

BSP Agency, LLC v Katzoff
2026 NY Slip Op 31464(U)
April 8, 2026
Supreme Court, New York County
Docket Number: Index No. 653472/2020
Judge: Andrew Borrok
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREW BORROK PART 53

Justice

BSP AGENCY, LLC,

Plaintiff,

- v -

GERALD KATZOFF,

Defendant.

INDEX NO. 653472/2020

MOTION DATE

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

GERALD KATZOFF

Plaintiff,

Third-Party Index No.

-against-

PROVIDENCE DEBT FUND III, L.P., BENEFIT STREET PARTNERS SMA LM L.P., BENEFIT STREET PARTNERS SMA-C L.P., PROVIDENCE DEBT FUND III MASTER (NON-US) FUND L.P., BENEFIT STREET PARTNERS SMA-C SPV L.P.

Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189

were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT

Upon the foregoing documents and for the reasons set forth on the record (tr. 4.7.26), (i) the Plaintiff's motion to confirm the Recommendation (hereinafter defined) of Special Referee Joseph P. Burke is GRANTED and (ii) the Defendant's cross-motion is DENIED. The Plaintiff may submit judgment consistent with the Recommendation to Part 53 (sfc-part53@nycourts.gov).

By way of background, on December 23, 2021, the Court (Chan, J.) referred this matter to a special referee to determine the amount due and owing pursuant to certain guarantees executed by the Defendant (NYSCEF Doc. No. 70). Ultimately, the matter was assigned to Special Referee Burke.

Special Referee Burke presided over a three-day trial (NYSCEF Doc. No. 97 at 1). His Recommendation reflects consideration of the evidence that was presented at trial. The Plaintiff called Michael Frick, the Chief Operating Officer of BSP Agency, Inc. The Defendant (although present for the trial) did not testify. Following trial, Special Referee Burke issued a Report with Recommendations (the **Recommendation**; *id.* at 1-12), dated March 31, 2025, pursuant to which he recommended that the Court find the Defendant liable to the Plaintiff in the amount of \$9,249,384.44 (*id.*).

Special Referee Burke's conclusion that the Plaintiff is owed \$9,249,384.44 was well supported by the record. To wit, Special Referee Burke found that "the principal balance due on the date of the bankruptcy is credibly calculated as \$20,674,553.69" (*id.* at 10). After determining the interest amount due and reducing the total amount of principal and interest due by the Plaintiff's credit bid, Special Referee Burke recommended that the amount owed under the main loan to be \$8,652,318.25 (*id.*). Because the Defendant's guarantee on the main loan was capped at \$7.5 million, Special Referee Burke recommended that the Court award the Plaintiff this amount (*id.*). Special Referee Burke further found the Defendant liable on two additional loans, the Hampton Loan and Atlantic City Loan, in the amount of \$1,749,384.44 (*id.* at 9).

In coming to these conclusions, Special Referee Burke reviewed certain bank statements (*see e.g.*, NYSCEF Doc. Nos. 109-121, 123-126, & 174 [a post-trial brief that contains certain bank statements]; *see also* NYSCEF Doc. No. 97 at 5; *see Elkaim v Elkaim*, 176 AD2d 116, 117 [1st Dept 2020]), a certain flow of funds (*see e.g.*, NYSCEF 127) and a summary chart of evidence that had been admitted into evidence (*see* NYSCEF Doc. No. 129; *Herbert H. Post & Co. v Sidney Biterman, Inc.*, 219 AD2d 214, 228 [1st Dept 1996]). He also carefully considered the testimony of Mr. Frick (who he found credibly testified as to when disbursements would be made to non-borrower entities) in coming to the conclusion that the Plaintiff had established the overall debt and amounts incurred and the amounts owed by the Defendant (NYSCEF Doc. No. 97 at 6-8, 11; *Last Time Beverage Corp. v F & V Distrib. Co., LLC*, 98 AD3d 947, 950 [2d Dept 2012] [a special referee's determinations of credibility should be given "great weight because, as the trier of fact, he or she has the opportunity to see and hear the witnesses and to observe their demeanor"]). Finally, he noted that although the Defendant was present for the whole trial, the Defendant neither testified nor presented evidence which undermined the Plaintiff's case.

As such, the record does support Special Referee Burke's Recommendation, and it is accepted by the Court (*see Atlantic Aviation Invest. LLC v Varig Logistica, S.A.*, 73 AD3d 467, 468 [1st Dept 2010] [when a special referee issues a report, "[a] court will not disturb the findings...where those findings are supported by the record"]; *see also* CPLR § 4403 [a "judge...may confirm or reject, in whole or in part,...the report of a referee...Where no issues remain to be tried the court shall render decision directing judgment in the action."])).

Finally, and for the avoidance of doubt, the Defendant is not correct that the Court should discount the interest owed because it took some time to come to a decision as to how much the Defendant owes.

The Court has considered the parties' remaining arguments and finds them unavailing.

Accordingly, it is hereby ORDERED that the Plaintiff's motion (Mtn. Seq. No. 002) is GRANTED and the Defendant's cross-motion is DENIED; and it is further

ORDERED that the Plaintiff may submit judgment consistent with the Recommendation to Part 53 (sfc-part53@nycourts.gov).

4/8/2026
DATE

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: