VTB Bank PJSC v Babel
2021 NY Slip Op 30566(U)
February 25, 2021
Supreme Court, Kings County
Docket Number: 525062/17
Judge: Leon Ruchelsman

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

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VTB BANK PJSC,

Plaintiff, Decision and order

- against - Index No. 525062/17

MIKHAIL ALEKSANDROVICH BABEL a/k/a
MICHAEL BABEL,

Defendants, February 25, 2021

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved seeking a default judgement on a supplemental complaint filed and also an injunction. The defendant has cross-moved seeking to dismiss the supplemental complaint or to compel the plaintiff to accept an answer and has opposed the request for an injunction. Papers were submitted by the parties and arguments held. After reviewing all the arguments of all parties this court now makes the following determination.

As recorded in prior orders, a commercial court of the Moscow region has determined the defendant owes the plaintiff 2.65 billion Russian Rubles which the plaintiff asserts equals approximately $40 million United States dollars. The plaintiff instituted an action to enforce the Moscow judgement and the court granted motions seeking to attach property owned by the defendant located at 79 South 5th Street, Unit 601 in Kings County. Further, the court ordered the parties to appear before a referee to determine the precise amount owed. The parties agreed the judgement equals $40,834,608.61, however, prior to the appearance before any referee the attached property was sold to Carlos Arredondo.

Thereafter the plaintiff served a supplemental complaint which the defendant never answered. The supplemental complaint contains causes of action for violations of the Debtor Creditor Law §§273(a)(1)(2) and §276-a. Specifically, the supplemental complaint alleges the sale of the attached property was a fraudulent transfer and should be voided. These motions followed.

Conclusions of Law

Pursuant to CPLR §5229 when there is a danger that assets may be dissipated such assets may be restrained (Sequa Capital Corp., v. Nave, 921 F.Supp 1072 [S.D.N.Y. 1996]). The defendant opposes the motion on the curious grounds that the "defendant has already done the 'thing' that Plaintiff now seeks to prevent – transferred his interest in the Real Property" (Memorandum of Law in Opposition, page 6). Thus, since the defendant has committed one wrong they should not be restrained from committing further wrongs. There is no cogent support for that argument. Thus, the motion seeking to restrain any of the defendant's property is granted.

Further, concerning the motion seeking discovery, it is opposed on the sole ground the defendant has stated he owns no further property and thus there is nothing to discover. However, the plaintiff is not required to be bound by defendant's mere

assertion that he owns no further property. Rather, the plaintiff is permitted to pursue such discovery and ascertain the holdings, if any of the defendant. The parties shall endeavor to conduct the discovery in a safe and socially distant manner to the extent possible to insure the safety of all parties in light of the ongoing COVID pandemic. If any disputes arise in this regard the parties shall contact the court for a conference. Thus, the motion seeking discovery is granted.

Turning to the motion seeking a default, the defendant contends that a reasonable excuse for failing to timely answer and a meritorious defense have been presented. The reasonable excuse is essentially based upon law office failure. Even if the court would accept such excuse, a meritorious defense must be presented. The defense asserted is that the party that purchased the attached property has not been joined in this action. Indeed, that is the basis for defendant's motion to dismiss the supplemental complaint. It is true that a purchaser of property whose rights would be affected by vacating the sale are considered necessary parties (Henry v. Soto-Henry, 89 AD3d 617, 936 NYS2d 84 [1st Dept., 2011]). Thus, Mr. Arredondo must be added as a party. However, the failure to so join him does not demand dismissal of the action (The Dime Savings Bank of New York, FSB v. Johneas, 172 AD2d 1082, 569 NYS2d 260 [4th Dept., 1991]). Nor does this technical infirmity provide any real

substantive defense to the fraudulent transfer. Thus, the plaintiff must join Mr. Arredondo as a necessary party. The motion seeking to dismiss the action based on the non-joinder is denied. The remainder of the defendant's motion seeking to deem the answer accepted is held in abeyance pending the joinder of Mr. Arredondo. Following that joinder the court will conduct a further hearing to consider that issue.

So ordered.

ENTER:

DATED: February 25, 2021
Brooklyn NY

Hon. Leon Ruchelsman
JSC