

**Arizona Mobility Ctr. LLC v Meadow Leasing Inc.**

2020 NY Slip Op 31346(U)

May 11, 2020

Supreme Court, Kings County

Docket Number: 502198/2020

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS, PART 73

Index No.: 502198/2020  
Motion Date: 2-24-20  
Mot. Cal. No.:

-----X  
ARIZONA MOBILITY CENTER LLC,

Plaintiff,

-against

MEADOW LEASING INC., and ANDREY KAMALOV,

Defendants.

-----X

The following papers numbered 1 to 1 were read on this motion:

<b>Papers:</b>	<b>Numbered:</b>
Notice of Motion/Order to Show Cause	
Affidavits/Affirmations/Exhibits/Memo of Law.....	1
Answering Affirmations/Affidavits/Exhibits/Memo of Law.....	
Reply Affirmations/Affidavits/Exhibits/Memo of Law.....	

Upon the foregoing papers, the motion is decided as follows:

The plaintiff, ARIZONA MOBILITY CENTER LLC, moves for the following relief: (a) an order of attachment pursuant to CPLR §6201 on all bank accounts registered to Andrey Kamalov and/or Meadow Leasing Inc., (collectively, "Kamalov"), including the account identified as ending in 3287 at Citibank, N.A.; and for (b) such other relief as the Court deems just and proper.

Plaintiff's motion was returnable on February 24, 2020. Defendant neither appeared in Court on the return date nor submitted papers in opposition.

In support of the motion, plaintiff submitted the affidavit of John Blackwell, the president and CEO of Arizona Mobility Center LLC ("AMC"), a company in the business of retrofitting preowned vehicles to make them handicapped accessible and reselling them to third parties. He averred that beginning in or about May of 2017, he began doing business with an entity known

as Meadow Leasing Inc. through an individual named Andrey Kamalov. He stated that he and Mr. Kamalov transacted business over the course of approximately 9 months, during which time the defendants accumulated an unpaid balance of over \$100,000.00.

He stated that in March of 2018, he stopped doing business with Mr. Kamalov and demanded payment of the overdue balance. While he maintains that over a period of months, Mr. Kamalov acknowledged the debt and promised payment, he continually made excuses and no payment was ever made. He contends that presently there is an outstanding balance due and owing in the amount of \$101,750.00, not including interest. He claims that Mr. Kamalov provided him with the Citibank account number referred to above but that he is unaware of which entity is named on the account.

To obtain an order of attachment under CPLR 6201, it was incumbent upon the plaintiff to demonstrate that it 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:

1. the defendant is a nondomiciliary residing without the state, or is a foreign corporation not qualified to do business in the state; or
2. the defendant resides or is domiciled in the state and cannot be personally served despite diligent efforts to do so; or
3. the defendant, with intent to defraud his creditors or frustrate the enforcement of a judgment that might be rendered in plaintiff's favor, has assigned, disposed of, encumbered or secreted property, or removed it from the state or is about to do any of these acts; or
4. the action is brought by the victim or the representative of the victim of a crime, as defined in subdivision six of section six hundred twenty-one of the executive law, against the person or the legal representative or assignee of the person convicted of committing such crime and seeks to recover damages sustained as a result of such crime pursuant to section six hundred thirty-two-a of the executive law; or

5. the cause of action is based on a judgment, decree or order of a court of the United States or of any other court which is entitled to full faith and credit in this state, or on a judgment which qualifies for recognition under the provisions of article 53.

CPLR 6201.

To obtain an order of attachment pursuant to CPLR 6201(3), the moving papers must contain evidentiary facts, as opposed to conclusions, proving the fraud (*see Societe Generale Alsacienne De Banque, Zurich v. Flemingdon Dev. Corp.*, 118 A.D.2d 769, 772, 500 N.Y.S.2d 278; *see also, Rothman v. Rogers*, 221 A.D.2d 330, 633 N.Y.S.2d 361; *Rosenthal v. Rochester Button Co.*, 148 A.D.2d 375, 376, 539 N.Y.S.2d 11). Mere “suspicion” of the intent to defraud is not enough; there must be a showing that the intent “really existed in the mind of the defendant,” and is not merely a matter of speculation (*Eaton Factors Co. v. Double Eagle Corp.*, 17 A.D.2d 135, 136, 232 N.Y.S.2d 901, 903). In addition to proving fraudulent intent, the plaintiff must also show probable success on the merits of the action (*see CPLR 6212[a]; Societe Generale Alsacienne De Banque, Zurich v. Flemingdon Dev. Corp.*, *supra* at 773, 500 N.Y.S.2d 278; *Computer Strategies v. Commodore Business Machs.*, 105 A.D.2d 167, 173, 483 N.Y.S.2d 716).

Here, while the plaintiff demonstrated probable success on the merits of its breach of contract claim, there has been an insufficient showing that the defendants engaged in fraud (CPLR 6201(3)), or any conduct which would satisfy the requirements of any of the prongs of CPLR 6201.

Accordingly, it is hereby

**ORDRED** that plaintiff’s motion for an order of attachment is **DENIED** even though there is no opposition to the motion.

This constitutes the decision and order of the Court.

Dated: May 11, 2020



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**PETER P. SWEENEY, J.S.C.**

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020