

Akhmedova v Akhmedov
2020 NY Slip Op 31997(U)
June 22, 2020
Supreme Court, New York County
Docket Number: 155688/2018
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

-----X

TATIANA AKHMEDOVA,

Plaintiff,

- v -

FARKHAD AKHMEDOV, COTOR INVESTMENT, S.A.,
QUBO 1 ESTABLISHMENT, QUBO 2 ESTABLISHMENT,
STRAIGHT ESTABLISHMENT, and AVENGER ASSETS
CORPORATION,

Defendants.

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INDEX NO. 155688/2018
MOTION DATE 12/03/2019
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 46, 47, 48, 49, 50, 52, 53, 54

were read on this motion to/for ORDER OF ATTACHMENT

ORDER

Upon the foregoing documents, it is

ORDERED that the plaintiff's motion for an order of attachment is granted; and it is further

ORDERED that the amount to be secured by this order of attachment, exclusive of probable interest, costs and Sheriff's fees and expenses, shall be \$ 487,782,000.00 ; and it is further

ORDERED that the plaintiff's undertaking is fixed in the sum of \$ _____ conditioned that the plaintiff shall pay to the defendant an amount not exceeding \$ _____ for legal costs and damages which may be sustained by reason of the attachment, and up to and not exceeding \$ _____ to the Sheriff for allowable fees, if the defendants recover judgment or

if it is decided that the plaintiff is not entitled to an attachment of the property of the defendant; and it is further

ORDERED that the Sheriff of the City of New York, or the Sheriff of any County of the State of New York, shall levy within his or her jurisdiction, and at any time it is reasonably possible, upon such real and personal property in which the defendants Farkhad Akhmedov and/or Straight Establishment have an interest and upon such debts owing to the defendants Farkhad Akhmedov and/or Straight Establishment as will satisfy \$ \$487,782,000.00, the amount of plaintiff's demand, together with probable interest, costs, and the Sheriff's fees and expenses, including the following property: any account of non-party/garnishee YCO NY, Inc., located at non-party/garnishee Bank of America, 222 Broadway, New York, New York, and that the Sheriff proceed herein in the manner and make his return within the time prescribed by law.

Plaintiff's Attorney
James H. Power, Esq.,
Holland & Knight
21 West 52nd Street, New York, New York 10019
212-513-3494;

and

WHEREFOR, this matter having come on before this court on October 1, 2019, on motion of the plaintiff for an attachment and the plaintiff having been represented in connection therewith by James H. Powers, Esq., Holland & Knight, and the defendant(s) having been represented in connection therewith by

Clarissa Gomez, Esq., Greenberg Traurig, LLP, and, pursuant to CPLR 4317, it appearing to the court that a reference to determine is proper and appropriate pursuant to CPLR 4317 (b), it is now hereby

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to determine the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose:

If the defendant recovers judgment or if it is decided that the plaintiff is not entitled to an attachment of the property of the defendant,

(1) the issue of the amount of the undertaking that plaintiff shall post;

(2) the issue of the maximum amount of legal fees, costs and damages that defendant Akhmedov may recover for damages sustained by reason of the attachment;

(3) the issue of the amount of allowable fees to the Sherriff; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR unless otherwise indicated; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon the calendar of the

Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the "References" link), shall assign this matter at the initial appearance to an available JHO/Special Referee to determine as specified above; and it is further

ORDERED that counsel shall immediately consult one another and counsel for plaintiff shall, within 15 days from the date of this Order, or the necessary resumption of "in person" operations of the court, whichever is later, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with the hearing, on the date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue(s) specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the "References" link on the court's website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules).

DECISION

In this action for the domestication of two foreign money judgments, by Order to Show Cause dated September 12, 2019 (OSC), plaintiff moved for a pre-judgment attachment. In such OSC, this court issued the following temporary restraining order:

ORDERED that pending the hearing of this motion [for a pre-judgment attachment] pursuant to CPLR § 6201, Defendants Farkhad Akhmedov and Straight Establishment, and garnishees Y CO NY INC and Bank of America are each restrained from disposing of, paying over, selling, transferring, conveying, encumbering, secreting or removing any tangible or intangible property, up to the amount of \$487,782,000.00 in which Defendants Farkhad Akhmedov and Straight Establishment have any interest, within their possession or custody".

At the OSC hearing, which took place on October 1, 2019, this court extended the duration of the temporary restraining order to the determination of the OSC at bar.

On January 13, 2020, the Clerk of this Court of New York County entered the judgments, upon the order that resettled this court's order granting plaintiff's motion for summary judgment in lieu of complaint to recognize such judgments against defendants Farkhad Akhmedov, Cotor Investment, S.A., Qubo 1 Establishment, Qubo 2 Establishment, Straight Establishment and Avenger Assets Corporation.

As the Court of Appeals stated in Koehler v Bank of Bermuda Ltd., 12 NY3d 533, 537-538 (2009):

Enforcement proceedings and attachment proceedings, while similar in many ways, differ fundamentally in respect to a court's jurisdiction. While prejudgment attachment is typically based on jurisdiction over property, postjudgment enforcement requires only jurisdiction over persons.

Article 52 authorizes a judgment creditor to file a motion against a judgment debtor to compel turnover of assets or, when the property sought is not in the possession of the judgment debtor himself, to commence a special proceeding against a garnishee who holds the assets. CPLR 5225, the provision applicable here, supplies judgment creditors with a device known as a "delivery order" or "turnover order." With respect to garnishees, CPLR 5225 (b) allows a New York court to issue a judgment ordering a party to deliver the property in which the judgment debtor has an interest, or to convert it to money for payment of the debt. "[W]here it is shown that the judgment debtor is entitled to the possession of such property . . . , the court shall require such person to pay the money, or so much of it

as is sufficient to satisfy the judgment, to the judgment creditor" (CPLR 5225 [b]). Disobedience of a turnover order is contempt of court and punishable as such.

The requirement that the judgment creditor proceed against the garnishee, rather than by a device operating on the property alone, recognizes the possibility that the garnishee, or a fourth party, may assert its own interests in the property.


"If there are any other claimants to the property or money involved, they can be allowed to intervene, if, indeed, the judgment creditor has not already joined them in the first place, or the garnishee interpleaded them. . . . The special proceeding, in short, can be converted into a full-fledged test of precisely whom the disputed property or debt belongs to" (Siegel, NY Prac § 510, at 868 [4th ed].)

By contrast, an article 62 attachment proceeding operates only against property, not any person. By means of attachment, a creditor effects the prejudgment seizure of a debtor's property, to be held by the sheriff, so as to apply the property to the creditor's judgment if the creditor should prevail in court. Attachment simply keeps the debtor away from his property or, at least, the free use thereof; it does not transfer the property to the creditor. It is frequently used when the creditor suspects that the debtor is secreting property or removing it from New York and/or when the creditor is unable to serve the debtor, despite diligent efforts, even though the debtor would be within the personal jurisdiction of a New York court (see CPLR 6201). Attachment has also been used to confer jurisdiction. When a debtor is neither a domiciliary nor a resident of New York—so that the creditor cannot obtain personal jurisdiction of the debtor—but owns assets in New York, courts have exercised jurisdiction over the debtor. This quasi in rem jurisdiction is subject to the due process restrictions outlined by the United States Supreme Court in Shaffer v Heitner (433 US 186 [1977]); see generally Siegel, NY Prac §§ 104, 313, 314 [4th ed]).

Under CPLR § 6201(5), as of the date that filings on the OSC, which were fully submitted to the court on October 1, 2019,

plaintiff demonstrated her entitlement to an order of attachment against the funds in the bank account of non-party Y CO NY, Inc., which are purportedly operating funds for a vessel owned by defendant Farkhad Akhmedov, as security for the collection of any judgment in her favor entered against defendants. See Hotel 71 Mezz Lender LLC v Falor, 14 NY3d 303, 308 (2010).

Of course, as of January 27, 2020, the date of entry of judgment herein, pursuant to Article 52 of the CPLR plaintiff is entitled to pursue her enforcement remedies, i.e., the turnover of the assets attached to satisfy the judgments. As stated in Koehler, should the court obtain personal jurisdiction over it, non-party YCO NY, Inc. may, in the context of such enforcement proceeding, assert its interest in the attached assets that plaintiff claims belong to the judgment debtor(s).

6/22/2020 DATE	 DEBRA A. JAMES, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input checked="" type="checkbox"/> REFERENCE