

Shanghai NoNoBank Fin. Info. Serv. Co., Ltd. v Yang Jie

2020 NY Slip Op 30298(U)

February 4, 2020

Supreme Court, New York County

Docket Number: 653834/2018

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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INDEX NO. 653834/2018

SHANGHAI NONOBANK FINANCIAL INFORMATION SERVICE CO., LTD.,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 006

- v -

YANG JIE, CHINA COMMERCIAL CREDIT, INC., YI LIN

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 99, 100, 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

were read on this motion to/for STAY

Upon the foregoing documents and for the reasons set forth on the record (2.4.20), Shanghai NoNoBank Financial Information Service Company Ltd.'s (NoNoBank) motion for a stay of the proceedings in this matter is granted.

This case involves the disappearance of a \$3.5 million escrow deposit that NoNoBank alleges was intercepted and converted by Yang Jie, who worked in collusion with a rogue NoNoBank employee to execute the theft. NoNoBank alleges that it transferred the \$3.5 million escrow payment to the attorney trust account of Yi Lin through an intermediary in China to be held in escrow for Yang Ji until a certain merger transaction was completed. NoNoBank has submitted the Escrow Agreement and certain Bank of America wire authorizations that they allege establish that Mr. Jie received the \$3.5 million escrow deposit and then wired the funds to Mr. Lin.

NoNoBank commenced this action by filing a summons and complaint on August 2, 2018 seeking, among other relief, to recover the \$3.5 million escrow deposit. Each of the defendants moved to dismiss the complaint. By decision and order, dated July 12, 2019, the court granted China Commercial Credit, Inc.'s motion to dismiss and denied Mr. Lin and Mr. Jie's motions to dismiss. Much has changed since then.

In November 2019, the Chinese authorities seized the operations of NoNoBank and its parent company, Shanghai Wheat Asset Management Co., Ltd (**Shanghai Wheat**). Certain executives of NoNoBank are currently in police custody in connection with the seizure, including its CEO. It is not yet known the extent to which they will or do face criminal charges. NoNoBank is now under the control of a receiver and is not operational. NoNoBank argues that a stay is necessary to preserve its interests in this litigation pending the outcome of the investigations of the Chinese government while preserving judicial resources as it does not have access to its computers and records and it is not clear whether and on what basis its key witness who is currently detained will be available. NoNoBank further argues that the Defendants would not be prejudiced by a limited stay as depositions have not yet occurred and the matter is not yet ripe for summary judgment motions, and a stay would allow the parties to avoid further unnecessary legal fees for the duration of the stay.

The Defendants oppose the motion, arguing that a stay would result in unjustifiable prejudice to their ability to defend the action. They argue that Mr. Jie is prepared to move for summary judgment seeking dismissal of the complaint as against him. The Defendants claim that they have evidence to challenge the authenticity of the Escrow Agreements and Wire Authorizations

purporting to show that NoNoBank wired \$3.5 million to an intermediary in China and that Mr. Jie intercepted the funds and wired them to the escrow account of his attorney, Mr. Lin. As this is the critical evidence at the heart of NoNoBank's case, the Defendants argue that they should be permitted to proceed with their motion in pursuit of a swift resolution of this case.

Pursuant to CPLR § 2201, “[e]xcept where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just.” It is within the sound discretion of the trial court to grant a stay “in order to avoid the risk of inconsistent adjudications, application of proof and potential waste of judicial resources” (*Zonghetti v Jeromack*, 150 AD2d 561, 563 [2d Dept 1989]).

In this case, a stay is appropriate given the seizure of NoNoBank and Shanghai Wheat and the imprisonment of key NoNoBank officials. In addition to the inaccessibility of many prospective witnesses due to their indeterminate detention, NoNoBank is also unable to access its computers or files, as they have been seized. Under these circumstances, it is impossible to continue with discovery in this matter without substantial prejudice to all parties or to compel NonBank and Shanghai Wheat to defend a summary judgment motion until there is more clarity regarding the outcome of the investigation by the Chinese authorities and/or NonBank and Shanghai Wheat has access to its personnel and its computers and files. Therefore, the motion for a stay in this matter is granted.

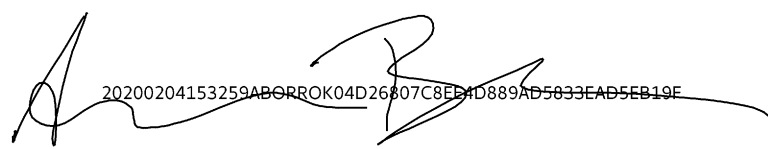
Accordingly, it is

ORDERED that the plaintiff's motion for a stay of the proceedings is granted; and it is further

ORDERED that either party may make an application by order to show cause to lift this stay upon showing of an appropriate change in circumstances; and it is further

ORDERED that the movant is directed to serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119) within ten days from entry and the Clerk shall mark this matter stayed as herein provided; and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).



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2/4/2020
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