Epic Sports & Entertainment, Inc. v Cohen

2024 NY Slip Op 32670(U)

July 12, 2024

Supreme Court, New York County

Docket Number: Index No. 656238/2023

Judge: Melissa A. Crane

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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. MELISSA A. CRANE** **PART** **60M**

Justice

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EPIC SPORTS & ENTERTAINMENT, INC.,

Plaintiff,

- v -

GREGORY D. COHEN, GREG COHEN PROMOTIONS, LLC, BULLDOG BOXING PROMOTIONS LLC, SALITA PROMOTIONS CORP.,

Defendant.

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INDEX NO. 656238/2023

MOTION DATE 04/02/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 58, 59, 60, 61, 62, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 87, 90, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 218

were read on this motion to/for ORDER OF ATTACHMENT.

In MS 01, plaintiff Epic Sports seeks a pre-judgment attachment pursuant to CPLR 6201 (3). It seeks an attachment "to prevent [defendant] Salita from paying any monies to [defendants] Cohen, GCP and/or Bulldog [collectively, the Cohen Defendants] due to . . . the Cohen Defendants' fraudulent attempt to divert monies from GCP to Bulldog to evade GCP's creditors, including, . . . Epic Sports" (Doc 4, para 3 [Sullivan aff.]). Defendants oppose the motion.

Background

The facts are taken from the complaint unless noted otherwise (*see* Doc 1 [summons and complaint]).

The Epic Agreement and Dinu's First Bout

Plaintiffs allege that GCP entered into a co-promotional agreement (CPA) with nonparties Bogdan Dinu, a professional boxer, and his manager, S.C. King Promotion S.R.L.

(King) [a Romanian boxing company]. The CPA was signed in February 2018. The CPA required GCP to promote Dinu in at least 3 bouts per year. Dinu's minimum purse for those bouts was $25,000 (Doc 2, Ex. 2). In August 2018, GCP and plaintiff entered into an Agreement and Assignment of Undivided Interest in Boxing Co-Promotional Agreement (the Epic Agreement). In the Epic Agreement, GCP assigned and transferred a 25% interest in the CPA, and Epic agreed to provide Dinu's minimum purse for his first two bouts (*id.*, Ex. 3).

Plaintiff asserts that it offered Dinu a bout on an upcoming boxing event featuring boxers Pulev and Fury in Bulgaria (the Bulgaria Event). Plaintiff states that it entered into a bout agreement with Dinu on 10/11/18 (*id.*, Ex. 6). Plaintiff asserts that it negotiated with Dinu's opponent, Tom Little, and verbally agreed to provide Little's purse for the Bulgaria Event. The bout was announced at a press conference on 10/24/18.

Cohen then contacted plaintiff and convinced it to remove the Dinu/Little bout from the Bulgaria Event in order to schedule Dinu to a fight a different boxer, Miller, for the "vacant WBA Regular World Heavyweight Championship" (Doc 1, para 30 [complaint]). At the time, GCP and defendant Salita shared co-promotional rights for Miller's bouts. Plaintiff removed Dinu from the Bulgaria event and made arrangements for Dinu to fly to New York to announce the Miller/Dinu bout at press conference on 10/28/18. Thereafter, Cohen allegedly lied to plaintiff's principals by telling them that the WBA had agreed to sanction the Miller/Dinu heavyweight championship bout. The WBA did not, apparently, sanction the fight for the WBA Heavyweight Championship title. At the Miller/Dinu Bout on 11/17/18, plaintiff learned that the Miller/Dinu bout was only sanctioned for the interim North American Boxing Association (NABA) heavyweight title. NABA is a regional WBA affiliate, and its heavyweight title is

"vastly inferior to a WBA world title" (Doc 1, para 44). This meant significantly less profit for the promoters.

Plaintiff alleges:

> "47. On information and belief, GCP entered into a POS agreement with MB to provide the services of Dinu for the Miller/Dinu Bout for a POS fee of $450,000.
>
> 48. On information and belief, GCP entered into a bout agreement with Dinu for a purse of $280,000.
>
> 49. Under the GCP/Epic Agreement, there were therefore $212,000 in "net profits" for the Miller/Dinu Bout under the GCP/Epic Agreement of which 25%, or $53,000, was due Epic Sports"

(Doc 1, paras. 47-49).

Plaintiff also alleges that GCP never paid plaintiff any sums for the Miller/Dinu Bout (*id.* para 52).

The Subsequent Bouts and Cohen's Conviction

Plaintiff also alleges that it later arranged for Dinu to fight Pulev on 3/23/19 in California. Plaintiff asserts, on information and belief, that "GCP negotiated . . . with Top Rank" (a co-promoter for that bout) "to be compensated for its promotional rights to Dinu under the CPA." However, GCP "never accounted . . . for the net profits due [to] Epic Sports with respect to its 25% share . . . from the Pulev/Dinu Bout" (*id.*, para 62). Dinu lost both the Miller/Dinu bout and the Pulav/Dinu bout.

In the following year, Dinu "resurrected" his career by winning two bouts that plaintiff arranged. During that time, Cohen was indicted and then convicted for wire fraud. He was incarcerated for 6 months in 2020 and he can no longer operate as a boxing promoter because he cannot hold a NYS Athletic Commission license (*id.* para 4). As a result of Cohen's inability to operate GCP, he allegedly created defendant Bulldog Boxing Promotions (BBP) to continue

promoting fights. In March 2021, "Cohen fraudulently assigned [GCP's] rights in Dinu to Bulldog" (*id.* para 65). Nonparty QP and BBP then co-promoted the Dinu/Dubois bout scheduled in London in June 2021. Plaintiff alleges that Cohen, GCP, and BBP (the Cohen Defendants) "failed to account for or pay over Epic Sports' share from the Dinu/Dubois Bout as well as [Epic's] share of the monies earned by the Cohen Defendants from the Dubois Options" (*id.* para 65).

Plaintiff's Claims

Plaintiff asserts the following claims in its complaint: (1) fraud against the Cohen Defendants for misrepresenting that the WBA agreed to sanction the Miller/Dinu bout for the world heavyweight title, and for "fraudulently transferr[ing] GCP's rights in Dinu to Bulldog for no consideration to evade GCP's contractual obligations under the Epic/GCP Agreement" (*id.*, paras 66-71); (2) breach of contract against GCP for its failure to pay Epic for Dinu's bouts (*id.* paras 72-77); (3) breach of the implied covenant of good faith and fair dealing for GCP's lies concerning the WBA, its failure to provide plaintiff with certain underlying contracts, and its failure to pay plaintiff for Dinu bouts (*id.* paras 78-84); (4) negligent misrepresentation regarding the WBA heavyweight title (*id.* paras 85-91); and accounting.

Discussion

> "A plaintiff seeking an order of attachment must show the probability of its success on the merits of its cause of action, that one or more grounds for attachment provided for in CPLR 6201 exist, and that the amount demanded from the defendant exceeds all counterclaims known to the plaintiff (CPLR 6212[a])"

(*Reed Smith LLP v LEED HR, LLC*, 156 AD3d 420, 420-21 [1st Dept 2017]).

"Attachment is a 'harsh' remedy, and is construed narrowly in favor of the party against whom the remedy is invoked" (*VisionChina Media Inc. v Shareholder Representative Services,*

LLC, 109 AD3d 49, 59 [1st Dept 2013]). "Whether to grant a motion for an order of attachment rests within the discretion of the court" (*id.*).

Contrary to defendants' arguments, plaintiff will likely succeed on the merits for its breach of contract claim, at least to the extent that plaintiff asserts it was not paid its 25% share for the Miller/Dinu bout. Plaintiff is also likely to succeed on its accounting claim. Even if Cohen's affirmation is admissible, the court rejects defendants' argument that the Epic Agreement was "voided from the outset" because "Epic failed to perform or satisfy the preconditions for obtaining a 25% interest in Dinu" (Doc 64, para 22 [Cohen aff.]). Plaintiff has adequately alleged that it offered Dinu the minimum purse for the Bulgaria bout, and that is sufficient under the CPA (Doc 2, Ex. 2, para 7) and the Epic Agreement (*id.* Ex 3, para 3 ["ESE shall offer to fighter a purse of at least $25,000 for a bout on October 27, 2018."]). These agreements do not make the boxer's acceptance of the offer a condition precedent. Plaintiff has also established that it is likely to succeed in proving that BBP is Cohen's and GCP's alter ego.

The court cannot conclude, on these papers, that plaintiff is likely to succeed on its fraud, breach of implied covenant, or negligent misrepresentation claims. Plaintiff has not adequately established what, if any, non-speculative damages it sustained due to the alleged misrepresentations or withheld documents.

Next, plaintiff asserts that an attachment is proper under CPLR 6201 (3), which states that an order of attachment may be granted where "the defendant, with intent to defraud his creditors or frustrate the enforcement of a judgment that might be rendered in plaintiff's favor, has assigned, disposed of, encumbered or secreted property, or removed it from the state or is about to do any of these acts." Under the circumstances here, plaintiff's evidence that the Cohen

defendants' unilaterally assigned GCP's Dinu rights to BBP, without notice to Epic and seemingly in violation of the Epic Agreement, is sufficient for CPLR 6201 (3).

Thus, plaintiff is entitled to an order of attachment against the Cohen Defendants for up to $53,000, the amount that GCP allegedly failed to pay plaintiff for the Miller/Dinu bout.

The court has considered the parties' remaining contentions and finds them unavailing.

Accordingly, it is

ORDERED that plaintiff's motion for a pre-judgment attachment is granted in part, and plaintiff is entitled to an order attachment against Cohen, GCP, and Bulldog in the amount of $53,000; and it is further

ORDERED that the motion is otherwise denied; and it is further

ORDERED that plaintiff shall submit a proposed order of attachment within 3 days of the date of this decision and order; and it is further

ORDERED that the funds being held in escrow shall remain in escrow until an order of attachment issues.

7/12/2024
DATE

MELISSA A. CRANE, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE

[*6]