

Bank of Hope v C & J Textiles, Inc.
2022 NY Slip Op 30545(U)
February 15, 2022
Supreme Court, New York County
Docket Number: Index No. 651156/2021
Judge: Barry Ostrager
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

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BANK OF HOPE, Plaintiff,

- v -

C & J TEXTILES, INC., HENRY P. JEDDA and WAN CHUL CHOI Defendants.

-----X

HENRY P. JEDDA, Third party Plaintiff,

-v-

Table with 2 columns: INDEX NO., MOTION DATE, MOTION SEQ. NO. and values: 651156/2021, (blank), 003

DECISION + ORDER ON MOTION

C & J TEXTILES, INC., WAN CHUL CHOI, a/k/a WALTER CHOI, EUNJUNG CHOI, a/k/a SUZANNE CHOI, IKSUNG CHOI, a/k/a JAMES CHOI,

Third party Defendants.

-----X

HON. BARRY R. OSTRAGER

Before the Court is a motion by the Third -Party Plaintiff Henry P. Jedda ("Jedda") for a default judgment in his favor awarding a declaratory judgment, a money judgment, and related relief as against the Third-Party Defendants C & J Textiles, Inc., Wan Chul Choi, a/k/a Walter Choi, Eunjung Choi, a/k/a Suzanne Choi, and Iksung Choi, a/k/a James Choi. For the reasons that follow, the motion is denied and the third-party action is dismissed by the Court sua sponte without prejudice to an action in Nassau County or another appropriate forum as a plenary action wholly independent from the main action, which was previously disposed of in full by this Court.

Bank of Hope commenced this proceeding for expedited relief based on summary judgment in lieu of complaint pursuant to CPLR 3213, seeking a money judgment in its favor against defendant C & J Textiles, Inc., as Borrower under two Notes, and against Henry P. Jedda, and Wan Chul Choi, as Guarantors, jointly and severally. By Decision and Order dated October

1, 2021, this Court granted Bank of Hope a judgment on default against the Borrower and Wan Chul Choi and also granted a judgment against Henry P. Jedda on consent, but with interest limited and attorneys' fees waived (NYSCEF Doc. No. 62). The Court subsequently awarded Bank of Hope attorney's fees against the Borrower and Wan Chul Choi only (NYSCEF Doc. No. 82). Judgments were entered in favor of Bank of Hope on both decisions, thereby disposing of all issues in the main action (NYSCEF Doc. Nos. 77 and 105), but the matter was left active to allow for the Court's review of the third-party action and this motion.

The third-party action commenced by Jedda is a plenary action (not an expedited CPLR 3213 proceeding) against the Borrower, Wan Chul Choi ("Walter"), Eunjung Choi ("Suzanne"), and Iksung Choi ("James") asserting six causes of action (NYSCEF Doc. No. 48). In the First Cause of Action, Jedda seeks a declaratory judgment based on an August 8, 2019 Stipulation of Settlement in a Nassau County action commenced by Jedda, individually and derivatively on behalf of C & J Textiles, Inc., against Walter, Suzanne, James, and an entity named as IS Industrial Co., Ltd., Index No. 608463/18 (NYSCEF Doc. No. 89). Specifically, Jedda in the First Cause of Action here seeks a declaratory judgment that Walter is obligated by the 2019 Nassau County Stipulation to indemnify Jedda for the money judgment that Bank of Hope entered against Jedda here in 2021. In the Second Cause of Action, Jedda seeks a money judgment against Walter based on the same Nassau County Stipulation and the same theory of liability as alleged in the First Cause of Action.

In the Third Cause of Action against all the third-party defendants, Jedda seeks to void all conveyances made by Walter to the other third-party defendants as fraudulent conveyances. In the Fourth Cause of Action, Jedda seeks the same relief as in the Third Cause of Action but based on Debtor and Creditor Law §§ 270-281. In the Fifth Cause of Action, Jedda relies on the

Debtor and Creditor provisions to demand the return of any funds fraudulently transferred, and in the Sixth Cause of Action, Jedda seeks an award of attorney's fees pursuant to Debtor and Creditor Law §276-A.

As this recitation of the Third-Party Complaint makes clear, the third-party plenary action is far more complex, and the claims and defendants far more varied, than those in Bank of Hope's motion for summary judgment in lieu of complaint, which consists only of a straightforward request for a money judgment based on an instrument for the payment of money only (i.e., two Notes). CPLR 1010 expressly authorizes a court, in cases such as this one, to "dismiss a third-party complaint without prejudice" in the exercise of discretion (see also Siegel, *New York Practice*, 6th ed., § 161). Just as courts are reluctant to permit third-party actions to be commenced in expedited summary proceedings (see CPLR 401; Siegel, *supra*, §167), so this Court in its discretion declines to expand this proceeding for summary judgment in lieu of complaint --- which has been concluded in full on the merits through the entry of two money judgments --- to include an entirely separate plenary action with additional parties and causes of action that are dependent upon a settlement entered into in the Nassau County Supreme Court.

What is more, the request for relief in the third-party action is anything but straightforward. As indicated above, Jedda relies on a Stipulation of Settlement in a Nassau County action against the third-party defendants here, all of whom were allegedly served in Nassau County where they reside (see NYSCEF Doc. Nos. 98-100). Further, the indemnification clause in the Stipulation on which Jedda relies is far from clear and requires proof beyond that which was submitted on this motion. Specifically, the four-page handwritten Stipulation states at paragraph 9 (with emphasis added) that: "Wan Chul Choi [Walter] shall indemnify Henry Jedda for any personal liability incurred by Henry Jedda on his guaranty of the Bank of Hope loans to

C & J Textiles, Inc. and the office lease of C & J Textiles, Inc. ... *if any such guaranty exists.*”

Thus, the indemnification, by its terms, is conditioned on the existence of an appropriate guaranty.

In addition, the Stipulation is quite extensive and includes various different terms and conditions that are intertwined with the rights and obligations of the parties and their relationship to C&J. The Court therefore declines to undertake an analysis of the various terms and conditions in the Nassau County Stipulation or to hold the hearing that would be necessary to determine the differing claims against the various defendants for liability, money damages, and declaratory and injunctive relief now that the main proceeding for summary judgment in lieu of complaint has been concluded. Such an undertaking, involving the enforcement of a Stipulation entered into in an action in the Nassau County Supreme Court against Nassau County residents, more properly belongs in Nassau County or another appropriate forum, but not before this Court in this third-party action.

Accordingly, it is hereby ORDERED, that the motion by the third-party plaintiff Henry P. Jedda for a default judgment against the third-party defendants is denied, and the third-party action is dismissed, both without prejudice to an application directed to the Nassau County Supreme Court or another appropriate forum.

Dated: February 15, 2022


BARRY R. OSTRAGER, J.S.C.

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