

**Nimble Ventures LLC v Liquid Digital Capital Mkts.
Holdings, LLC**

2021 NY Slip Op 30063(U)

January 8, 2021

Supreme Court, New York County

Docket Number: 651762/2020

Judge: Barry Ostrager

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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. BARRY R. OSTRAGER, PART IAS 61EF

Justice

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Nimble Ventures LLC,	INDEX NO. 651762/2020
Plaintiff,	MOTION DATE
- v -	MOTION SEQ. NO. 007, 008, 009
Liquid Digital Capital Markets Holdings, LLC, Liquid Digital Holdings LLC, and Michael Graves,	
Defendants.	DECISION AND ORDER ON MOTIONS
-----X	

HON. BARRY R. OSTRAGER

The Court heard oral argument on motions 007, 008 and 009 via Microsoft Teams on January 7, 2021. In accordance with the proceedings on the record, the motions are resolved as follows.

Motion 007 by plaintiff requests a stay of the JAMS arbitration initiated by defendants. This Court has ruled several times that the claims in this action are properly before this Court because the claims in this action are based on a breach of the Loan Agreement between plaintiff and the Liquid Digital corporate defendants which contains a New York forum selection clause. To the extent the JAMS arbitration includes any claims identical to the claims before this Court, those claims should be stayed or withdrawn from the arbitration. However, plaintiff and the Liquid Digital corporate defendants are also parties to an LLC agreement, which contains an arbitration provision. To the extent the claims asserted in the JAMS arbitration are related to the LLC Agreement, or anything other than the Loan Agreement at issue in this action, the Court declines to stay the arbitration and takes no position on the arbitrability of those claims.

Motion 008 by defendant Michael Graves and non-party entities controlled by Graves is to quash bank subpoenas. Plaintiff filed a cross-motion to enforce a different set of subpoenas

severed on non-party entities controlled by Graves. In accordance with the rulings on the record, counsel is directed to modify the subpoenas to request only the information relevant to Count I of the Complaint, on which plaintiff has a judgment against the Liquid Digital corporate defendants.

Motion 009 by defendant Graves is for an order pursuant to CPLR 5240 to stay the “Order of Enforcement” issued to Chase Bank. This Court granted summary judgment on Count I of the Complaint in favor of plaintiff Nimble Ventures, LLC and against the Liquid Digital Corporate defendants (NYSCEF Doc. No. 262) and judgment was entered (NYSCEF Doc. No. 363). Plaintiff furnished an execution to the Sheriff and the Sheriff promptly levied the execution on the judgment debtors and their garnishees. Chase Bank holds an account belonging to the Liquid Digital corporate defendants and was directed, pursuant to the judgment, to turn over the money in the corporate account to plaintiff. Graves, who is not subject to the judgment, objects based on his claim the money in the account properly belongs to him. Graves previously raised this argument in response to Nimble’s motion (004) for partial summary judgment.

Graves’ claim that money in Liquid Digital corporate bank account held by Chase Bank properly belongs to him is not a basis to stay execution of the judgment, or this specific Order of Enforcement, for several reasons.

First, Graves controls the Liquid Digital corporate defendants. The Liquid Digital corporate defendants appealed this Court’s decision and order granting partial summary judgment on Count I of the Complaint. Graves and Liquid Digital could have requested a stay from the Appellate Division based on the pending appeal by posting a bond.

Second, Graves' claim that he funneled personal funds through the Liquid Digital corporate bank account and that some funds remain in that account is not a claim or counterclaim in this action. Graves' argument was raised as a defense to plaintiff's claim that the Liquid Digital corporate defendants had breached the Loan Agreement. In response to this argument the Court said:

Taking as true that the funds transferred to and withdrawn by Mr. Graves rightfully belonged to him, those transactions still violate provisions of the Loan Agreement. Specifically, the LDH defendants do not dispute that the statements were inaccurate, and further this conduct violated the prohibition on transactions with related persons (Loan Agreement § 6.7). Under the Loan Agreement, a "related person" means "any Affiliate of Borrower, or any officer, employee, director or equity security holder of Borrower or any Affiliate." As an officer of LDH, Mr. Graves is a related person and thus, the LDH defendants were prohibited from entering a transaction with him, allowing him to funnel personal funds through LDH accounts.

NYSCEF Doc. No. 262 p. 3. The Court's finding was that even if Graves' version of events were true, it would still be a breach of the Loan Agreement. The Court did not adjudicate whether the funds in the Liquid Digital corporate defendants' account belong to Graves, as there were several other identified breaches of the Loan Agreement. Graves has not asserted a claim or a counterclaim in this action claiming that he is owed money by the Liquid Digital corporate defendants, which he controls.

Finally, modification of a judgment under CPLR 5240 is discretionary. Here, equity weighs against modification. Plaintiff has a valid \$8M judgment against the Liquid Digital corporate defendants. Graves, who has repeatedly attempted to stay this proceeding, is not subject to that judgment. Indeed, this action is presently stayed against Graves individually by the First Department. Additionally, restraining orders are appropriate where there is a risk of irreparable injury not compensable with money damages. Here, if Liquid Digital succeeds on

appeal, the money paid out on the judgment to plaintiff will be returned, and Liquid Digital can, in turn, return it to Graves if his claims are meritorious.

The Status Conference previously scheduled for January 19, 2021 is rescheduled to April 6, 2021 at 11:00 am.

Dated: January 8, 2021

Barry R. Ostrager

BARRY R. OSTRAGER, J.S.C.

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