

<b>Horowitz v Rotenberg</b>
2025 NY Slip Op 34302(U)
October 24, 2025
Supreme Court, Kings County
Docket Number: Index No. 524407/2024
Judge: Reginald A. Boddie
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At an IAS Commercial Term Part 12 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York, on the 24<sup>th</sup> day of October 2025.

P R E S E N T:  
Honorable Reginald A. Boddie  
Justice, Supreme Court

-----X  
SHLOMO Z. HOROWITZ, individually, and also  
Derivatively in the names of 2814 E 78TH ST LLC and  
7641 S SAGINAW AVE LLC,

Index No. 524407/2024  
Cal. No. 16 MS 4

Plaintiff,

**Decision and Order**

-against-

YISSOCHER ROTENBERG,

Defendant,

-and-

2814 E 78TH ST LLC and 7641 S SAGINAW AVE  
LLC,

Nominal Defendants.

-----X

The following e-filed papers read herein  
MS 4

NYSCEF Doc Nos.  
39-50

Plaintiff Shlomo Z. Horowitz, individually, and also derivatively in the names of 2814 E 78th St LLC and 7641 S Saginaw Ave LLC (collectively, the “Nominal Defendants” or the “LLCs”), has interposed a motion (motion sequence four) for an Order pursuant to CPLR 2221 (d) granting plaintiff leave to reargue plaintiff’s motion for leave to supplement and amend the summons with notice (motion sequence three).

In the underlying motion (motion sequence three) (the “Underlying Motion”), which lies at the core of the instant motion (motion sequence four), plaintiff had moved the court for an order:

(i) granting plaintiff leave to file and serve a supplemental and amended summons with notice to add additional defendants and to assert claims against them pursuant to CPLR 305 (a), 1002 (b) and 1003, as well as to amend the caption to include the name of the additional defendants pursuant to CPLR 305 (c); and (ii) granting plaintiff leave to amend the summons with notice to add a new claim to expel defendant Yissocher Rotenberg (“Defendant Rotenberg”) from each of the Nominal Defendants. The court denied the Underlying Motion by Decision and Order dated August 7, 2025 (*see* NYSCEF Doc No. 45) (the “Underlying Decision and Order”), leading plaintiff to interpose the instant motion (motion sequence four) for an Order pursuant to CPLR 2221 (d) granting plaintiff leave to reargue plaintiff’s motion for leave to supplement and amend the summons with notice (the “Present Motion for Reargument”).

Plaintiff contends that this action arises out of an alleged fraudulent scheme carried out by Defendant Rotenberg, the managing member of the Nominal Defendants, which purportedly culminated in the unauthorized sale, assignment or transfer of Plaintiff’s membership interests in each of the LLCs (the “LLC Interests”), as well as the unauthorized transfer of the real estate owned by each of the LLCs (collectively, the “Properties”). Plaintiff posits that, under Illinois law - applicable in the present action pursuant to the respective Operating Agreements of each of the LLCs - plaintiff has standing to request that this court expel Defendant Rotenberg from each of the LLCs since Defendant Rotenberg’s purported multiple improper acts warrant his expulsion. Accordingly, in the Underlying Motion, plaintiff sought leave to amend the summons with notice to add this claim.

In the Underlying Motion, plaintiff further sought leave to supplement and amend the summons with notice to enable plaintiff and the LLCs to pursue other parties involved in the alleged fraudulent scheme that led to the theft of plaintiff’s LLC Interests, as well as the LLC’s

Properties. Plaintiff claims that adding these other parties to the present action, and adding causes of action against such new parties, constitute critical steps in the effort to rescind the unauthorized transactions at issue in the case and return the rightful ownership of the Properties to the LLCs.

Plaintiff, individually, and also derivatively in the names of 2814 E 78th St LLC and 7641 S Saginaw Ave LLC, commenced the instant action on September 10, 2024 by filing a summons with notice against Defendant Rotenberg, naming the LLCs (namely, 2814 E 78th St LLC and 7641 S Saginaw Ave LLC) as nominal defendants. On October 24, 2024 plaintiff effected service of process on Defendant Rotenberg via “nail and mail” service (*see* NYSCEF Doc No. 2, affirmation of service). Inasmuch as Defendant Rotenberg did not serve an answer, or otherwise respond, to the summons with notice, plaintiff filed a motion for a default judgment on December 10, 2024 against Defendant Rotenberg. The Court granted plaintiff’s motion for a default judgment by Decision and Order dated January 10, 2025, in which the Court instructed plaintiff to submit a proposed judgment on notice to Defendant Rotenberg within 30 days (*see* NYSCEF Doc No. 21).

Thereafter, plaintiff submitted a proposed judgment on February 4, 2025 (*see* NYSCEF Doc No. 24), which proposed judgment the Court rejected by Order dated March 7, 2025 (*see* NYSCEF Doc No. 25). Ultimately, the Court so ordered plaintiff’s proposed judgment on March 20, 2025 (*see* NYSCEF Doc No. 29).

Approximately three months after obtaining a default judgment on March 20, 2025, plaintiff filed the Underlying Motion on June 24, 2025 endeavoring to recalibrate the present proceeding. Specifically, Plaintiff, individually, as well as derivatively in the names of the Nominal Defendants, interposed a motion for an Order: (a) granting plaintiff leave to file and serve a supplemental and amended summons with notice to add additional defendants and to assert claims against them, as well as to amend the caption to include the name of the additional

defendants; and (b) granting plaintiff leave to amend the summons with notice to add a new claim to expel Defendant Rotenberg from each of the Nominal Defendants (*see* NYSCEF Doc No. 43).

In the Underlying Decision and Order, the court determined, based on an analysis of plaintiff's proposed amended summons with notice, that two of the proposed new defendants sought to be named in plaintiff's proposed supplemental and amended summons with notice are ostensibly domiciled in Skokie, Illinois (*see* NYSCEF Doc No. 41, proposed supplemental and amended summons with notice, 2-3). Specifically, plaintiff's proposed amended pleading sets forth the following two individuals as additional defendants:

Vera Pandev, Esq.  
c/o Berg, Berg & Pandev, P.C.  
5215 Old Orchard Road, Suite 220  
Skokie, IL 60077

Berg, Berg & Pandev, P.C.  
5215 Old Orchard Road, Suite 220  
Skokie, IL 60077

(*id.* at 2).

In short two of the defendants to be named in plaintiff's proposed amended summons with notice are not domiciled in New York State but appear instead to be domiciled out-of-state in Illinois. The court held in the Underlying Decision and Order that plaintiff's attempt to name two out-of-state proposed additional defendants gives rise to consequential constitutional procedural due process questions as to whether such proposed defendants are subject to personal jurisdiction in New York State, particularly since an analysis of plaintiff's proposed amended pleading reveals it to be bereft of any allegation as to the nexus between Vera Pandev, Esq. and Berg, Berg & Pandev, P.C. and New York State.

As such, the court determined in the Underlying Decision and Order that, in light of plaintiff's failure to adduce evidence in conjunction with the Underlying Motion supporting the

proposition that New York State may duly exercise personal jurisdiction over Vera Pandev, Esq. and Berg, Berg & Pandev, P.C., whose respective domiciles appear to be in Illinois, serious questions exist as to the viability of plaintiff's claims against such proposed additional defendants. In particular, plaintiff has not proffered evidence that Vera Pandev, Esq. and Berg, Berg & Pandev, P.C. transacted business in New York State in connection with the matters that led to the parties' dispute, thereby potentially rendering any assertion of personal jurisdiction by New York State over such defendants under CPLR 302<sup>1</sup> at variance with applicable precedent from the Appellate Division, Second Department (*see Pichardo v Zayas*, 122 AD3d 699, 701 [2d Dept 2015] ["[i]n order to determine whether personal jurisdiction exists under CPLR 302 (a) (1), a court must determine (1) whether the defendant transacted business in New York and, if so, (2) whether the cause of action asserted arose from that transaction"]).

In light of the constitutional due process and personal jurisdiction implications associated with plaintiff's attempt to name two additional out-of-state domiciliaries as defendants in this proceeding, without providing any evidence as to such proposed defendants' link to New York State, the court denied plaintiff's motion for leave to amend the summons with notice in the Underlying Decision in that "[m]otions for leave to amend pleadings should be freely granted . . . unless the proposed amendment is palpably insufficient or patently devoid of merit" (*see U.S. Bank, N.A. v Sharif*, 89 AD3d 723, 724 [2d Dept 2011]).

In the Present Motion for Reargument, Plaintiff challenges the Underlying Decision and Order on the basis that the court determined *sua sponte* to deny the Underlying Motion based on the constitutional due process questions as to whether the out-of-state defendants sought to be

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<sup>1</sup> CPLR 302 provides that "a court may exercise personal jurisdiction over any non-domiciliary . . . who in person or through an agent . . . transacts any business within the state or contracts anywhere to supply goods or services in the state."

named in the proposed amended summons with notice are subject to personal jurisdiction in New York State (*see* NYSCEF Doc No. 45, Horowitz affirm., ¶ 6). Plaintiff's argument on the *sua sponte* front is cogent (*see DLJ Mtge. Capital, Inc. v Ramnarine*, 177 AD3d 854, 855 [2d Dept 2019]; *see also Daniels v King Chicken & Stuff, Inc.*, 35 AD3d 345, 345 [2d Dept 2006]).

Based on the foregoing, the Court hereby grants Plaintiff's motion (motion sequence four) for an order pursuant to CPLR 2221 (d) granting plaintiff leave to reargue plaintiff's Underlying Motion (namely, plaintiff's motion for leave to supplement and amend the summons with notice) (motion sequence three), and, upon reargument, grants the relief sought by plaintiff in the Underlying Motion. As such, the court hereby grants on reargument plaintiff's Underlying Motion (motion sequence three) for an order: (i) granting plaintiff leave to file and serve a supplemental and amended summons with notice to add additional defendants and to assert claims against them pursuant to CPLR 305 (a), 1002 (b) and 1003, as well as to amend the caption to include the name of the additional defendants pursuant to CPLR 305 (c); and (ii) granting plaintiff leave to amend the summons with notice to add a new claim to expel defendant Yissocher Rotenberg from each of the Nominal Defendants. It is further ordered that, while the existing default judgment in favor of Plaintiff is unaffected by the instant Decision and Order, any new claims raised in the supplemental and amended summons with notice, including (i) new claims asserted against defendants that are subject to the existing default judgment, and (ii) claims asserted against new defendants named in the supplemental amended summons with notice, are not subject to the existing default judgment, and, as such, the aforesaid two categories of new claims may be responded to, whether via answer or dispositive motion practice, by the defendants that are subject

to either of the aforesaid two categories of new claims. It is further ordered that any new claims asserted by plaintiff against defendants in the supplemental and amended summons with notice are not subsumed within, or subject to, the existing default judgment. Any relief not expressly addressed herein has been considered and is denied.

ENTER:



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Honorable Reginald A. Boddie

HON. REGINALD A. BODDIE  
J.S.C.