

White Oak Commercial Fin., LLC v EIA Inc.

2023 NY Slip Op 33362(U)

September 28, 2023

Supreme Court, New York County

Docket Number: Index No. 650346/2023

Judge: Margaret A. Chan

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49M

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WHITE OAK COMMERCIAL FINANCE, LLC,

INDEX NO. 650346/2023

Plaintiff,

01/18/2023,

07/13/2023,

- v -

MOTION DATE 07/27/2023

EIA INC., ELECTRONIC INTERFACE ASSOCIATES, INC.,
EIA DATACOM, INC., EIA ELECTRIC, INC., GEORGE
ENGEL LIC, LLC, YOLANDA DELPRADO, ALEXANDRA
ENGEL, DAVID ENGEL, GEORGE ENGEL, MATTHEW
ORENT, ANDREEA ORENT, CHARLES SCHWAB & CO.,
INC. (A NOMINAL DEFENDANT), ADP TOTALSOURCE,
INC. (A NOMINAL DEFENDANT), 1861 ACQUISITION
LLC (A NOMINAL DEFENDANT), GREAT MIDWEST
INSURANCE COMPANY (A NOMINAL DEFENDANT), and
SOFIA ENGEL

MOTION SEQ. NOS. 001, 007, 009

DECISION + ORDER ON MOTION

Defendants.

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HON. MARGARET A. CHAN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 67, 69, 70, 72, 136 were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR

The following e-filed documents, listed by NYSCEF document number (Motion 007) 169, 170, 172, 223 were read on this motion to/for REARGUMENT/RECONSIDERATION

The following e-filed documents, listed by NYSCEF document number (Motion 009) 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 243, 245, 246 were read on this motion to/for MODIFY

Plaintiff White Oak Commercial Finance, LLC (White Oak) brings this action for, inter alia, breach of contract, replevin, conversion, negligent misrepresentation, fraudulent misrepresentation, and fraudulent conveyance. Presently before the court are (1) defendants Matthew Orent (Matthew) and AnDreea Orent's (AnDreea, and together with Matthew, the Orents) motion, pursuant to CPLR 2221(d), for leave to reargue this court's Decision and Order, entered June 13, 2023, granting White Oak's application for a preliminary injunction against the Orents (the PI Order)¹ (NYSCEF # 169); (2); the Orents' motion, pursuant to CPLR 2221(d), to

¹ The court issued an amended decision and order on June 23, 2023 (NYSCEF # 156).

modify the PI Order to permit the Orents to pay their reasonable and ordinary living expenses (NYSCEF # 178), and (3) White Oak's application for a turnover order of Matthew's Charles Schwab brokerage account (NYSCEF #s 41, 69-72). Each motion is opposed.

Background

Discussion

I. Orent's Motion for Leave to Reargue the PI Order (MS007)

In the PI Order, this court granted White Oak's motion for a preliminary injunction and enjoined Matthew's individual property and the Orents' jointly owned property (NYSCEF # 156).² In granting White Oak's motion, the court determined that White Oak (1) established a likelihood of success on merits with respect to its breach of contract claim against Matthew stemming from alleged breaches of the Credit Agreement,³ as well as its claims for fraudulent conveyance against Matthew and AnDreea, (2) made a sufficient showing of irreparable harm based on conduct by Matthew and AnDreea that put White Oak's collateral at risk of further dissipation and threatened to render ineffectual any judgment that White Oak might obtain, and (3) established that the balance of equities weighed in favor of an injunction based on the risk of White Oak being left without a viable recourse in these proceedings absent injunctive relief (*id.* at 8-12). As is relevant here, to reach its conclusion on irreparable harm, the court determined that White Oak had brought this action as a secured creditor based on the fact that it extended a \$10 million revolving secured line of credit to Borrowers under the Credit Agreement, which was secured by the Collateral (*id.* at 11). The court further noted that White Oak's secured interest was guaranteed by various individual and corporate guarantors, including Matthew (*id.*, citing NYSCEF #s 51, 52).

The Orents now seek leave to reargue the court's PI Order to the extent it enjoins any of the Orents' assets beyond the court's order of attachment (NYSCEF # 170 at 1). In bringing this motion, the Orents do not challenge the court's conclusions related to White Oak's showing of a likelihood of success on the merits or that the balance of equities tipped in its favor (*see id.* at 4-5). Rather, the Orents contend that the court overlooked or misapprehended that Matthew's guarantee is not, in and of itself, a secured debt (*id.* at 1, 4-5; NYSCEF # 223). The court disagrees.

"A motion for leave to reargue pursuant to CPLR 2221 is addressed to the sound discretion of the court and may be granted only upon a showing that the

² The court also issued order of attachment in the amount of \$211000 against Matthew, which the Orents do not challenge (NYSCEF # 169 [seeking leave to reargue the PI Order and upon granting such leave, "vacating the Court's grant of a preliminary injunction against the Orents]; *see also* NYSCEF # 163 at 18).

³ Unless otherwise noted, defined terms used herein are the same as those used throughout the PI Order.

court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision” (*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992] [quotation marks omitted]). Such a motion “is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law” (*Pro Brokerage, Inc. v Home Ins. Co.*, 99 AD2d 971, 972 [1st Dept 1984] [internal quotation marks and citation omitted]). The determination to grant leave to reargue lies within the sound discretion of the court (*see William P. Pahl Equip Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992]).

Here, the Orents fail to establish that the court misapprehended any controlling law or facts when it determined that White Oak had established irreparable harm as a secured creditor. To start, as the Orents plainly recognize (NYSCEF # 170 at 2-4), White Oak *is* a secured creditor with respect to the \$10 million revolving line of credit under the Credit Agreement, which was secured by the Collateral and personally guaranteed by the Individual Guarantors (including Matthew) (*see* NYSCEF # 42 at § 4.1; NYSCEF #s 49, 51).⁴ This is the secured debt that White Oak is suing to recover from defendants, including Matthew as guarantor of that debt (*see e.g.* NYSCEF # 102 at ¶¶ 5, 77 100-110). And this the secured debt that White Oak is attempting to protect from further dissipation based on the conduct of, as is relevant here, Matthew and AnDreea (*see* NYSCEF # 129 at 1-3, 12-13; *see also* NYSCEF # 77, 90-92; NYSCEF # 99 at ¶¶ 26, 28, 32-33). For these reasons, the court’s conclusion that White Oak established irreparable harm—and, more broadly, entitlement to injunctive relief—based on its status as a secured creditor, as well as its showing that certain guarantors’ conduct threatened to render ineffectual any potential judgment, is entirely consistent with Court of Appeal’s directives in *Credit Agricole Indosuez v Rossiyskiy Kredit Bank* (*see* 94 NY2d 541, 544 [2000] [recognizing that, in general, an unsecured creditor is not entitled to preliminary injunctive relief to prevent dissipation of assets]; *see also Winchester Global Trust Co. Ltd. v Donovan*, 58 AD3d 833, 834 [2d Dept 2009] [finding irreparable harm when defendants transferred assets in derogation of a perfected security interest]).

The cases upon which the Orents rely do not compel a different conclusion.⁵ *Knaak v Wells Fargo Bank, N.A.*, for example, merely recognized that a liability arising solely from a guaranty executed in connection with secured loan agreement is an unsecured debt (2018 WL 6533283, at *1 [Bankr DNJ, Dec. 10, 2018, No. 18-1533-ABA]). Meanwhile, both *PNC Bank N.A. v Sprout Mortg., LLC* and *Aprile v Men of Invention LLC* involved unsecured creditors, and neither decision offers any indication that plaintiffs’ lawsuits and corresponding motions for injunctive relief

⁴ White Oak was also a secured creditor with respect to the Pledge Agreement (*see* NYSCEF #’s 55-56).

⁵ The Orents are also incorrect in contending that this court “previously recognized that an injunction is not permitted as to unsecured debt” (NYSCEF # 170 at 5). Rather, the court observed that “a secured *creditor*” has a legally recognized interest preventing the dissipation of encumbered property prior to obtaining judgment, while a “general *creditor*” does not (NYSCEF # 156 at 10-11).

were premised on concerns over the dissipation of a secured debt (*see* 2022 NY Slip Op 33703[U], at *2 [Sup Ct, NY County, Oct. 26, 2022] [plaintiff sought injunctive relief to restrain defendant's bank accounts in connection with lawsuit to collect on money from interim servicer of various mortgage loans]; 40 Misc 3d 1240[A], at * [Sup, Ct, NY County, Sept. 13, 2013] [plaintiff sued in individual capacity to collect on a presumed debt for failure of defendants to distribute profits obtained in the management of an LLC]). Finally, in *Silva v Silva*, the court determined that plaintiff was an unsecured creditor because she had failed to perfect her security interest "and was content on remaining an unsecured creditor" (27 Misc 3d 526, 533 [Sup Ct, Nassau Cty, 2010]).⁶

None of these decisions hold, as the Orents seemingly suggest, that a creditor suing to collect on a secured debt cannot establish entitlement to injunctive relief when it alleges actions taken by a guarantor that may frustrate its collection efforts. Nor do the Orents cite to any authority to support their apparent position that, even after recognizing that a creditor is a secured creditor as to the specific indebtedness upon which it has sued, the court must still analyze the specific nature of each and every guarantee of the secured debt to determine whether those guarantees are also secured or unsecured.

In conclusion, the court did not misapprehend any facts or applicable law when rendering the PI Order. The Orents' motion for leave to reargue is therefore denied.

II. Orent's Motion to Modify the PI Order (MS009)

As part of the PI Order, the court held that "the Orents should be permitted to access reasonable living expenses" (NYSCEF # 156 at 13). It accordingly directed the parties to "work[] in good faith" to determine that amount (*id.*). But in what has become a common trend in this increasingly protracted litigation, those discussions have failed. Indeed, the parties were unable to find a compromise between the \$30,000 per month allowance sought by the Orents, and the \$20,000 per month allowance sought by White Oak (*see* NYSCEF # 179 at 5; NYSCEF # 180 ¶¶ 4-6; NYSCEF # 181). As a result, the Orents move this court to modify the PI Order to allow for reasonable living expenses (NYSCEF # 178).

The Orents principally argue that they should be permitted to access reasonable living expenses without a specific cap (NYSCEF # 179 at 5-6). But if the court insists on a monetary cap, the Orents request that they be permitted to spend up to \$34,000 per month, which purportedly constitutes the Orents' current monthly living expenses (*id.* at 6). In support of this motion, the Orents offer affidavits by Matthew and AnDreea that calculate the Orents' monthly expense as

⁶ *Crosswind Venture Fund LP v Cohen* is completely inapposite (2017 Cal Super LEXIS 47184, at *6 [Cal. Super Ct, Jan 5, 2017]). In that case, the court merely observed that, in applying for an order of attachment, plaintiff's claim against defendant was not secured by an interest in real property (*id.*).

totaling \$34,000 per month (NYSCEF # 182 ¶ 2; NYSCEF # 201 ¶ 2). Their submissions attach various monthly expenses such as mortgage payments, COBRA payments, utilities, insurance, car payments, and other miscellaneous expenses (NYSCEF # 182 ¶ 4; NYSCEF # 4; *see also* NYSCEF #s 183-200, 202-219). Matthew also affirms, in a separate affidavit, that he has recently secured full-time employment, and his current wages are \$160,000 plus commission (NYSCEF # 246 ¶ 2-4). Matthew indicates that this position requires extensive travel and business-related expenses that are subsequently reimbursed (*id.* ¶¶ 5-8).

White Oak opposes the Orents' motion. White Oak contends that the Orents are not entitled to monthly living expenses, and that the Orents should only be permitted to pay reasonable living expenses (NYSCEF # 243 at 4-5). As White Oak puts it, the monthly living expenses sought by the Orents would allow them to fund their lavish lifestyle and result in further dissipation of assets (NYSCEF # 243 at 3-4). White Oak concludes that its proposal for a payment of \$20,000 per month to be paid from the proceeds of the sale of the Orents' apartment, with any amounts needed to be paid from AnDreea's individual assets, is entirely reasonable and consistent with the PI Order (*id.*).

At the outset, the court notes that it is thoroughly disappointed with the parties' inability to work in good faith and avoid burdening this court with disputes that should be resolvable without its intervention. Nevertheless, while the court had hoped that the parties could amicably resolve this specific issue of reasonable living expenses, it now reluctantly wades into this dispute.

As the PI Order held, the Orents are entitled to reasonable living expenses—no more, no less. After a careful review of the Orents' expense submissions, the court concludes that the Orents should be permitted to access reasonable living expenses totaling **\$25,000 per month**. This amount, in the court's view, considers Matthew's current wages and related travel expenses, and accounts for those expenses that are reflective of *reasonable* and necessary living expenses incurred by the Orents on a month-to-month basis, while excluding potentially nonessential and/or incidental expenses (*cf.*, *e.g.* NYSCEF # 210 [pool expenses of \$678.91]; NYSCEF # 192 [landscaping expenses \$3,965.36]; NYSCEF # 186 [premium car payments totaling \$3,391.73]; *see also* NYSCEF # 182 ¶ 8 [noting average monthly car payments of \$2,787.94]; *id.* ¶ 14 [noting that landscaping services average \$1,982.68 per month]). This amount also fairly strikes a balance between the parties' competing positions, which were ultimately not that far apart.

As for the additional conditions requested by White Oak, the court declines to engage in any further babysitting of the parties by delineating how the Orents may pay their reasonable living expenses. The parties are both acutely aware that the Orents are subject to an injunction pursuant to the terms set forth in the PI Order. The court, in turn, fully expects that the Orents will respect that court order and act in a manner that is consistent with the current scope of the preliminary injunction.

III. White Oak's Pending Turnover Application (MS001)

White Oak commenced this action on January 17, 2023, and, the next day, moved by order to show cause for, among other relief, a preliminary injunction restraining Matthew from using, transferring, or disposing of any Collateral, including the Brokerage Account (NYSCEF #s1, 41). Although the parties partially resolved this motion by stipulation dated January 25, 2023 (NYSCEF # 69), White Oak's application for a turnover of the Brokerage Account remained pending before the court (see NYSCEF #'s 70-71). Now, in recent correspondence to the court, White Oak has stated that Matthew's transfer of assets away from the Brokerage Account rendered its turnover application moot (NYSCEF # 224 at 2 n.1). Given this representation, the court denies the remainder of White Oak's turnover application as moot.

Conclusion

For the foregoing reasons, it is hereby

ORDERED that defendant Matthew Orent and AnDreea Orent's motion (MS007) for leave to reargue this court's decision and order, dated June 13, 2023 (NYSCEF # 156), as amended on June 23, 2023 (NYSCEF # 163), is denied; and it is further

ORDERED that that defendant Matthew Orent and AnDreea Orent's motion (MS009) to modify this court's decision and order, dated June 13, 2023 (NYSCEF # 156), as amended on June 23, 2023 (NYSCEF # 163), is granted; and it is further

ORDERED that the court hereby modifies that preliminary injunction set forth in the court's decision and order, dated June 13, 2023 (NYSCEF # 156), as amended on June 23, 2023 (NYSCEF # 163), to permit the Orents to access reasonable living expenses in the amount of \$25,000 per month; and it is further

ORDERED that plaintiff White Oak's application for the turnover of Matthew Orent's Charles Schwab brokerage account (MS001) is denied as moot.

09/28/2023

DATE

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

MARGARET A. CHAN, J.S.C.