

Ukrainian Natl. Fed. Credit Union v Organization for the Defense of Four Freedoms for Ukraine, Inc.
2022 NY Slip Op 30948(U)
March 23, 2022
Supreme Court, New York County
Docket Number: Index No. 154909/2021
Judge: Nancy M. Bannon
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. NANCY BANNON PART 42

Justice

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UKRANIAN NATIONAL FEDERAL CREDIT UNION,

Plaintiff,

INDEX NO. 154909/2021

MOTION DATE 12/09/2022

MOTION SEQ. NO. 001

- v -

ORGANIZATION FOR THE DEFENSE OF FOUR FREEDOMS FOR UKRAINE, INC., ORGANIZATION FOR THE DEFENSE OF FOUR FREEDOMS FOR UKRAINE, INC., BRANCH #2, ORGANIZATION FOR THE DEFENSE OF FOUR FREEDOMS FOR UKRAINE, INC., BRANCH 41, RADIO DOMIVKA, LLC, ALEXANDER STRILTSCHUK, MICHAEL KOZIUPA, JOHN YAWORSKY, ESTEBAN KACZURAK, DMITRI LENCZUK, MYKOLA HRYCKOWIAN, CHRISTYNA BALKO, PAVLO BANDRIWSKY, VOLODYMYR ZARYCKYJ, BOHDAN HARHAJ, IHOR DLABOHA, NYKOLA LUCAK, BORYS POTAPENKO, ANDRIJ DOBRIANSKY, ROSTYK SACIUK, MICHAEL ROSCICHEWSKY, EMIL BANDRIWSKY, ROMAN MYHAL, IHOR DIACZUN, MYRON WASIUNEC, BOHDAN FEDORAK, and YURI NAKONECHNY,

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20

were read on this motion to/for MISCELLANEOUS.

The court's prior order dated February 16, 2022, entered on February 24, 2022, is hereby recalled and vacated, upon the court's own motion, and the following order is substituted therefor:

The plaintiff stakeholder in this interpleader action moves pursuant to CPLR 1006 and 2601 for permission to deposit into the court certain contested funds held in accounts at the plaintiff's Manhattan branch. The plaintiff further moves pursuant to CPLR 1006 and 2601 to be discharged from this action and for an award of attorney's fees and costs. The defendants Alexander Striltschuk, Michael Koziupa, John Yaworsky, Estebon Kaczurak, Dmitri Lenczuk, the Organization for the Defense of Four Freedoms for Ukraine, Inc., Branch 41, and Radio Domivka, LLC, (together, the responding defendants) oppose the motion only to the extent that it seeks an award of fees. The motion is granted to the extent provided herein.

The plaintiff is the custodian of four accounts currently containing, in the aggregate, \$150,199.51 in funds on deposit. The named account holders on the accounts, respectively, are the Organization for the Defense of Four Freedoms for Ukraine, Inc. (ODFFU); ODFFU, Branch #2; ODFFU, Branch 41; and Radio Domivka, LLC (Radio Domivka). While the name of the account holder on each account is different, all four accounts were opened under the Federal Employer ID Number assigned to ODFFU.

On September 28, 2019, ODFFU, a non-profit organization, held an election of directors, officers, and committee members (the election). The election results became the subject of litigation in a proceeding filed in the Supreme Court for the State of New York, New York County, under Index No. 160063/2019 (the state court proceeding). In the state court proceeding, members of the Old Board of ODFFU sought to set aside, or have declared invalid, the results of the election, which placed the New Board in power. By order entered on January 15, 2021, the state court proceeding was dismissed (the state court decision). The Old Board appealed the state court decision. The appeal was denied by the Appellate Division, First Department, on October 21, 2021. The responding defendants represent that they are seeking leave to reargue and leave to appeal the First Department's decision.

