

**Zaklady Tytoniowe W Lublinie SA v MS Global  
Funding LLC**

2024 NY Slip Op 32014(U)

June 11, 2024

Supreme Court, New York County

Docket Number: Index No. 652975/2015

Judge: Joel M. Cohen

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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 03M

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ZAKLADY TYTONIOWE W LUBLINIE SA, BIOSYNTEC SA, IMAN EMAMI	INDEX NO. <u>652975/2015</u>
Plaintiffs,	MOTION DATE <u>03/13/2024</u>
- v -	MOTION SEQ. NO. <u>011</u>
MS GLOBAL FUNDING LLC,MS GLOBAL FINANCE LLC,KEN MACKAY,	<b>DECISION + ORDER ON MOTION</b>
Defendants.	
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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 011) 370, 371, 372, 373, 374, 375, 379, 380, 384, 385, 386 were read on this motion for ATTORNEY - FEES & SECURITY FOR COSTS.

Defendants MS Global Funding and MS Global Finance (the “Funds Defendants”) seek sanctions (in the form of attorney’s fees) under 22 NYCRR 130-1.1 and security for costs under CPLR 8501(a) in connection with a contemplated motion under CPLR 2221 by plaintiffs Iman Emami, Zaklady Tytoniowe w Lublinie SA (“ZTL”), and Biosyntec SA (“Biosyntec”). For the following reasons, the motion is **denied without prejudice**.

On January 26, 2024, this Court granted the Funds Defendants’ motion to dismiss the complaint in this case on the grounds of *forum non conveniens* (NYSCEF 353). Subsequently, on March 19, 2024, counsel for plaintiffs was granted leave to withdraw (NYSCEF 376 [ordering that Emami either appoint substitute counsel or advise the Court of his intention to proceed pro se within 30 days and ordering Plaintiffs ZTL and Biosyntec to appoint substitute counsel within 30 days]). Emami thereafter represented to the Court an intention to proceed pro

se, and the Court deemed him to have appeared as such (NYSCEF 388). ZTL and Biosyntec have not appointed counsel.

In his letter dated April 16, 2024, Emami indicated that he planned to file a motion for renewal or reargument (*id.*). The Court agreed to give Emami 60 days from April 29, 2024 to file his proposed motion (NYSCEF 388).<sup>1</sup> To date, that motion has still not been filed.<sup>2</sup>

On March 13, 2024, in anticipation of Emami's contemplated motion for renewal or reargument, counsel to the Funds Defendants filed a motion for sanctions under 22 NYCRR 130-1.1 and for security for costs under CPLR 8501(a) (NYSCEF 370).

### **I. Attorneys' Fees**

22 NYCRR 130-1.1 states that “[t]he court, in its discretion, may award to any party or attorney in any civil action or proceeding before the court . . . costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney’s fees, resulting from frivolous conduct as defined in this Part.” Under this section:

conduct is “frivolous” if:

- (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;

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<sup>1</sup> The so-ordered letter (NYSCEF 388) also granted a 30-day extension to ZTL and Biosyntec to retain counsel. However, as of June 11, 2024, those entities have still not retained counsel. Emami cannot proceed on their behalf (in connection with a motion or otherwise) and they cannot proceed pro se (*see* CPLR 321[a]). Whether and to what extent that impacts the viability of any motion filed by Emami remains to be seen.

<sup>2</sup> Emami's papers opposing Defendants' motion suggest he believes they were filed “in support of” his contemplated motion for renewal and/or re-argument. If that is his belief, it is incorrect. Emami has not filed a motion, only opposed one (*see* NYSCEF 379; *see also, e.g.,* CPLR 2214; CPLR 2221). Although the Court will show some flexibility to accommodate a pro se litigant, he must still follow the basic rules of procedure. Without a filed motion, there is nothing for the Court to decide.

- (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
- (3) it asserts material factual statements that are false.

(*Id.*)

With regard to sanctions, the Fund Defendants chiefly argue that Emami's contemplated motion is frivolous and designed to harass (NYSCEF 371, at 3-4). To perhaps state the obvious, the Court cannot evaluate the merit of a motion that has not yet been filed. By contrast, the cases upon which the Fund Defendants rely on sanctionable conduct that had already occurred (*see Miller v Cruise Fantasies, Ltd.*, 74 AD3d 919, 920 [2d Dept 2010]; *see also Marx v Rosalind & Joseph Gurwin Jewish Geriatric Ctr. Of Long Island, Inc.*, 148 AD3d 696, 697 [2d Dept 2017]). Thus, the motion for sanctions is denied without prejudice as premature.

## II. Security for Costs

Defendants also move for security for costs under CPLR 8501. That section provides for such security as of right where no plaintiff "is a domestic corporation, a foreign corporation licensed to do business in the state or a resident of the state when the motion is made" (CPLR 8501[a]). The amount is ordinarily capped at \$500.00 in New York County, although the Court may set a higher amount (*see* CPLR 8503).

However, this action is already disposed, and all costs have already been incurred. Defendants can pursue costs by enforcing its judgment. The statute upon which Defendants relies is designed to be used prior to judgment (*see Clement v Durban*, 147 AD3d 39, 42 [2d Dept 2016]; CPLR 8502 [authorizing dismissal of the action if security is not given on order]; *see also Sorin v Shahmoon Indus.*, 30 Misc2d 429, 432 [Sup Ct NY County 1961] [stating the predecessor statute would require security for costs posted before judgment]). If Emami's

contemplated motion succeeds in resuscitating this case, the Funds Defendants may move for security for costs at that point.

Accordingly, it is

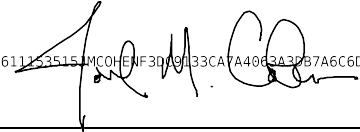
**ORDERED** that Defendants' motion for an order awarding attorneys' fees and directing the posting of security for costs by Plaintiffs is **denied without prejudice**.

This constitutes the Decision and Order of the Court.

6/11/2024

DATE

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JOEL M. COHEN, 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