

**Can IV Packard Sq. LLC v Schubiner**

2025 NY Slip Op 32725(U)

August 5, 2025

Supreme Court, New York County

Docket Number: Index No. 151544/2020

Judge: Debra A. James

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. DEBRA A. JAMES**

**PART 59**

*Justice*

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CAN IV PACKARD SQUARE LLC,

Plaintiff,

- v -

CRAIG SCHUBINER,

Defendant.

-----X

**INDEX NO.** 151544/2020

**MOTION DATE** 08/05/2025

**MOTION SEQ. NO.** 004 005 005

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 95, 96, 97, 98, 99, 100, 106, 109, 110, 113, 118, 119, 120, 121, 122

were read on this motion to/for STAY.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 101, 102, 103, 104, 105, 107, 108, 111, 114, 116, 117

were read on this motion to/for PRECLUDE.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 101, 102, 103, 104, 105, 107, 108, 111, 114, 116, 117

were read on this motion to/for PRECLUDE.

ORDER

Upon the foregoing documents, it is

ORDERED that the motion, pursuant to CPLR § 2201, of defendant for an order that stays proceedings on the execution upon the foreign judgment, entered on July 22, 2022, pending the resolution of the appeal of the action before the Michigan court, is denied; and it is further

ORDERED that to the extent that it seeks discovery, the motion, pursuant to CPLR 3126, of defendant is granted and plaintiff shall serve upon defendant a notice pursuant to CPLR

3101(d) with respect to any expert that it intends to call on the trial of the issues that this court referred to a Special Referee to hear and report, within ten days of the service of a copy of this order with notice of entry; and it is further

ORDERED to the extent that it seeks to preclude the testimony of any expert to be called by plaintiff, the motion of defendant is denied, without prejudice to any ruling upon the admissibility of any testimony, expert or otherwise, made by the special referee assigned to hear and report.

#### DECISION

With respect to defendant's motion to stay execution on the judgment, and ancillary proceedings with respect to same, the court agrees with plaintiff that OneBeacon America Insurance Company v Colgate-Palmolive Company, 96 AD3d 541 (1<sup>st</sup> Dept 2012) is distinguishable from the facts of the matter herein. In OneBeacon, the First Department affirmed the grant by the trial court of stay of an New York action, pending the resolution of an appeal of a Massachusetts trial court order that dismissed an action before that court, which Massachusetts action was "substantially identical" to the action pending in New York. As plaintiff argues, in OneBeacon, there was no foreign judgment entered in New York, and therefore CPLR 2201 applied.

This court concurs with plaintiff that as defendant at bar seeks a stay of execution of a foreign judgment, domesticated in

New York, CPLR § 5404(a) applies, which requires defendant to post an undertaking<sup>1</sup>. See Ituran, USA, Inc v Dror, NYLJ, January 26, 2012, p. 33 (New York Supreme Court, Queens County, McDonald, J). On that basis, the court denies defendant's motion for relief pursuant to CPLR § 2201.

As to defendant's motion pursuant to CPLR § 3126, this court agrees that the undersigned did not refer matters of discovery to the Special Referee, and therefore this court must resolve discovery issues.

That said, Langer v Miller, 305 AD2d 270 (1<sup>st</sup> Dept), where defendant's answer was stricken for his disclosure violations, and the court determined that on that basis, defendant was not entitled to any further discovery, is distinguishable on its facts from the case at bar, where the judgment was domesticated over the opposition of defendant. Therefore, defendant at bar is entitled to notice of the expert that plaintiff intends to call pursuant to CPLR § 3101(d).

However, with respect to the issue of the need for expert testimony under the circumstances, or other questions concerning the admissibility of such expert testimony at trial, such matters will be determined by the rulings of the Special Referee to hear and report, which report will be subject to this court's

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<sup>1</sup>Of course, the parties are free to agree to a stay of execution, conditioned on defendant's posting of an undertaking.

review of such evidentiary rulings. See Genger v Genger, 144 AD3d 581, 584 (1<sup>st</sup> Dept 2016).

*Debra A. James*

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<u>8/5/2025</u>				<u>DEBRA A. JAMES, J.S.C.</u>	
	<b>DATE</b>				
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER	
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input checked="" type="checkbox"/> REFERENCE	