

People v Northern Leasing Sys., Inc.

2023 NY Slip Op 33492(U)

September 28, 2023

Supreme Court, New York County

Docket Number: Index No. 450460/2016

Judge: Lucy Billings

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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: PART 41

PEOPLE OF THE STATE OF NEW YORK, by
 LETITIA JAMES, Attorney General of
 the State of New York, and GEORGE J.
 SILVER, Deputy Chief Administrative
 Judge for New York City Courts,

Index No. 450460/2016

Petitioners

- against -

AMENDED DECISION
AND ORDER

NORTHERN LEASING SYSTEMS, INC., LEASE
 FINANCE GROUP LLC, MBF LEASING LLC,
 LEASE SOURCE-LSI, LLC a/k/a LEASE
 SOURCE, INC., GOLDEN EAGLE LEASING
 LLC, PUSHPIN HOLDINGS LLC, JAY COHEN
 a/k/a ARI JAY COHEN, individually,
 as a principal of NORTHERN LEASING
 SYSTEMS, INC., as a member of LEASE
 FINANCE GROUP LLC, and as an officer
 of PUSHPIN HOLDINGS LLC, NEIL
 HERTZMAN, individually and as an
 officer of NORTHERN LEASING SYSTEMS,
 INC., JOSEPH I. SUSSMAN, P.C., JOSEPH
 I. SUSSMAN, individually and as a
 principal of JOSEPH I. SUSSMAN, P.C.,
 and ELIYAHU R. BABAD, individually and
 as a principal or associate of JOSEPH
 I. SUSSMAN, P.C.,

Respondents

APPEARANCES:

For Petitioners

Mary Alestra Esq., Special Counsel
 Mark Ladov Esq., Assistant Attorney General
 Office of Attorney General Letitia James
 28 Liberty Street, New York, NY 10005

For Respondents Joseph I. Sussman, P.C., Sussman, and Babad
 Robert A. Freilich Esq.
 Rottenberg Lipman Rich, P.C.

230 Park Avenue, New York, NY 10169

For All Other Respondents

Robert S. Smith Esq.

Katten Muchin Rosenman LLP

50 Rockefeller Plaza, New York, NY 10020

LUCY BILLINGS, J.S.C.:

The accounting that respondents have provided to petitioners through disclosure enables the court to calculate and award to petitioners a judgment without an evidentiary hearing. C.P.L.R. § 411.

I. THE JUDGMENT AGAINST THE NORTHERN LEASING RESPONDENTS

The Northern Leasing respondents, respondents other than Joseph I. Sussman, P.C., Sussman, and Babad, have provided the names and addresses of all lessees and guarantors from which the Northern Leasing respondents collected payments under these respondents' equipment finance leases and the amounts collected since April 11, 2013. In proposing the amount of the judgment, petitioners subtracted the average value that the Northern Leasing respondents provided of the equipment that lessees may have retained and subtracted any taxes on the lease payments that these respondents collected. This calculation thus assumes that the Northern Leasing respondents repossessed none of the equipment.

The court has rescinded all the leases that the identified lessees entered and the identified guarantors guaranteed, vacated all the judgments against the lessees and guarantors, and ordered

restitution. Now, armed with the undisputed evidence outlined above, the court may effect restitution by returning the amounts collected to the identified lessees and guarantors from whom the amounts were collected. See People v. General Elec. Co., 302 A.D.2d 314, 316-17 (1st Dep't 2003).

In sum, these lessees and guarantors are to be restored to the positions they were in before they entered the leases and guaranties. Respondents emphasize that many of their collection actions failed to obtain any recovery. If respondents' accounting shows respondents collected nothing from lessees or guarantors, they will receive no restitution.

Respondents further protest that restitution allows the lessees to have used the leased equipment for free. First, the Northern Leasing respondents are receiving a setoff for the value of the equipment. Second, the payments lessees and guarantors made to lease the equipment far exceed the value of the equipment had they purchased it new. People v. Northern Leasing Sys., Inc., 193 A.D.3d 67, 71 (1st Dep't 2021). Third, part of the fraudulent enterprise in which respondents engaged was that the leased equipment often was defective and unusable, and they refused to repair or replace it and prevented lessees from returning it. Id. at 71, 75.

Consequently, the court awards a judgment in favor of petitioners and against the Northern Leasing respondents for

\$680,990,038.00, the amount they collected, minus the amount they paid to the attorney respondents, Joseph I. Sussman, P.C., Sussman, and Babad, for their services in seeking to obtain or defend judgments against equipment finance lessees and guarantors under the leases. This latter amount will be the attorney respondents' disgorgement.

II. THE JUDGMENT AGAINST THE ATTORNEY RESPONDENTS

Based on respondents' accounting, petitioners propose a judgment against the attorney respondents for \$9,430,469.10. This amount comprises the Northern Leasing respondents payments to the attorney respondents for their services, minus expenses that the attorney respondents claimed, even though they would not have incurred those expenses but for their engagement in the fraudulent collection activity.

The attorney respondents insist that the Northern Leasing respondents' payments to the attorneys covered services unrelated to their collection activity in connection with the equipment finance leases. Therefore the court provided the attorney respondents an opportunity to demonstrate the amount of payments for such unrelated services and, if the attorney respondents made such a showing, an opportunity for an evidentiary hearing on the issues raised.

The attorney respondents attempt to carve out a deduction for defensive litigation or defense of adverse claims. The

attorney respondents nonetheless fail to show it was anything other than defending against lessees' or guarantors' motions to vacate default judgments, counterclaims in collection actions, or other challenges to collection activity in connection with the equipment finance leases: litigation like this proceeding, but on an individual scale.

Respondent Sussman in his affidavit seeks to carve out legal advice and consultation, legal research and memoranda, and services related to compliance with the law, without any further description or explanation. Collection activities involve all these services. The attorney respondents seek a deduction for services related to bankruptcies and unfunded equipment leases, but never explain why these services were unrelated to collection actions: where a defendant was in bankruptcy or an issue regarding the financing of an equipment lease arose, for example.

Sussman refers to contractual disputes, but fails to show the contracts involved were other than equipment finance leases. He refers to transactions and disputes involving the independent sales organizations (ISOs) that the court found were essential components of the fraudulent equipment finance leasing scheme. Id. at 71, 75-76. He fails to show the transactions and disputes involving ISOs were unrelated to the equipment finance leasing. Even if the attorney respondents assisted in the Northern Leasing respondents' corporate formation or structure, the attorney

respondents fail to show these services were for any purpose other than enabling their clients to conduct their equipment finance leasing enterprise and commence collection actions.

The attorney respondents refer to pre-litigation services, but fail to show they were anything other than communications to lessees or guarantors demanding their payments to avoid being sued and even collection of payments in response to such demands. Id. at 72, 78. If the attorney respondents had not engaged in the fraudulent equipment finance leasing enterprise, they never would have conducted any pre-litigation review of potential collection actions or performed any pre-litigation services. Again, the attorney respondents emphasize that many of their collection actions resulted in unsatisfied judgments. This result does not indicate that the attorney respondents were not paid for their services in obtaining the judgments or in unsuccessfully attempting to collect the judgments. Disgorgement is measured not by the loss to the defendants in the collection actions, but by the gain to the attorney respondents from their fraudulent or other wrongful activity. People v. Greenberg, 27 N.Y.3d 490, 497 (2016); People v. Applied Card Sys., Inc., 11 N.Y.3d 105, 125 (2008); People v. Ernst & Young LLP, 114 A.D.3d 569, 569-70 (1st Dep't 2014).

The only category of services attenuated from the attorney respondents' collection activities is services related to

employment. Although the attorney respondents provide no further description, it is difficult to conceive how this category relates to collection activities. Nor do petitioners suggest that it does. Therefore the court grants a deduction for this category.

This deduction is distinct from the large deduction the attorney respondents seek for payroll expenses. The entire purpose of the disgorgement order is to recover the compensation the attorney respondents received for their services. To categorize this compensation as a payroll expense that is to be deducted would defeat this purpose.

The total of all the deductions the attorneys respondents seek amounts to 45% of the \$9,430,469.10 judgment petitioners seek against the attorney respondents, a deduction of \$4,243,711.10. Sussman assesses his law firm's services related to employment as 3% of that 45%, a deduction of \$127,311.33. Therefore the court deducts \$127,311.33 from the proposed \$9,430,469.10.

III. CONCLUSION

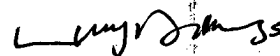
In sum, the court awards a judgment in favor of petitioners and against respondents Northern Leasing Systems, Inc., Lease Finance Group LLC, MBF Leasing LLC, Lease Source-LSI, LLC, Golden Eagle Leasing LLC, Pushpin Holdigs LLC, Cohen, and Hertzman, jointly and individually, for \$680,990,038.00. The court awards

a judgment in favor of petitioners and against respondents Joseph I. Sussman, P.C., Sussman, and Babad, jointly and individually, for \$9,303,157.77 (\$9,430,469.10 - \$127,311.33). C.P.L.R. § 411.

The court already determined that respondent Babad was jointly and individually liable for any judgment against the attorney respondents. If the attorney co-respondents seek to relieve him of liability, they may pay the judgment against them in full. The court awards costs of \$2,000.00 against each respondent individually. C.P.L.R. § 8303(a)(6).

The court stays enforcement of the judgment pending (1) notice to the lessees and guarantors from whom respondents collected lease payments and judgments, informing the lessees and guarantors of their right to restitution, and (2) the establishment of a procedure for distributing the judgment to the entitled lessees and guarantors. Respondents shall propose to petitioners the notice to be sent within 45 days after entry of this order and send this notice to the identified lessees and guarantors within 90 days after entry of this order. If petitioners object to respondents' notice, they may raise their objections via a motion by an order to show cause before expiration of the 90 days.

DATED: September 28, 2023



LUCY BILLINGS, J.S.C.