

**Emigrant Bus. Credit Corp. v Hanratty**

2024 NY Slip Op 30311(U)

January 25, 2024

Supreme Court, New York County

Docket Number: Index No. 158207/2022

Judge: Margaret A. Chan

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

-----X

EMIGRANT BUSINESS CREDIT CORPORATION,

Plaintiff,

- v -

JOHN ARTHUR HANRATTY, EBURY STREET  
CAPITAL, LLC, EBURY FUND 1, LP, EBURY FUND 2,  
LP, EBURY 1EMI LLC, EBURY 2EMI LLC, EB  
1EMIALA LLC, EB 2EMIALA LLC, EB 1EMIFL, LLC,  
EB 2EMIFL, LLC, EB 1EMIIN, LLC, EB 2EMIIN, LLC,  
EB 1EMIMD, LLC, EB 2EMIMD, LLC, EB 1EMINJ,  
LLC, EB 2EMINJ, LLC, EB 1EMINY, LLC, EB  
2EMINY, LLC, EB 1EMISC, LLC, EB 2EMISC, LLC, RE  
1EMI LLC, RE 2EMI LLC, EB 1EMIDC, LLC, ARQUE  
TAX RECEIVABLE FUND (MARYLAND), LLC,  
EBURY FUND 1FL, LLC, EBURY FUND 2FL, LLC,  
EBURY FUND 1NJ, LLC, EBURY FUND 2NJ, LLC,  
RED CLOVER 1, LLC, EBURY RE LLC, and XYZ  
CORPS.

Defendants.

-----X

HON. MARGARET A. CHAN:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 113, 153, 154

were read on this motion to/for CONTEMPT.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 114, 115, 116, 117, 118, 119, 155, 160, 161, 162, 163, 164

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 149, 150, 151, 152, 156, 157, 158, 159

were read on this motion to/for STAY.

Presently before the court are three motions in this action by plaintiff Emigrant Business Credit Corporation alleging claims for breach of contract, fraudulent inducement, and fraudulent transfer. In Motion Sequence (MS) 005, plaintiff moves, by order to show cause, for an order pursuant to Judiciary Law §§ 753, 773, and 774 holding defendants in civil contempt and an order pursuant to Judiciary Law §§ 750(3) and 751(1) holding defendant John Arthur Hanratty

(Hanratty) in criminal contempt (NYSCEF # 113). In MS 006, defendants move, by order to show cause, for an order pursuant to CPLR 5015 and/or 2221 vacating and/or modifying that portion of this court's January 9, 2024, order requiring defendants to deposit \$306,946.30 into the parties' joint escrow account no later than January 11, 2024 (NYSCEF # 114). And in MS 007, defendants move pursuant to CPLR 2201 for a stay of this civil action pending final resolution of the criminal action against Hanratty, captioned *United States of America v John Arthur Hanratty*, 23-mj-7566 (SDNY 2023). All three motions are opposed.

Oral arguments on all three motions were held on January 24, 2024. This Decision and Order resolves all three motions and/or pending orders to show cause.

Turning to MS 005, to establish civil contempt based on an alleged violation of a court order, the movant must establish, by clear and convincing evidence, that a lawful order of the court expressing an unequivocal mandate was in effect, and that the order was disobeyed with reasonable certainty (*Department of Env'tl. Protection of City of New York v Dept. of Env'tl. Conserv. of State of N.Y.*, 70 NY2d 233, 240 [1987]). "Intent or willfulness is not required to hold a party in contempt for disobeying a court order or subpoena" (*Yalkowsky v Yalkowsky*, 93 AD2d 834, 835 [2d Dept 1983]). Instead, the movant must establish that the party to be held in contempt had knowledge of a clear and unequivocal order, failed to comply with its terms, and prejudiced the right of another party through its disobedience (*McCain v Dinkins*, 84 NY2d 216, 226 [1994]; *Garcia v Great Atl. & Pac. Tea Co.*, 231 AD2d 401, 401-402 [1st Dept 1996]). Once this showing is made, "the burden shifts to the alleged contemnor to refute the movant's showing, or to offer evidence of a defense, such as an inability to comply with the order" (*El-Dehdan v El-Dehdan*, 114 AD3d 4, 17-18 [2d Dept 2013], *aff'd* 26 NY3d 19 [2015]).

Here, for the reasons set forth during oral arguments and upon consideration of defendants' concessions set forth on the record, the court finds Hanratty in civil contempt and imposes a civil fine of \$306,946.30 for failure to comply with the terms and restrictions set forth in the court's preliminary injunction order (NYSCEF # 47 at 8-9) and its preliminary conference order (NYSCEF # 53). Hanratty is directed to pay or cause to be paid \$306,946.30 into the parties' joint escrow account by no later than February 7, 2024.

Given this determination, the court declines to sign defendants' proposed order to show cause submitted in connection with MS 006 because that issue has been mooted by the court's resolution of MS 007. Meanwhile, the remainder of MS 005 is denied, without prejudice, to extent it seeks to hold Hanratty in criminal contempt. Plaintiff, however, is granted leave to renew if plaintiff learns of additional breaches of the court's preliminary injunction order or preliminary conference order.

Regarding defendants' application for a stay in MS 007, it is well settled that a motion pursuant to CPLR 2201 seeking a stay of a civil action pending resolution of a related criminal action is directed to the sound discretion of the court (*see Britt v International Bus Servs., Inc.*, 255 AD2d 143, 144 [1st Dept 1998]). Factors for the court to consider include, among others, the risk of inconsistent adjudications, potential waste of judicial resources, and whether "defendant will invoke his or her constitutional right against self incrimination" (*see id.*, citing *Zonghetti v Jeromack*, 150 AD2d 561, 563 [2d Dept 1989] and *DeSiervi v Liverzani*, 136 AD 527, 528 [2d Dept 1988]).

Here, after considering the parties' written and oral arguments, the court concludes that a stay of this action pending resolution of the ongoing criminal proceedings against Hanratty is warranted. As defendants note, the criminal action against Hanratty and this civil action arise out of identical facts (*compare* NYSCEF # 1 *with* NYSCEF # 152). Accordingly, a stay will avoid the possibility inconsistent results, save scarce judicial resources, and result in a potential streamlining and simplifying of the issues to be resolved in this proceeding, either by summary judgment or trial (*see Mook v Homesafe Am., Inc.*, 144 AD3d 1116, 1117 [2d Dept 2016] ["a prior determination in the criminal proceeding could have collateral estoppel effect in this action, thereby simplifying the issues"]). Furthermore, although discovery in this action is complete, briefing on plaintiff's motion for summary judgment on its breach of contract claim remains ongoing—including a forthcoming opposition and cross-motion by defendants—and a trial on plaintiff's remaining claims is also on the horizon. Hanratty's concerns regarding his constitutional right against self-incrimination are therefore not entirely obviated by the current procedural posture of this civil action. For these reasons, defendants' motion to stay pursuant to CPLR 2201 is granted.

In conclusion, it is hereby

ORDERED that plaintiff's motion to hold defendant John Arthur Hanratty in civil contempt (MS 005) is granted; and it is further

ORDERED and ADJUDGED that defendant John Arthur Hanratty is guilty of civil contempt for his failure to comply with the court's November 30, 2022, preliminary injunction order and its December 12, 2022, preliminary conference order; and it is further

ORDERED that a fine of \$306,946.30 is imposed on defendant John Arthur Hanratty, plus legal costs and expenses incurred by plaintiff in connection with its contempt motion; and it is further

ORDERED that defendant John Arthur Hanratty will be purged of the contempt by providing proof of payment of the \$306,943.30 into the parties' joint escrow account by February 7, 2024; and it is further

ORDERED that if defendant John Arthur Hanratty fails to comply with the immediately preceding paragraph, plaintiff may apply for further relief including a fine or other appropriate penalty or an adjudication of criminal contempt; and it is further

ORDERED that defendants' request for a stay pursuant to CPLR 2201 pending final resolution of the criminal action against defendant John Arthur Hanratty, captioned *United States of America v John Arthur Hanratty*, 23-mj-7566 (SDNY 2023) is granted, thereby resolving the proposed order to show cause submitted in connection with MS 007.

The court otherwise declines to sign the order to show cause in MS006 for the reasons set forth above.

01/25/2024

DATE



MARGARET A. CHAN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE