

Matter of Eisen v Q-Bank Group, LLC

2020 NY Slip Op 34568(U)

October 8, 2020

Supreme Court, Queens County

Docket Number: 701269/2020

Judge: Denis J. Butler

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DENIS J. BUTLER IAS Part 12
Justice

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In the Matter of the Petition of
USHER EISEN; SHMUEL LAUFER; and ABRAHAM
GOTTLIEB,

Index No.:
701269/2020

Petitioner(s),

Motion Date:
September 29, 2020

-against-

Motion Seq. No.: 001

Q-BANK GROUP, LLC; and MEDICARE SUPPLIES
PLUS, INC. d/b/a ADVANCED CARE INC.,

Respondent(s).

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The following papers were read on this motion by petitioners for an order: (1) finding respondents in contempt; (2) compelling responses to information subpoenas; (3) compelling respondents to turn over to petitioners, or the Sheriff of Queens County for public sale under CPLR 5233, an amount sufficient to satisfy the judgments entered in favor of petition in the amount of \$140,000.00, plus interest: all of judgment debtor Judah David Weinberg's right, title, and interest in and to all shares or certificates of stock, membership interests, property interests, and other documents evidencing Mr. Weinberg's ownership interest in respondents; all money or other personal property for which respondents are or will become indebted to Mr. Weinberg; (4) if there are no certificates, ordering an assignment in recordable form transferring and assigning all of Mr. Weinberg's right, title, and interest in and to all shares or certificates of stock, membership interests, property interests, and other documents evidencing Mr. Weinberg's ownership interest in and to respondents; (5) appointing a receiver; and (6) granting an order of attachment; and cross-motion by respondents for an order: (1) pursuant to CPLR 401 and 5225 (b), granting Mr. Weinberg leave to intervene; (2) pursuant to CPLR 3218, vacating the confessions of judgments and judgments docketed by petitioners against Mr. Weinberg and dismissing this special proceeding; (3) pursuant to CPLR 404 and 3211, dismissing this special proceeding against respondent Q-Bank Group, LLC, due to lack of personal jurisdiction; (4) pursuant to CPLR 511 (b), 5221 (a) (4), and 404, transferring this special

proceeding to Nassau County; and (5) pursuant to CPLR 2201, staying all proceedings.

	Papers
	<u>Numbered</u>
Order to Show Cause, Affirmation, Exhibits.....	E1-12
Cross-Motion, Affirmation, Exhibits.....	E16-20
Memorandum of Law in Reply.....	E21

Upon the foregoing papers, it is ordered that the motion and cross-motion are determined as follows:

In this special proceeding, petitioner, a judgment creditor as against Judah David Weinberg, the judgment debtor, served information subpoenas requiring respondents to answer questions relevant to the satisfaction of judgments entered on May 4, 2017. The judgments resulted from petitioners filing confessions of judgment by Mr. Weinberg in petitioners' favor, in connection with three convertible notes issued to petitioners by EV Transportation, LLC, known now as EV Transportation, Inc.

"In order to find that contempt has occurred in a given case, it must be determined that a lawful order of the court, clearly expressing an unequivocal mandate, was in effect. It must appear, with reasonable certainty, that the order has been disobeyed" (*Matter of McCormick v Axelrod*, 59 NY2d 574, 583 [1983]). Moreover, "the party to be held in contempt must have had knowledge of the court's order" (*id.*), and the offending conduct must have prejudiced the complaining party (*see id.*). A contempt sanction is a matter of judicial discretion (*see Matter of Storm*, 28 AD2d 290, 293 [1st Dept 1967]).

In any event, the request for contempt is premature at this juncture. The failure to comply with an information subpoena is governed by CPLR 2308 (b). Subdivision (b) applies specifically to non-judicial subpoenas such as the one herein and provides that the party on whose behalf the information subpoena was issued must move to "compel compliance," as opposed to make a motion for contempt (*see Lyon Fin. Servs., Inc. v Scapes Professional Landscape, Inc.*, 27 Misc 3d 1233 (A) [Sup Ct, Rockland County 2010]).

Vacatur of the judgments entered against Mr. Weinberg is not warranted, contrary to respondents' contentions. Respondents failed to offer sufficient evidence that petitioners exercised their option to convert the notes upon maturity in lieu of repayment. Indeed, the subscription agreements provided by respondents are not signed by petitioners.

The submissions demonstrate that plaintiff served respondent Q-Bank Group, LLC (Q-Bank), a foreign limited liability company, pursuant to Limited Liability Company Law § 304 (see *Glob. Liberty Ins. Co. v Surgery Ctr. of Oradell, LLC*, 153 AD3d 606 [2d Dept 2017]).

Moreover, New York courts may exercise personal jurisdiction over a party who "transacts any business within the state or contracts anywhere to supply goods or services in the state" (CPLR 302 [a] [1]), even where that party has never physically entered the state (see *Parke-Bernet Galleries v Franklyn*, 26 NY2d 13 [1970]), "so long as the [party's] activities here were purposeful and there is a substantial relationship between the transactions and the claim asserted" (*Kreutter v McFadden Oil Corp.*, 71 NY2d 460 [1988]). Here, petitioners satisfied their burden, at this stage of the litigation, of showing that this standard has been met (see *Fischbarg v Doucet*, 9 NY3d 375 [2007]; *Deutsche Bank Sec., Inc. v Montana Bd. of Invs.*, 7 NY3d 65 [2006]; *Crystal Cove Seafood Corp. v Chelsea Harbor, LLC*, 47 AD3d 670 [2d Dept 2008]; *Cornely v Dynamic HVAC Supply, LLC*, 44 AD3d 986 [2d Dept 2007]). Additionally, exercising jurisdiction over respondents in the circumstances presented here would not be inconsistent with traditional notions of due process, fair play, and substantial justice (see *International International Shoe Co. v Washington*, 326 US 310 [1945]; *LaMarca v Pak-Mor Mfg. Co.*, 95 NY2d 210 [2000]; *Opticare Acquisition Corp. v Castillo*, 25 AD3d 238 [2d Dept 2005]).

With respect to venue, where, as here, it appears appropriate to have all parties served with the papers connected to the special proceeding brought before the court at the same time, and a technical application of CPLR 5221 (a) would make this impossible, a court that is proper as to any single respondent should be deemed proper as to all of them. The provision that makes venue proper as to one party supports venue as to all.

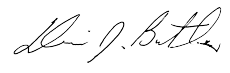
As such, petitioner's motion is granted, pursuant to CPLR 2308 (b), solely to the extent that respondents shall provide responses to the duly issued information subpoenas within 30 days of service of this order with notice of entry. Petitioner is granted leave to renew its application for turn over upon receipt of the responses to the information subpoenas.

Furthermore, respondents' cross-motion is granted solely to the extent that Judah David Weinberg is given leave to intervene.

Any and all relief sought not specifically addressed herein is denied.

This constitutes the decision and order of the court.

Dated: October 8, 2020



Denis J. Butler, J.S.C.

**FILED & RECORDED
10/8/2020
11:07 AM
COUNTY CLERK
QUEENS COUNTY**