

Kogan v Scamperle

2025 NY Slip Op 34685(U)

December 4, 2025

Supreme Court, New York County

Docket Number: Index No. 651255/2024

Judge: Emily Morales-Minerva

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 42M

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MAXIM ALEC KOGAN

Plaintiff,

- v -

GIULIA SCAMPERLE,

Defendant.

INDEX NO. 651255/2024

MOTION DATE 12/12/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 36, 37, 38, 39, 43

were read on this motion to/for ORDER OF ATTACHMENT

APPEARANCES:

Law Office of David McArthur, New York, New York (David F. McArthur, Esq., of counsel), for plaintiff.

David A. Kaminsky & Associates, P.C., New York, New York (David A. Kaminsky, Esq., and Dalton Herzog, Esq., of counsel), for defendant.

EMILY MORALES-MINERVA, J.S.C.

In this action alleging breach of contract, plaintiff MAXIM ALEC KOGAN, moves, by order to show cause (mot. seq. no. 01), against defendant GIULIA SCAMPERLE, his estranged wife, for an order of prejudgment attachment to all rights, title and interest that defendant has in the real property known as 20 Pine Street, New York, New York 10005. Pending a hearing on the motion, the Court (L.L. Nock, J.S.C.) granted plaintiff a temporary injunction "enjoining and restraining [defendant] from

dissipating, transferring, pledging, encumbering, selling, disposing of, or making any use of the Real Property and/or any proceeds from such Real Property up to the amount of \$80,136[.00] until further Order of this Court" (New York State Court Electronic Filing System [NYSCEF] Doc. No. 13, order to show cause, dated December 16, 2024).

While the Court (L.L. Nock, J.S.C.) made the subject motion returnable on December 18, 2024, it is unclear what occurred on that date. However, the record indicates that there was no hearing or disposition on the motion. The matter was later reassigned twice to different jurists, joining the undersigned's inventory on or about August 2025.

Thereafter, on October 09, 2025, the parties informed this Court that they had not received a disposition on the instant order to show cause. Following a conference, this Court scheduled the matter returnable for a hearing on December 01, 2025, at 2:30 P.M.

At the call of the calendar, all parties appeared. Plaintiff did not call any witnesses in support of his application for a prejudgment attachment, resting after oral arguments on the motion. Defendant opposed the motion, presenting counterarguments.

For the reasons set forth below, the Court denies plaintiff's application entirely, vacates the temporary

injunction against defendant, and marks the cross motion and motion (seq. no. 03) submitted for determination on a regular motion schedule; these motions present no emergency requiring expedited disposition.

On a motion for an order of attachment, the plaintiff "shall show, by affidavit and such other written evidence as may be submitted, that [1] there is a cause of action, that [2] it is probable that the plaintiff will succeed on the merits [of that cause of action], that [3] one or more grounds for attachment provided in section 6201 [of the CPLR] exist, and that [4] the amount demanded from the defendant exceeds all counterclaims known to the plaintiff" (CPLR § 6212 [a] [emphasis added]).

Here, plaintiff has satisfied the first and fourth of these elements. He undisputedly filed a claim against defendant for breach of contract. Further, defendant does not assert counterclaims. Therefore, plaintiff seeks a judgment in excess of that zero-amount.

However, plaintiff fails to establish the second prong for an order of attachment, the possibility of success on the merits. To the contrary, plaintiff's submissions establish clear issues of fact that turn on credibility and, perhaps, expert handwriting analysis (see generally Metropolitan Partners Group Admin., LLC v Nerney, 239 AD3d 480, 481 [1st Dept 2025]

[finding that the plaintiff had not established a likelihood of success on the merits where, "at most, there (were) factual issues surrounding" the allegation of a breach of a guaranty)].

Indeed, plaintiff contends that, during better times in their relationship, defendant, his estranged wife, signed a written contract hiring him as a real estate broker. Defendant counters that plaintiff is fabricating such hiring and that the notion that she would hire her husband is absurd. Further, defendant maintains that her signature is forged on the alleged contract between them.

In support of her contention, defendant submits the sworn statement of a forensic document examiner; said examiner opines that defendant's signature as it appears on the alleged contract is a forgery (see NYSCEF Doc No. 20, memorandum of law, exhibit A, examination letter of Patricia J. Hale, forensic document examiner, dated December 20, 2024). Plaintiff denies having forged or having had anyone forge the signature. However, his statement in this regard directly contradicts defendant's sworn statement, and no evidence is submitted to contradict the forensic examiner's opinion or expertise.

In sum, the facts are unclear, and, at this juncture, the court cannot determine which version of the parties' history is more possibly true. Plaintiff has failed to show the

possibility of his success on the breach of contract claim for purposes of a prejudgment attachment.

Plaintiff also fails to show that one or more of the grounds for attachment provided for in CPLR § 6201 exist here, the third prong of the applicable standard. Section 6201 (1), upon which plaintiff relies, provides:

"An order of attachment may be granted in any action, except a matrimonial action, where the plaintiff has demanded and would be entitled, in whole or in part, or in the alternative, to a money judgment against one or more defendants, when: . . .
1. the defendant is a nondomiciliary residing without the state."

The First Department interprets this language as requiring something more than a person being non-domiciled, holding consistently that a defendant "'residing without the State of New York is not [a] sufficient ground for granting an attachment'" (Metropolitan Partners Group, 239 AD3d at 481, quoting TAGC Mgmt., LLC v Lehman, 842 F. Supp. 2d 575, 586 [SD NY 2012]; see also VisionChina Media Inc. v Shareholder Representative Servs, LLC, 109 AD3d 49, 59 [1st Dept 2013] [stating the same]).

Hence, for purposes of CPLR § 6201 (1), a plaintiff seeking an attachment must also "demonstrate an identifiable risk' that the defendant[] 'will not be able to satisfy [a] judgment'" if any (Metropolitan Partners Group, 239 AD3d at 481, quoting

VisionChina Media, 109 AD3d at 60; see also Halse v Hussain, 193 AD3d 1140, 1143 [3d Dept 2021] [applying First Department precedent in this regard]; Owens v Taliban, No. 22 Civ 1949 [VEC], 2022 US Dist LEXIS 66857, *19 [SDNY 2022] ["Several New York cases suggest that the animating concerns behind attachment are the depletion of funds due to the defendant's behavior . . . 'New York courts have required an additional showing that something, whether it is a defendant's financial position or past and present conduct, poses a real risk to the enforceability of a future judgment'"] [citations omitted], vacated on other grounds 2023 US Dist LEXIS 31225 [2023]).

Here, plaintiff makes no showing that defendant would not be able to satisfy a judgment in the amount sought (\$80,136.00) absent an attachment of her real property located within New York, New York, valued at or around one million dollars.

Accordingly, it is

ORDERED that plaintiff's motion (seq. no. 01), by order to show cause, seeking a prejudgment attachment is denied entirely; it is further

ORDERED that the ex parte order of attachment for the premises located at 20 Pine Street, Apartment 1416, New York, New York 10005, Block 44 and Lot 1181, dated December 16, 2024, is VACATED and CANCELLED; and it is further

ORDERED that the Clerk of Court shall mark its records to reflect said vacatur and cancellation.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Date: December 04, 2025



Emily Morales-Minerva, J.S.C.