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| Cornwall Mgt. Ltd v Kambolin |
| 2018 NY Slip Op 31337(U) |
| June 25, 2018 |
| Supreme Court, New York County |
| Docket Number: 653675/2013 |
| Judge: Barry Ostrager |
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. BARRY R. OSTRAGER
Justice

PART 61

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CORNWALL MANAGEMENT LTD and OLEG SOLOVIEV,
Plaintiffs,

INDEX NO. 653675/2013

MOTION DATE 4/2/2018

MOTION SEQ. NO. 010

- v -

PETER KAMBOLIN, OLEG BATRATCHENKO, ABRAHAM
BENNUN, THOR UNITED CORP. (a/k/a CONSOLIDATED
OPTIMAL CORP.), ATLANT CAPITAL HOLDINGS, LLC, THOR
REAL ESTATE MASTER FUND, LTD, NORTH 3RD
DEVELOPMENT, LLC, and NORTH 3RD ACQUISITION, LLC,

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number 296, 297, 298, 299, 300, 301,
302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321,
322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341,
342, 343, 345, 346

were read on this application to/for SUMMARY JUDGMENT (AFTER JOINDER)

Upon the foregoing documents, it is

ORDERED that plaintiff's motion for summary judgment after the filing of the Note of
Issue is granted in part and denied in part for the reasons stated on the record on May 23, 2018,
entered June 19, 2018 (NYSCEF Doc. No. 347).

As confirmed at oral argument, plaintiffs have settled all claims against all defendants
except defendants Oleg Batratchenko, Thor United Corp., a New York corporation, and Thor
Real Estate Master Fund, Ltd, a British Virgin Islands corporation. According to the Amended
Complaint, Batratchenko is the President of Thor United, and Thor United is the parent of Thor
Real Estate (NYSCEF Doc. No. 300 at ¶¶ 23 and 29). Based on decisions issued before this case

was assigned to this Court, the only remaining claim against the three remaining defendants is the First Cause of Action entitled “Suit on Judgment (against all Defendants pursuant to the Doctrines of Alter Ego and Veil Piercing).”

Two judgments are at the heart of the First Cause of Action, and both were obtained in Russia and domesticated in the United States District Court of the Southern District of New York based on certain loans. The Honorable Jess M. Furman entered one judgment in favor of Oleg V. Soloviev against Thor United Corp. on April 15, 2013 in the amount of \$1,421,336.78 for principal plus interest at 9% per annum from April 19, 2012 through the date of the April 15, 2013 judgment (NYSCEF Doc. No. 338). That decision was entered based on the domestication of a Moscow judgment (NYSCEF Doc. No. 336), which was based on a loan from Soloviev to Thor United (NYSCEF Doc. No. 329).

The Honorable Laura T. Swain entered a separate judgment in favor of Cornwall Management Ltd. against Thor United Corp. on April 24, 2013 in the amount of \$2,026,289.21 for principal plus interest at 9% per annum from April 15, 2012 through the date of the April 24, 2013 judgment (NYSCEF Doc. No. 339). That decision was entered based on the domestication of a Moscow judgment (NYSCEF Doc. No. 337), which was based upon a loan from Cornwall Management to Thor United (NYSCEF Doc. No. 328).

Plaintiffs move here for judgments in their favor against Thor United and Thor Real Estate based on the federal court judgments. Plaintiffs are entitled to that relief against Thor United, against whom the judgments were entered. As to Thor Real Estate, plaintiffs have established proper service and a default but they have not established to what extent, if any, Thor Real Estate, as a subsidiary, is responsible for the debts of its parent Thor United. Thus, while a default judgment is granted, the amount of the judgment must await proof at trial.

The primary focus of plaintiffs' motion, however, is the request for a judgment against Batratchenko personally for the amounts in the Thor judgments based on the theory of piercing the corporate veil. It is undisputed that Batratchenko is the President of Thor United, and plaintiffs offer evidence of other facts, as detailed at oral argument and in the moving papers, to support their claim for veil piercing. In the alternative, plaintiffs seek judgment against Batratchenko based either on his noncompliance with discovery obligations or his spoliation of evidence that had been on his computer and cell phone. At a minimum, plaintiffs seek an adverse inference at trial based on Batratchenko's alleged noncompliance with discovery obligations or spoliation of evidence.

As the Court indicated on the record, veil piercing is a fact-intensive theory that plaintiffs have failed to establish as a matter of law. Nor have plaintiffs sufficiently established Batratchenko's noncompliance with discovery or spoliation of evidence so as to allow the Court to find as a matter of law at this time that plaintiffs are entitled to an adverse inference or other sanctions. Therefore, those aspects of the motion are denied without prejudice to renewal at trial based on the evidence presented then.

Accordingly, it is hereby

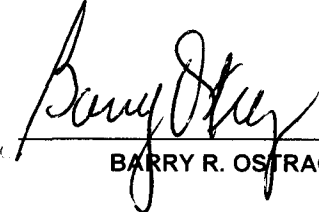
ORDERED that plaintiffs' motion is granted as stated herein and for the reasons stated on the record entered June 19, 2018 to the extent of directing the Clerk to enter judgment in favor of plaintiff Cornwall Management Ltd against defendant Thor United Corp. a/k/a Consolidated Optimal Corp. in the sum of \$2,026,289.21 plus interest at the statutory rate of 9% per annum from April 24, 2013 through the entry of judgment, and to also enter judgment in favor of plaintiff Oleg Soloviev against defendant Thor United Corp. a/k/a Consolidated Optimal Corp. in the sum of \$1,421,336.78 plus interest at the statutory rate of 9% per annum from April 15, 2013

through the entry of judgment, and a default judgment is awarded against defendant Thor Real Estate Master Fund, Ltd., with the extent of liability and the amount of any damages to be established at trial; and it is further

ORDERED that plaintiffs' motion is otherwise denied without prejudice to renewal at trial.

The trial remains set for August 1, 2018 at 9:30 a.m. in Room 232 at 60 Centre Street. Counsel shall appear for a final pre-trial conference on Tuesday, July 24, 2018 at 11:00 a.m. to discuss settlement, to make arrangements for the Russian interpreter, and to otherwise resolve any open issues in preparation for the trial. Plaintiffs are directed to mail copies of this decision and the transcript entered June 19 to both Thor defendants at the las known address.

6/25/2018
DATE


BARRY R. OSTRAGER, J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED
- SETTLE ORDER
- DO NOT POST

DENIED

- NON-FINAL DISPOSITION
- GRANTED IN PART
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT

OTHER

APPLICATION:

CHECK IF APPROPRIATE:

REFERENCE