or “Sheppard Mullin”) now moves for (1) an order of seizure, pursuant to CPLR § 7102, directing the sheriff of any county where the chattel described in the Affidavit of Daniel L. Brown (“Brown Affidavit”) is found, to seize the same, and further directing that if the chattel is not delivered to the sheriff, he may break open, enter and search for said chattel at 45 East 89th Street, New York, New York; and/or 885 Third Avenue, 31st Floor, New York, New York; and (2) an order of attachment, pursuant to CPLR § 6201 et seq., on the grounds that Plaintiff seeks a money judgment in a breach of contract action against defendants County Holding, Inc. (“County Holding”) and Laurence N. Strenger, A Corporation (“LNS Corp.”), each a foreign corporation not qualified to do business in the State of New York, directing the Sheriff to levy upon the Collateral by taking it into the Sheriff’s actual custody.

Plaintiff submits the supporting affidavit of Daniel L. Brown, a partner at Sheppard Mullin. Annexed to Brown's affidavit is a copy of the retainer agreement, Security Agreement, and UCC-1 Financing Statements. No opposition is submitted.

Brown avers that in February 2011, pursuant to a retainer agreement, defendant Lawrence N. Strenger ("Strenger") and nonparty Ampton Investments, Inc., a California corporation ("Ampton"), engaged Sheppard Mullin to represent them in connection with a civil action pending in Los Angeles Superior Court. Defendant Strenger and Ampton failed to timely pay their legal fees and expenses. In order to induce Sheppard Mullin to continue its representation, Defendant Strenger and Ampton, together with defendants County Holding, LNS Corp., LNS Corp., and Laurence N. Strenger, LLC ("LNS LLC"), entered into the Security Agreement with Sheppard Mullin.

Pursuant to the Security Agreement, as security for the payment of all outstanding legal fees and expenses, each Defendant pledged, granted, and assigned to Sheppard Mullin a continuing security interest in all rights, title, and interest in, to, and under (i) all antiques, furniture and related decorations, china, porcelain, ceramics, and fine art, including, but not limited to, the items listed on Exhibit A to the Security Agreement (collectively, the "Property"), which items may be located at one or more of the following locations within the State of New York: 45 East 89th Street, New York, New York; and/or 885 Third Avenue, 31st Floor, New York, New York; (ii) all accessions, additions, replacements and substitutions relating to any of the Property; (iii) all related accounts, contracts, documents, instruments, insurance rights and general intangibles related to the Property, whether now existing or hereinafter acquired or created; (iv) all bills of sale, invoices, books of account, ledger sheets, files, and other records, including, without limitation, all computer disks and tapes, related to the Property; and (v) to the extent not otherwise included in the above, all Proceeds (as that term is defined in the Security Agreement) of the foregoing (collectively, the "Collateral"). See §§ 3.1-3.2 of the Security Agreement.

As Brown further avers, Sheppard Mullin perfected its security interests in the Collateral by filing UCC-1 Financing Statements with the California Secretary of State on June 22, 2011, and with the New York Department of State on June 23, 2011. In the Security Agreement, each Defendant represented and warranted to Sheppard Mullin that it owns and has possession or control of the Collateral and has the right to grant a security interest in the Collateral. Pursuant to the Security Agreement, Defendants agreed that: (1) if Defendant Strenger and Ampton failed, inter alia, to pay the full amount of outstanding fees and expenses on or before

September 30, 2011, or any Defendant fails to observe or perform any other obligation or agreement under the Security Agreement, that failure would constitute an Event of Default; and (2) upon an Event of Default, and at any time thereafter, Sheppard Mullin has and could exercise, without demand, any and all rights, powers, privileges, and remedies granted to a secured party upon default under the California Uniform Commercial Code or otherwise provided by law, which include the right to take immediate and exclusive possession of the Collateral. See §§ 5.1 and 5.2 of the Security Agreement.

Brown further avers that Defendant Strenger and Ampton did not pay the full amount of outstanding legal fees on or before September 30, 2011 or at any time thereafter. The total amount owed and due to Sheppard Mullin for legal services performed is \$1,849,988.53. Annexed to Brown's Affidavit is a summary of Sheppard Mullin's accounts receivable in connection with its representation of Defendant Strenger and Ampton, setting forth, among other information, the date each invoice was delivered to Defendant Strenger and Ampton, the amount of each invoice, and the total amount owed and due to Sheppard Mullin for legal fees and expenses to date. Brown states that Plaintiff has demanded payment of all outstanding legal fees and expenses and, more recently, delivery of the Collateral; however, to date, Defendant Strenger and Ampton have not paid any of the outstanding legal fees and Defendants have failed to deliver possession of the Collateral despite Sheppard Mullin's demand. As such, Defendants are wrongfully holding the Collateral.

Based on these facts, Sheppard Mullin seeks an order of seizure and an order of attachment.

As for obtaining an Order of Seizure, CPLR §7102 states, in relevant part:

(c) Affidavit. The application for an order of seizure shall be supported by an affidavit which shall clearly identify the chattel to be seized and shall state:

1. that the plaintiff is entitled to possession by virtue of the facts set forth;
2. the chattel is wrongfully held by the defendant named;
3. whether an action to recover the chattel has been commenced, the defendants served, whether they are in default, and, if they have appeared, where papers may be served against them;
4. the value of each chattel or class of chattels claimed, or the aggregate value of all chattels claimed;

5. if the plaintiff seeks the inclusion in the order of seizure of a provision authorizing the sheriff to break open, enter and search for the chattel, the place where the chattel is located and facts sufficient to establish probable cause to believe that the chattel is located at that place;
6. that no defense to the claim is known to the plaintiff; and
7. if the plaintiff seeks an order of seizure without notice, facts sufficient to establish that unless such order is granted without notice, it is probable the chattel will become unavailable for seizure by reason of being transferred, concealed, disposed of, or removed from the state, or will become substantially impaired in value.

(d) Order of seizure. Upon presentation of the affidavit and undertaking and upon finding that it is probable the plaintiff will succeed on the merits and the facts are as stated in the affidavit, the court may grant an order directing the sheriff of any county where the chattel is found to seize the chattel described in the affidavit and including, if the court so directs, a provision that, if the chattel is not delivered to the sheriff, he may break open, enter and search for the chattel in the place specified in the affidavit. The plaintiff shall have the burden of establishing the grounds for the order.

(e) Undertaking. The undertaking shall be executed by sufficient surety, acceptable to the court. The condition of the undertaking shall be that the surety is bound in a specified amount, not less than twice the value of the chattel stated in the plaintiff's affidavit, for the return of the chattel to any person to whom possession is awarded by the judgment, and for payment of any sum awarded by the judgment against the person giving the undertaking. A person claiming only a lien on or security interest in the chattel may except to the plaintiff's surety.

Based on Brown's Affidavit, Sheppard Mullin has demonstrated its entitlement to an Order of Seizure. Sheppard Mullin has shown that it is entitled to possession of the Collateral, Defendants have been served and they are not in default, the aggregate value of the Collateral is at least \$1,000,000, there is probable cause to believe the Collateral is located in the places described in Brown's Affidavit, and Sheppard Mullin is not aware of any defense to its claim and has not made a previous application for the same relief.

To attach a defendant's property under CPLR § 6201 the movant must affirmatively demonstrate that: 1) a cause of action exists; 2) a probability of success

on the merits; 3) grounds for attachment under CPLR § 6201; and 4) movant's claim exceeds all known counterclaims or offsets. Under CPLR § 6201(1), "An order of attachment may be granted in any action ... where the plaintiff has demanded and would be entitled, in whole or in part, or in the alternative, to a money judgment against one or more defendants, when . . . the defendant is a nondomiciliary residing without a state, or is a foreign corporation not qualified to do business in the state."

Sheppard Mullin has demonstrated its entitlement to an Order of Attachment. Sheppard Mullin has demonstrated that a cause of action for breach of Security Agreement exists, a probability of success on the merits, and that the amount sought exceeds all counterclaims of which Sheppard Mullin has any knowledge. Pursuant to 6201, the grounds for attachment of the Collateral against County Holding and LNS Corp. is that each entity is a foreign corporation organized under the laws of the State of California and not qualified to do business in the State of New York. Annexed to Brown's Affidavit are copies of search results from the websites of California Secretary of State and the New York Department of State showing County Holding and LNS Corp. are California corporations not qualified to do business in the State of New York.

Wherefore it is hereby

ORDERED that Plaintiff's motion for an order of seizure and an order of attachment in accordance with the annexed orders is granted without opposition.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

Dated: APRIL 28, 2015



Eileen A. Rakower, J.S.C.