After the issuance of the state court decision, competing claims to the funds on deposit in the accounts maintained by the plaintiff were made by the various defendants in this matter. Specifically, on March 16, 2021, counsel to the New Board of ODFFU demanded that funds held in the accounts be turned over to the New Board. On March 18, 2021, the Director of ODFFU, Branch #2, demanded that funds held in the account be turned over to ODFFU, Branch #2. On March 19, 2021, members of the Old Board demanded that funds held in the account be turned over to the Old Board and indicated that some accounts were subject to control by different "Branches" of ODFFU, rather than the "National" ODFFU. On March 22, 2021, the Director of Radio Domivka demanded that funds held in the accounts be turned over to Radio Domivka.

The plaintiff commenced this interpleader action by filing of the summons and complaint on May 19, 2021. It has filed proof of service or acknowledgement of service as to each of the defendants, which consist of the relevant ODFFU entities, Radio Domivka, and individuals purporting to be elected members of either the New Board or the Old Board of ODFFU. No party has filed an answer or otherwise responded to the complaint and the time to do so under the CPLR has expired.

CPLR 1006(f) provides that a "stakeholder may move for an order discharging him from liability in whole or in part to any party," once "the time for all parties to plead has expired." The stakeholder is required to "submit proof by affidavit or otherwise of the allegations in his pleading" and, upon such proof, the court "may grant the motion and require payment into court, delivery to a person designated by the court or retention to the credit of the action, of the subject matter of the action to be disposed of in accordance with further order or the judgment." A stakeholder discharged under this provision is entitled to payment of expenses, costs and disbursements as may be just "and which may be charged against the subject matter of the

action.” Where the stakeholder is directed to deposit property or money with the court, CPLR 2601 provides that such stakeholder is discharged when it delivers the subject property or money to the county treasurer.

The plaintiff’s submissions, which include, *inter alia*, the affidavit of its CEO, the affidavit of its counsel with invoices for legal work performed attached thereto, and the verified complaint, establish the plaintiff’s entitlement to discharge upon its deposit of the relevant funds into the court under CPLR 1006 and 2601. As to the plaintiff’s request for attorney’s fees and costs, the proof submitted establishes the plaintiff’s entitlement to \$20,484.13 in fees and \$884.63 in costs. These figures omit the hypothetical \$1,485.00 the plaintiff’s counsel states he “anticipates” charging in connection with any additional hearings related to this motion.

Contrary to the responding defendants’ assertion, the fact that the defendants herein include a nonprofit organization and its members does not warrant denial of the plaintiff’s application for attorney’s fees and costs. The plaintiff, a neutral stakeholder with no interest in the disputed accounts, commenced this proceeding to protect itself against multiple adverse claims to the funds it holds by the defendants. The responding defendants admit that they have not reached a resolution on their claims. Under such circumstances, the plaintiff is entitled to fees and costs as provided by statute in the total sum of \$21,368.76. See New York Life Ins. Co. v Lowy, 40 AD3d 295, 297 (1st Dept. 2007); Lincoln Life and Annuity Co. of New York v Caswell, 31 AD3d 1, 8 (1st Dept. 2006); Sun Life Ins. and Annuity Co. of New York v Braslow, 38 AD3d 529, 530 (2nd Dept. 2007). Such sum shall be charged against the \$150,199.51 in contested funds held by the plaintiff and paid therefrom.

Accordingly, it is

ORDERED that the plaintiff’s motion is granted, and the plaintiff is hereby permitted to pay into this court the total sum of \$128,830.75, which sum constitutes the \$150,199.51 sum in dispute less the amount hereinafter allowed the plaintiff for its expenses, costs, and disbursements, to be disposed of in accordance with the further order or final judgment of this court; and it is further

ORDERED that, upon payment of the sum into this court pursuant to this order, the plaintiff is hereby discharged from liability in whole to any party in the above-entitled action by reason of any matter or thing set forth in the pleadings herein; and it is further

ORDERED that there be paid to the plaintiff as its expenses, costs, and disbursements in the above-entitled action, the total sum of \$21,368.76, which sum shall be charged against the aforesaid amount in dispute in the above-entitled action and be paid therefrom.

This constitutes the Decision and Order of the court.



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

3/23/2022

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER