

**Matter of GP Trading Partners, LLC v Shapiro**

2023 NY Slip Op 34610(U)

December 20, 2023

Supreme Court, Kings County

Docket Number: Index No. 528987/22

Judge: Carolyn E. Wade

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 84 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 20th day of December, 2023.

P R E S E N T:

HON. CAROLYN E. WADE,

Justice.

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In the Matter of the application for a judgment pursuant to Article 62 and Article 75 of the CPLR

GP TRADING PARTNERS, LLC,

Petitioner,

- against -

Index No. 528987/22

SAADIA SHAPIRO, VADIM LEYBEL, CAST GROUP LLC, PAZ GLOBAL VENTURES, LLC, REBOUND HOLDINGS, LLC and MAPLE STREET LLC,

Respondents.

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The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/  
Petition/Cross Motion and  
Affidavits (Affirmations) Annexed  
Opposing Affidavits (Affirmations)  
Reply Affidavits (Affirmations)

458-461, 470-478, 479-480  
471-478, 488  
485, 488

Upon the foregoing papers, respondent Paz Global Ventures, LLC (Paz) and pro se respondent Saadia Shapiro (Shapiro) move (in motion sequence [mot. seq.] three), for an order, pursuant to CPLR 3215 (a), granting them a default judgment against petitioner GP Trading Partners LLC (GTP or petitioner) on Paz's and Shapiro's counterclaims (NYSCEF Doc No. 458).

Petitioner GPTP cross-moves (in mot. seq. four) for an order: (1) dismissing the counterclaims asserted by respondents Paz, Shapiro, Global Ventures, LLC (Global), Rebound Holdings, LLC (Rebound) and Maple Street LLC (Maple), pursuant to CPLR 3211 (a) (5) and (a) (6), and (2) reimbursing GPTP for its costs, travel expenses and attorneys' fees that it incurred as a result of respondents' motion, pursuant to 11 NYCRR § 130-1.1 (c) (Part 130) (NYSCEF Doc No. 470).

Respondents Vadim Leybel (Leybel) and Cast Group, LLC (Cast) cross-move (in mot. seq. five) for an order: (1) granting petitioner GPTP's cross-motion and dismissing the counterclaims asserted by respondents Shapiro, Paz, Rebound and Maple, pursuant to CPLR 3211 (a) (5) and (a) (6), and (2) reimbursing them for their costs, travel expenses and attorneys' fees incurred as a result of respondents' motion, pursuant to Part 130 (NYSCEF Doc No. 479).

### Background

On October 5, 2022, GPTP commenced this Article 75 proceeding, by order to show cause (OSC), including a verified petition with 30 exhibits, an attorney affirmation and a memorandum of law (NYSCEF Doc Nos. 1-34). The verified petition alleges that:

“[t]he Petitioner in the above-entitled action is also the [c]laimant in an arbitration proceeding captioned ‘*GP Trading Partners, LLC vs. Paz Global Ventures, LLC, The Cast Group, and Saadia Shapiro*,’ which is pending before the American Arbitration Association (Case No. 01-21-0016-4629) (the ‘Arbitration’).

“[t]his Petition is made in support of an application pursuant to CPLR § 7502 (c) for a temporary restraining order [TRO] against the Respondents, and an order of attachment against the Respondents' real property located at 3145 Coney Island

Avenue, Brooklyn, New York 11235 (the 'Premises'), pending the Arbitration" (NYSCEF Doc No. 1 at ¶¶ 2-3).

The petition explains that the Arbitration, which commences in January 2024, regards an allegedly fraudulent Ponzi scheme orchestrated by the individual respondents during the Covid-19 pandemic:

"[d]uring the Covid-19 pandemic, Respondent Shapiro used a meticulously calculated network of strawman entities and co-conspirators, including Respondents Vadim Leybel and Boris Leybel, to defraud GPTP and steal Three Million Thirty-Five Thousand Eight Hundred Forty-Six and 00/100 (\$3,035,846.00) Dollars from it between December 2020 and April 2021 as part of an elaborate PPE fraud. The PPE Ponzi-like scheme eventually began to unravel, and by July 2021 GPTP had clear-cut evidence that Respondents Saadia Shapiro, Vadim Leybel, and Boris Leybel – using their corporate alter egos Respondents PAZ and CAST – had intentionally defrauded GPTP for more than seven (7) months.

