

**Atalaya Asset Income Fund II LLP v Ringel**

2023 NY Slip Op 30970(U)

March 28, 2023

Supreme Court, New York County

Docket Number: Index No. 654299/2019

Judge: Joel M. Cohen

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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

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ATALAYA ASSET INCOME FUND II LLP,  Plaintiff,  - v -  BENJAMIN RINGEL, YAEL RINGEL, BCR REALTY INVESTMENT II, LLC, SAGG MAIN INV LLC  Defendants.	INDEX NO. <u>654299/2019</u>  MOTION DATE <u>03/01/2023</u>  MOTION SEQ. NO. <u>014</u>  <b>DECISION + ORDER ON          MOTION</b>
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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 014) 298, 299, 300, 301, 302, 303, 304, 305, 307, 308, 313, 314, 315, 316, 317, 318, 319, 320, 321 were read on this motion to STAY.

Defendants' motion for a stay pursuant to CPLR 5240 pending a decision on their motion in the Suffolk County Supreme Court under Index No. 609491/2015 ("Foreclosure Action") is **denied**.

**BACKGROUND**

On January 28, 2019, Plaintiff Atalaya Asset Income Fund II LP ("Atalaya") was awarded a Judgment of Foreclosure and Sale (NYSCEF 300) on default in the Foreclosure Action against, among others, Benjamin Ringel, Yael Ringel, BCR Realty Investments II, LLC and Sagg Main Inv LLC who are the defendants ("Defendants") in this case. A Referee's Report of Sale dated February 10, 2020 and filed in the Foreclosure Action (NYSCEF 317) found a "deficiency" of "\$3,955,987.27." Defendants' appeal in the Foreclosure Action was denied by the Second Department on June 22, 2022 (*Atalaya Asset Income Fund II, L.P. v 219 Sagg Main, LLC*, 206 AD3d 870, 870 [2d Dept 2022]).

On July 26, 2019, Atalaya commenced this action by filing a motion for summary judgment in lieu of a complaint based upon a guaranty executed by Defendants (“Guaranty” [NYSCEF 4]) relating to the mortgage at issue in the Foreclosure Action. Atalaya’s motion was granted on default on April 27, 2020 (*Atalaya Asset Income Fund II LLP v Ringel*, 2020 N.Y. Slip Op. 31438[U], 2 [N.Y. Sup Ct, New York County 2020]). Judgment in the amount of \$13,177,056.64 was entered on October 2, 2020 (NYSCEF 32).

Atalaya subsequently sought to enforce the Judgment including through a motion to compel post-judgment discovery (NYSCEF 41). On June 7, 2021, Defendants appeared and moved to vacate the default and dismiss (NYSCEF 60). On July 21, 2021, Atalaya’s motion to compel was granted and Defendants’ motion to vacate and dismiss was denied (NYSCEF 76). Substantial motion practice followed.

On August 18, 2022, Defendants Benjamin Ringel and Yael Ringel (the “Ringels”) were held in contempt, enjoined from dissipating assets individually or through their numerous closely held entities, required to provide discovery and directed to pay Atalaya’s costs and fees (NYSCEF 165). On September 29, 2022, Atalaya advised the Court by letter that the Ringels were in violation of the contempt order (NYSCEF 176). Shortly thereafter, counsel for Defendants withdrew from representation (NYSCEF 202).

On December 5, 2022, Atalaya advised the Court that Benjamin Ringel was likely to recover a large amount of money in the New Jersey action known as *Chana Ringel et. al. v. BR Lakewood, LLC et. al.* (Superior Ct. of New Jersey App. Div. Docket No. A-0370-21) (NYSCEF 204-205) and requested relief. The Court authorized Atalaya to file a motion by order to show cause (NYSCEF 208).

Atalaya filed another motion for contempt against Benjamin Ringel and the Court scheduled a show cause hearing for December 23, 2022 (NYSCEF 226). On December 19, 2022, Benjamin Ringel, appearing *pro se*, requested an extension of time to respond (NYSCEF 230). On December 21, 2022, the Court granted Mr. Ringel a multi-week extension and scheduled a “FINAL” hearing date of January 17, 2023 (NYSCEF 234).

On January 10, 2023, replacement counsel for Mr. Ringel appeared to request an adjournment (NYSCEF 253). The Court granted an extension of time for Mr. Ringel to submit opposition papers but denied the request to adjourn the hearing (NYSCEF 254) in light of the express directive that January 17, 2023 was a FINAL extension. Replacement counsel was immediately terminated by Mr. Ringel and moved to withdraw (NYSCEF 263-265).

Mr. Ringel appeared at the January 17, 2023 hearing *pro se* (NYSCEF 306 [Transcript at 3-4]). The Court granted Atalaya’s motion for contempt, afforded Mr. Ringel the opportunity to purge the contempt, and directed that the parties meet-and-confer submit a proposed order to reflect the Court’s directives (Tr. 7:7-23). The parties could not reach an agreement and on January 30, 2023, Atalaya submitted a proposed order (NYSCEF 281-282).

On February 6, 2023, Berg & David, PLLC appeared on Defendants’ behalf (NYSCEF 284) and, the next day, submitted a proposed counter-order (NYSCEF 285-286). Thereafter, the parties continued to submit proposals (NYSCEF 287-297). The Court entered an order granting in part the motion for contempt on March 28, 2023 (NYSCEF 322).

On March 1, 2023, Defendants filed the instant motion. The crux of the motion is that, on February 27, 2023, Defendants (among others) moved in the Foreclosure Action for an order (i) pursuant to RPAPL § 1371(3) declaring the Judgment of Foreclosure and Sale entered in the Suffolk County Supreme Court under Index No. 609491/2015 (“Foreclosure Action”) fully

satisfied; or (ii) in the alternative, pursuant to RPAPL § 1371(2) setting the matter down for a deficiency hearing; (iii) pursuant to CPLR §§602 and 1006(c) removing this action and consolidating it with the Foreclosure Action; and (iv) upon consolidation, vacating the Judgment pursuant to CPLR 5015 and in the interest of substantial justice (NYSCEF 301-304). Atalaya opposes on, among other grounds, that the motion made in the Foreclosure Action is frivolous (NYSCEF 318 [Letter from Atalaya's counsel in the Foreclosure Action]).

### DISCUSSION

CPLR 5240 provides:

The court may at any time, on its own initiative or the motion of any interested person, and upon such notice as it may require, make an order denying, limiting, conditioning, regulating, extending or modifying the use of any enforcement procedure. Section 3104 is applicable to procedures under this article.

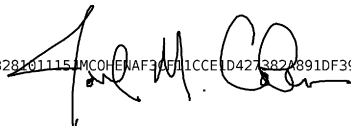
Relief is warranted to “prevent unreasonable annoyance, expense, embarrassment, disadvantage or other prejudice” (*Gryphon Dom. VI, LLC v APP Intern. Fin. Co.*, 58 AD3d 498, 498 [1st Dept 2009]). The Court has broad authority to craft a remedy, if warranted based on the facts presented, under CPLR 5240 (*Matter of Sirotkin v Jordan, LLC*, 141 AD3d 670, 672 [2d Dept 2016] [collecting cases]). Relief may be denied where “defendant has obstructed plaintiff's efforts to pursue the judgment” (*79 Madison LLC v Ebrahimzadeh*, 203 AD3d 589 [1st Dept 2022]).

There is no question that the Ringels have disobeyed this Court's orders and sought to frustrate Atalaya's attempts to enforce its Judgment. Defendants' default, compounded by their failure to seek a stay for multiple years, militate against a stay at this late stage. Moreover, Atalaya notes that the referee calculated the deficiency in the Foreclosure Action and the Second Department rejected Defendants' appeal.

In light of the facts and circumstances of this case, the Court finds that Defendants are not entitled to any relief under CPLR 5240. To the extent Defendants seek to invoke the Court’s general equitable authority to stay proceedings, the Court denies relief.

Accordingly, it is

**ORDERED** that Defendants’ motion for a stay is **DENIED**.

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3/28/2023  
DATE

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JOEL M. COHEN, J.S.C.

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	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input 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