

Triadou SPV S.A. v CF 135 Flat LLC
2016 NY Slip Op 30192(U)
February 2, 2016
Supreme Court, New York County
Docket Number: 154681/15
Judge: Donna M. Mills
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 58

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TRIADOU SPV S.A.,

Plaintiff,

-against-

CF 135 FLAT LLC, CF 135 WEST MEMBER LLC,
and THE CHETRIT GROUP LLC,

Defendants.

Index No. 154681/15
650239/15
653462/14
156907/15

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Donna Mills, J.:

These are related breach of contract actions and motions for summary judgment in lieu of complaint, arising from an agreement between plaintiff, Triadou SPV S.A. (Triadou) and defendant CF 135 Flat LLC (CF 135 Flat), whereby Triadou agreed to sell to CF 135 Flat all of Triadou's interests in defendant CF 135 West Member LLC (CF 135 West). The purchase price was \$28 million, to be paid in installments.

In the action commenced under index No. 653462/14, defendants move, in motion sequence No. 004, to vacate a judgment of this court, in plaintiff's favor, dated February 3, 2015 (February 3rd judgment), for \$5,250,000. In motion sequence No. 005, in the same action, defendants move for a stay of enforcement of the February 3rd judgment.

In the action commenced under index No. 650239/15, defendants

move, in motion sequence No. 003, to vacate a judgment of this court in plaintiff's favor, dated April 15, 2015 (April 15th judgment), for \$5,250,000. In motion sequence No. 004, in the same action, defendants move for a stay of enforcement of the April 15th judgment.

In the action commenced under index No. 154681/15, plaintiff moves, pursuant to CPLR 3213, for an order granting summary judgment in lieu of complaint, \$5.25 million, for a payment which allegedly came due on April 1, 2015. Defendants cross-move, pursuant to CPLR 3211(a)(10), for an order dismissing the action for failure to join a necessary party.

In a letter dated July 23, 2015, defendants requested that the court stay the actions under index Nos., 653462/14, 650239/15, 156907/15 and 154681/15. The request for a stay arises from defendants' commencement of an action for interpleader in this court, which was subsequently removed to federal court.

For the reasons stated below, the request for a stay is granted and the actions are stayed for 120 days, provided that defendants demonstrate, within 20 days of service of a copy of this order with notice of entry, that they have paid the \$21 million at issue in these actions into either this court, pursuant to CPLR § 2601, or into the federal court pursuant to the federal

interpleader statute.

Background

On August 4, 2014, Triadou and CF 135 Flat executed an agreement (Agreement) whereby Triadou agreed to assign and sell to CF 135 Flat all of Triadou's rights, title and membership interest in CF 135 West for \$28 million. CF 135 West is the owner of the real property located at 135 West 52nd street in Manhattan. The purchase price was to be paid in installments, including, relevant here, four payments of \$5.25 million each, totaling \$21 million. On August 4, 2014, CF 135 West and defendant The Chetrit Group LLC (Chetrit) executed a guaranty agreement unconditionally guaranteeing the prompt and complete payment of each of the amounts set forth in the Agreement.

The first payment of \$5.25 million was due on or before November 2, 2014. After not receiving payment, plaintiff commenced an action for summary judgment in lieu of complaint, under index No. 653462/14. In an order dated February 3, 2015, this court granted plaintiff's motion and directed the entry of a judgment for \$5.25 million. On July 13, 2015, this court issue an order temporarily restraining Triadou from enforcing this judgment, pending the outcome of the various motions at issue here, including

defendants' motions to stay each of the actions.

On January 26, 2015, Triadou commenced an action for summary judgment in lieu of complaint, under index No. 650239/15, seeking the \$5.25 million payment which was due on January 1, 2015. On April 15, 2015, this court granted plaintiff's motion and directed the entry of a judgment for \$5.25 million. Again, on July 13, 2015, this court issued an order temporarily restraining Triadou from enforcing this judgment.

In the meantime, on May 8, 2015, Triadou commenced another action for summary judgment in lieu of complaint, under index No. 154681/15, seeking the \$5.25 million payment which was scheduled to come due on April 1, 2015. Defendants cross-moved to dismiss for failure to join a necessary party.

Specifically, defendants' cross motion contends that Triadou failed to join the city of Almaty, Kazakhstan (Almaty) as a necessary party. Defendants assert that Almaty is a necessary party based on a letter received by defendants, dated April 30, 2015, from the attorneys for Almaty (Letter). The Letter states that Almaty had commenced an action in federal court in California, against its former mayor Viktor Khrapunov and members of his family, including his son Iliyas. As discussed below, Almaty alleges that, among other things, Khrapunov and his family

embezzled approximately \$300 million from Almaty, and laundered the money through numerous foreign shell corporations, including Triadou, before eventually investing the money in New York real estate.

The Letter stated that, as a result, Almaty was claiming an interest in CF 135 West, and was demanding that all parties refrain from taking any action with respect to that interest. The Letter also stated that Almaty was prepared to intervene in the various actions commenced in this court.

On July 9, 2015, Triadou commenced another action for summary judgment in lieu of complaint, under index No. 156907/15, seeking the \$5.25 million payment which was scheduled to come due on June 30, 2015.

In the meantime, on July 7, 2015, CF 135 Flat, CF 135 West and Chetrit, as plaintiffs, commenced an interpleader action in this court, under index No. 156834/15, against Triadou and the City of Almaty. In the interpleader complaint, the plaintiffs, who are defendants here, "admit that the sum of \$21,000,000.00 is due and owing either to Triadou or to Almaty." Interpleader complaint, ¶ 13. However, they state that they "are unable to determine to whom such sum should be paid and which of the defendants is entitled thereto." *Id.* As such, they contend that they "are or may be

exposed to double liability." *Id.* They also state that they are willing to deposit the money into court, to await determination as to whether Triadou or Almaty is entitled to it. *Id.*, ¶ 14.

On July 9, 2015, Almaty filed a Notice of Removal of the interpleader action to the United States District Court for the Southern District of New York. In its Notice of Removal, Almaty states that it objects to the assignment, by Triadou, which is at issue in the instant actions. It states that the assets which Triadou originally used to purchase its interest in CF 135 West were the rightful property of the people of Almaty, "embezzled by a family of corrupt public servants and then laundered through foreign shell corporations before being invested in New York real estate." Notice of Removal, ¶ 4.

Almaty states that, in 2008, it and other departments of the government of the Republic of Kazakhstan "began a series of investigations into the family of Viktor Khrapunov, the former mayor of Almaty, based on allegations that Mr. Khrapunov had abused his position to transfer public assets to himself and his family members." *Id.*, ¶ 5. It further states that "Almaty and other governmental authorities subsequently discovered that Mr. Khrapunov had looted an estimated \$300 million during his tenure as mayor, funneling these assets through his family members into foreign

holding companies." *Id.* Almaty states that the embezzled funds were traced to a series of shell corporations including Triadou. *Id.*, ¶ 6.

As such, Almaty contends that Triadou's assets or any profits from the disposition of such assets are the rightful property of Almaty, and that any transfer of that interest would constitute a fraudulent conveyance at a below-market rate, intended to frustrate Almaty's recovery of those assets. *Id.*, ¶ 7.

Request for Stay of Actions

Defendants now request that this court stay the instant actions pending resolution of the interpleader action. Defendants concede that they owe \$21 million to either Triadou or Almaty but contend that a stay of the instant actions is necessary to avoid potential double liability in the event that the court in the interpleader action determines that the money should be paid to Almaty.

Pursuant to CPLR 2201, the court has the discretion to "grant a stay of proceedings in a proper case, upon such terms as may be just." *See Asher v Abbott Labs.*, 307 AD2d 211, 211 (1st Dept 2003). In deciding whether to grant a stay of one action in favor of another, the court will examine certain factors, including

duplication of effort, waste of judicial resources, and the possibility of inconsistent rulings in the absence of a stay, as well as any possible prejudice to the non-moving party. See *OneBeacon Am. Ins. Co. v Colgate-Palmolive Co.*, 96 AD3d 541 (1st Dept 2012). The court will also examine whether the issues, the relief sought, and the parties in the two actions, are substantially identical. *Asher v Abbott Labs.*, 307 AD2d at 211. In deciding whether to stay a New York action in favor of an action in federal court, the court will also consider issues of comity, orderly procedure, and judicial economy. *Id.*

Here, the court finds that, for several reasons, a stay of the instant proceedings is appropriate, pending disposition of the interpleader action.

First, there is a substantial identity of parties because the instant defendants are the plaintiffs in the interpleader action and Triadou, the plaintiff here, is a defendant in the interpleader action. Moreover, while Almaty has not yet been joined in the instant actions, it has expressed its intent to intervene in these actions if necessary, and it is a defendant in the interpleader action.

The court also finds that there is a substantial identity of issues and relief sought to the extent that both the instant

actions, and the interpleader action, will determine whether defendants have to pay the \$21 million to Triadou or not.

As set forth above, defendants have conceded owing the money, but seek a determination as to which party is entitled to that money. Clearly, a possibility of inconsistent rulings exists since, in the instant actions, this court has already granted judgments in Triadou's favor whereas the court in the interpleader action may determine that the money is properly payable to Almaty.

The court also finds that a stay would avoid a duplication of effort and waste of judicial resources, and would pay due consideration to judicial comity.

As to the issue of prejudice to Triadou, that can be avoided by compelling defendants to pay the \$21 million into court, in order to protect Triadou's interest in the judgments which it has already received as well as its interest in the pending motions for summary judgment in lieu of complaint. Triadou has already asserted in this action that defendants should be compelled to pay the money at issue into court, in order to protect Triadou's interests. Further, as set forth above, defendants have stated in the interpleader complaint that they are prepared to deposit \$21 million into court, which would encompass the four installment payments at issue in the various actions which Triadou has

commenced.

The parties disagree as to whether defendants will be required to pay the money into the district court under the statutes and rules pertaining to interpleader in federal court, and that issue has not yet been determined in that court. Therefore, the court finds that, in order to avoid prejudice to Triadou, defendants must pay the \$21 million into this court, pursuant to CPLR § 2601, within 20 days of service of a copy of this order with notice of entry. If necessary, defendants may seek to modify this order at such time as they can demonstrate that the money must be paid into the district court.

Accordingly, it is

ORDERED that the motion for a stay proceedings is granted to the extent of staying further proceedings in the actions commenced under index Nos. 156907/15, 154681/15, 650239/15 and 653462/14, except for an application to vacate or modify said stay, provided that defendants pay \$21 million into this court within 20 days of service of a copy of this order with notice of entry; and it is further

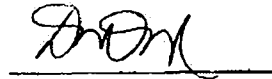
ORDERED that either party may make an application by order to show cause to vacate or modify this stay upon the final determination of the action/proceeding known as CF 135 Flat LLC, CF

135 West Member LLC, and The Chetrit Group LLC v Triadou SPV S.A.
and City of Almaty, index No. 156834/15, pending before the United
States District Court for the Southern District of New York; and it
is further

ORDERED that the movant is directed to serve a copy of this
order with notice of entry on the Trial Support Office (Room 158).

DATED: 2/2/16

ENTER:



J.S.C.