

U.S. Bank N.A. v AllCity Med., P.C.

2022 NY Slip Op 33651(U)

October 21, 2022

Supreme Court, New York County

Docket Number: Index No. 654466/2019

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

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U.S. BANK NATIONAL ASSOCIATION D/B/A U.S. BANK
EQUIPMENT FINANCE,

Plaintiff,

INDEX NO. 654466/2019

MOTION DATE N/A

MOTION SEQ. NO. 007

- v -

ALLCITY MEDICAL, P.C., KONSTANTINOS ZARDAKAS

Defendants.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 007) 83, 84, 85, 86, 87, 88, 89, 90, 91

were read on this motion to/for REARGUE.

Defendant AllCity Medical, P.C.’s (“AllCity”) motion to reargue is granted, and upon reargument, the Court adheres to its previous decision.

Previously, this Court granted AllCity’s motion to vacate the judgment entered against it but conditioned the vacatur on AllCity posting a bond for the amount of the judgment, exclusive of interest (NYSCEF Doc. No. 80). The Court included this requirement because of the record in this case. Specifically, in this equipment finance agreement matter, there was no dispute that AllCity and plaintiff entered into an agreement that formed the basis of this plaintiff’s claims (NYSCEF Doc. No. 2).

AllCity now moves to reargue to remove the requirement that it post a bond for the judgment (for \$27,125.19). It claims that plaintiff presented no evidence as to why posting security was necessary. AllCity argues it was the victim of fraud by the person who signed the instant agreement on its behalf—co-defendant Zardakas. It points to a news article in which

defendant Zardakas pled guilty to fraud in connection with PPP loans and complaints in two matters concerning alleged misconduct by Zardakas in connection with AllCity.

In opposition, plaintiff emphasizes that it requested that a bond be posted so that it would not lose its position with respect to other judgments that might be entered against AllCity. It also points out that AllCity's discussions about defendant Zardakas' misdeeds seem to show that he had control over AllCity, which is the key remaining issue in this case: whether or not he had authority to bind AllCity to the equipment finance agreement.

Discussion

The Court adheres to its initial decision. As an initial matter, the Court has discretion to require the posting of an undertaking in connection with vacating a default as a matter of equity (*Big Apple Indus. Bldgs., Inc. v George A. Fuller Co.*, 161 AD2d 553, 554, 556 NYS2d 57 [1st Dept 1990]). That defendant Zardakas may have pled guilty to unrelated crimes is not a reason for this Court to vacate the requirement that AllCity post an undertaking. Moreover, the complaints submitted by AllCity suggest that Zardakas engaged in misconduct designed, in part, to hinder AllCity's ability to fulfill its contractual obligations (*see* NYSCEF Doc. No. 86 at 4). The fact that AllCity may be facing, at least according to these lawsuits, financial trouble justifies the imposition of bond requirement (*c.f. A. G. Serv. Co. v Interboro Contractors, Inc.*, 64 AD2d 880, 880, 407 NYS2d 279 [2d Dept 1978] [noting that the possibility of corporate dissolution justifies imposing a bond requirement as a condition for vacating a default judgment]).

There is no dispute in this case that Zardakas was the sole shareholder of AllCity and that he signed the instant agreement on AllCity's behalf. Moreover, posting a bond for the amount of the judgment here, a judgment for \$27,125.19, is not an outrageous requirement. AllCity claims, without any supporting evidence, that it is not in danger of going out of business.

Then it should have no issue posting a bond for a relatively small amount. Of course, that conflicts with the allegations in the lawsuits attached by AllCity which suggest that Zardakas and others attempted to harm AllCity's finances.

The fact is that plaintiff commenced this action and obtained a judgment in October 2021. While AllCity might have a good reason to contest plaintiff's claims on the merits, plaintiff should not be forced to start this case (which began in 2019) again without any assurance that it can recover the amount of the judgment it already obtained, should plaintiff win on the merits.

The Court observes that the previous order, in Motion Sequence 006, required that AllCity post a bond on or before September 21, 2022 and serve proof of the bond on the General Clerk's office in order to restore this case to the active calendar (NYSCEF Doc. No. 80 at 2). AllCity was also directed to upload a copy of a proposed answer within 7 days after the bond was posted.


AllCity wholly failed to comply with this order and there is no evidence on the docket that a bond was ever obtained. The Court observes that it struck the portion of the order to show cause that sought a temporary restraining order staying the requirement that AllCity post a bond (NYSCEF Doc. No. 87). Therefore, the Court must abide by its own order in Motion Sequence 006, which warned that "if no bond is posted as ordered above, then the motion is denied and restraints on accounts remain and the judgment may otherwise be enforced" (NYSCEF Doc. No. 80 at 2).

In other words, the judgment remains and plaintiff is free to enforce the judgment as it wishes. The case, which is currently marked disposed, will remain as such.

Accordingly, it is hereby

ORDERED that defendant AllCity Medical P.C.'s motion to reargue is granted and, upon rearguement, the Court adheres to its original decision; and it is further

ORDERED that based on the record before this Court and it appearing that no bond was ever posted, the Court denies AllCity's request to vacate the judgment against it, the judgment (which was never actually vacated) shall remain in full effect and plaintiff is entitled to enforce the judgment.

<u>10/21/2022</u> DATE			 ARLENE P. BLUTH, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input checked="" type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE