

Honeedew Inv. Ltd. v Abadi
2021 NY Slip Op 30138(U)
January 11, 2021
Supreme Court, New York County
Docket Number: 652654/2017
Judge: Nancy M. Bannon
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

<p>PRESENT: <u>HON. NANCY M. BANNON</u></p> <p style="text-align: center;"><i>Justice</i></p> <p>-----X</p> <p>HONEEDEW INVESTING LIMITED,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- v -</p> <p>CARLOS ABADI and BARBARA ABADI</p> <p style="text-align: center;">Defendants.</p>	<p>PART</p>	<p>IAS MOTION 42EFM</p> <p>INDEX NO. <u>652654/2017</u></p> <p>MOTION DATE <u>11/30/2020,</u> <u>11/30/2020,</u> <u>4/22/2020,</u> <u>12/14/2020,</u> <u>12/14/2020</u></p> <p>MOTION SEQ. NO. <u>003 004 005</u> <u>006 007</u></p>
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**DECISION + ORDER ON
MOTIONS**

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 88, 89, 90, 91, 92, 93, 94, 99, 166, 168, 169, 170, 171, 172, 178

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 104, 105, 106, 107, 108, 109, 110, 111, 112, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 167, 173, 174, 175, 176, 177, 179

were read on this motion to/for TURNOVER PROCEEDING.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145

were read on this motion to/for PUNISH FOR CONTEMPT.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 180, 181, 184, 185, 186, 187

were read on this motion to/for REARGUMENT/RECONSIDERATION.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 182, 183, 188, 189, 190, 191

were read on this motion to/for REARGUMENT/RECONSIDERATION.

The motions are decided in accordance with the attached Decision and Order.


 NANCY M. BANNON, J.S.C.
 HON. NANCY M. BANNON

1/11/2021

DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION				
SEQ 003	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
SEQ 004	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
SEQ 005	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
SEQ 006	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
SEQ 007	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: I.A.S. PART 42

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 HONEEDEW INVESTING LIMITED

Plaintiff,

DECISION AND ORDER

- v -

Index No. 652654/2017

CARLOS ABADI and BARBARA ABADI

MOT SEQ 003, 004,
 005, 006, 007

Defendants.

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NANCY M. BANNON, J.:

In this action to recover damages arising from the defendants' failure make payments pursuant to a settlement agreement, upon affidavits of confession of judgment submitted by each defendant, a judgment was entered against the defendants, jointly and severally, in the principal sum of \$4,603,408.23 on May 17, 2017 (the "New York judgment"). By order dated April 17, 2019, the court granted two separate applications of the plaintiff judgment creditor to punish the defendants for civil contempt for their alleged interference with the plaintiff's efforts to enforce collection of its judgment, to the extent that the parties were directed to appear for a contempt hearing on May 29, 2019. The court further enjoined the defendants from transferring, diminishing, hypothecating, or otherwise disposing of the defendants' non-exempt real and personal property assets anywhere situated in

the world, including certain real property located at Calle Parera 37:47 in Buenos Aires, Argentina (the "Buenos Aires apartment"), until the New York judgment was satisfied. However, the court denied without prejudice the plaintiff's application to appoint the plaintiff's Argentine counsel as receiver to sell the Buenos Aires apartment.

The plaintiff now moves to direct the defendants to turn over all converted property of the defendants' former company, Abadi & Co., in their possession to the plaintiff and require the defendants' former attorneys to turn over copies of the entirety of its file relating to the engagement agreement between the attorneys and Abadi & Co. (SEQ 003). The plaintiff also brings a second application to direct the defendants to turn over the Buenos Aires apartment and appoint the plaintiff's Argentine counsel as receiver to sell it (SEQ 004). Finally, the plaintiff moves again to punish the defendants for civil contempt for their alleged false swearing in connection with their request to have an Argentine court fix the legal fees to be paid by the plaintiff to the defendants (SEQ 005). The defendants oppose the motions.

As a preliminary matter, by interim order dated November 6, 2020, the court adjourned motion sequences 003 and 004 until November 30, 2020, for submission on papers, and permitted the

parties to submit supplemental papers by November 25, 2020. The plaintiff has moved to reargue the interim order pursuant to CPLR 2221 (SEQ 006, SEQ 007). The plaintiff's applications are procedurally improper insofar as the November 6, 2020, order did not render any decision on the merits of motion sequences 003 and 004. Moreover, even if they were proper, the plaintiff has not shown that the court overlooked or misapprehended any facts or relevant law that were presented to it in connection with the prior motion. See CPLR 2221(d)(2); William P. Pahl Equip. Corp. v Kassis, 182 AD2d 22 (1st Dept 1992). Accordingly, the plaintiff's motions to reargue are denied.

The court turns first to the plaintiff's motion for turnover of the converted property of Abadi & Co. and of the file of Abadi & Co. held by the law firm Duffy & Amedeo, LLC. By stipulation dated July 1, 2020, the defendants' agreed to withdraw their opposition to this motion except to the extent that the defendants challenge the plaintiff's standing to seek relief. The defendants argue that the plaintiff, the sole shareholder of Abadi & Co., is not entitled to access to certain Abadi & Co. property because it is seeking the property "as a shareholder of Abadi & Co. and the judgment creditor of the Abadis" and not "as Abadi & Co.," through an appointed board of directors. The defendants similarly reason that while, as a shareholder, the plaintiff may be entitled to inspect Abadi &

Co.'s records, it would need to serve any such inspection request on a properly appointed board of directors. No board of directors presently exists.

The defendants' arguments are without merit. The defendants have no cognizable property interest in the assets of Abadi & Co., the shares of which were all sold to the plaintiff under Sheriff's execution. Nonetheless, they insist that the plaintiff appoint a board of directors and take all of their turnover and inspection issues up with the board, even though it is the defendants themselves who refuse to relinquish control over Abadi & Co. property. The defendants may not obstruct the plaintiff's access to company data and information within their exclusive control merely by citing the proposition that legal title to corporate assets remains vested in the corporation, not the shareholders. The crux of the matter is not whether the plaintiff's right to corporate property is legal or equitable; it is that the plaintiff, as the sole shareholder of Abadi & Co., has a claim to the corporate information sought, and the defendants have none. In light of the foregoing, the plaintiff's turnover application is granted.

As to the plaintiff's application for a receivership pursuant to CPLR 5228 with respect to the Buenos Aires apartment, the court previously noted that it possessed the

authority to compel the defendants to deliver property to a receiver from outside the court's territorial jurisdiction. See United States v Ross, 302 F2d 831 (2nd Cir. 1962); United States v First National City Bank, 379 US 378 (1965); Inter-Regional Financial Group, Inc. v Hashemi, 562 F2d 152 (2nd Cir. 1977); Koehler v Bank of Bermuda Ltd., 2004 WL 1555116 (S.D.N.Y. 2004). However, the court denied the plaintiff's first application for relief under CPLR 5228 without prejudice for failure to make an evidentiary showing that the appointment of a receiver was warranted in this case. In reaching this conclusion, the court emphasized the injunction that had been issued by this court, a similar injunction that remained in place in the plaintiff's Argentine proceeding to recognize the New York judgment, and the defendants' assertions that they intended to sell their Manhattan property in order to satisfy the New York judgment.

The plaintiff filed the instant motion approximately one year after its first application for the same relief and four months after the court's April 17, 2019, decision. The plaintiff averred that in the intervening time, the value of the Buenos Aires apartment had decreased due to the Argentine economic crisis and the defendants were not making good faith efforts to sell their Manhattan property. As of December 11, 2020, however, the sale of the Manhattan property was consummated, and the proceeds of the sale, approximately

\$2,000,000, are currently being held in an escrow account with the defendants' counsel. Moreover, the defendants report that as of November 25, 2020, the plaintiff continues to have a perfected lien security interest granted by the Argentine court with regard to the Buenos Aires apartment, and the defendants are regularly sending the plaintiff a portion of their incomes in partial satisfaction of the judgment.

Although the plaintiff was given the same opportunity as the defendants to supplement the record on issues of this nature, the plaintiff elected instead to challenge the court's order permitting such supplementation. No explanation has been provided as to why the Argentine court, where the parties have been engaged in efforts related to the enforcement of the New York judgment, cannot adequately dispose of controversies in connection with real property there. Nor has the plaintiff established whether or how this court's directive to place foreign real property into receivership would be enforced in Argentina. Based on all of the foregoing factors, the court finds that the plaintiff has again failed to demonstrate that this court's appointment of a receiver is warranted or proper.

However, the plaintiff has successfully demonstrated that the defendants' conduct in the Argentine proceeding captioned Matter of Recognizing Foreign Sentence Case No. 055732-2017

warrants a further hearing on the issue of whether such conduct defeated, impaired, impeded, or prejudiced the plaintiff's rights. The defendants have apparently continued to allege in the Argentine proceeding that the New York judgment does not exist and that they owe no debt to the plaintiff. The defendants are now actively seeking legal fees from the plaintiff in the Argentine proceeding. While the defendants aver that they are merely entitled to fees because they are prevailing party in the Argentine proceeding, the plaintiff's Argentine counsel states that the outcome of the proceeding was premised on the defendants' refusal to retract their fraudulent statements regarding the New York judgment, even after this court's many admonishments.

Unfortunately, this appears to fit an unflattering pattern of defendants' making one set of representations to this court and a very different one outside of it. The defendants' contention that they were unaware of the fee application in the Argentine proceeding likewise continues their trend of disclaiming responsibility for troubling behavior, such as listing the Buenos Aires apartment for sale. The court has made clear on many occasions that it does not countenance such conduct.

Accordingly, it is

ORDERED that the plaintiff's turnover application (SEQ 003) is granted, and the defendants and/or their agents, including, without limitation, Duffy & Amedeo, LLC, are directed to turn over all converted property of Abadi & Co. and a copy of the file related to the engagement agreement between Duffy & Amedeo, LLC, and Abadi & Co., dated September 11, 2018, to the plaintiff forthwith; and it is further,

ORDERED that the plaintiff's motion for a receivership in connection with the defendants' real property located at Calle Parera 37:47 in Buenos Aires, Argentina (SEQ 004), is denied; and it is further,

ORDERED that the plaintiff's motion to punish the defendants for civil contempt (SEQ 005) is granted to the extent that a remote hearing is directed on the issue of whether the defendants' false statements in the Argentine proceeding captioned Matter of Recognizing Foreign Sentence Case No. 055732-2017, defeated, impaired, impeded, or prejudiced the plaintiff's rights; and it is further,

ORDERED that the plaintiff's motions to reargue (SEQ 006, SEQ 007) are denied as procedurally improper and without merit; and it is further,

ORDERED that the parties shall appear for a remote contempt hearing, to be held via Microsoft Teams, on March 24, 2021, at 2:30 p.m.

This constitutes the Decision and Order of the court.

Dated: JANUARY 11, 2021



NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON