

**Kosachuk v 9197-5904 Quebec, Inc.**

2023 NY Slip Op 32193(U)

June 16, 2023

Supreme Court, New York County

Docket Number: Index No. 158379/2022

Judge: Lucy Billings

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: PART 41

-----x

CHRIS KOSACHUK,

Index No. 158379/2022

Petitioner

- against -

DECISION AND ORDER

9197-5904 QUEBEC, INC., and SELECTIVE  
 ADVISOR GROUP, LLC f/k/a SELECTIVE  
 ADVISORS GROUP, LLC, a Delaware Limited  
 Liability Company,

Respondents

-----x

LUCY BILLINGS, J.S.C.:

I. BACKGROUND

Petitioner seeks to vacate a judgment by confession dated February 22, 2012, entered in a related action, 9197-5904 Quebec, Inc. v. NLG, LLC, Index No. 101875-2012 (Sup. Ct. N.Y. Co. 2012) by respondent 9197-5904 Quebec, Inc., against nonparty judgment debtor NLG, LLC. C.P.L.R. §§ 3001, 3218, 5015(a). Petitioner is the undisputed manager and principal member of NLG. Upon respondents' failure to answer the petition, petitioner seeks a default judgment against respondents. C.P.L.R. § 3215. They move to dismiss the petition and for sanctions, including attorneys' fees. C.P.L.R. § 3211(a); 22 N.Y.C.R.R. § 130-1.1(c). The court denies the petition and grants respondents' motion as follows.

Petitioner previously moved to vacate the 2012 judgment in

the related action repeatedly, but either abandoned or withdrew each motion, and ultimately opted to pursue his claims in federal court. In 2019, the United States District Court for the Southern District of New York (Cote, J.) determined that the applicable statute of limitations barred petitioner's claims. C.P.L.R. § 213(8); Kosachuk v. Selective Advisors Group, LLC, 19-CV-4844 (DLC), 2019 WL 4805742, at \*5 (S.D.N.Y. Sept. 30, 2019). The Second Circuit Court of Appeals affirmed the district court's determination and further held that petitioner had no recourse based on fraud or otherwise under C.P.L.R. § 5015(a). Kosachuk v. Selective Advisors Group, LLC, 827 Fed. Appx. 58, 62 (2d Cir. 2020). Petitioner subsequently moved to restore his action before this court (Hagler, J.), which adopted the federal district court's decision and denied the motion. In 2021, nonparty Juan Ramirez, NLG's former attorney, commenced a special proceeding similar to this one to vacate the 2012 judgment. This court (Borrok, J.) dismissed that petition based on lack of personal jurisdiction and collateral estoppel. Petitioner now seeks the same relief yet again.

## II. DISMISSAL

Petitioner has attempted exhaustively to vacate the same judgment for over 10 years since it was entered, through multiple lawsuits in both New York state and federal courts, as well as courts across Pennsylvania, Delaware, and Florida. Most

recently, on September 26, 2022, four days before petitioner commenced the current proceeding, petitioner commenced an identical proceeding in the United States Bankruptcy Court for the District of Delaware, Case No. 21-11269-JK, which is grounds alone to dismiss the petition. C.P.L.R. § 3211(a)(4). The court also dismisses the petition based on collateral estoppel, since petitioner had several opportunities to fully litigate the timeliness of his claims. Paramount Pictures Corp. v. Allianz Risk Transfer AG, 31 N.Y.3d 64, 72 (2018); Kuang v. Zhou, 212 A.D.3d 579, 580 (1st Dep't 2023); Russell v. New York Univ., 204 A.D.3d 577, 579 (1st Dep't 2022); Margulies v. USAA Cas. Ins. Co., 191 A.D.3d 559, 560 (1st Dep't 2021).

Moreover, even were the court to consider the petition's timeliness, the court would reach the same conclusion as both Judge Cote's decision dated September 30, 2019, and Justice Hagler's decision dated February 13, 2020. The statute of limitations bars petitioner's claims, as he filed this petition over 10 years after the judgment was entered. C.P.L.R. §§ 213(8), 3211(a)(5); Kosachuk v. Selective Advisors Group, LLC, 827 Fed. Appx. at 62. Petitioner's unreasonable delay, which petitioner utterly fails to justify, likewise precludes him from seeking relief under C.P.L.R. § 5015(a). Ramirez v. Selective Advisors Group, LLC, 202 A.D.3d 608, 609 (1st Dep't 2022). Therefore the court grants respondents' motion to dismiss the

petition. C.P.L.R. § 3211(a)(5).

### III. SANCTIONS

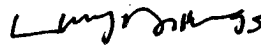
Petitioner's demonstrated willingness to perpetuate meritless, vexatious, and duplicative litigation warrants sanctions and attorneys' fees in respondents' favor. 22 N.Y.C.R.R. 130-1.1(c)(3); Continental Indus. Group, Inc. v. Ustuntas, 215 A.D.3d 417, 418 (1st Dep't 2023); Teshabaeva v. Family Home Care Services of Brooklyn and Queens, Inc., 214 A.D.3d 442, 444 (1st Dep't 2023); Goetz Fitzpatrick LLP v. OTR Media Group, Inc., 210 A.D.3d 568, 570 (1st Dep't 2022). A reasonable award for the attorneys' fees and expenses respondents incurred in this action is \$15,000.00. The court further enjoins petitioner from any future action or proceeding regarding the 2012 judgment against respondents 9197-5904 Quebec, Inc., and Selective Advisor Group, LLC f/k/a Selective Advisors Group, LLC, as well as nonparties Sean Meehan and Elizabeth Hazan, without prior approval from Justice Lucy Billings, Justice Schlomo Hagler, the Administrative Judge of the New York County Supreme Court, or the Administrative Judge's designee. Abe v. New York Univ., 169 A.D.3d 445, 450 (1st Dep't 2019); Cangro v. Marangos, 160 A.D.3d 580, 580 (1st Dep't 2018); Shapiro v. Hayes, 133 A.D.3d 468, 468 (1st Dep't 2015). Petitioner must attach this decision and order to a written request to the court if he ever seeks such approval. In the event that he violates this order,

respondents may move for contempt.

IV. CONCLUSION

Since the court grants respondents' motion to dismiss the petition, the court denies the petition and petitioner's motion for a default judgment. The court enjoins petitioner as set forth above and awards a judgment in favor of respondents against him for \$15,000.00. The Clerk shall enter a judgment accordingly.

DATED: June 16, 2023



---

LUCY BILLINGS, J.S.C.

**LUCY BILLINGS**  
J.S.C