Batbrothers LLC v Paushok
2018 NY Slip Op 33041(U)
November 28, 2018
Supreme Court, New York County
Docket Number: 150122/2015
Judge: Andrew Borrok

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
Part 57

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BATBROTHERS LLC,

Plaintiff **Index no. 150122/2015**

-against-

SERGEY VIKTOROVICH PAUSHOK,

Defendant

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Recitation, as required by CPLR § 2219(a), of the papers considered on the review of this motion for summary judgment:

PAPERS	NUMBERED
Notice of Motion and Affidavits and Exhibits Annexed	1
Memorandum of Law in Support of the Motion	2
Answering Affidavits and Exhibits Annexed	3
Memorandum of Law in Opposition to the Motion And in Support of the Cross Motion	4
Replying Affidavits and Exhibits Annexed Memorandum of Law in Reply	5
Sur-Reply Affidavits	

Upon the foregoing cited papers, (i) Batbrothers LLC's (the **Plaintiff**) motion for summary judgment against Sergey Viktorovich Paushok (the **Defendant**) is granted in its entirety, (ii) the Defendant's cross-motion for summary judgment or, in the alternative, requesting a stay is denied, and (iii) the Clerk of the Court is directed to enter judgment in favor of the Plaintiff and against the Defendant in the amount of $25,030,650.18 for the reasons set forth below.

Borrok, J.

Reference is made to a certain Decision, dated June 21, 2018, by this Court (the **June 21, 2018 Decision**) pursuant to which this Court held that CPLR § 5304 sets

forth the exclusive grounds for non-recognition of a foreign judgment and pursuant to which this Court dismissed the Defendant's asserted counterclaims as impermissible in the context of an Article 53 action. To avoid repetition, the relevant facts and circumstances are set forth in the June 21, 2018 Decision which is attached hereto as **Exhibit A** and made a part hereof. Terms used but not otherwise defined herein shall have the meaning ascribed thereto in the June 21, 2018 Decision.

Summary Judgment should be granted when the movant presents evidentiary proof in admissible form that there are no triable issues of material fact and that there is either no defense to the cause of action or that the cause of action or defense has no merit. CPLR § 3212(b). The burden is initially on the movant to make a prima facie showing of entitlement to judgment as a matter of law tendering sufficient evidence in admissible form to demonstrate the absence of any material fact. *Alvarez v. Prospect Hosp.*, 68 NY2d 320, 324 (1986). Failure to make such a prima facie showing requires denial of the motion. *Alvarez v. Prospect Hosp.*, 68 NY2d 320, 324 (1986) citing *Winegrad v. New York Univ. Med. Center*, 64 N.Y.2d 851, 476 N.E.2d 642, 487 N.Y.S.2d 316 (1985). Once the showing has been made, the burden of going forward with the proof shifts to the opposing party to produce evidence in admissible form sufficient to establish the existence of a material issue of fact which requires a trial. *Alvarez v. Prospect Hosp.*, 68 NY2d 320, 324 (1986) citing *Zuckerman v. City of New York*, 49 N.Y.2d 557, at 562, 404 N.E.2d 718, 427 N.Y.S.2d 595 (1980).

The Plaintiff argues that it is entitled to summary judgment and that the Russian Judgment entered on December 12, 2011 by the Russian Court must be recognized because, as of April 16, 2012, the Russian Judgment is a final, conclusive and enforceable judgment of money which otherwise complies with CPLR §§5302 and 5303 and for which no grounds exist for non-recognition under CPLR § 5304.[1]

In its opposition papers, the Defendant cross-moves arguing that this Court should (I) not recognize the Russian Judgment because (A) the Plaintiff does not have standing, (B) there are grounds for non-recognition under CPLR § 5304 in that (i) the Russian Judgment is not a final judgment as the Defendant has additional appellate rights available in the Russian Federation, (ii) the Russian Judgment is no longer enforceable, and (iii) the Russian Judgment is not conclusive because the Russian Judgment amounted to an improper ex parte proceeding and the treatment

[1] Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment to Recognize Foreign Money Judgment Pursuant to CPLR §§ 3212, 5302 and 5303. Pg. 14 *citing* Popelyuk Aff., ¶¶ 61-62, 68-70. *See VTB Bank (PJSC) v. Mavlyanov* (Sup Ct. New York County Jan. 30 2018).

of the Defendant is repugnant under the Constitution of the United States, the State of New York or the Russian Federation, or (II) stay recognition of the Russian Judgment pursuant to CPLR § 5306 until all of the Defendant's appeals in the Russian Federation are exhausted. None of these arguments are however availing.

I. The Russian Judgment should be recognized

Foreign judgments are to be recognized unless a ground for non-recognition exists under CPLR § 5304. CPLR § 5304(a) provides two mandatory grounds for non-recognition. To wit, a judgment is not conclusive if either it was rendered under a system that does not provide for impartial tribunals or if the foreign court did not have personal jurisdiction over the defendant. *See* CPLR § 5304(a)(1) and (2). New York Courts have consistently held that Russian courts afford a fair, and impartial tribunal[2] and, as per the June 21, 2018 Decision, based on the forum selection clause, it is beyond dispute that the Russian Court had personal jurisdiction over the Defendant. CPLR § 5304(b) provides certain grounds pursuant to which a foreign judgment "need not be recognized." Here, in addition to challenging the Plaintiff's standing, it is pursuant to CPLR § 5304(b) that Defendant challenges recognition. Both arguments are addressed below.

(A) The Plaintiff has standing

The Defendant variously argues that the Plaintiff lacks standing because (i) the Plaintiff is an alter-ego of Gazprombank created to collect Gazprombank's allegedly fraudulent claim, or (ii) because the Plaintiff has unclean hands in "urging such a fictitious action in this court,"[3] or (iii) because an examination of the Plaintiff's financial papers indicate either that the Plaintiff could not have paid the purported consideration for the loan itself (i.e., someone paid it for them which the Defendant concedes would be permissible) or that the consideration was not paid at all or, finally, (iv) because Gazprombank (which may have had no obligation whatsoever to do so) failed to execute a certification that the Plaintiff paid the consideration. Further, the Defendant argues that once standing has been challenged, the Plaintiff must establish standing. In support of its request to have the court engage in what would amount to an exercise in forensic accounting, the Defendant cites Society of Plastics Industry, Inc., et al. v. County of Suffolk, et al,

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[2] *VTB Bank (PJSC) v. Mavlyanov* (Sup Ct. New York County Jan. 30 2018) *citing Base Metal Trading SA v. Russian Aluminum*, 253 F Supp 2d 681, 708-709 [SD NY 2003], *affd sub nom. Base Metal Trading Ltd. v. Russian Aluminum*, 98 F Appx 47 [Cir 2004]; *Parex Bank v. Russian Sav. Bank*, 116 F Supp 2d 415, 425 [SD NY 2000].

[3] Defendant's Memorandum of Law in Opposition to Plaintiff's Motion for Summary Judgment and in Support of Defendant's Motion for Summary Judgment or for a Stay under CPLR §5306. Pg. 9.

77 NY.2d. 761 (1991). That case does not support the Defendant's position and, in any event, the argument is otherwise without merit.

Society of Plastics involved a challenge to the 1988 adoption of the Plastics Law which banned the use of certain plastic products by retail food establishments. Several representatives of the plastic industry commenced the action to invalid the Plastics Law under the State Environmental Quality Review Act (**SEQRA**) alleging that the county legislature failed in its administrative responsibility to address the areas of environmental concern that had been identified and to provide an environmental impact statement or a reasoned elaboration for its determination that the law posed no significant environmental impacts. The plaintiff Society of the Plastics Industry, Inc (**SPI**) was a nationwide nonprofit trade organization of more than 2,000 members. The only Suffolk county member was Lawrence Wittman & Co. (**Wittman**) who produced a variety of plastic products – which was not affected by the Plastics Law. To establish its standing, SPI submitted an affidavit of Wittman's President in which it was alleged that the statute would result in an increase in solid waste produced and an increase in atmospheric pollutants generally, among other things. The Society of Plastics court indicated that when a party seeking relief is challenged as lacking standing, the issue must be considered at the outset of any litigation, and the burden of establishing standing in the context litigation brought to invalidate an administrative action is on the party seeking review.[4] The Society of Plastics court noted that often the issue of standing can be resolved by the statute at issue which itself can identify the class(es) of people entitled to demand review, and that, although some statutes provide that any person has the right to sue to avoid or compel compliance, the statute at issue in Society of Plastics did not. Thus, the court found that SPI lacked standing as it failed to demonstrate that the interests it asserted were germane to its purposes and that Wittman's affidavit failed to demonstrate standing to bring the challenge because it failed to allege any cognizable injury it would suffer different in degree than the public at large.

Simply put, Society of Plastics has, at best, only *de minimus* application to the case at bar. There is not before this court a challenge to a statute. Rather, this is a proceeding seeking recognition of a foreign judgment already obtained in the Russian Federation. And, as discussed in the June 21, 2018 Decision, pursuant to an Assignment Agreement, dated June 16, 2015, Gazprombank assigned its rights under, among other things, (x) the Facility Agreement and (y) a "surety

[4] Society of Plastics Industry, Inc., et al. v. County of Suffolk, 77 NY.2d 761 (1991).

agreement" No.33-06/B-11, dated February 9, 2006, by the Defendant in favor of Gazprombank to the Plaintiff. *See, also,* June 21, 2018 Decision, Fn. 1.

There simply is no authority for the Defendant's proposition that this Court should trace the funds in support of the Assignment Agreement. Such an endeavor would be tantamount to permitting a challenge to the validity of the Assignment Agreement itself – which challenge is not permissible under Article 53 and would amount to relitigating the underlying judgment itself. The Court notes, to avoid any further doubt, that Exhibit 1 to the Reply Affirmation of Batzorig Baatar, the Plaintiff's Chief Executive Officer, dated November 1, 2018, is the SWIF message showing that the Plaintiff as the "Ordering Customer" on June 18, 2015 paid USD $6 million to Gazprombank as "Beneficiary Customer" for Agreement No. 6425 and that Exhibit 2 to the Reply Affirmation of Batzorig Baatar is a copy of the Certificate of Assignment of Rights and Certificates of Remittance of documents to the Assignee executed on June 18, 2015 by Gazprombank and Plaintiff.[5] Accordingly, it is beyond dispute that the Plaintiff as the assignee of the loan made pursuant to the Facility Agreement has standing to maintain the instant proceeding.

(B) CPLR § 5304: No Grounds for Non-Recognition Exist

(i) The Russian Judgment is a final judgment

Alternatively, *inter alia*, the Defendant argues that the Russian Judgment is not entitled to recognition because it is not final because the Defendant is in the process of appealing as of right to the court of second instance in the Russian Federation.[6] This argument is also unavailing. Indeed, CPLR § 5302 is dispositive of this very point providing in relevant part:

> This article applies to any foreign country judgment which is final, conclusive and enforceable where rendered *even though an appeal therefrom is pending or it is subject to appeal.* (emphasis added)

Accepting the Defendant's interpretation of the definition of "final judgment" necessarily would require this Court to ignore the plain meaning of CPLR § 5302.

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[5] Reply Affirmation of Batzorig Baatar in Further Support of Plaintiff's Motion for Summary Judgment and in Opposition to Defendants Cross-Motion for Summary Judgment and for a Stay, ¶¶ 10 and 11, and Exhibits 1 and 2.
[6] Defendant's Memorandum of Law in Opposition to Plaintiff's Motion for Summary Judgment and in Support of Defendant's Motion for Summary Judgment or for a Stay under CPLR §5306. Pg. 11.

The Defendant further argues that the Russian Judgment is not a final judgment because the Defendant has learned of, and intends to appeal to the Russian Court based on, "newly discovered circumstances" (i.e., that the collateral pledged pursuant to the Facility Agreement has been used to satisfy the obligation to Gazprombank) and that, therefore at a bare minimum, this Court should issue a stay pursuant to CPLR § 5306 to avoid inconsistent adjudication and a waste of judicial resources based on this not yet filled appeal.[7] This argument is also unavailing.

The potential of a filing of an appeal and the potential for the Russian Judgment being vacated does not in any way make the Russian Judgment any less final. Moreover, pursuant to a Written Confirmation of Reconciled Accounts (the **Debt Confirmation**), dated November 6, 2018, Ider M., Executive Director of Altan Dornod Mongolia LLC the debtor, and Batzorig B., General Director of Bat Brothers LLC, acknowledged that the debt was USD $27,433.181.76.

(ii) The Russian Judgment is not presently enforceable

Relying primarily on the Affirmation of Rodionova Irina Viktroovna proffered in Defendant's Memorandum of Law in Opposition to Plaintiff's Motion for Summary Judgment and in Support of Defendant's Cross Motion for Summary Judgment or for a Stay under CPLR § 5306 , the Defendant argues as a basis for the relief it seeks that CPLR § 5302's requirement that the judgment must be "enforceable where rendered" must be interpreted to mean ***presently*** enforceable, and, posits that the Russian Judgment is not presently enforceable, purportedly because the Plaintiff waived its rights to enforcement by seeking to have the Defendant declared insolvent triggering an automatic stay of execution in the Russian Federation similar to the stay in bankruptcy provided for in 11 U.S.C. § 382.[8] Ms. Rodionova's own affidavit, however, contradicts this conclusion.

In the Affirmation of Rodionova Irina Viktroovnain Opposition to Plaintiff's Motion for Summary Judgment and In Support of Defendant's Cross Motion to Stay, Ms. Rodionova explains that nothing in the Russian Judgment declares that it is immediately enforceable and that by the Russian Judgment's terms, appeals are

[7] Defendant's Memorandum of Law in Opposition to Plaintiff's Motion for Summary Judgment and in Support of Defendant's Motion for Summary Judgment or for a Stay under CPLR §5306. Pg. 18.
[8] Defendant's Memorandum of Law in Opposition to Plaintiff's Motion for Summary Judgment and in Support of Defendant's Motion for Summary Judgment or for a Stay under CPLR §5306. Pg. 12 *citing* Rodionova Aff., at ¶¶ 32-42.

permitted within 10 days.[9] In addition, according to Ms. Rodionova, the Federal Bailiff's Service was charged with collection and although it initially determined that the Russian Judgment was enforceable, it has since "reversed that determination"[10] because on November 15, 2017 the Federal Bailiff's Service issued an Order to Terminate Enforcement Proceedings. According to Ms. Rodionova, once the Federal Bailiff's Service terminates enforcement proceedings, the writ of execution is returned to the party seeking recovery, and that at that point, the judgment is no longer enforceable unless it is appealed from or further information is secured as to the existence of assets.[11] Inasmuch as the Bailiff advised that the writ of execution would lapse unless the party seeking recovery provided information about changes in the financial standing of the debtor, and the Plaintiff did not do that, and instead proceeded by filing an insolvency action, the writ of execution lapsed and, Ms. Rodionova argues that, the judgment became no longer enforceable as of November 1, 2017.[12] According to Ms. Rodionova, even if the Plaintiff had acted on the writ, enforcement against the Defendant would have ended when the Moscow Arbitration Court issued an order recognizing the Plaintiff's insolvency petition against the Defendant on February 12, 2018 because as soon as the Moscow Arbitration Court assumed jurisdiction over the Defendant's estate, "enforcement necessarily ends".[13] Indeed, according to Ms. Rodionova, under Insolvency Law Article 213.25, any transaction of the debtor may only be concluded with the consent of the Arbitration Manager and the Financial Manager. This, according to Ms. Rodionova, like with a U.S. bankruptcy, is to ensure the preservation of the estate for benefit of all of the creditors and to avoid a preferential payment to any one creditor.[14] Put another way, according to Ms. Rodionova, the judgment is not enforceable because approval of the bankruptcy administrator is required for enforcement. This argument is obvious hyperbole and without merit. The requirement of consent of an administrator does not make a judgment unenforceable. The requirement as Ms. Rodionova correctly admits is to avoid preferential treatment of one creditor's claims. This does not however make a judgment creditor's claims unenforceable.

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[9] Affirmation of Rodionova Irina Viktroovna in Opposition to Plaintiff's Motion for Summary Judgment and In Support of Defendant's Cross Motion for Summary Judgment or for a Stay, ¶ 32.
[10] Affirmation of Rodionova Irina Viktroovna in Opposition to Plaintiff's Motion for Summary Judgment and In Support of Defendant's Cross Motion to Stay, ¶¶ 33-34.
[11] Affirmation of Rodionova Irina Viktroovna in Opposition to Plaintiff's Motion for Summary Judgment and In Support of Defendant's Cross Motion to Stay, ¶ 34.
[12] Affirmation of Rodionova Irina Viktroovna in Opposition to Plaintiff's Motion for Summary Judgment and In Support of Defendant's Cross Motion to Stay, ¶ 37.
[13] Affirmation of Rodionova Irina Viktroovna in Opposition to Plaintiff's Motion for Summary Judgment and In Support of Defendant's Cross Motion to Stay, ¶ 39.
[14] Affirmation of Rodionova Irina Viktroovna in Opposition to Plaintiff's Motion for Summary Judgment and In Support of Defendant's Cross Motion to Stay, ¶ 40.

Holding otherwise would necessarily eviscerate creditor rights around the world and contradict the reality that all such claims are valid and enforceable subject to the orderly administration of the estate by the administrator (re: Arbitration Manager).

(iii) The Russian Judgment is conclusive

The Defendant argues the Russian Judgment is "not conclusive" under CPLR § 5304(b)(2) and (4) because the Defendant did not receive notice of the proceeding in sufficient time to enable him to defend the action and that the cause of action on which the judgment is based is therefore repugnant to the public policy of this state.[15] Putting aside that CPLR § 5304(a) addresses the grounds upon which a judgment can be found as "not conclusive"[16] (and CPLR § 5304(b) sets forth "other grounds for non-recognition"), this argument contradicts the record and holding of the Russian Court and the rejection of the same argument in the Defendant's cassation appeal by the Moscow City Court (the **Moscow Court**). In its April 16, 2012 determination (the **April 16, 2012 Moscow Court Decision**), the Moscow Court wrote:

> Under such circumstances, the judicial panel agrees with conclusions made the court of first instance. Arguments provided in the cassation appeal, according to which the case was considered by the Curt without appropriate notification of the Defendant, are rejected based on copies of notices, included in the case materials, which were repeatedly sent at the Defendant's address; telegram was sent to S.V. Paushok with summons for December 5, 2011, but the addressee did not collect it. A.A. Larin, the Defendant's representative was notified of the date of the hearing, i.e., December 12, 2011.
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> According to article 48 of RF Civil Procedure Code, individuals may be involved in a case either personally or through their representatives. Personal involvement does not deprive an individual of his or her right to have a representative. Defendant's representative did not attend the court hearing and did not provide reasonable excuse for his absence.
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> According to article 35 of RF Civil Procedure Code, persons involved in the case may study case materials, take their copies, file objections, provide

[15] Defendant's Memorandum of Law in Opposition to Plaintiff's Motion for Summary Judgment and in Support of Defendant's Motion for Summary Judgment or for a Stay under CPLR § 5306. Pgs. 21-23.
[16] *See* discussion supra. The Russian Judgment is conclusive as it complies with CPLR § 5304(a).

evidences and participate in consideration thereof, ask questions to other persons involved in the case, witnesses, experts and specialists, file motions, particularly those calling for evidence; provide oral and written explanations to the court; provide arguments regarding all issues raised during the court proceedings, object against motions and arguments of other persons involved in the case; appeal against court rulings and exercise other procedural rights provided for by civil proceedings. The persons involved in the case must exercise their procedural rights in good faith.

Persons involved in the case will assume procedural liabilities stipulated by this Code and other federal laws. Failure to perform procedural liabilities will result in the consequences provided for by relevant civil procedure laws.

The Defendant and his representative did not attend the judicial panel hearing.

When settling the dispute, the Court correctly determined relevant circumstances. The circumstances, which were determined by the Court, are supported by the case materials and evidences, which were considered and assessed by the Court in an appropriate manner. The Court's conclusions are based on the established circumstances. The Court did not breach any procedural and substantive laws, so there are no reasons to cancel the resolution.

Arguments, provided in the appeal, focus on another assessment of evidences by the court of the first instance; they do not include new circumstances which would refute conclusions made in the court's ruling; therefore, they may not be a reason for its cancellation.

Based on the above and according to articles 360, 361 of RF Civil Procedure Code, the judicial panel

RULED:

To uphold the ruling of the Cheremushki District Court in Moscow as of December 12, 2011 and to dismiss the cassation appeal.[17]

As this Court commented upon in the June 21, 2018 Decision, as *in John Galliano, S.A. v. Stallion, Inc.* 930 N.E.2d 756 (2010), and now, as the Court holds, the Guaranty contained a foreign selection clause and as such the Defendant agreed to

[17] Exhibit 2 to the Complaint, dated January 6, 2015.

submit to the jurisdiction of the Russian Court in accordance with CPLR §5305(a)(3). In denying the Defendant's cassation appeal, the Moscow Court correctly ruled that the Defendant had received proper notice. *See:* the June 21, 2018 Decision and the April 16, 2012 Moscow Court Decision. Accordingly, the requirements of CPLR § 5304(b)(2) have been conclusively met and to the extent that the basis for the challenge to recognition under CPLR § 5304(b)(4) is lack of notice/due process and that the treatment of the Defendant is repugnant under the Constitutions of the United States, New York or the Russian Federation, this argument is denied as meritless.

II. No Stay Granted under CPLR § 5306

CPLR § 5306 provides:

> If the defendant satisfies the court either that an appeal is pending or that he is entitled and intends to appeal from the foreign country judgment, the court may stay the proceedings until the appeal has been determined or until the expiration of a period of time sufficient to enable the defendant to prosecute the appeal.

In other words, notwithstanding that the requirements of CPLR §§ 5302 and 5303 are met and no grounds for non-recognition exist under CPLR § 5304 a court, in its discretion, may nevertheless stay recognition of a foreign judgment. That said, a stay in this case is simply not appropriate.

As an initial matter, the court notes that although 11 U.S.C § 1515 Application for recognition provides for recognition of a foreign proceeding, the Arbitration Manager in the insolvency proceeding has not filed an application for recognition of the foreign insolvency proceeding and, thus, there is no evidence before the court that the Arbitration Manager has attempted to stay recognition of the foreign judgment or that recognition of the foreign judgment could result in inconsistent judgments. As such, recognition of the foreign insolvency proceeding, or a stay issued in recognition of the foreign insolvency proceeding, would be wholly inappropriate. *See VTB Bank (PJSC) v. Mavlyanov*, 2018 WL 623530 (Sup. Ct. New York Co. Jan. 30, 2018*) citing Orchard Enter. NY, Inc. v. Magabop Records Ltd.*, 2011 WL 832881, *3 [S.D.N.Y. 2011].

In support of its request for a stay, the Defendant relies primarily on two cases -- *Krineta Enters. Co., Ltd., v. Lavidas*, 161911/14, 48 Misc. 3d 1219(A), 2015 N.Y. Misc. LEXIS 2901, at *3 (Sup. Ct. NY County July 24, 2015) and *Liberty Seguros*

S.A. v. Fagioli, 154502/2014, 2017 Misc. LEXIS, *5 (Sup. Ct. NY County Apr. 17, 2017). Neither case supports issuing a state in the case at *nisi prius*.

In *Krineta Enters. Co.*, Krineta Enterprises Company Limited (**Krineta**) paid five million euros to purchase 3,366 shares in a Greek joint stock company, Lavipharm Holding Group, S.A. (**Lavipharm**), from Athanasios Lavidas a/k/a Athanase Lavidas a/k/a Athanese Lavidas (**Lavidas**), a doctor and the only shareholder of Lavipharm. According to their agreement, if Lavipharm was not admitted to a stock exchange within 30 months, Krineta could exercise a put requiring Lavidas to repurchase the shares. The agreement provided a forum selection clause and choice of law provision designating the Athens Courts as the appropriate forum and Greek law as applicable. When Lavidas failed to timely go public, Krineta exercised the put but Lavidas refused to repurchase the shares. Krineta commenced an action in Athens Multi-Member Court of First Instance in October, 2011. In December, 2012, that court awarded a money judgment against the defendant in the sum of euro 6,068,423 plus interest (the **Athens Judgment**). In a separate proceeding, the Athens Single Member Court of First Instance denied Krineta's application for an attachment and restraint of the Lavidas' assets to secure the judgment. In March, 2013, Lavidas sought an appeal to the Athens Court of Appeal and in June, 2014 the Athens Judgment was affirmed. Lavidas did not pay the judgment and instead brought a cassation appeal. Significantly, on February 9, 2015, the Supreme Court of Greece issued a partial stay of enforcement of the judgment beyond 500,000 euros of the amount awarded pending the determination of the cassation appeal. The Supreme Court of Greece heard the cassation appeal on April 27, 2015. However, prior to the Supreme Court of Greece making a determination on Lavidas's cassation appeal, Krineta commenced an action in New York seeking summary judgment and enforcement of the Athens Judgment. In his opposition papers, Lavidas, cross-moved, among things, to increase the amount of undertaking to $11.5 million and in effect, pursuant to CPLR § 5306 to stay the proceeding on the ground that the Athens Judgment was not final, conclusive or enforceable. Inasmuch as the judgment was only partially enforceable given the stay issued by the Supreme Court of Greece, the New York court exercised its discretion under CPLR § 5306 to stay recognition of the Athens Judgment pending the cassation appeal to prevent inconsistent judgments. This simply is not factually relevant to the case before this court. In this case, there is no stay issued by a Russian Court as to any portion of the Russian Judgment. In addition, there is no pending appeal which likely will result in an inconsistent judgment to that which is at issue before this court. Indeed, the only allegation set forth in the Defendants papers is that the Defendant intends to bring an appeal based on newly discovered facts which alleged facts appear to be contradicted by the Debt Confirmation.

In *Liberty Seguros S.A.*, Fagioli S.p.A. (**Fagioli**) entered into a Master Service Agreement (**MSA**) with General Electric to provide General Electric with transportation services. The MSA contained both a forum selection clause and a choice-of-law provision designating New York as the appropriate forum and New York law as the applicable law governing disputes between the parties. On June 29, 2011, the parties issued a Statement of Work, pursuant to which General Electric hired Fagioli to transport a generator to a Brazilian customer, Ute Paranaiba. Fagioli, then hired a Brazilian agent, Transdata Transportes LTDA (**Transdata**), to transport the generator from Port Itaqui, Brazil to Santo Antonio dos Lopes. During the course of the shipment, while with Transdata, damage occurred to the generator. General Electric then recovered $7,000,000 from its insurer, Liberty Seguros (**Liberty).** Liberty then commenced suit against Fagiolli and Transdata in Brazil based on subrogation rights in its insurance policy with General Electric alleging negligent transportation of the generator and for damages to the generator. The policy contained a Waiver of Right of Recourse (DDR) Clause (the **Waiver Clause**). Under the Waiver Clause, Liberty reserved subrogation rights for claims falling within certain exceptions. In its answer, Fagioli contested the Brazilian court's jurisdiction based on the Master Servicing Agreement foreign selection clause and otherwise denied responsibility based on the Waiver Clause. In May 2014, while Fagioli's challenge to the Brazilian court's jurisdiction was pending, Liberty commenced suit in New York but then moved to stay its own New York action pending the outcome of the Brazilian action. Transdata did not appear in the New York action. The New York court issued an interim anti-suit injunction order barring Liberty from continuing its prosecution of the suit in Brazil, conditioned upon Transdata's appearing in the New York suit within 60 days of the order. The order also granted a 60-day stay of the New York action on the condition that if Transdata did not appear, then Liberty's motion to stay the action would be granted in full. On October 17, 2016, the Brazilian trial court decided the underlying action in the defendants' favor holding that the exception in the Waiver Clause applied. Liberty appealed in Brazil and moved to further stay the New York action. The New York court, in exercising its discretion to issue a stay pursuant to CPLR § 5306, noted that although it was reluctant to interpret Brazilian law which was currently being considered by the appellate court in Brazil, it appeared that there was a substantial likelihood of success on Liberty's appeal of the interpretation of the Waiver Clause and, inasmuch as Transdata did not appear in the New York lawsuit, a stay was therefore appropriate to permit Liberty to continue to prosecute the lawsuit in Brazil at least through its pending appeal.

Liberty Seguros S.A. v. Fagioli simply does not lend support for the notion that a stay of the current proceeding is appropriate. The Defendant in this case has exercised his rights of appeal and his appeals have been denied. In addition, as noted above, there is no further pending appeal. Finally, it does not appear to this court that even if another appeal were to be filed, given the Debt Confirmation, that any such appeal would in fact be successful.

Therefore, the requirements of CPLR §§ 5302 and 5303 are conclusively met and the Defendants request for a stay pursuant to CPLR § 5306 is denied and it is

ORDERED, that the Plaintiff's motion for summary judgment is granted in its entirety; and it is further

ORDERED, that the Defendant's cross-motion for summary judgment or, in the alternative, requesting a stay is denied; and it is further

ORDERED that the foreign country money judgment entered on December 12, 2011 in favor of Plaintiff Batbrothers LLC and against Defendant Sergey Viktorovich Paushok by the Cheremushki District Court in Moscow, awarding the Plaintiff the total sum of USD $25,030,650.18 which became final on April 16, 2012, is hereby recognized by this Court, pursuant to Article 53; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of the Plaintiff and against the Defendant in the amount of USD $25,030,650.18 together with statutory post judgment interest at the rate of 9% per annum, as calculated by the Clerk, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.

This constitutes the decision and order of the Court.

Date: November 28, 2018

Hon. Andrew Borrok J.S.C.

Hon. Andrew Borrok