"Between December 8, 2020 and June 29, 2021, before GPTP had uncovered the extent of fraud committed by the Respondents, *GPTP was induced to enter into numerous written agreements regarding the purported purchase of Gloves [the Joint Venture Agreements], and they made payments to the Respondents in the total amount of \$3,035,846.00. The Respondents never intended to provide any Gloves to GPTP, and throughout this entire time knew that they would be unable to provide the materials GPTP thought it was purchasing with its payments. In order to conceal the fraud, the Respondents lied to GPTP about their relationships with various manufacturers of PPE, forged documents, actively prevented GPTP from mitigating any of its losses, and engaged in other intentional conduct designed to further defraud GPTP*" (*id.* at ¶¶ 16 and 19).

The petition alleges that "[i]n an effort to avoid having any liability for its conduct, the individuals who orchestrated the PPE Ponzi scheme – Respondents Saadia Shapiro, Vadim Leybel, and Boris Leybel – have started to liquidate and hide their assets" (*id.* at ¶

61). The petition alleges, upon information and belief, that “Respondent Shapiro has listed the Premises for sale in order to defraud his creditors and avoid having the Premises levied to repay any portion of the losses sustained by GPTP and other victims of his PPE fraud” (*id.* at ¶ 66).

GPTP’s petition asserts the following three causes of action: (1) an order of attachment against the Premises in aid of the Arbitration, pursuant to CPLR 7502 (c); (2) a preliminary injunction enjoining respondents from transferring, selling or in any way disposing of any asset they own or have an interest in, whether directly or indirectly, pending the conclusion of the Arbitration, pursuant to CPLR 7502 (c); and (3) a writ of attachment against the Premises, pursuant to CPLR 6201 (3), “in an amount of no less than \$3,035,846.00, exclusive of interest, costs and sheriff fees and expenses” (*id.* at ¶¶ 69-88).

#### *Respondents’ Answer and Counterclaims*

On January 23, 2023, respondents Shapiro (acting pro se), Paz, Rebound and Maple collectively answered the verified petition, denied the material allegations therein, asserted affirmative defenses and asserted counterclaims/cross-claims (NYSCEF Doc No. 53). Specifically, they assert the following nine counterclaims/cross-claims: (1) a judgment declaring the existence of a binding Joint Venture Agreement between GPTP, Cast, Glover and Paz, pursuant to CPLR 3001 (*id.* at ¶¶ 255-265); (2) a judgment declaring the obligations of the parties and the financial losses suffered under the Joint Venture Agreement, pursuant to CPLR 3001 (*id.* at ¶¶ 267-271); (3) breach of contract asserted against GPTP and Cast and Leybel (*id.* at ¶¶ 273-281); (4) breach of the warranty of good faith and fair dealing asserted against GPTP and Cast and Leybel (*id.* at ¶¶ 283-284); (5)

breach of fiduciary duty asserted against GPTP and Cast and Leybel (*id.* at ¶¶ 286-290); (6) fraudulent inducement asserted against GPTP and Cast and Leybel (*id.* at ¶¶ 292-296); (7) indemnification asserted against GPTP and Cast and Leybel (*id.* at ¶¶ 298-300); (8) conversion asserted against GPTP and Cast and Leybel (*id.* at ¶¶ 302-305); and (9) unjust enrichment asserted against GPTP and Cast and Leybel (*id.* at ¶¶ 307-312).

### *The April 28, 2023 Decision and Order*

On February 8, 2023, respondents Shapiro and his company, Paz, moved, by OSC, for a stay of the Arbitration, pursuant to CPLR 7503 (b) and/or CPLR 6301, pending the resolution of their first and second counterclaims/cross-claims for declaratory judgments about the Joint Venture Agreement.

By an April 28, 2023 decision and order, this court denied Shapiro's motion to stay the Arbitration (*see* NYSCEF Doc No. 466). Importantly, the court held that respondents Shapiro and Paz "could not demonstrate a likelihood of success on the merits of a viable counterclaim or cross claim that is not addressed by the Arbitration . . ." and that all issues regarding the parties' Joint Venture Agreement "will be addressed in the Arbitration":

*"the Shapiro Respondents have been actively engaged in the Arbitration, and they have specifically raised affirmative defenses and claims regarding the purported joint venture agreement in the Arbitration, and that issue is properly before the Arbitrator, and will be addressed in the Arbitration" (id. at 3-4 [emphasis added]).*

The Court also held that:

*"[t]o the extent that any valid claim exists regarding the purported joint venture agreement, it would be inextricably woven to the subject matter and the transactions being decided*

*in the Arbitration.* The parties have specifically brought these issues up during the Arbitration; and there is no prejudice to the Shapiro Respondents if this Court denies their application and permits the Arbitration to proceed” (NYSCEF Doc No. 466 at 4 [emphasis added]).

***Respondents Paz and Shapiro’s Motion for a Default Judgment on Their Counterclaims***

Meanwhile, on March 29, 2023, respondents Shapiro and Paz moved for a default judgment against petitioner GPTP for its failure to respond to their counterclaims (NYSCEF Doc No. 458).

***GPTP’s Opposition and Cross-Motion***

On June 14, 2023, GPTP opposed Shapiro and Paz’s motion for a default judgment and cross-moved to dismiss respondents’ counterclaims on the ground that they are barred by this court’s holding in the April 28, 2023 decision and order (NYSCEF Doc No. 470). Essentially, GPTP argues that respondents’ counterclaims/cross-claims are barred by this court’s holding in the April 28, 2023 decision and order, which is law of the case (NYSCEF Doc No. 471 at ¶ 14).

Notably, respondents Shapiro and Paz failed to oppose GPTP’s cross-motion to dismiss their counterclaims/cross-claims.

***Respondents Cast and Leybel’s Cross Motion***

On June 14, 2023, respondents Cast and Leybel cross-moved for an order granting GPTP’s cross-motion and dismissing the other respondents’ counterclaims/cross-claims for the same reasons asserted by GPTP (*see* NYSCEF Doc No. 479). This cross-motion was also unopposed.

### Discussion

As explicitly stated in the petition, this Article 75 proceeding was commenced for the limited purpose of obtaining a TRO “pursuant to CPLR § 7502 (c) . . . against the Respondents, and an order of attachment against the Respondents’ real property . . . pending the Arbitration” regarding an alleged Ponzi scheme and the parties’ purported Joint Venture Agreement (NYSCEF Doc No. 1 at ¶¶ 2-3).

Contrary to GPTP’s contention, the Court of Appeals has held that “mere denial of [a] motion for a preliminary injunction did not constitute the law of the case or an adjudication on the merits” (*Town of Concord v Duwe*, 4 NY3d 870, 875 [2005]). Thus, the mere fact that this court denied Shapiro and Paz’s OSC for a stay of the Arbitration pending the resolution of their first and second counterclaims/cross-claims for declaratory judgments regarding the parties’ Joint Venture Agreement, is not an adjudication on the merits of respondents’ counterclaims/cross-claims.

However, as this court previously held in its April 28, 2023 decision and order, “the Shapiro Respondents have been actively engaged in the Arbitration, and they have specifically raised . . . claims regarding the purported joint venture agreement in the Arbitration . . .” (NYSCEF Doc No. 466 at 3). The court held that those claims are properly before the Arbitrator “and will be addressed in the Arbitration” (*id.*). The Second Department has held that where “[t]he counterclaims asserted by the respondent are inextricably interwoven with the main claim by the petitioner [in the arbitration]” “the counterclaims are subject to the arbitration (*Monotube Pile Corp. v Pile Found. Const. Corp.*, 269 AD2d 531, 531-532 [2000]). Based on controlling authority, respondents’

counterclaims/cross-claims, all of which improperly raise issues regarding the Joint Venture Agreement that are already before the Arbitrator, are subject to dismissal. Accordingly, it is hereby

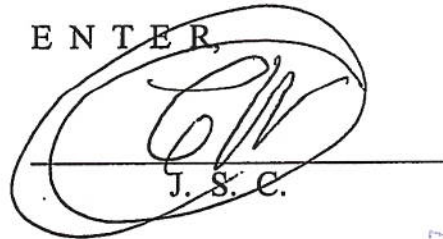
**ORDERED** that respondent Paz and Shapiro’s motion for a default judgment on their counterclaims asserted against petitioner GPTP (mot. seq. three) is **denied**; and it is further

**ORDERED** that petitioner GPTP’s cross-motion to dismiss respondents’ counterclaims (mot. seq. four) is **granted without opposition**; the branch of the cross-motion seeking an award of Part 130 sanctions is **denied**; and it is further

**ORDERED** that respondents Cast and Leybel’s cross-motion to dismiss respondents’ cross-claims (mot. seq. five) is **granted without opposition**; the branch of the cross-motion seeking an award of Part 130 sanctions is **denied**.

This constitutes the decision and order of the court.

E N T E R,



J. S. C.

2023 DEC 29 A 11:06  
KINGS COUNTY CLERK  
FILED