

Grgurev v Licul

2019 NY Slip Op 32951(U)

October 4, 2019

Supreme Court, New York County

Docket Number: 157551/2019

Judge: Andrew Borrok

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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. ANDREW BORROK PART IAS MOTION 53EFM

Justice

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OMER GRGUREV AND FERDO GRGUREV, AS
MINORITY SHAREHOLDERS EACH OWNING 25% OF
ALL OUTSTANDING SHARES OF OCINOMLED, LTD,

Plaintiff,

- v -

MILAN LICUL INDIVIDUALLY, AND AS THE HOLDERS OF
50 PERCENT OF ALL OUTSTANDING SHARES OF
OCINOMLED, LTD., AS ACTING OFFICERS, DIRECTORS
AND CONTROLLING SHAREHOLDERS OF OCINOMLED,
LTD., BRANKO TURCINOVIC INDIVIDUALLY, AND AS
THE HOLDERS OF 50 PERCENT OF ALL OUTSTANDING
SHARES OF OCINOMLED, LTD., AS ACTING OFFICERS,
DIRECTORS AND CONTROLLING SHAREHOLDERS OF
OCINOMLED, LTD., OCINOMLED, LTD., ANTHONY
ANTONELLO, THE HARTFORD LIFE INSURANCE
COMPANY

Defendant.

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DECISION + ORDER ON
MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10,
11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 48, 49, 50, 51, 52

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

For the reasons set forth on the record (10/04/2019) and as otherwise set forth below, Omer
Grgurev and Ferdo Grgurev's motion for a preliminary injunction against Milan Licul and
Branko Turcinovic is denied.

Omer Grgurev and Ferdo Grgurev move by order to show cause for an order (i) directing Milan
Licul to permanently remove his name and address from Hartford Life Insurance Company's
files as the contact person and mailing address for life insurance Policy No. U06030982 (the
Policy), insuring the life of Omer Grgurev, (ii) directing Milan Licul to permanently refrain from

contacting Hartford regarding the Policy hereafter, and (iii) directing Milan Licul to distribute all future taxable income to Omer Grgurev and Ferdo Grgurev which Ocinomled, Ltd. reports to the IRS on K-1 forms.

Omer Grgurev and Ferdo Grgurev further seek an order directing that (a) Milan Licul shall execute and date the reinstatement application regarding the Policy immediately and deliver the same to Omer Grgurev and Ferdo Grgurev's counsel, (b) Milan Licul and Branko Turcinovic shall immediately release \$990,612 from Ocinomled, Ltd.'s bank accounts representing the taxable income which they reported as having been distributed to Omer Grgurev and Ferdo Grgurev on IRS forms k-1 from 2013-2018, and (c) restraining the Hartford Life Insurance Company from exercising any rights regarding the Policy to allow its reinstatement period to expire on August 6, 2019, pending the hearing on the petitioner's motion.

As an initial matter, the petitioners' application is barred under CPLR § 6301. CPLR § 6301 provides, in relevant part:

A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff.

No cause of action or claim for relief in the Amended Complaint concerns the Policy.

Accordingly, the branch of the motion seeking a preliminary injunction relating to the Policy is improper and is denied (CPLR § 6301).

Putting that aside, Omer Grgurev and Ferdo Grgurev otherwise fail to establish (i) a likelihood of ultimate success on the merits, (ii) irreparable injury if the preliminary injunction is denied, and (iii) a balancing of the equities in their favor (*1234 Broadway LLC v West Side SRO Law Project*, 86 AD3d 18, 23 [1st Dept 2011]). With respect to likelihood of ultimate success on the merits, “[a] party seeking the drastic remedy of a preliminary injunction must establish a clear right to that relief under the law and the undisputed facts upon the moving papers” (*Gagnon Bus Co., Inc. v Vallo Transp., Ltd.*, 13 AD3d 334, 335 [2d Dept 2004]).

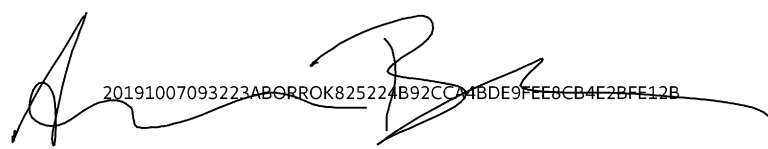
Omer Grgurev and Ferdo Grgurev fail to demonstrate a likelihood of ultimate success on the merits. First, the same parties in this case are involved in *Ocinomled, Ltd., et al v Milan Licul, et al*, 15 CV 9805, currently pending in the United States District Court for the Southern District of New York. This action was filed in 2015 and involves substantially the same claims and the same parties as the instant action. Pursuant to CPLR § 3211 (a) (4), a party may move to dismiss on the ground that “there is another action pending between the same parties for the same cause of action in a court of any state or the United States.” Dismissal on this ground is not mandatory, but the court may do so as justice requires (*id.*). The “‘first-in-time’ rule provides that ‘the court which has first taken jurisdiction is the one in which the matter should be determined’” (*Fouad v Mohamed Emat Ezzat Mahmoud Magdy*, 147 Ad3d 436, 437 [1st Dept 2017], quoting *Syncora Guar. Inc. v J. P. Morgan Sec. LLC*, 110 AD3d 87, 95 [1st Dept 2013] [internal citations and quotation marks omitted]). Therefore, to the extent that the causes of action in this case are duplicative of those in the federal action, they are subject to dismissal on a motion to dismiss pursuant to CPLR § 3211 (a) (4). Accordingly, the petitioners cannot demonstrate a likelihood of ultimate success on the merits as to those claims.

Moreover, with respect to the payments of distributions to the petitioners which were allegedly never received, potentially causing them to incur significant tax liabilities, the petitioners fail to establish that irreparable injury would result if the preliminary injunction were denied. On the contrary, there is currently no tax liability, making any such injury wholly speculative, and even if such tax liability should arise in the future, money damages would be an adequate remedy.

Accordingly, it is

ORDERED that the motion for a preliminary injunction is denied in its entirety; and it is further

ORDERED that the respondents are directed to file an answer to the Amended Complaint or otherwise move to dismiss within twenty (20) days of the date of the decision and order herein.



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10/4/2019
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE