

J. Remora Maintenance LLC v Efromovich
2018 NY Slip Op 32620(U)
October 12, 2018
Supreme Court, New York County
Docket Number: 650943/2011
Judge: Marcy Friedman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 60

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J. REMORA MAINTENANCE LLC and REMORA
MAINTENANCE LLC,

Plaintiffs,

- v -

GERMAN EFROMOVICH,

Defendant.

INDEX NO. 650943/2011

MOTION DATE

MOTION SEQ. NO. 005

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 93, 94, 95, 96, 97, 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, 133, 134, 135, 136, 137, 138, 139, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154

were read on this motion to/for CONTEMPT/TURN OVER/INSTALLMENT ORDER.

This action arises out of the breach of a personal guaranty. Plaintiffs J. Remora Maintenance LLC and Remora Maintenance LLC (together, Remora) seek to enforce a judgment, entered on January 30, 2014, in their favor and against defendant German Efromovich, in the amount of approximately \$12.7 million.

On June 10, 2014, Remora served a restraining notice and information subpoena upon Efromovich. (Remora Memo. In Supp., at 3.) By notice of motion, dated June 17, 2014, Efromovich moved to vacate or quash the restraining notice and information subpoena. (Notice of Motion to Vacate or Quash [NYSCEF Doc. No. 62].) By decision on the record, dated November 13, 2014 and so ordered on March 23, 2015, this court upheld the restraining notice, but vacated the information subpoena without prejudice to reservice of a more appropriately limited information subpoena. (See Transcript at 17 [NYSCEF Doc. No. 89].) On or about December 8, 2014, Remora served Efromovich with a revised information subpoena. (Aff. of Jonathan Perrelle [Pls.' attorney], Revised Information Subpoena [Exh. E].) Efromovich served

a sworn response, dated January 13, 2015. (Perrelle Aff., Response to Revised Information Subpoena [Exh. F].) For more than three years, no further enforcement proceedings were taken in this action. The instant motion, returnable on February 22, 2018, is the first docketed activity since the court's decision on the record on November 13, 2014.

Remora moves for an order, pursuant to CPLR 5251, holding Efromovich in contempt for allegedly violating the restraining notice and allegedly falsely answering the information subpoena; an order, pursuant to CPLR 5225, directing Efromovich to turn over assets in a bank account at Itau (Panama), S.A., formerly known as Helm Bank; and an order, pursuant to CPLR 5226, directing payment to Remora of compensation to be received by Efromovich as a director of Avianca Holdings, S.A. Efromovich cross-moves to strike Remora's December 8, 2014 revised information subpoena.

As a threshold matter, the court holds that the continuing retention of jurisdiction over this enforcement proceeding is not proper, as the Commercial Division Rules provide that proceedings to enforce a judgment are cases that "will not be heard in the Commercial Division." (22 NYCRR 202.70 [c] [5]; see Poah One Acquisition Holdings V Ltd. v Armenta, WL 12919298, * 2 [Sup Ct, NY County 2012].) The court notes, moreover, that Remora provides no explanation for its delay in seeking enforcement of the judgment in the context of this action.

The issues raised by Remora's motion are, in any event, more appropriately addressed in a special proceeding. The branch of Remora's motion to punish Efromovich for contempt is based on the allegation that "[a]fter the Restraining Notice was validly served, Defendant transferred over \$3 million of assets from his personal bank accounts to third parties. \$2.1 million of these transfers were to entities ultimately owned and controlled by Defendant." (Remora Memo. In Supp., at 9.) Remora further claims that Efromovich "made false sworn

statements in his response to the Information Subpoena by failing to disclose assets, bank accounts, ownership interests, and transfers, all of which served to obscure information that would have aided Plaintiffs in satisfying the Judgment.” (*Id.*) The branch of the motion for a turn over order seeks funds allegedly held by Efromovich in the Panama bank account, as well as the turn over of “assets in [Efromovich’s] other, yet to be identified, bank accounts.” (Remora Memo. In Reply, at 13.)

In moving for contempt and for the turn over order, Remora asserts that Efromovich failed “to identify all entities wholly owned and/or controlled by him, [and that] Defendant identified a single company, omitting the 84 companies that Plaintiffs have identified as being controlled by him.” (Remora Memo. In Supp., at 9-10.) In response, Efromovich argues that the entities themselves own the assets, and that the assets “are not in any sense ‘owned’” by Efromovich. (Efromovich Memo. In Opp., at 9.)

Efromovich’s roles in numerous entities with which he may be affiliated are therefore at issue in both the contempt and the turn over motions. The court assumes without deciding, for purposes of this motion, that Remora may ultimately be able to meet the legal threshold required to reach assets in entities with which Efromovich is affiliated – e.g. to make a showing sufficient to pierce the corporate veil. Such a showing would, however, likely require a factually intensive inquiry that is more appropriately undertaken in a special proceeding. Under CPLR 103 (c), this court has the power “to convert a motion into a special proceeding . . .” and will therefore do so.¹

As to the branch of the motion for an installment order under CPLR 5226, Remora seeks Efromovich’s compensation from Avianca Holdings, S.A. According to Remora, “[t]he Avianca

¹ In converting the motion, the court notes that Remora moves under CPLR 5225 (a) for the turn over order. To the extent that Remora seeks funds from other entities, an issue exists as to whether relief must be sought pursuant to CPLR 5225 (b), which requires the commencement of a special proceeding.

Holdings Form 20-F reports that Defendant is the ultimate beneficial owner of Synergy Aerospace. . . ." (Remora Memo. In Reply, at 13.) The factual issues on the 5226 claim also overlap with the factual issues on the contempt and 5225 claims regarding Efromovich's roles in the affiliated entities. This branch of the motion will therefore also be converted to a special proceeding, pursuant to CPLR 103 (c).

Nothing in this order converting the motions shall be construed as precluding Efromovich from raising any defense to the special proceeding. Efromovich's cross-motion will also be heard in the context of the special proceeding.

It is accordingly hereby ORDERED that the motion of plaintiffs J. Remora Maintenance LLC and Remora Maintenance LLC is converted into a special proceeding and the cross-motion of Efromovich shall be transferred to the special proceeding for hearing therein; and it is further

ORDERED that the special proceeding and cross-motion shall be referred to the Trial Support Office for random reassignment to an IAS Part.

This constitutes the decision and order of the court.

Dated: New York, New York
October 12, 2018


MARCY FRIEDMAN, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE