

**GS Capital Partners, LLC v Ameritek Ventures**

2023 NY Slip Op 31314(U)

April 20, 2023

Supreme Court, New York County

Docket Number: Index No. 656964/2019

Judge: Debra A. James

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. DEBRA A. JAMES**

**PART 59**

*Justice*

-----X

GS CAPITAL PARTNERS, LLC,

Plaintiff,

- v -

AMERITEK VENTURES,

Defendant.

-----X

INDEX NO. 656964/2019

MOTION DATE 08/23/2021

MOTION SEQ. NO. 002

**ORDER – RESETTLED  
AMENDED and INTERIM  
(MOTION RELATED)**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57 were read on this motion to/for VACATE - JUDGMENT.

ORDER

Upon the foregoing documents, it is

ORDERED that the Amended and Order filed on April 20, 2023 restoring the herein action to calendar pursuant to the Remittitur Order dated April 20, 2023, of the Appellate Division, First Department, concerning motion sequence 002 in this action is VACATED, RESETTLED AND CORRECTED PURSUANT TO CPLR § 5019(a) [see Kiker v Nassau County, 85 NY2d 879 (1995)] as follows:

WHEREAS by Remittitur Order entered on April 20, 2023 (NYSCEF Document Number 60, "Remittitur Order"), the Appellate Division, First Department, reversed the Decision + Order entered on August 23, 2021 (NYSCEF Document Number 56) of the undersigned, which denied defendant Ameritek Venture's motion to vacate the default

judgment against it pursuant to CPLR 5015(a)(4), to the extent of remanding the matter for a traverse hearing and for further proceedings consistent with the determination rendered after such hearing; and

WHEREAS this matter having come on before this court on April 19, 2021, on motion of the defendant Ameritek Ventures, by Robert Benjamin Harmon, Esq., to dismiss this action on the grounds that this court lacks personal jurisdiction over it, and plaintiff GS Capital Partners, LLC, having appeared by Mendy Menachem Piekarski, pursuant to CPLR 4212, the court having on its own motion determined to consider the appointment of a referee to hear and report, and it appearing to the court that an appointment is appropriate, it is now hereby

ORDERED that to the extent of setting down the matter for a traverse hearing on whether process was properly served upon defendant Ameritek Ventures, the Order entered on August 23, 2021, is, in accordance with the Remittitur Order on August 23, 2023, vacated, and the matter restored to the calendar for a traverse hearing; and it is further

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to hear and report to this court on the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose:

the issues whether

- (1) Edward Zimmerman, Ameritek Venture's former registered agent for service of process had apparent authority to accept service on Ameritek Venture's behalf at the time he was served; and
- (2) there was collusion between Ameritek Ventures and Zimmerman to evade service of process, which was seemingly calculated to lead plaintiff to believe that Zimmerman continued to be Ameritek Venture's agent at the time of service;

and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR unless otherwise indicated; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or [spref@nycourts.gov](mailto:spref@nycourts.gov)) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh) at the "References" link), shall assign this matter at the initial appearance to an available JHO/Special Referee to hear and report as specified above; and it is further

ORDERED that counsel shall immediately consult one another, and counsel for plaintiff shall, within twenty (20) days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible at the

"References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the plaintiff and defendant of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with the hearing, on the date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issues specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts; and it is further

ORDERED that, unless otherwise directed by this court in any Order that may be issued together with this Order of Reference to

Hear and Report, the issues presented in any motion identified in the first paragraph hereof shall be held in abeyance pending submission of the Report of the JHO/Special Referee and the determination of this court thereon; and it is further

ORDERED that counsel are directed to appear via Microsoft Teams for oral argument on the fully submitted papers on the motion to confirm or disaffirm the Report of the Special Referee on July 27, 2023, 11:00 AM.

DECISION

See Remittitur Order of the Appellate Division, First Department, entered on April 20, 2023, which, to the extent of remanding the matter for a traverse hearing on whether service of process upon defendant Ameritek Ventures was properly made and further proceedings consistent with the determination rendered after such hearing, vacated the Decision + Order entered on August 23, 2021 of this court.

*Debra A. James*  
 20230421171532DJAMES69087E2D56254A299C0BDE4B0C2EBD64

<u>4/20/2023</u>			<u>DEBRA A. JAMES, J.S.C.</u>	
<b>DATE</b>				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	OTHER
			<input checked="" type="checkbox"/>	REFERENCE