

**62nd St. Dev. LLC v Johnson**

2025 NY Slip Op 35029(U)

December 22, 2025

Supreme Court, New York County

Docket Number: Index No. 652032/2025

Judge: Phaedra F. Perry-Bond

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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. PHAEDRA F. PERRY-BOND PART 35**

*Justice*

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62ND STREET DEVELOPMENT LLC,  
Plaintiff,

- v -

ERIK JOHNSON, and BESPOKE DEVELOPMENT LLC,  
Defendants.

INDEX NO. 652032/2025

MOTION DATE 04/22/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 39, 40, 42

were read on this motion to/for DISMISS.

Upon the foregoing documents, Defendants Erik Johnson (“Johnson”) and Bespoke Development LLC’s (“Bespoke Development”) (collectively “Defendants”) motion for a stay of this action pending the completion of an ongoing related between Plaintiff 62<sup>nd</sup> Street Development LLC’s (“Plaintiff”) and non-party Bespoke Contracting, Inc. (“Bespoke Contracting”), or alternatively dismissing Plaintiff’s Complaint, is granted in part and denied in part. Plaintiff’s cross motion for an order of attachment pursuant to CPLR 6201 and seeking certain disclosure pursuant to CPLR 6220 is denied.<sup>1</sup>

**I. Background**

Plaintiff engaged Bespoke Contracting to build a storage facility at 6120 15<sup>th</sup> Avenue, Brooklyn, New York (the “Project”). Johnson is allegedly the sole owner of Bespoke Contracting. On November 17, 2023, Bespoke Contracting subcontracted excavation, foundation, and concrete work to non-party Pasenti Construction Inc. (“Pasenti Construction”). Allegedly, Johnson

<sup>1</sup> Plaintiff’s impermissible surrepley is disregarded as it was filed in violation of 22 NYCRR 202.8-c.

previously loaned \$400,000 through a promissory note to Louis Pasciuto (“Pasciuto”), the principal of Pasenti Construction. On December 14, 2023, Johnson and Pasciuto allegedly amended the promissory note to reflect that \$685,000 was owed by Pasciuto to Johnson (the “Loan”).

Johnson allegedly threatened to foreclose on the Loan as a means of coercing Pasenti to allow Bespoke Contracting to retain payments for work completed by Pasenti and its subcontractors. Johnson allegedly tried to conceal this by forcing Pasenti to execute various back charges. Plaintiff allegedly learned about the scheme once subcontractors and suppliers allegedly threatened to stop work due to lack of payment. Plaintiff demanded Bespoke Contracting return funds paid to it and provide a full accounting. Allegedly, Bespoke Contracting did not comply. According to Bespoke Contracting, Plaintiff owed over 4 million in payment to Bespoke Contracting.

On March 13, 2025, Plaintiff served Bespoke Contracting with a 7-day notice to cure before termination. On March 21, 2025, Bespoke Contracting advised Plaintiff it was abandoning the Project. In response, Plaintiff issued a notice terminating Bespoke Contracting from the Project. Bespoke Contracting initiated an arbitration against Plaintiff pursuant to the parties’ contract seeking to recover amounts allegedly owed by Plaintiff to Bespoke Contracting and seeking a declaration that it was wrongfully terminate. Plaintiff asserted counterclaims for breach of contract, fraud, and conversion against Bespoke Contracting in the arbitration. Plaintiff brought this action against Defendants, who are not part of the arbitration, alleging fraud, conversion, and fraudulent conveyance.

Defendants respond with a pre-answer motion seeking to stay this action pending the outcome of the arbitration between Plaintiff and Bespoke Contracting or alternatively seeking to

dismiss this action pursuant to CPLR 3211(a)(1), (a)(3), and (a)(7). Plaintiff opposes and seeks an order of attachment pursuant to CPLR 6201 and disclosure pursuant to CPLR 6220.

## II. Discussion

### A. Defendants' Motion

Defendants' motion is granted to the extent that this matter is stayed pending the completion of the arbitration between Plaintiff and Bespoke Contracting. The remainder of the motion is denied, without prejudice, with leave to renew upon completion of the ongoing arbitration. "Where arbitrable and nonarbitrable claims are inextricably interwoven, the proper course is to stay judicial proceedings pending completion of the arbitration, particularly where, as here, the determination of issues in arbitration may well dispose of nonarbitrable matters" (*Living Real Estate Group, LLC v Douglas Elliman, LLC*, 220 AD3d 573, 574 [1st Dept 2023] quoting *Cohen v Ark Asset Holdings, Inc.*, 268 AD2d 285, 286 [1st Dept 2000]; see also *Marcus v Millwork Trading Co., Ltd.*, 208 AD2d 448, 448 [1st Dept 1994]). That some of the parties are not subject to the arbitration clause does not require a motion seeking a stay be denied "particularly where the claims against the other parties are derivative and secondary and there are similar, if not identical, issues" (*Brown v V & R Advertising, Inc.*, 112 AD2d 856, 861 [1st Dept 1985]).

The claims are inextricably interwoven. In the arbitration Plaintiff is asserting claims for conversion and fraud against Bespoke Contracting premised on identical factual allegations and transactions as Plaintiff is asserting against Johnson and Bespoke Development in this action (see NYSCEF Doc. 10 *cf.* NYSCEF Doc. 1). A review of the damages sought in the arbitration against Bespoke Contracting and in this action against Johnson and Bespoke Development shows that in both the arbitration and in this action, Plaintiff seeks an identical amount for conversion, fraud, breach of contract, and fraudulent conveyance against all parties: \$1,293,848.93. Moreover, the

non-signatories to the arbitration provision are closely related to the signatory, Bespoke Contracting. Erik Johnson, served as an officer of Bespoke Contracting while Bespoke Contracting was performing services for Plaintiff (*see T&M Trusteeship and Management Services SA v BDO USA, LLP*, 192 AD3d 493, 494 [1st Dept 2021]). Further, in the arbitration, Plaintiff alleges that Bespoke Development is Bespoke Contracting's "sister-company" (*see* NYSCEF Doc. 10 at ¶ 13). Thus, there is ample basis to find that the claims in this action and the claims in the arbitration are, if not identical, so inextricably interwoven that a stay is warranted (*see also Michilli, Inc. v Aquavit, Inc.*, 71 Misc.3d 1205[A] at \*2 [Sup. Ct., New York County 2021] [Lebovits, J.]).

Granting a stay also serves judicial economy and ensures avoidance of potentially inconsistent results (*see County Glass & Metal Installers, Inc. v Pavarini McGovern, LLC*, 65 AD3d 940 [1st Dept 2009]). A finding in the arbitration that Bespoke Contracting is liable for fraud or conversion will likely be dispositive in this action, while a finding that Plaintiff wrongfully withheld payment and wrongfully terminated Bespoke Contracting may, at a minimum, serve as an offset to the damages being sought by Plaintiff against Johnson and Bespoke Development in this action. Therefore, a stay of this action pending the outcome of the arbitration between Plaintiff and Bespoke Contracting is warranted (*see Oxbow Calcining USA Inc. v American Indus. Partners*, 96 AD3d 646, 652 [1st Dept 2012] citing *Belopolsky v Renew Data Corp.*, 41 AD3d 322 [1st Dept 2007]; *see also Damon v Dagbid, Inc.*, 81 Misc.3d 1230(A) at \*1 [Sup. Ct., New York County 2024] citing *Uptown Healthcare Management, Inc. v Rivkin Radler LLP*, 116 AD3d 631 [1st Dept 2014]). Because the Court stays the action the Court denies, without prejudice, Defendants' motion to dismiss, with leave to renew when the stay is lifted.

### B. Plaintiff's Cross Motion

Plaintiff's cross motion for an attachment pursuant to CPLR 6201 is denied. Whether to grant or deny a request for attachment is within the Court's discretion (*J.V.W. Investment Ltd. v Kelleher*, 41 AD3d 233, 234 [1st Dept 2007]). It is well established that "[a]ttachment is a 'harsh' remedy and is construed narrowly in favor of the party against whom the remedy is invoked" (*see VisionChina Media Inc. v Shareholder Representative Services, LLC*, 109 AD3d 49, 59 [1st Dept 2013]). The party seeking attachment bears the burden of showing an identifiable risk that the defendants will not be able to satisfy a potential judgment and requires a showing of the real, not alleged, past and present conduct involving the dissipation of assets (*VisonChina, supra* at 60). A motion seeking attachment will be denied where the movant fails to show that a judgment or arbitral award in their favor will be rendered ineffectual without an attachment (*see Founders Ins. Co. Ltd. v Everest Nat. Ins. Co.*, 41 AD3d 350, 351 [1st Dept 2007]).

Aside from the onerous burdens outlined above, Plaintiff is also required to establish a likelihood of success on the merits of their claims to obtain an order of attachment (*see Metropolitan Partners Group Administration, LLC v Nerney*, 239 AD3d 480, 481 [1st Dept 2025]). "CPLR 6212(a) requires that an attachment be based upon an 'affidavit and such other written evidence as may be submitted.'" (*Metropolitan Partners, supra*). Generally, granting an order of attachment based on competing affidavits, without more, constitutes an abuse of discretion (*VisionChina, supra* at 61-62).

