

Gelbfish v Russack
2021 NY Slip Op 32371(U)
November 16, 2021
Supreme Court, Kings County
Docket Number: Index No. 509846/2021
Judge: Ingrid Joseph
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At an IAS Part 83 of the Supreme Court Of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 16th day of November, 2021.

PRESENT: HON. INGRID JOSEPH, J.S.C
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
YEHUDA GELBFISH,

Index No.: 509846/2021

Plaintiff,

-against-

DECISION/ORDER

IRA RUSSACK and SAM SPREI a/k/a
SHIMI SPREI a/k/a ELI SHAPIRO,

Defendants.

-----X

Recitation, as required by CPLR §2219(a), of the papers considered in the review of parties' motions:

Papers	NYSCEF Nos.
Notice of Motion/Affirmation/Affidavits/Exhibits	<u>1 - 17</u>
Order to Show Cause/Cross Motion/Affirmation	
Exhibits Annexed	<u>20 - 30; 32; 49 - 54</u>
Opposition/Affirmation/Exhibits Annexed	<u>34 - 46; 55</u>

Plaintiff, Yehuda Gelbfish ("plaintiff"), commenced this action by motion for summary judgment in lieu of complaint pursuant to CPLR §3213 (Motion Seq. 1) to enforce judgments entered in plaintiff's favor and against defendants, Ira Russack and Sam Sprei a/k/a Shimi Sprei a/k/a Eli Shapiro (referred to collectively as "defendants"), jointly and severally, in an action captioned 5218 Atlantic Avenue Associates, LLC v Miriam Equities Limited Liability Company, et al, Superior Court of New Jersey, Atlantic County, Law Division, Docket No. ATL-I-1391-19 ("2019 New Jersey case"), wherein the parties in the instant matter were co-defendants. Defendants submitted written opposition to the motion, filed an emergency application (Motion Seq. 2) and cross motion (Motion Seq. 3), seeking the same relief: (1) the issuance of a preliminary injunction and an order compelling plaintiff to arbitrate pursuant to CPLR 7503.

The parties in this matter were co-defendants in the 2019 New Jersey case, wherein the plaintiff's cross claims against the defendants resulted in an April 9, 2020 Order for Judgment ("the 2020 Judgment") in favor of plaintiff and against the defendants, jointly and severally, for \$252,000, with interest accruing at a rate of 6%. On September 16, 2020, the parties entered into a Consent Order for the payment of such judgment with accumulated interest and reimbursement for plaintiff's legal fees and costs. The Consent Order set out a payment schedule with threshold dates for the remittance of funds until the debt is paid in full, as well as the penalties that would accrue upon the defendants' default. Thereafter, the New Jersey Court issued two additional orders in favor of plaintiff and against the defendants jointly and severally. The orders, dated February 24, 2021 and March 2, 2021, awarded plaintiff money judgments of \$15,000 and \$9,487.26, plus interest of 6%, respectively. By further order dated March 5, 2021, the New Jersey Court directed the defendants' then counsel, Allen Etish, Esq., to turn over to plaintiff's attorneys, the firm of Ansell Grimm & Aaron, PC, certain funds held in trust totaling \$32,400, by attorney trust account check or wire.

In support of his motion, plaintiff contends that the defendants owe outstanding principal of \$129,600 on the 2020 Judgment, with late fees of \$75,000 and interest totaling \$14,436.82. Plaintiff alleges that the defendants also failed to pay the \$15,000 penalty that the New Jersey Court directed them to pay in the February 24, 2021, and the attorneys fees of \$9,487.26 in accordance with the March 2, 2021 order. Plaintiff contends that the total sum outstanding is \$211,124.08, as of April 27, 2021, after all remittance by the defendants have been applied.

The defendants' counter argument, and the relief requested in their order to show cause and cross motion, is to stay this matter and compel plaintiff to arbitrate. However, the Heter Iska agreement that plaintiff relies upon is not fully executed, as it bears only the signature of Shimon

Yechezkel Sprei. The section reserved for plaintiff's signature is blank, and, contrary to the defendant's contention, email correspondence showing that plaintiff reviewed the document and was asked to sign it, or that it was the defendant's custom and practice to sign such documents in prior transactions is insufficient to establish that the parties entered into a binding agreement to arbitrate. Since the defendants have failed to produce a signed Heter Iska, the court finds that they have failed to establish, by clear and convincing evidence, a likelihood of success on the merits. Additionally, there is no showing of irreparable injury or that a balancing of the equities weigh in favor of defendants (*see Arthur J. Gallagher & Co. v Marchese*, 96 AD3d 791 [2d Dept 2012]; *Herczl v Feinsilver*, 153 AD3d 1338 [2d Dept 2017]). Further, the defendants already requested an order staying plaintiff from enforcing the judgment and an order compelling arbitration in the New Jersey action and the court denied the application.

Regarding plaintiff's motion, the court finds that the money judgments plaintiff has obtained in the New Jersey court are entitled to the same credit, validity, and effect in every other court of the United States pursuant to the full faith and credit clause of the United States Constitution (US Const., Art. IV, § 1; *Matter of Bennett*, 84 AD3d 1365, 1367 [2d Dept 2011]). Since relief under CPLR § 3213 encompasses "any judgment," and, based upon this court's finding that the plaintiff has met his prima facie burden and the defendants have failed to raise a material issue of fact, the court finds that the plaintiff is entitled to summary judgment in his favor and against the defendants jointly and severally.

Accordingly, it is hereby

ORDERED, that plaintiff's motion for summary judgment in lieu of complaint (Motion Seq. 1) is granted, and it is further

ORDERED, that plaintiff is awarded a judgment in the amount of \$211,124.08, against the defendants, jointly and severally, based upon the Order For Judgment dated April 9, 2020, Consent Order For Payment of Judgment dated September 16, 2020, Proposed [sic] Order dated February 24, 2021, and Order For Fees and Costs dated March 12, 2021, and it is further

ORDERED, that all stays, if any, are hereby lifted, and it is further

ORDERED, that the defendants' Order to Show Cause (Motion Seq. 2) and Cross Motion (Motion Seq. 3) are denied.

This constitutes the decision and order of the court.

ENTER,



HON. INGRID JOSEPH, J.S.C.

**Hon. Ingrid Joseph
Supreme Court Justice**