

People v Northern Leasing Sys., Inc.

2020 NY Slip Op 33617(U)

October 29, 2020

Supreme Court, New York County

Docket Number: 450460/2016

Judge: Lucy Billings

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

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PEOPLE OF THE STATE OF NEW YORK, by
LETITIA JAMES, Attorney General of
the State of New York, and GEORGE J.
SILVER, Deputy Chief Administrative
Judge for New York City Courts,

Index No. 450460/2016

Petitioners

- against -

DECISION AND ORDER

NORTHERN LEASING SYSTEMS, INC., LEASE
FINANCE GROUP LLC, MBF LEASING LLC,
LEASE SOURCE-LSI, LLC a/k/a LEASE
SOURCE, INC., GOLDEN EAGLE LEASING
LLC, PUSHPIN HOLDINGS LLC, JAY COHEN
a/k/a ARI JAY COHEN, individually,
as a principal of NORTHERN LEASING
SYSTEMS, INC., as a member of LEASE
FINANCE GROUP LLC, and as an officer
of PUSHPIN HOLDINGS LLC, NEIL
HERTZMAN, individually and as an
officer of NORTHERN LEASING SYSTEMS,
INC., JOSEPH I. SUSSMAN, P.C., JOSEPH
I. SUSSMAN, individually and as a
principal of JOSEPH I. SUSSMAN, P.C.,
and ELIYAHU R. BABAD, individually and
as a principal or associate of JOSEPH
I. SUSSMAN, P.C.,

Respondents

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APPEARANCES:

For Petitioners

Laura J. Levine Esq., Deputy Bureau Chief
Mary Alestra Esq., Special Counsel
Mark Ladov Esq., Assistant Attorney General

Office of Attorney General Letitia James
28 Liberty Street, New York, NY 10005

For Respondents Joseph I. Sussman, P.C., Sussman, and Babad
Robert A. Freilich Esq.
Rottenberg Lipman Rich, P.C.
230 Park Avenue, New York, NY 10169

LUCY BILLINGS, J.S.C.:

I. BACKGROUND

In a decision dated May 29, 2020, the court ordered respondent attorneys Joseph I. Sussman, P.C., Sussman, and Babad to disgorge "their attorneys' fees collected in any collection actions on the Northern Leasing respondents' behalf" against defendants who had entered or guaranteed equipment finance leases with the Northern Leasing respondents since April 11, 2013. The Northern Leasing respondents are all respondents other than the three attorney respondents. Plaintiffs move to conduct disclosure in this special proceeding to ascertain the attorney respondents' "attorneys' fees collected in any collection actions on the Northern Leasing respondents' behalf." C.P.L.R. § 408. The attorney respondents show that they turned over to their clients, the Northern Leasing respondents, all the funds the attorney respondents recovered in any collection actions, whether those funds were attributable to the principal debt or interest owed by the defendants, to the myriad of other fees chargeable

under the leases, or to attorneys' fees. The attorney respondents claim the Northern Leasing respondents paid the attorney respondents separately for their services.

II. THE MEANING OF THE ORDER GRANTING DISGORGEMENT

The Northern Leasing respondents' payments to the attorney respondents for their services in any collection actions on the Northern Leasing respondents' behalf constituted the attorney respondents' "attorneys' fees collected in any collection actions on the Northern Leasing respondents' behalf." The attorney respondents insist that the last phrase, "on the Northern Leasing respondents' behalf," modifies "attorneys' fees collected," but the phrase modifies the immediately antecedent noun, "collection actions." Thus, the attorney respondents are to disgorge the attorneys' fees they received in any collection actions that the attorney respondent undertook for the Northern Leasing respondents. If the phrase "on the Northern Leasing respondents' behalf" were interpreted as the attorney respondents suggest, they would never disgorge any attorneys' fees, because the attorneys' fees all would be "on the Northern Leasing respondents' behalf" and thus for the Northern Leasing respondents and not for the attorney respondents. This interpretation would render the court's provision for

disgorgement entirely meaningless. See Mann v. Cooper Tire Co., 56 A.D.3d 363, 364 (1st Dep't 2008); Cardinell v. Allstate Ins. Co., 258 A.D.2d 853, 854-55 (3d Dep't 1999).

The court also ordered that the attorneys' fees to be disgorged "be disbursed to the defendants from whom the fees were collected." The court did so because, to the extent that the attorneys' fees were part of the funds collected from defendants, the attorneys' fees were to be restored to those defendants, and petitioners did not request that the disgorged funds be paid to petitioners or to anyone other than the defendants in the collection actions. The total disgorgement, however, is measured not by the loss to the defendants, but by the gain to the attorney respondents from their fraudulent or other wrongful activity. People v. Greenberg, 27 N.Y.3d 490, 497 (2016); People v. Applied Card Sys., Inc., 11 N.Y.3d 105, 125 (2008); People v. Ernst & Young LLP, 114 A.D.3d 569, 569-70 (1st Dep't 2014). For the court to effectuate disgorgement, the attorney respondents must show their gains.

III. THE NEED FOR THE DISCLOSURE SOUGHT

As the attorney respondents point out, since the court also awarded restitution to defendant lessees and guarantors for respondents' fraudulent acts since April 11, 2013, the Northern

Leasing respondents are to restore to those defendants all the funds that the attorney respondents collected from the defendants and turned over to the Northern Leasing respondents. People v. Applied Card Sys., Inc., 11 N.Y.3d at 125; State of New York v. Ford Motor Co., 74 N.Y.2d 495, 502 (1989). See State of New York v. Astro Shuttle Arcades, 221 A.D.2d 198, 198 (1st Dep't 1995).

If the Northern Leasing respondents comply, the defendants will be made whole without being paid any of the attorneys' fees that the attorney respondents received. While this result ultimately may ensue, it does not eliminate the need for the disclosure that petitioners seek. Disclosure may support the very result that the attorney respondents suggest, but without disclosure petitioners and the court will never know whether that result is the most equitable.

First, the Northern Leasing respondents may not possess all the funds that the Northern Leasing respondents originally received from the attorney respondents. See People v. Ernst & Young LLP, 114 A.D.3d at 570. The lessees and guarantors to whom respondents owe restitution are not to be short changed because the Northern Leasing respondents possessed the funds to pay the attorney respondents for carrying out their collective fraudulent conduct, but now do not possess the funds to repay the lessors

and guarantors due to that conduct.

Second, the court ordered that the respective respondents were to pay restitution according to the harm attributable to each respondent's fraudulent conduct. People v. Applied Card Sys., Inc., 41 A.D.3d 4, 8-9 (3d Dep't 2007), aff'd, 11 N.Y.3d 105 (2008). See People v. Imported Quality Guard Dogs, Inc., 88 A.D.3d 800, 802 (2d Dep't 2011). Therefore, if the attorney respondents contributed to the harm, it would be inequitable for them to escape payment of their proportionate share simply because they turned the full recovery over to the Northern Leasing respondents, which then paid the attorney respondents for their part in causing the harm.

These payments of attorneys' fees to the attorney respondents that petitioners seek in disclosure, whether a percentage of the amounts that the attorney respondents recovered for their clients, a fee per lease enforced or per action, or another measure, thus are relevant not only to disgorgement, but also to restitution. Even if the Northern Leasing respondents simply paid the attorney respondents a periodic fee for all their services on their clients' behalf, the fees for the collection activity and other legal services related to the leases involved in this proceeding would be determined by the ratio of those

services to all services on the clients' behalf during the payment period.

IV. DISPOSITION

Consequently, to determine the extent of disgorgement to be disbursed, and to determine the equitable apportionment of liability for restitution, the court grants petitioners' motion to conduct disclosure seeking the production of documents in the attorney respondents' possession, custody, or control that show:

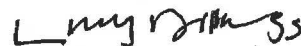
- (1) the attorney respondents' income from collection actions and other legal services performed on the Northern Leasing respondents' behalf related to each lease under which the attorney respondents recovered funds for the Northern Leasing respondents;
- (2) the policies, procedures, methods, and practices by which the Northern Leasing respondents paid the attorney respondents for collection actions and other legal services performed on the Northern Leasing respondents' behalf related to the leases involved in this proceeding;
- (3) any amounts that the attorney respondents collected from lessees or their guarantors involved in this proceeding and kept as reimbursement for their attorneys' services or expenses; and

(4) the methods by which the attorney respondents provided the above accounting and any prior accounting to petitioners.

C.P.L.R. §§ 408, 3120(1)(i); Hirsch v. Stewart, 63 A.D.3d 74, 81 (1st Dep't 2009); 952 Assoc., LLC v. Palmer, 52 A.D.3d 236, 236 (1st Dep't 2008); Roth v. Pakstis, 13 A.D.3d 194, 195 (1st Dep't 2004); People v. Zymurgy, Inc., 233 A.D.2d 178, 179 (st Dep't 1996). If the attorney respondents already have produced any such document to petitioners, before or after the May 2020 order, the attorney respondents may identify the document and the context in which the document was produced rather than reproducing it to petitioners.

The parties shall appear for a further video conference November 30, 2020, at 3:00 p.m., preparatory to the hearing on restitution.

DATED: October 29, 2020



LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C.