

**Beylerian v Kuriga**

2013 NY Slip Op 34097(U)

December 17, 2013

Supreme Court, Nassau County

Docket Number: 887/13

Judge: Robert A. Bruno

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This opinion is uncorrected and not selected for official publication.

# SHORT FORM ORDER

## SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NASSAU

PRESENT: HON. ROBERT A. BRUNO, J.S.C.

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RESIDUARY TRUST UNDER LAST WILL AND  
TESTAMENT OF ROBERT BUCHAKIAN, by its  
CO-TRUSTEE, LYNN PINAJIAN BEYLERIAN,

TRIAL/IAS PART 20  
INDEX No.: 887/13  
Motion Date: 10/18/13  
Motion Sequence: 002

Plaintiff,

-against-

PATRICIA A. KURIGA, FRANK DELLASPERANZA  
and PATRICIA DELLASPERANZA,

### DECISION & ORDER

Defendants.

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### Papers Numbered

<i>Sequence #001</i>	
Notice of Motion, Affidavit, Affirmation & Exhibits .....	1
Defendants' Memorandum of Law.....	2
Affirmation in Opposition .....	3
Reply Affirmation .....	4

Motion pursuant to CPLR 2221(a), CPLR 5015(a) and CPLR 3211(a)(1), (a)(5) and (a)(7) is determined as set forth below.

Pursuant to the order of this court dated May 16, 2013, plaintiff's unopposed motion for summary judgment in lieu of complaint in the amount of \$50,000 was granted based upon, *inter alia*, a Stipulation of Settlement executed by defendant Patricia A. Kuriga, individually and as president of Nikki's Dressing Room, Ltd. on January 26, 2012, and a personal guarantee executed by Dellasperanza defendants, the parents of defendant Patricia A. Kuriga, on or about June 21, 2007 in connection with a lease agreement between plaintiff and corporate tenant Nikki's Dressing Room, Ltd. as tenant.

### *Background*

On or about January 28, 2013, defendant Patricia A. Kuriga filed a petition for Chapter 7 bankruptcy relief under case no. 8-13-70442 in the United States Bankruptcy Court for the Eastern District of New York where an order of Discharge was entered on May 8, 2013.

Defendants assert that the instant action, commenced on January 22, 2013, should have

been stayed during the pendency of the bankruptcy proceeding pursuant to 11 U.S.C. § 362. Defendants failed to advise the court of the bankruptcy proceeding, or oppose plaintiff's motion for summary judgment in lieu of complaint, because of alleged confusion between defendants' bankruptcy attorney and the attorney handling this matter. Defendants argue that the judgment of this court entered against defendant Patricia A. Kuriga should be vacated in view of the stay and that, as to the Dellasperanza defendants, the initial application was deficient. In this regard, defendants maintain that, on plaintiff's original application, the underlying lease agreement guaranteed by the Dellasperanza defendants was not presented, nor was proof supplied establishing that the judgments issued by Third District Court: County of Suffolk, filed November 9, 2012 and December 13, 2012 respectively, were obtained pursuant to a valid lease.

Defendants contend that the May 16, 2013 order of this court must be vacated given the purported lack of proof establishing that the subject judgments were obtained as a result of the breach of a valid lease agreement guaranteed by the Dellasperanza defendants. Moreover, by virtue of the expiration/termination of the lease agreement as of November 3, 2010, defendants argue that any guaranty pertaining to the lease agreement terminated on the expiration date of the lease as a matter of law. As such, the Dellasperanza defendants maintain they cannot be found liable for any past due rent beyond November 3, 2010, the date of the alleged termination of the lease. These claims, however, are unavailing.

While defendants maintain that the judgments dated September 24, 2012 and December 13, 2012 represent alleged rent arrears post-termination of the lease to which the guaranty is not applicable, it is undisputed that defendant Nikki's Dressing Room, Ltd. remained in possession of the premises, pursuant to the terms and conditions of the lease, as evidenced by the so-ordered Stipulation of Settlement in the District Court action, executed by defendant Patricia A. Kuriga individually and as president of defendant Nikki's Dressing Room, Ltd. which provides that Nikki's Dressing Room, Ltd.:

"is the tenant of the Premises (301 Route 110, Huntington Station, New York) pursuant to a written lease . . . dated July 1, 2007";  
and that said defendant  
"agrees and confesses that the amount claimed of \$52,766.67 is due and owing Landlord without offset or defense whatsoever, through January 31, 2012."

Further, it was specifically stipulated and agreed that:

In the event Tenant fails to make any such installment payment of Arrears as aforesaid together with the full amount of fixed and additional rent due with such payment, then in such event Landlord shall, upon submission of an Affidavit of Default to such effect, have the right to enter judgment against Tenant for the remaining, unpaid Arrears, it being understood and acknowledged, that any and all payments made by Tenant after the date hereof (and until the Arrears are satisfied) for less than the full amount due and owing as of said month for rent, additional rent or Arrears, shall be first applied to the Arrears, and then to any current rent or additional rent. Nothing contained herein shall otherwise limit or

prohibit the right of the Landlord to commence any new action for summary Proceedings for "Non-Payment," or an action against any of the "Guarantors" in the event that any installment provided for hereunder towards Arrears and any regular rent payment, is not made as provided for herein or when due under the Lease, all of which rights are expressly reversed by the Landlord."

The United States Bankruptcy Code provides for an automatic stay of certain prescribed actions against the debtor or the debtor's property (11 U.S.C. §362[a][1])<sup>1</sup>. No formal notice is required to effectuate the stay. The automatic stay is activated immediately upon the filing of the bankruptcy petition and remains in effect until the entry of an order dismissing the bankruptcy proceeding. Judicial actions and proceedings, as well as extra judicial acts, in violation of a bankruptcy stay are generally void and without legal effect unless countenanced by the Bankruptcy Court in which the petition is pending (*Rexnord Holdings, Inc. v Bidermann*, 21 F3d 522, 527 [2d Cir. 1994]).

Once triggered by a debtor's bankruptcy petition, the automatic stay suspends any non-bankruptcy court's authority to continue judicial proceedings then pending against the debtor (*Emigrant Sav. Bank v Rappaport*, 20 AD3d 502, 503 [2d Dept 2005]). Only the bankruptcy court has jurisdiction to grant relief from the stay (*Levant v National Car Rental Inc.*, 33 AD3d 367, 368 [1<sup>st</sup> Dept 2006]). Where, as here, there are multiple parties to the litigation, however, the action may continue against the other parties even though the action is stayed as to the debtor. By its terms, the automatic stay does not extend to prohibit the continuation of claims against non-bankrupt parties, as long as those claims do not effect the bankrupt debtor's property (*Vasquez v New York City Health & Hosps. Corp.*, 100 AD3d 868, 869 [2d Dept 2012]; *Winters v Dowdall*, 63 AD3d 650, 652 [1<sup>st</sup> Dept 2009]).

Accordingly, the motion by defendants to vacate the order of this court dated May 16, 2013 granting plaintiff's unopposed motion for summary judgment in lieu of complaint in the amount of \$50,000 is denied as to the liability of defendant Frank Dellasperanza and defendant Patricia Dellasperanza on the guaranty.

Insofar as it pertains to defendant Patricia A. Kuriga, the order of this court, issued in violation of the automatic stay of the bankruptcy code, is not merely voidable, but void (*Valiotis v Psaroudis*, 69 AD3d 610, 611 [2d Dept 2010], *lv to appeal denied* 16 NY3d 713 [2011]). The

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<sup>1</sup>Insofar as relevant the provision reads as follows:

§ 362 Automatic stay

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of –

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;"

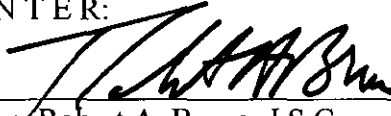
[\*4]  
court notes that whether plaintiff was properly listed as a creditor in the bankruptcy petition is a disputed issue. Whether the debt at issue herein was discharged in the bankruptcy proceeding is an issue for the bankruptcy court which has jurisdiction to interpret and enforce its own prior orders (*Yu Yun Dong v Ruiz*, 103 AD3d 442, 443 [1<sup>st</sup> Dept 2013] [citations omitted]).

This constitutes the Decision and Order of this Court.

Submit Judgment on Notice.

Dated: December 17, 2013  
Mineola, New York

ENTER:

  
Hon. Robert A. Bruno, J.S.C.

**ENTERED**  
DEC 30 2013  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE