

Honeedew Inv. Ltd. v Abadi
2019 NY Slip Op 31194(U)
April 17, 2019
Supreme Court, New York County
Docket Number: 652654/2017
Judge: Nancy M. Bannon
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. NANCY M. BANNON PART IAS MOTION 42EFM

Justice

-----X	INDEX NO.	<u>652654/2017</u>
HONEEDEW INVESTING LIMITED,		
Plaintiff,	MOTION DATE	<u>01/16/2019,</u> <u>01/16/2019</u>
- v -	MOTION SEQ. NO.	<u>001 002</u>

CARLOS ABADI and BARBARA ABADI

Defendant.

DECISION AND ORDER

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 48

were read on this motion to/for CONTEMPT

The following e-filed documents, listed by NYSCEF document number (Motion 002) 10, 11, 12, 13, 14, 15, 16, 17, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49

were read on this motion to/for INJUNCTION/RESTRAINING ORDER

In this action to recover damages arising from the defendants' failure make payments pursuant to a settlement agreement, upon affidavits of confession of judgment submitted by each defendant, a judgment was entered against the defendants, jointly and severally, in the principal sum of \$4,603,408.23 on May 17, 2017. The plaintiff judgment creditor now moves to punish the defendants for civil contempt for their alleged interference with the plaintiff's efforts to enforce collection of its judgment, and to appoint the plaintiff's Argentine counsel as receiver to sell the defendants' apartment located in Buenos Aires, Argentina (SEQ 001). By separate motion, filed subsequently, the plaintiff seeks to enjoin the defendants from transferring, diminishing, hypothecating, or otherwise disposing of the defendants' non-exempt real and personal property assets anywhere situated in the world, to punish the defendants for civil contempt based on additional acts of interference with the plaintiff's efforts to enforce collection of its judgment, and to require the defendants to appear for post-judgment depositions (SEQ 002). The court notes that the branch of the second motion seeking to compel the defendants' appearance at depositions has been rendered academic, as the defendants did appear for their scheduled depositions.

The defendants are residents of New York and own real property in Manhattan. They also own real property in Buenos Aires, Argentina, located at Calle Parera 37:47 (the Buenos Aires Apartment), a fact which the defendants failed to disclose in their June 12, 2017, response to information subpoenas served by the plaintiff. When the defendants, through their counsel, finally revealed their connection to the Buenos Aires Apartment, they represented that the property was encumbered, although no proof of any encumbrance has been produced. Casting

further doubt on the defendants' claim, the defendants had listed the Buenos Aires Apartment for sale at a value of US\$2.5 million. In their opposition papers, the defendants do not dispute that Carlos Abadi owns the Buenos Aires Apartment and that the Buenos Aires Apartment was listed for sale by Abadi's real estate agent, although the defendants assert that the listing was somehow made without their consent and that they have since removed the listing.

The plaintiff, through Argentine local counsel, obtained an injunction in Buenos Aires temporarily enjoining the transfer of the Buenos Aires Apartment, in a proceeding in the Argentine court captioned Matter of Recognizing Foreign Sentence Case No. 055732-2017. The plaintiff was required to post a cash bond in the sum of US\$200,000 in order to continue the injunction. In response to the injunction, the defendants are alleging in the Argentine court that the judgment entered in New York on May 17, 2017, does not exist and that they do not owe any debt to the plaintiff, in direct contradiction to the affidavits of confession of judgment each defendant swore to on November 9, 2016, and November 14, 2016, respectively. After the filing of the first motion for contempt in this action, the defendants allegedly escalated their efforts in Argentina to frustrate enforcement of the New York judgment by demanding a hearing to discontinue the Argentine proceeding, based in part upon the defendants' assertions that the New York judgment is invalid. The plaintiff also lists a number of other examples of the defendants' misrepresentations as to their assets in alleged attempts to frustrate enforcement of the judgment.

This court issued a TRO prohibiting the defendants from transferring and/or hypothecating real and personal property until further order of the court, by order to show cause dated October 10, 2018. By interim order dated November 28, 2018, the court directed the defendants to execute affidavits prepared by the plaintiff's counsel, wherein the defendants unconditionally acknowledge the validity of the New York judgment entered on May 17, 2017, that the judgment remains unpaid, that the judgment is the same judgment that the plaintiff seeks to enforce in Argentina in the Matter of Recognizing Foreign Sentence Case No. 055732-2017, and that the defendants unconditionally do not dispute any part of the New York judgment or its enforceability. The foregoing was to be completed no later than December 5, 2018. The parties were directed to appear on December 12, 2018, to update the court on the status of this matter and the defendants' compliance with the interim order. That appearance was adjourned until January 16, 2019. On that date, all parties appeared and the defendants informed the court of their refusal to produce the executed affidavits that were the subject of the interim order or to otherwise withdraw the false allegations of fact made in the Argentine proceeding.

In light of the foregoing, the branches of the plaintiff's motions seeking to punish the defendants for contempt are granted to the extent that the parties are directed to appear for a hearing on the issue of whether the defendants' disobedience of the court's interim order and their violation of the restraining notice served by the plaintiff pursuant to CPLR 5222 defeated, impaired, impeded, or prejudiced the plaintiff's rights. The branch of the second motion seeking injunctive relief is likewise granted, as the plaintiff has established, by clear and convincing evidence, (1) a likelihood of success on the merits, (2) irreparable injury if an injunction is not granted, and (3) a balance of equities in its favor. See CPLR 6301; Nobu Next Door, LLC v

Fine Arts Hous., Inc., 4 NY3d 839, 840 (2005); Doe v Axelrod, 73 NY2d 748, 750 (1988). The injunction shall remain in effect pending the defendants' satisfaction of the judgment entered against them on May 17, 2017.

As to the plaintiff's application for a receivership pursuant to CPLR 5228 with respect to the Buenos Aires Apartment, the defendants' contention that this court lacks the power to compel them to deliver property to a receiver from outside the court's territorial jurisdiction is without merit. In United States v Ross, 302 F2d 831 (2nd Cir. 1962), wherein the district court had appointed a receiver after determining that the defendant was engaged in transferring his assets out of the United States in an effort to escape the enforcement of any tax liabilities, the Second Circuit found, on appeal, that because the court had personal jurisdiction over the defendant, the court could order the defendant to transfer property to a receiver "whether that property was within or without the limits of the court's territorial jurisdiction. United States v Ross, *supra* at 834; see United States v First National City Bank, 379 US 378 (1965); Inter-Regional Financial Group, Inc. v Hashemi, 562 F2d 152 (2nd Cir. 1977); Koehler v Bank of Bermuda Ltd., 2004 WL 1555116 (S.D.N.Y. 2004). While Ross involved tax claims on behalf of the federal government, the Second Circuit has extended the rule to suits between private parties. See Inter-Regional Financial Group, Inc. v Hashemi, *supra*.

Nonetheless, given the injunction presently issued by this court and the injunction that remains in place in the Argentine proceeding, as well as the defendants' assertions that they intend to sell their Manhattan property in order to satisfy the New York judgment, the defendants have not made a clear evidentiary showing, at this juncture, warranting the appointment of a receiver pursuant to CPLR 5228. Thus, the branch of the plaintiff's first motion seeking the appointment of receiver is denied without prejudice to renewal.

Accordingly, it is,

ORDERED that the plaintiff's motions are granted to the extent that (1) a hearing is directed on the issue of whether the defendants' disobedience of the court's interim order dated November 18, 2018, and their violation of the restraining notice served by the plaintiff pursuant to CPLR 5222, defeated, impaired, impeded, or prejudiced the plaintiff's rights; (2) the defendants are hereby enjoined from transferring, hypothecating, or otherwise disposing of any non-exempt real and personal property assets anywhere situated, whether within or outside of the United States, and including, but not limited to, the real property located at Calle Parera 37:47, Second Floor, Buenos Aires, Argentina, until the judgment entered on May 17, 2017, is satisfied, or the court orders otherwise; (3) and the motions are otherwise denied without prejudice; and it is further,

ORDERED that the parties shall appear for a contempt hearing in Part 42 on May 29, 2019, at 3:00 p.m.; and it is further,

ORDERED that the plaintiff shall serve a copy of this order with notice of entry on the defendants by personal service within 20 days, and file proof of service with the court.

This constitutes the Decision and Order of the court.

4/17/2019
DATE


NANCY M. BANNON, J.S.C.

HON. NANCY M. BANNON

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
SEQ 001	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
SEQ 002	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					REFERENCE