

**Scarola Zubatov & Schaffzin PLLC v Rocketfuel
Blockchain, Inc.**

2023 NY Slip Op 34328(U)

December 11, 2023

Supreme Court, New York County

Docket Number: Index No. 652887/2022

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

In opposition, defendants point out that they are both Nevada corporations, they have an office in California and employ people in California, Colorado, South Carolina and India. They observe that they have no assets in New York and conduct all of their business operations from California and India. Defendants explain that their business involves processing payments for merchants with an emphasis on permitting the acceptance of cryptocurrency for transactions.

Defendants argue that the appointment of a receiver is inappropriate because most of the funds in their accounts are a combination of customer and non-customer funds and so a receiver would have difficulty segregating those funds. They insist that the appointment of a receiver is not warranted where the judgment debtors have no assets in New York.

Defendants point out that plaintiff has other remedies to enforce the judgment, including enforcing the judgment in California and that a receiver is not likely to increase the chances that the judgment is satisfied. They also maintain that their most recent public filings (for the third quarter of 2023) show that they are doing much better financially.

In reply, plaintiff insists that defendants have raised meritless points and that they have demonstrated a contempt for the Court's orders, including the entry of the judgment. It argues that it does not matter where defendants' assets are located because this Court already has jurisdiction over defendants.

Discussion

“Upon motion of a judgment creditor the court may appoint a receiver who may be authorized to administer, collect, improve, lease, repair or sell any real or personal property in which the judgment debtor has an interest or to do any other acts designed to satisfy the judgment. The appointment of a receiver pursuant to section 5228(a) is a matter within the court's discretion. A motion to appoint a receiver should only be granted when a special reason

appears to justify one. In deciding whether the appointment of receiver is justified, courts have considered the (1) alternative remedies available to the creditor; (2) the degree to which receivership will increase the likelihood of satisfaction; and (3) the risk of fraud or insolvency if a receiver is not appointed” (*Hotel 71 Mezz Lender LLC v Falor*, 14 NY3d 303, 317, 900 NYS2d 698 [2010] [internal quotations and citations omitted]).

The Court denies the instant motion as plaintiff did not satisfy the elements cited above. Critically, it appears that plaintiff made the instant motion well before it discovered what assets defendants actually possess. Plaintiff admits that it has not yet sought to enforce the subject information subpoena (and it will address this issue by ‘separate proceeding’ [NYSCEF Doc. No. 146, n2]).

Without this information, the Court cannot properly assess if there is a “special reason” to appoint a receiver here. The Court has no idea whether defendants’ assets include cash (and, if so, precisely how much) and the extent to which these assets include intangible assets such as a patent. Allusions to public securities filings is not the same as identifying bank accounts and other specific assets. The Court sees no reason to appoint a receiver where it is unclear that such an appointment would increase the likelihood of satisfying the judgment. For instance, if defendants actually have some liquidity (they point to their third quarter 2023 filings), then a receiver may not be necessary at all.


Moreover, plaintiff did not meet its burden to show that the sale of defendant’s patent would yield any results. Plaintiff attaches a printout of the patent but there is nothing to show that this patent has a market and that bidders or potential purchasers would offer significant money for this patent. Plaintiff need not establish an exact value (of course, some estimation will be involved) but the Court declines to appoint a receiver where such limited information is

presented. It is plaintiff’s job to find and identify assets; it is the receiver’s job to take control of those assets and work to satisfy an outstanding judgment.

Nothing prevents plaintiff from making another application for this relief once it has a better understanding of defendants’ assets. If, in the future, another application to appoint a receiver is brought, then plaintiff should also include a list of possible receivers that the Court should consider. The Court takes no position on whether a receiver, if one is appointed, would be able to pursue assets located outside the state of New York. That issue is premature because, as noted above, plaintiff has not yet received information about the location (or anything else) about defendants’ assets.

Accordingly, it is hereby

ORDERED that plaintiff’s motion for the appointment of a receiver is denied.

<u>12/11/2023</u> DATE			 ARLENE P. BLUTH, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE