

Cornwall Mgt. Ltd. v Kambolin
2018 NY Slip Op 32718(U)
October 19, 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 PART IAS MOTION 61EFM

Justice

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CORNWALL MANAGEMENT LTD. and OLEG SOLOVIEV,

Plaintiffs,

- 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., and NORTH 3RD
DEVELOPMENT, LLC,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 013) 388, 389, 391, 392, 397
were read on this motion to/for

STRIKE PLEADINGS

OSTRAGER, BARRY R., J.S.C.:

This motion is the latest and last installation in the long-running battle by plaintiffs Cornwall Management Ltd. and Oleg Soloviev to obtain money judgments against Oleg Batratchenko, the only remaining defendant in this action, based on judgments entered against the co-defendant Thor United Corp. The procedural history is detailed in this Court's June 25, 2018 Decision and Order granting in part plaintiffs' motion for summary judgment against defendants Batratchenko, Thor United Corp., a New York corporation, and Thor Real Estate Master Fund, Ltd., a British Virgin Islands corporation (NYSCEF Doc. No. 348). According to the Amended Complaint in this action, Batratchenko is the President of Thor United, and Thor United is the parent of Thor Real Estate.

In the June 25 summary judgment decision, the Court awarded plaintiff Cornwall Management a judgment against defendant Thor United on default in the sum of \$2,026,289.21 plus interest based on a similar judgment entered by the Honorable Laura T. Swain in the United

States District Court in the Southern District of New York. Judge Swain for her decision had relied on a judgment obtained in Russia and domesticated here related to a loan from Cornwall to Thor United. This Court on June 25 also awarded plaintiff Soloviev a judgment on default against Thor United based on a judgment entered by the Honorable Jesse M. Furman in the Southern District for \$1,421,336.78 plus interest. Judge Furman for his decision, like Judge Swain, had relied on a judgment obtained in Russia and domesticated here related to a loan from Soloviev to Thor United.

However, this Court in its June 25 decision declined to hold defendant Batratchenko individually liable for the judgments against Thor United based on a veil piercing theory or, alternatively, based on Batratchenko's alleged noncompliance with prior discovery orders or spoliation of evidence. The Court denied that branch of the summary judgment motion without prejudice to renewal at trial based on the fact-intensive nature of the inquiry.

The trial proceeded on August 2, 2018. Plaintiff Soloviev appeared at the trial with counsel, testified, and was cross-examined by counsel for Batratchenko (NYSCEF Doc. No. 385). Although Batratchenko appeared through counsel pursuant to CPLR §§ 320 and 321, he was not present to testify, it apparently being undisputed that Batratchenko was residing in Russia. At the end of the trial, the Court awarded plaintiffs a judgment against Batratchenko in the sum of \$1,254,000.00 plus interest based on Batratchenko's guarantee of the loan from Cornwall to Thor United and Judge Furman's judgment against Thor related to that loan. A judgment was entered by the New York County Clerk accordingly (see NYSCEF Doc. Nos. 386 and 390).

This Court after trial also held that plaintiff had failed to establish Batratchenko's individual liability for Thor United's second loan underlying the judgment entered by Judge

Swain, as Batratchenko had not signed any guarantee for that loan and plaintiffs had failed to present sufficient evidence to pierce the corporate veil. The Court nevertheless granted plaintiffs an opportunity to move post-trial to hold Batratchenko individually liable for Thor's second loan based on Batratchenko's alleged noncompliance with discovery obligations (NYSCEF Doc. No. 362 at pp 95-96). This motion was made by Order to Show Cause on September 21, 2018 pursuant to that express permission granted at the end of the trial. The motion was served on Batratchenko's counsel on September 26 (NYSCEF Doc. No. 397). By decision and order dated September 28, 2018, this Court relieved Batratchenko's counsel, and Batratchenko was served with that order (NYSCEF Doc. Nos. 393 and 396). Batratchenko has not opposed this motion, nor retained new counsel.

Plaintiffs move here for judgment on two grounds: first, pursuant to CPLR §3126(3), which empowers the Court to strike pleadings or render "a judgment by default against the disobedient party" who "refuses to obey an order for disclosure or willfully fails to disclose information which the court finds ought to have been disclosed"; and second, pursuant to CPLR §3215, on the ground that Batratchenko "failed to appear" at the trial, despite an admonition from the Court on May 23, 2018 that an appearance by defendant was required to avoid a default (NYSCEF Doc. No. 347, at p 4).

The Court grants the motion on the first ground asserted. Plaintiffs in their moving papers have documented Batratchenko's evasive and dilatory conduct and willful violations of clear discovery orders issued by Justices Schweitzer and Singh before the case was assigned to this Court. Counsel has cited to various orders in which, for example, Justice Singh, shortly before his appointment to the Appellate Division, ordered that Batratchenko provide the computer and cell phone he had used during the relevant period or suffer sanctions (NYSCEF Doc. No. 274).

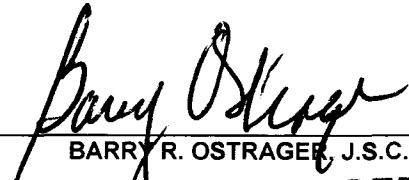
While Batratchenko provided *a* computer and *a* cell phone, neither device contained relevant information, and Batratchenko otherwise failed to provide the discovery ordered by the Court. As a sanction for noncompliance with Justice Singh's orders, and the failure to cure after the case was assigned to this Court, this Court strikes defendant's Answer and deems the allegations in the Complaint as to liability admitted. *Rokina Opt. Co. v Camera King*, 63 NY2d 728, 730 (1984) ("a defendant whose answer is stricken as a result of a default admits all traversable allegations in the complaint, including the basic allegation of liability ..."). Based on Judge Swain's judgment, this Court further finds that plaintiffs are entitled to a judgment on the second Thor loan in the sum of \$2,026,289.21 plus interest at the statutory rate of 9% per annum from April 24, 2013. The Court declines to award relief pursuant to CPLR § 3215, as such relief is unnecessary in light of the above analysis and not mandated by the statute under these circumstances, where counsel appeared at the trial on behalf of defendant Batratchenko.

Accordingly, it is hereby

ORDERED that plaintiffs motion is granted for the reasons stated herein, and the Clerk is directed to enter a judgment in favor of plaintiffs Cornwall Management Ltd. and Oleg Soloviev, jointly and severally, against defendant Oleg Batratchenko in the sum of \$2,026,289.21 for principal plus interest at 9% per annum from April 24, 2013 through the entry of judgment.

10/19/2018

DATE


BARRY R. OSTRAGER, J.S.C.
BARRY R. OSTRAGER
JSC

CHECK ONE:

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CASE DISPOSED

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NON-FINAL DISPOSITION

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GRANTED

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DENIED

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GRANTED IN PART

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OTHER

APPLICATION:

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SETTLE ORDER

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SUBMIT ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

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FIDUCIARY APPOINTMENT

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REFERENCE