

GT Biopharma, Inc. v TWF Global, LLC

2024 NY Slip Op 34128(U)

November 18, 2024

Supreme Court, New York County

Docket Number: Index No. 655181/2023

Judge: Louis L. Nock

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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. LOUIS L. NOCK **PART** **38M**

Justice

-----X

GT BIOPHARMA, INC.,

Plaintiff,

- v -

TWF GLOBAL, LLC, Z-ONE, LLC, and DOES 1 THROUGH
100,

Defendants.

-----X

INDEX NO. 655181/2023

MOTION DATE 02/05/2024,
05/09/2024

MOTION SEQ. NO. 002 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 002) 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 45

were read on this motion for DEFAULT JUDGMENT.

The following e-filed documents, listed by NYSCEF document numbers (Motion 003) 39, 40, 41, 42, 43, 44, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, and 60

were read on this motion for SUMMARY JUDGMENT.

LOUIS L. NOCK, J.S.C.

Upon the foregoing documents, the motion by defendant Z-One, LLC (“Z-One”), for summary judgment dismissing the action is granted, for the reasons set forth in the moving and reply papers (NYSCEF Doc. Nos. 40, 42, 44, 60) and the exhibits attached thereto, in which the court concurs, as summarized herein. Plaintiff’s supplemental submission seeking to renew its motion for default judgment against defendant TWF Global, LLC (“TWC”), is dismissed as moot.

In this interpleader action commenced pursuant to CPLR 1006, plaintiff asserts that it is holding shares of its common stock that must be issued to one or the other of defendants pursuant to “certain securities purchase agreements and an underlying \$150,000 convertible note” (complaint, NYSCEF Doc. No. 1, ¶ 1). TWC has not responded to the complaint. Z-One

filed an answer and a cross-claim against TWC for a declaratory judgment that Z-One is entitled to the shares (answer, NYSCEF Doc. No. 27).

Plaintiff's motion for a default judgment was denied without prejudice to renewal on May 7, 2024, for failure to comply with the requirements of CPLR 3215 (f) (NYSCEF Doc. No. 38). Shortly thereafter, Z-One made the instant motion. Z-One submits a Securities Assignment and Release Agreement (the "Agreement"), pursuant to which TWC conveyed all of its "rights to and interest in the Note, and any other document related to the Note, including but not limited to TWF's rights to and interest in any securities issuable upon conversion of the Note" (Agreement, NYSCEF Doc. No. 41, ¶ 1). TWC also agreed to release:

(a) any rights arising under the SPA, the Note or any document referenced therein, (b) any GT Bio corporate document, (c) under any statute, regulation or self-regulatory organization rule protecting the rights of holders or securities or (d) any claims filed in connection with the Note by TWF against GT Bio and any related claims and all other rights to recovery arising under any of the foregoing" (*id.*).

Z-One argues that the agreement obviates the need for an interpleader action, as plaintiff no longer faces competing claims to the shares to be issued.

CPLR 1006 provides that "[a] stakeholder is a person who is or may be exposed to multiple liability as the result of adverse claims. A claimant is a person who has made or may be expected to make such a claim. A stakeholder may commence an action of interpleader against two or more claimants" (CPLR 1006 [a]). Where a party does not actually face multiple liability, however, an interpleader action is not appropriate (*Royal Bank of Can. v Weiss*, 172 AD2d 167, 169 [1st Dept 1991]). Here, the Agreement ends any potential multiple liability for plaintiff regarding the shares, as TWC has unambiguously released any such claim it might have to the shares to Z-One. Z-One has thus established prima facie entitlement to summary judgment dismissing the action.

In opposition, plaintiff argues that the Agreement is insufficient to resolve the dispute, for several reasons. Plaintiff relies almost exclusively on cases from outside of the state, and federal cases, none of which is binding on this court. Primarily, plaintiff cites to *Vincent Metro, LLC v Yah Realty, LLC, et al.*, a decision of the Connecticut Supreme Court. In *Vincent Metro*, after an interlocutory judgment of interpleader, the disputing claimants voluntarily agreed among themselves that the stakeholder should release the disputed funds to one of them (*Vincent Metro, LLC v Yah Realty, LLC, et al.*, 297 Conn 489, 493, 1 A3d 1026 [2010]). The trial court then dismissed the action as moot. The Connecticut Supreme Court reversed, holding that the agreement could not resolve the matter because the stakeholder was not a party to it (*id.* at 500). Plaintiff has taken the holding of *Vincent Metro* as proof that it must be a party to any agreement in order to resolve the case, and that TWC must submit an amended pleading relinquishing its claim to the funds. Neither point is supported by any binding authority.

As an initial matter, the court notes that there is no interlocutory judgment of interpleader entered in this matter, rendering *Vincent Metro* procedurally distinguishable. The requirements posited by plaintiff are not included in the interpleader statute, which was not before the *Vincent Metro* court. Further, and unlike in *Vincent Metro*, the Agreement definitively divests TWC of any claim to the shares at issue (Agreement, NYSCEF Doc. No. 41, ¶ 1). Because the competing claims to the shares have been resolved in such a manner that plaintiff will not have to face multiple liability for their issuance—the issue upon which plaintiff commenced this action—the purpose of the interpleader statute is satisfied, and an interpleader judgment is no longer necessary. Whatever other claims defendants may have against plaintiff need not be discharged once the specific claims that prompted the interpleader action has been resolved (*Birnbaum v Marine Midland Bank, N.A.*, 96 AD2d 776, 777 [1st Dept 1983] [court denied cross-motion by

bank for interpleader by bank on the ground that the bank may have had separate liability to the claimants]). In addition, the thoroughness of the release suggests that any claim TWC might have had against plaintiff relating to the shares has now been transferred to Z-One, removing the possibility of further multiple liability. Plaintiff's arguments regarding attorneys' fees are also unavailing. Attorneys' fees are a matter of the court's discretion, and should be limited in an interpleader action (*Lincoln Life and Annuity Co. of New York v Caswell*, 31 AD3d 1, 8-9 [1st Dept 2006]). The interpleader is no longer necessary, plaintiff is seeking a disproportionate amount of fees, and has failed to provide counsel's rates or any information necessary to determine whether such rates are reasonable. Accordingly, attorneys' fees are not appropriate under the circumstances.

Finally, plaintiff submitted a party affidavit to renew its previously denied motion for default judgment against TWC (NYSCEF Doc. No. 45). However, based upon the above discussion, such a renewal is moot, as TWC is no longer a claimant of plaintiff.

Accordingly, it is hereby

ORDERED that the motion by defendant Z-One, LLC, for summary judgment is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment dismissing the action.

This constitutes the decision and order of the court.

ENTER:

Louis L Nock

<u>11/18/2024</u>			<u>LOUIS L. NOCK, J.S.C.</u>
DATE			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>
			<input type="checkbox"/> NON-FINAL DISPOSITION
			<input type="checkbox"/> GRANTED IN PART
			<input type="checkbox"/> OTHER
			<input type="checkbox"/> SUBMIT ORDER
			<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE