

YH Lex Estates LLC v H F Z Capital Group LLC

2022 NY Slip Op 32259(U)

July 11, 2022

Supreme Court, New York County

Docket Number: Index No. 655980/2020

Judge: Joel M. Cohen

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

-----X

YH LEX ESTATES LLC,

Plaintiff,

- v -

H F Z CAPITAL GROUP LLC, ZIEL FELDMAN, NIR MEIR,

Defendants.

INDEX NO. 655980/2020

MOTION DATE 03/04/2022

MOTION SEQ. NO. 018

**DECISION + ORDER ON
MOTION**

-----X

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 018) 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 575, 576, 577, 591, 592, 593, 594, 605, 606

were read on this motion for POST JUDGMENT RELIEF.

This motion is one of many that Plaintiff YH Lex Estates LLC (“YH Lex”) has made in attempting to enforce an approximately \$20,000,000 judgment granted in its favor against Defendant Nir Meir (“Meir”). This case was initiated in November 2020 to recover on a promissory noted executed by H F Z Capital Group LLC, and a personal guaranty executed by its principals, Ziel Feldman and Meir. Summary judgment was granted in favor of Plaintiff against Meir on April 12, 2021 (NYSCEF 94), and judgment was entered on June 15, 2021 (NYSCEF 142). A Restraining Notice was served pursuant to CPLR § 5222(b) that same day (NYSCEF 497). On June 16, 2021, the First Department granted an interim stay of the enforcement of said judgment, conditioned upon Meir “not transferring any assets owned by him directly or indirectly from his name, custody or control” (NYSCEF 225 [the “June 16, 2021 Order”]). The First Department lifted the interim stay on June 30, 2021 (NYSCEF 189).

YH Lex alleges that Meir has violated the Restraining Notice—which prohibited Meir from transferring, encumbering or otherwise disposing of any property in which he has an interest until the Judgment is satisfied—by transferring and/or selling his fleet of hidden luxury automobiles estimated in value at approximately \$2 million. YH Lex also alleges that in violation of the June 16, 2021 Order, Meir transferred over \$473,000 in cash from his Chase Account. Accordingly, through this motion, YH Lex seeks a turnover order regarding Meir’s collection of luxury automobiles, and a turnover order regarding funds transferred in violation of the June 16, 2021 Order.¹

A party served with a restraining notice “is forbidden to make or suffer any sale, assignment, transfer or interference with any [of the judgment debtor’s] property . . . to any person other than the sheriff, except upon direction of the sheriff or pursuant to an order of the court” (*Aspen Indus., Inc. v Mar. Midland Bank*, 52 NY2d 575, 579 [1981], quoting CPLR 5222[b]). “Thus, the restraining notice serves as a type of injunction prohibiting the transfer of the judgment debtor’s property” (*id.*).

YH Lex is entitled to a turnover of Meir’s blue convertible Aston Martin DBS, purportedly worth \$350,000, which Meir conceded he owned but argued was subject to an undocumented lien held by a friend (NYSCEF 591 ¶¶19–21 [“Meir Aff.”]). The record is unclear as to whether Meir has already sold or transferred this vehicle in violation of the Restraining Notice, which could give rise to a separate contempt motion. In any event, Meir is hereby directed to turnover this vehicle or account for any transfer or sale of this vehicle,

¹ YH Lex also requested that Meir be compelled to produce EAM’s tax returns from 2017–2020. In response, Meir has represented that EAM did not file tax returns for any of the requested years (Meir Aff ¶¶64–66).

including any proceeds and where such proceeds are located, within three (3) days of the date of this Order, or otherwise be held in contempt of Court (*In re Wimbledon Fin. Master Fund, Ltd. v Bergstein*, 173 AD3d 401, 402 [1st Dept 2019] [noting that contempt is a remedy for disobedience of a restraining notice]).²

Further, Meir is ordered to turnover the not less than \$494,893 that he transferred in violation of the June 16, 2021 Order. The records from Meir's Chase Account illustrate that in the two-week period commencing with the appellate court's June 16, 2021 Order and ending on June 30, 2021, Meir made cash withdrawals of \$44,800; paid \$154,000 in credit card bills; spent \$55,000 to reside at the Four Seasons Hotel in Surfside Beach, Florida; distributed \$100,000 to a friend who allegedly has a lien on the Aston Martin; and sent \$75,000 to another friend (*see* NYSCEF 224). Meir does not credibly deny that he violated this Order, rather argues that he made payments to existing creditors and unrelated third-parties for goods and services which he did not understand to violate the Order. Meir's suggestion that he is not susceptible to a turnover order with respect to these dissipated funds is unavailing.

Accordingly, it is

ORDERED that Plaintiff's motion to compel is **GRANTED** as follows:

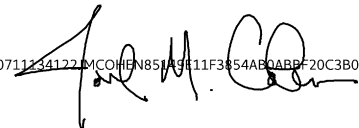
- 1) Meir is directed turnover the blue convertible Aston Martin DBS or to account for any transfer or sale of this vehicle, including any proceeds and where such proceeds are located within three (3) days of the date of this Order; and

² The remaining four cars that are subject to this motion — a 2001 Mercedes, 2018 Porsche, 2019 Porsche, and a 2021 Mercedes — were purportedly bought by or transferred to Meir's spouse, Rane A. Bartolacci ("Bartolacci") or her wholly-owned entity, Ermitage One, LLC ("Ermitage"). YH Lex may pursue any claims related to these cars in the special proceeding against Bartolacci and Ermitage (*YH Lex Estates, LLC v Meir et al*, Index No. 151267/2022 [Sup Ct, NY County 2022]).

2) Meir is ordered to turnover the not less than \$494,893 that he wrongfully transferred in violation of the First Department’s June 16, 2021 Order within three (3) days of the date of this Order.

IT IS FURTHER ORDERED that should Meir fail to comply with any provisions of this Order, YH Lex may file a motion seeking civil and/or criminal contempt.

This constitutes the Decision and Order of the Court.

2022071112341221MCOHEN851A3E11F3854A80A8BF20C3B0E488BC


JOEL M. COHEN, J.S.C.

7/11/2022
DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE