

AKF, Inc. v Windows & Beyond Interiors, LLC

2023 NY Slip Op 34330(U)

December 11, 2023

Supreme Court, New York County

Docket Number: Index No. 653110/2023

Judge: John J. Kelley

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JOHN J. KELLEY PART 56M

Justice

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AKF, INC, doing business as FUNDKITE,

Petitioner,

- v -

WINDOWS & BEYOND INTERIORS, LLC, VINCENT
CHARLES GEORGES DESHAYES, BAILEY'S BLINDS,
LLC, FINE FOOD, INC., and VANISHING SCREEN
SYSTEM, LLC

Respondents.

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INDEX NO. 653110/2023

MOTION DATE 08/08/2023

MOTION SEQ. NO. 001

**AMENDED DECISION, ORDER,
AND JUDGMENT**

The court's prior decision and order, dated December 8, 2023, is recalled and vacated, upon the court's own motion, to add a provision expressly vacating and dissolving a temporary restraining order set forth in the initiatory order to show cause, and the following order and judgment is substituted therefor:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

This is a proceeding pursuant to CPLR 6301, 6312(a), and 7502(c) for a preliminary injunction in aid of arbitration to restrain respondents' bank accounts, pending an award in the underlying arbitration. Although the respondents do not oppose the petition, it nonetheless is denied.

On January 17, 2023, the petitioner entered into an agreement with the respondent Windows & Beyond Interiors, LLC (WBI), pursuant to which the petitioner agreed to purchase \$282,436.00 of WBI's future receivables for the sum of \$215,600.00, less service fees in the sum of \$8,809.00, in consideration for WBI's future repayment of that sum plus 13% in annual interest. The agreement presumed a weekly "delivery" amount of \$7,060.90 from WBI's receivables via an automatic debit from WBI's bank account, with a monthly reconciliation. The

agreement provided for arbitration of any dispute under the agreement, including claims that WBI breached the agreement by failing to pay its weekly delivery.

The petitioner alleged in its petition that, beginning on June 22, 2023, WBI's scheduled weekly debit of receivables from its designated bank account was declined because the bank had stopped payment. It further asserted that WBI did not inform it whether the bank account had been closed, nor did WBI attempt to demonstrate any supposed downturn in the amount of its weekly receivables, as would have been permitted under the agreement. Neither, according to the petitioner, did WBI restore its receivables back into that account to permit the petitioner to continue to receive weekly payments. Rather, the petitioner alleged that it believed that WBI's principal began depositing WBI's receipts into his personal bank account, or into the accounts of other limited liability companies that he managed and controlled.

Sometime between June 22, 2023 and June 28, 2023, the petitioner demanded arbitration of its claim for \$169,597.88 against WBI before Civil Arbitration Inc., doing business as Rapid Ruling, an arbitral forum located in Manhattan. The petitioner commenced this proceeding for a preliminary injunction in aid of arbitration on June 28, 2023. In the initiatory order show cause, this court, pending hearing of the petition, temporarily restrained the respondents from transferring money out of their bank accounts, and restrained JPMorgan Chase Bank, as WBI's designated bank, from transferring money out of any of the respondents' accounts that were maintained at JPMorgan Chase Bank. The petitioner properly served the respondents in accordance with the method to which they consented in the underlying agreement, which was memorialized in the order to show cause.

To obtain a preliminary injunction, a movant must demonstrate, by clear and convincing evidence, (1) a likelihood of success on the merits, (2) irreparable injury if a preliminary injunction is not granted, and (3) a balance of equities in its favor (see CPLR 6301; *Nobu Next Door, LLC v Fine Arts Hous., Inc.*, 4 NY3d 839, 840 [2005]; *Doe v Axelrod*, 73 NY2d 748, 750 [1988]; *Gliklad v Cherney*, 97 AD3d 401, 402 [1st Dept 2012]; *Gilliland v Acquafredda Enters.*,

LLC, 92 AD3d 19, 24 [1st Dept 2011]; *Spinale v 10 W. 66th St. Corp.*, 193 AD2d 431, 431 [1st Dept 1993]). Although the petitioner demonstrated a likelihood of success on the merits of its underlying arbitration against WBI, inasmuch as the arbitration is based upon allegations of WBI's nonpayment, the petitioner failed to demonstrate an irreparable injury, as its damages are compensable through monetary relief (see *Atlas MF Mezzanine Borrower, LLC v Macquarie Texas Loan Holder, LLC*, 174 AD3d 150, 156 [1st Dept 2019]; *Broadway 500 W. Monroe Mezz II LLC v Transwestern Mezzanine Realty Partners II, LLC*, 80 AD3d 483, 484 [1st Dept 2011]; *Matter of AKF, Inc. v Polonez Parcel Serv., LLC*, 2023 NY Slip Op 33055[U], 2023 NY Misc LEXIS 5346 [Sup Ct, N.Y. County, Aug. 21, 2023]). Nor has the petitioner demonstrated that WBI would be unable to satisfy a judgment against it without a preliminary injunction, as it has not established that WBI's account actually has been closed, or that WBI has no other assets that could be seized or levied upon to satisfy a judgment. The petitioner simply seeks to ensure that an arbitration award in its favor would be recoverable, which is not an adequate basis for prejudgment equitable relief (see *Credit Agricole Indosuez v Rossiyskiy Kredit Bank*, 94 NY2d 541, 548 [2000]; *Buckley v McAteer*, 210 AD3d 1044, 1045 [2d Dept 2022]; *Matter of AKF, Inc. v Polonez Parcel Serv., LLC*, 2023 NY Slip Op 33055[U]; cf. *Matter of Qwil PBC v Landow*, 180 AD3d 593, 593 [1st Dept 2020] [granting preliminary injunction in aid of arbitration where petitioner established that respondents in fact discontinued the petitioner's access to their bank account and actually transferred significant funds to other accounts]).

The court notes that CPLR 7502(c) also allows a party to seek an order of attachment in aid of an arbitration, regardless whether the arbitration is for monetary damages, but that the petition does not seek attachment as alternative relief. Even if the petition may be construed as one for attachment, none of the respondents resides in New York and, although JPMorgan Chase Bank has its principal place of business in New York, "[t]he general rule in New York is that in order to reach a particular bank account the judgment creditor [in a turnover proceeding] must serve the office of the bank where the account is maintained" (*Therm-X-Chemical & Oil*

Corp. v Extebank, 84 AD2d 787, 787 [1st Dept 1981]). This “separate entities” rule, of necessity, applies to attachments, since, “for purposes of attachment, among others, each branch of a bank is a separate entity, in no way concerned with accounts maintained by depositors in other branches or at the home office” (*Cronan v Schilling*, 100 NYS2d 474, 476 [Sup Ct, N.Y. County 1950], *affd* 282 App Div 940 [1st Dept 1953]; *see JSC VTB Bank v Mavlyanov*, 154 AD3d 560 561 [1st Dept 2017]; *National Union Fire Ins. Co. of Pittsburgh, Pa. v Advanced Empl. Concepts, Inc.*, 269 AD2d 101, 101 [1st Dept 2000]; *Global Technology, Inc. v Royal Bank of Canada*, 34 Misc 3d 1209[A], 2012 NY Slip Op 50023[U], *3, 2012 NY Misc LEXIS 47, *6-7 [Sup Ct, N.Y. County, Jan. 11, 2012] [and cases cited therein]). Since the petitioner has not shown that any of the respondents maintains a bank account at a JPMorgan Chase branch in New York, any account maintained by the respondents in their states of residence would be beyond the jurisdiction of this court. Nor does the petitioner present admissible evidence that an arbitration award would be rendered ineffective absent an attachment (see CPLR 7502[c]; *Matter of Mermaid Marine, Ltd. v Maritime Capital Mgt. Partners, Ltd.*, 147 AD3d 498, 499 [1st Dept 2017]; *Sullivan & Worcester LLP v Takieddine*, 73 AD3d 442, 442 [1st Dept 2010]). Therefore, to the extent that the petition may be construed as seeking an attachment of the respondents’ bank account, that relief must be denied as well.

In light of the foregoing, it is,


ORDERED that the petition is denied; and it is further,

ORDERED that the temporary restraining order set forth in the initiatory order to show cause dated June 30, 2023 and entered July 3, 2023, be, and hereby is, vacated and dissolved; and it is,

ADJUDGED that the proceeding is dismissed.

This constitutes the Amended Decision, Order, and Judgment of the court.

12/11/2023
DATE



JOHN J. KELLEY, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<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