At this juncture, before the Court are conflicting affidavits from various parties who have all asserted claims and counterclaims against other another. While Pasciuto claims that Johnson committed fraud and forced him to divert funds meant for subcontractors to Johnson under duress (NYSCEF Doc. 18), Johnson includes e-mail correspondence from Pasciuto, with both Johnson

and Pasciuto's attorneys on the e-mails, showing Pasciuto made payments voluntarily (NYSCEF Doc. 27). According to Johnson, Pasciuto was a fifty (50%) percent owner of Bespoke Contracting until November 15, 2024, when Johnson purchased Pasciuto's shares. Curiously, shortly after Pasciuto divested from Bespoke Contracting and signed a non-compete clause, he allegedly complained to Plaintiff about Bespoke Contracting's alleged misconduct, after which Bespoke Contracting was terminated, and the general contractor role was given to Pasciuto's company.

Johnson also explains that during the construction project, amounts were advanced to Pasciuto's company, Pasenti Construction, to pay its suppliers and expenses. According to Johnson, the payments made by Pasciuto were to repay Bespoke Contracting for amounts advanced to Pasenti Construction (NYSCEF Doc. 23). Moreover, Pasciuto's claims, made under penalty of perjury, that Pasenti Construction is owed money is severely undercut by the fact that Pasciuto signed a release and lien waiver in favor of Bespoke Contracting and Plaintiff, stating that Pasenti Construction was paid for all labor, materials, and services and that Pasenti Construction paid all of its subcontractors and suppliers for all labor performed and materials furnished at the Project (NYSCEF Doc. 28). The conflicting affidavits, and evidence undercutting the affidavits relied upon by Plaintiff, severely hampers Plaintiff's burden of showing an order of attachment is appropriate.

Plaintiff also failed to show that Johnson and Bespoke Development will be insolvent and unable to satisfy any potential judgment entered against them. If anything, the bank records submitted by Plaintiff shows a bank account that has increased its balance, and transfers from Bespoke Contracting to Johnson and Bespoke Development do not show a dissipation or secretion

of assets, but instead shows assets maintained within the group of defendants Plaintiff is pursuing for damages in this case and in arbitration.<sup>2</sup>

Given the conflicting record, lack of evidence in support of Plaintiff's motion, credibility issues, and the requirement that this Court construe Article 62 narrowly and in favor of the nonmovant, the Court denies Plaintiff's motion for an order of attachment. Should further evidence arise during the arbitration, or should the arbitrator find affirmatively that Bespoke Contracting engaged in fraud and conversion, the Court may revisit Plaintiff's request for an order of attachment. However, on this record, where there are mainly conclusory allegations, contradictory affidavits, and a slew of claims and counterclaims asserted against the various corporate entities and individuals in multiple courts and in an arbitration, the Court declines to grant Plaintiff the drastic and harsh remedy of attachment.<sup>3</sup>

Because the Court denies Plaintiff's cross motion for an order of attachment, Plaintiff's cross motion for disclosure pursuant to an order of attachment is denied. CPLR 6220 requires a motion to be made "at any time after the granting of an order of attachment and prior to final judgment". Because an order of attachment has not been granted, CPLR 6220 is not applicable.

Accordingly, it is hereby,

ORDERED that Defendants' motion for a stay of proceedings pending the determination of the ongoing arbitration between Bespoke Contracting and Plaintiff is granted, but Defendants' motion to dismiss is denied, without prejudice, with leave to renew upon the lifting of the stay and depending on the outcome of the arbitration; and it is further

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<sup>2</sup> According to Defendants, Plaintiff owes Bespoke Contracting \$4,800,874.29, an amount being sought in arbitration and which is far greater than the \$1,293,848.93 being sought here.

<sup>3</sup> Bespoke Contracting sued Pasciuto and Pasenti in Kings County Supreme Court prior to the cross motion for an attachment being filed (*see Bespoke Contracting v. Pasciuto, et al.*, Index No. 511071/2025). Bespoke Contracting alleges that Pasciuto made false statements to 62<sup>nd</sup> Street Development LLC which led to Bespoke Contracting's termination and the retention of Pasciuto's company, Pasenti, as the general contractor on the Project.

ORDERED that Plaintiff's cross motion for an order of attachment and disclosure pursuant to CPLR 6220 is denied, without prejudice, with leave to renew pending any further evidence uncovered in the ongoing arbitration or pending a finding in favor of Plaintiff on Plaintiff's counterclaims for fraud and conversation against Bespoke Contracting in the ongoing arbitration; and it is further

ORDERED that all proceedings in this action are hereby stayed, except for an application to vacate or to modify said stay; and it is further

ORDERED that any party may make an application by order to show cause to vacate or to modify this stay upon the final determination of the arbitration; and it is further

ORDERED that within 10 days of entry, counsel for Defendants shall serve a copy of this Decision and Order, with notice of entry, on Plaintiff via NYSCEF.

This constitutes the Decision and Order of the Court.

12/22/25  
DATE

  
HON. PHAEDRA F. PERRY-BOND, J.S.C..

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER  
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: