

Caballero v Fuerzas Armadas Revolucionarias de Colombia

2020 NY Slip Op 33886(U)

November 20, 2020

Supreme Court, New York County

Docket Number: 154864/2020

Judge: Lucy Billings

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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
COUNTY OF NEW YORK: PART 46

-----x

ANTONIO CABALLERO,

Index No. 154864/2020

Plaintiff

- against -

DECISION AND ORDER

FUERZAS ARMADAS REVOLUCIONARIAS DE
COLOMBIA, a/k/a/ FARC-EP a/k/a
REVOLUTIONARY ARMED FORCES OF
COLOMBIA, and NORTE DE VALLE CARTEL,

Defendants

-----x

LUCY BILLINGS, J.S.C.:

Plaintiff moves for a declaratory judgment, C.P.L.R. § 3001, that Samark Jose Lopez Bello is an agent or instrumentality of defendant Fuerzas Armada Revolucionarias de Colombia (FARC) under 28 U.S.C. § 1610 n., so that plaintiff may enforce his federal judgment from the Southern District of Florida, now domesticated in New York by the Erie County Clerk, C.P.L.R. § 5018(b), against Lopez Bello. Kirschenbaum v. 650 Fifth Ave., 830 F.3d 107, 132-33 (2d Cir. 2016). The federal district court for the Southern District of Florida determined that both FARC and its co-defendant are narcoterrorist organizations engaged in international terrorism and entered a final judgment against them

in favor of plaintiff. A terrorist organization includes any organization designated as a Foreign Terrorist Organization under 8 U.S.C. § 1189, any organization designated in the Federal Register as a terrorist organization, or a group of two or more individuals who engage in terrorist activities. 8 U.S.C. § 1182(a)(3)(B)(iv); Kirschenbaum v. 650 Fifth Ave., 830 F.3d at 131, 133.

An agent or instrumentality of a terrorist organization such as FARC includes a person who materially assisted in, provided financial or technical support to, or provided merchandise or services in support of the international narcotics trafficking activities of a narcotics trafficker such as FARC or was controlled by or acted for a narcotics trafficker. Kirschenbaum v. 650 Fifth Ave., 830 F.3d at 135; Stansell v. Revolutionary Armed Forces of Colombia, 771 F.3d 713, 724 n.6, 731-32 (11th Cir. 2014). Following the 11th Circuit Court of Appeals' decision in Stansell v. Revolutionary Armed Forces of Colombia, 771 F.3d 713, when the plaintiff sought to enforce his judgment from the Middle District of Florida in the Southern District of New York, the federal district court for the Southern District of New York (Carter, J.) found that "members of the 'EL AISSAMI & LOPEZ BELLO NETWORK' are each an agent or instrumentality of the


FARC." Stansell v. Revolutionary Armed Forces of Colombia, No. 1:16-mc-00405-ALC, slip op. at 2 (S.D.N.Y. Jan. 23, 2019). The same court (Oetken, J.) found similarly in Pescatone v. Pineda, No. 1:18-mc-00545-JPO, slip op. at 2 (S.D.N.Y. May 4, 2020). The record of plaintiff's motion in this court reveals no reason why this court would find any differently.

In Stansell, the federal district courts for the Middle District of Florida and for the Southern District of New York relied on the designation by the United States Department of the Treasury Office of Foreign Asset Control (OFAC) that both Lopez Bello and entities associated with Lopez Bello were FARC's agents and instrumentalities. Aff. of Nicholas Rostow Ex. B, at 2, Ex. C; Stansell v. Revolutionary Armed Forces of Colombia, No. 1:16-mc-00405-ALC, slip op. at 2 (S.D.N.Y. Jan. 23, 2019). See Kirschenbaum v. 650 Fifth Ave., 830 F.3d at 120. OFAC also designated Lopez Bello's assets, his associated entities' assets, and the assets of entities that Lopez Bello and his associated entities owned as "blocked" and therefore subject to execution based on any judgment against FARC. Rostow Ex. B, at 2; Stansell v. Revolutionary Armed Forces of Colombia, No. 1:16-mc-00405-ALC, slip op. at 2 (S.D.N.Y. Jan. 23, 2019). See Kirschenbaum v. 650 Fifth Ave., 830 F.3d at 137.

Consequently, the court grants plaintiff's motion to the following extent and declares and adjudges as follows. (1) Samark Jose Lopez Bello is an agent or instrumentality of defendant Fuerzas Armada Revolucionarias de Colombia (FARC) under 28 U.S.C. § 1610 n. (2) Plaintiff may enforce his federal judgment against FARC from the Southern District of Florida against Lopez Bello, his associated entities designated by OFAC, and entities that Lopez Bello and his associated entities own designated by OFAC. C.P.L.R. § 3001; Kirschenbaum v. 650 Fifth Ave., 830 F.3d at 132-33, 135; Stansell v. Revolutionary Armed Forces of Colombia, 771 F.3d at 724 n.6, 731-32; Pescatone v. Pineda, No. 1:18-mc-00545-JPO, slip op. at 2 (S.D.N.Y. May 4, 2020); Stansell v. Revolutionary Armed Forces of Colombia, No. 1:16-mc-00405-ALC, slip op. at 2 (S.D.N.Y. Jan. 23, 2019). Plaintiff acknowledges that, before actually enforcing his judgment against Lopez Bello, his associated entities, or entities that Lopez Bello and his associated entities own, plaintiff must provide Lopez Bello or the affected entity notice and an opportunity to be heard. Stansell v. Revolutionary Armed Forces of Colombia, 771 F.3d at 725-27, 729. Because plaintiff's notice of his motion does not request a declaratory judgment that the associated entities or owned entities are agents or

instrumentalities of FARC, the court denies a further declaratory judgment to that effect, without prejudice to a future motion seeking that relief. C.P.L.R. § 2214(a); Ran v. Weiner, 170 A.D.3d 425, 426 (1st Dep't 2019); Henderson-Jones v. City of New York, 120 A.D.3d 1123, 1124 (1st Dep't 2014); DaimlerChrysler Ins. Co. V. Seck, 82 A.D.3d 581, 582 (1st Dep't 2011); Reyes v. Sequeira, 64 A.D.3d 500, 508 (1st Dep't 2009).

DATED: November 20, 2020



LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C