

AKF Inc. v CI Mgt. Servs. LLC

2024 NY Slip Op 32026(U)

June 14, 2024

Supreme Court, New York County

Docket Number: Index No. 152474/2020

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14

Justice

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AKF INC. D/B/A FUNDKITE,

Petitioner,

- v -

CI MANAGEMENT SERVICES LLC, ELITE WATER SERVICES, LLC,ASHLEY ROSE RYCKMAN, EDWARD V. RYCKMAN

Respondent.

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INDEX NO. 152474/2020

MOTION DATE N/A, N/A¹

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

were read on this motion to/for AMEND/MODIFY DECISION/ORDER/JUDGMENT .

The following e-filed documents, listed by NYSCEF document number (Motion 002) 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46

were read on this motion to/for DISMISS .

Respondents' motion (MS002) to dismiss is denied and the petition (MS001) is adjourned to July 26, 2024 for submission only.

Background

Petitioner obtained a judgment against non-parties Controlled Irrigation LLC, Controlled Landscaping and Edward Albert Ryckman, Jr. in Queens County Supreme Court via a February 2019 confession of judgment for \$147,975.38 (NYSCEF Doc. No. 5). The parties' dispute arose out of a receivables agreement whereby Controlled Irrigation would provide a 15% share of its daily receivables to plaintiff until the purchase price was paid.

¹ The Court recognizes that the motion to dismiss was fully briefed more than three years ago. Although this proceeding was only recently transferred to this part, the undersigned apologizes for the absurd and unacceptable delay in the issuance of this decision.

Petitioner alleges that after the confession of judgment, Mr. Edward A. Ryckman, Jr. along with respondent Ryckman (Edward V. Ryckman) and his daughter (Ashley Ryckman) conspired to fraudulently transfer all the assets of Controlled Irrigation to respondents CI Management Services, LLC (“CI Management”) and Elite Water Services, LLC (“Elite Water”). Petitioner argues that CI Management and Elite Water are in the same business as Controlled Irrigation—commercial water and irrigation products and services. Petitioner alleges, upon information and belief, that Mr. Ryckman (the judgment debtor) is running Controlled Irrigation through CI Management and Elite Water as a way to prevent petitioner from satisfying the aforementioned judgment. It insists that CI Management and Elite Water are alter-ego/successors to Controlled Irrigation and Controlled Landscaping.

Respondents move to dismiss on the ground that this Court lacks jurisdiction. Respondent Ashley Ryckman observes that Edward A. Ryckman is her father and that neither she nor CI Management has anything to do with New York. Ms. Ryckman contends that she does not own any property in New York nor did she sign any agreement in New York and that all of the relevant companies and individuals are in Florida. Ms. Ryckman contends she is the owner/managing member of CI Management.

Edward V. Ryckman also submits an affidavit in which he admits he is the owner of respondent Elite Water Services LLC and makes similar arguments about the lack of connection to New York.

In opposition, Petitioner contends that this Court has jurisdiction over respondents based on its alter-ego liability theories. Petitioner maintains that respondents conspired to create CI Management and Elite Water Services to avoid the obligations of Controlled Irrigation.

Discussion

As an initial matter, the Court observes that although respondents' notice of motion referenced a memorandum of law in support, no such document was ever uploaded. And despite the fact that the notice of motion referenced numerous grounds for dismissal, the only basis cited in the affidavits from respondents is that this Court lacks jurisdiction. This Court will therefore only consider that ground (respondents also failed to submit a reply).

The only basis for respondents' inclusion in a proceeding filed in New York is a forum selection clause contained in the receivables contract (NYSCEF Doc. No. 3, § 4.5). That is what led to the confession of judgment being filed in Queens County even though this record suggests that respondents have no other connection to New York.

“A non-signatory may be bound by a contract under certain limited circumstances, including as a third-party beneficiary or an alter ego of a signatory or where it is a party to another related agreement that forms part of the same transaction. A non-signatory may also be bound by a forum selection clause where the non-signatory and a party to the agreement have such a “close relationship” that it is foreseeable that the forum selection clause will be enforced against the non-signatory” (*Highland Crusader Offshore Partners, L.P. v Targeted Delivery Tech. Holdings, Ltd.*, 184 AD3d 116, 122 [1st Dept 2020]). A Court may exert jurisdiction over a non-party to a contract containing a forum selection clause where that party was part of an alleged fraudulent conveyance (*see Borden LP v TPG Sixth St. Partners*, 173 AD3d 442, 443 [1st Dept 2019]).

Here, petitioner sufficiently alleged that respondents engaged in a scheme to hide assets from petitioner by transferring funds and other assets to respondents. It contends that these transfers rendered the original judgment debtors unable to satisfy the confession of judgment.


The caselaw cited above holds that even third parties can be forced to litigate in New York under these circumstances. In fact, a similar Supreme Court case involving a receivables contract found that certain parties were subject to jurisdiction in New York even though they had not signed the subject receivables contract containing the forum selection clause (*Kapitus Servicing, Inc. v Zumma Mgt. Group, LLC*, 81 Misc 3d 1222(A) [Sup Ct, NY County 2023] [holding that Ohio residents were subject to jurisdiction in New York where plaintiff alleged that they had transferred money as part of an alter ego theory of liability]).

The Court emphasizes that respondents only included affidavits in support; that is, they did not address any of the alter-ego arguments raised by petitioner in its opposition to the motion to dismiss. Based on this record, petitioner sufficiently cited a basis upon which this Court can exert jurisdiction over respondents.

Accordingly, it is hereby

ORDERED that respondents’ motion to dismiss is denied (MS002) and they are directed to answer pursuant to the CPLR; and it is further

ORDERED that the petition (MS001) is adjourned to July 26, 2024 on submission only.

<p style="text-align: center;"><u>6/14/2024</u></p> <p style="text-align: center;">DATE</p>	 <hr style="border: 0; border-top: 1px solid black;"/> <p>ARLENE P. BLUTH, J.S.C.</p>																			
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