

Moltchanov v Khaitov

2024 NY Slip Op 32781(U)

August 8, 2024

Supreme Court, New York County

Docket Number: Index No. 150489/2020

Judge: David B. Cohen

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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**

<p>PRESENT: <u>HON. DAVID B. COHEN</u></p> <p align="center"><i>Justice</i></p> <p>-----X</p> <p>GUENADI MOLTCHANOV,</p> <p align="center">Plaintiff,</p> <p align="center">- v -</p> <p>SERGEY KHAITOV and ANZHELA YAKUTILOVA,</p> <p align="center">Defendants.</p> <p>-----X</p>	<p>PART 58</p> <p>INDEX NO. <u>150489/2020</u></p> <p>MOTION DATE <u>08/28/2020, 04/01/2024</u></p> <p>MOTION SEQ. NO. <u>001 002</u></p> <p align="center">DECISION + ORDER ON MOTION</p>
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The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 19, 20, 23, 25, 27
 were read on this motion to/for JUDGMENT - DEFAULT.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 65
 were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

In this breach of contract action, nonparty Anzhela Yakutilova (movant Yakutilova) moves, pursuant to CPLR 4403 and 5015(a)(4), to reject the report of Special Referee Harold Bahr III dated February 27, 2024, vacate this Court’s decision and order dated February 2, 2021, and dismiss the complaint as against defendant Anzhela Yakutilova.

I. Factual and Procedural Background

This action arises out of a real estate transaction in 2013 in which plaintiff sold one of his properties located in Brooklyn (NYSCEF Doc No. 2). At that time, plaintiff was represented by defendant Sergey Khaitov, who helped plaintiff place the proceeds of the sale into a trust bearing the name of defendant Yakutilova. In the years following the initial sale, Khaitov paid monthly maintenance fees and various real estate taxes with monies from the trust. However, sometime in either 2017 or 2018, Khaitov informed plaintiff that the money in the trust was gone. Plaintiff then commenced this action against Khaitov and defendant Yakutilova in January 2020.

Plaintiff moved for a default judgment against defendants in August 2020 (NYSCEF Doc No. 16). By decision and order dated February 2, 2021, plaintiff's motion was partially granted and the matter was referred to a Special Referee to "hear and report" on "the issue of the amount due to plaintiff from [defendants] for unreturned monies as a result of the [real estate transaction]" (Doc No. 25). The Special Referee scheduled a hearing for January 24, 2024. As plaintiff was the only party to appear at that time, the Special Referee conducted an inquest and generated a report and recommendation.

By report dated February 27, 2024, the Special Referee found plaintiff was a credible witness, despite some confusing testimony (Doc No. 33). During the inquest, the Special Referee confirmed with plaintiff that \$350,831.78 was placed into the trust and \$50,550 was paid out from the trust, resulting in \$300,281.78 of damages sought by plaintiff. The Special Referee concluded that plaintiff proved his entire damages and recommended granting plaintiff's motion for a default judgment in the amount of \$300,281.78.

Movant Yakutilova now moves by order to show cause to reject the Special Referee's report, vacate the February 2024 order, and dismiss plaintiff's complaint as against defendant Yakutilova (Doc No. 47 & 62), which plaintiff opposes (Doc No. 63).¹ At oral argument, movant Yakutilova stated that this was a case of mistaken identity; she was not defendant Yakutilova and had no knowledge or involvement with the trust, she only became aware of the judgment after a relative discovered it while performing an Internet search (tr at 3-5).² Plaintiff admitted that he

¹ Although plaintiff submitted papers in opposition to the motion, such papers are functionally useless due to the difficulty of ascertaining the legal arguments articulated within them.

² "THE COURT: You say it's a case of mistaken identity --
MS. ENGSON: Yes, your Honor. . . .
MS ENGSON: Well, there is a name Anzhela Yakutilova on the check, but that is not my client. . . .
THE COURT: She is not the Yakutilova who was named in the trust, is that what you're contending?
MS ENGSON: Yes. Yes, your honor. . . .
THE COURT: Okay. So you're saying there is more than one person by the same name?"

could not identify what defendant Yakutilova looked like, he just knew that her name was associated with Khaitov and the trust (tr at 10-12).³

II. Legal Analysis and Conclusions

A. Movant Yakutilova's Motion

Movant Yakutilova contends that the Special Referee's report must be rejected and the February 2021 order vacated because this Court lacked personal jurisdiction over her, as she was never served in this action. She further contends that she is not defendant Yakutilova, and that this is a case of mistaken identity. Plaintiff maintains in opposition that movant Yakutilova cannot challenge the report or the prior order based on her assertion that she is not defendant Yakutilova.

In order to challenge the Special Referee's report and the February 2021 order, movant Yakutilova must have standing (*see Hayward v Site 4 DSA Owner LLC*, 226 AD3d 510, 510 [1st Dept 2024] [tenant could not bring action challenging regulatory agreement because she lacked standing]). However, by her own admission, movant Yakutilova lacks standing. In support of her motion, she repeatedly asserted that she was not defendant Yakutilova. Therefore, she lacked standing to move this Court to reject the report and vacate its prior order (*see Deutsche Bank National Trust Co. v Nachimovsky*, 188 Ad3d 811, 812 [2d Dept 2020] [nonparty could not oppose motion because she lacked standing]; *US Bank N.A. v Cruz*, 2017 NY Slip Op 31964[U], *1 [Sup

MS ENGSON: Apparently.” (tr. at 3-4).

³ “THE COURT: Whose Yakutilova who [sic] is on the trust?

MR. MOLTCHANOV: At the time he explained to me that –

THE COURT: Do you know who this person is?

MR. MOLTCHANOV: No, I don't know. . . .

THE COURT: You don't really know who the Yakutilova who you're suing really is?

MR. MOLTCHANOV: No. I never saw her.

THE COURT: You don't even know who she is?

MR. MOLTCHANOV: No.”.

Ct, New York County, 2017, Mendez, J.] [denying motion because party failed to demonstrate it had standing]).

Even under the plain language of CPLR 5015, movant Yakutilova does not have standing here. Pursuant to the statute, “interested” persons may seek to vacate a prior order or judgment (CPLR 5015 [a]). However, movant Yakutilova is not an interested person based on her contention that she is not defendant Yakutilova; she is not impacted by any order or judgment issued against defendant Yakutilova because they are not the same individual. Therefore, she cannot seek to challenge the February 2021 order or the Special Referee report resulting from that order (*cf. Genesis Group, LLC v North Am. Energy Credit & Clearing Corp.*, 100 AD3d 434, 435 [1st Dept 2012] [finding defendant entity had standing to challenge prior order directing nonparty to turnover escrow funds because defendant entity’s status as “a close affiliate of” additional nonparty made it interested party under CPLR 5015]).

B. Confirming the Special Referee Report

Based on the findings above that movant Yakutilova does not have standing to challenge the Special Referee’s report or the February 2021 order, the Special Referee’s report is confirmed. “CPLR 4403 requires a motion to reject a [special] referee’s report be made within 15 days of the filing of the report, while 22 NYCRR 202.44(a) requires the defendant to move to confirm or reject the report within 30 days after notice of the filing of the report” (*HSBC Bank USA, N.A. v Sewell*, 198 AD3d 953, 955 [2d Dept 2021 [citations omitted]]). However, if no party moves to confirm or reject the report, the court “shall issue its determination.” (22 NYCRR 202.44 [b]).

Here, the Special Referee’s report was filed on February 28, 2024, which gave the parties until March 28, 2024 to move to either confirm or reject the report. No such motion has been filed

by any party in this action, therefore, the Court must issue its determination. As the Special Referee’s report is supported by both the applicable facts and law, it is hereby confirmed.

The parties’ remaining arguments are either without merit or need not be addressed given the findings above.

Accordingly, it is hereby:

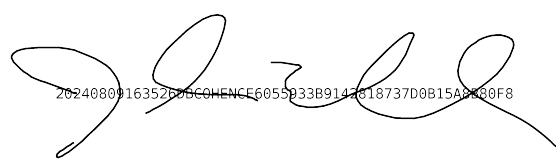
ORDERED that the motion (Seq. 002) by nonparty Anzhela Yakutilova is denied; and it is further

ORDERED that the report of Special Referee Harold Bahr, III, dated February 27, 2024, is confirmed; and it is further

ORDERED that plaintiff’s motion (Seq. 001) for a default judgment against defendants Sergey Khaitov and Anzhela Yakutilova is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendants Sergey Khaitov and Anzhela Yakutilova, jointly and severally, in the sum of \$300,281.78, with interest at the statutory rate from January 2020 until the date of the decision on this motion, and thereafter at the statutory rate, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs.

8/8/2024
DATE


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DAVID B. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE