

PJSC Natl. Bank Trust v Pirogova

2023 NY Slip Op 33050(U)

September 6, 2023

Supreme Court, New York County

Docket Number: Index No. 160130/2020

Judge: Jennifer G. Schecter

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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: COMMERCIAL DIVISION**

PRESENT: HON. JENNIFER G. SCHECTER PART 54

Justice

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INDEX NO 160130/2020

PJSC NATIONAL BANK TRUST,

MOT SEQ NOS 015 016

Plaintiff,

- v -

NATALIA PIROGOVA, LUIZA DUBROVSKY, FGP 1,
LLC, SERHII YEFIMTSEV, M INVESTMENT CAPITAL, LLC

**DECISION + ORDER ON
MOTIONS**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 015) 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 491, 511, 512, 513, 514, 515, 516

were read on this motion to/for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 016) 483, 484, 485, 486, 487, 488, 489, 492, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510

were read on this motion to/for DISCOVERY.

Plaintiff moves to compel Pirogova to provide complete responses to interrogatory no. 1 and amended interrogatory no. 2 and to produce documents responsive to its second requests for production. The court notes that reference below to document request numbers correspond to the numbers that appear in the demand itself (Dkt. 464), and not the erroneous numbering appearing in Pirogova's response and motion papers (*see* Dkt. 481 at 17 n 7). Pirogova also moves to compel plaintiff to respond to many of her own document requests.

Plaintiff's Motion to Compel (Seq 15)

Pirogova's opposition does not actually address the majority of the arguments made in plaintiff's moving brief, including the implications of her late service of objections to plaintiff's second requests for production. She also does not address the prong of the motion seeking responses to interrogatory no. 1 and amended interrogatory no. 2. Instead, most of the opposition merely recounts procedural history that is irrelevant to the propriety of the requested discovery. Thus, the motion could be granted based on waiver alone.

However, the court will nonetheless consider her relevant arguments, which appear on pages 7-8 of her counsel's affirmation (which, to be sure, is a violation of Part Rule

44). There, she objects to the scope of some of the requests notwithstanding that plaintiff narrowed them pursuant to the direction in the June 22, 2023 conference (*see* Dkt. 511 at 8). Thus, her objection that the requests are an improper attempt at article 52 discovery is unavailing.

Pirogova also baselessly contends that plaintiff did not particularize “how the individual documents in these various categories were relevant to establishing Ms. Pirogova’s insolvency in 2015” (*id.*). On the contrary, plaintiff’s moving brief more than sufficiently explains the basis for these requests (*see* Dkt. 481 at 13-22). As noted, Pirogova’s opposition does not actually respond to most of these explanations.

She does, however, proffer a valid objection to request nos. 15, 19 and 20, which seek copies of Pirogova’s passports, visas, travel authorizations, detailed phone records, and documents sufficient to show her location on three particular dates (*see* Dkt. 464 at 3). While the areas of inquiry that prompted these requests are fair game for deposition questions, notwithstanding Pirogova’s late responses, these document requests are unduly intrusive and disproportionate to the needs of this case.

To be sure, there appears to be reason to doubt the veracity of Pirogova’s CPLR 3118 response, so plaintiff’s resulting discovery requests are understandable. Pirogova is strongly urged to clarify this issue with plaintiff since the court will entertain a motion to shift the costs associated with this discovery if it revealed that Pirogova does not really reside at that address. While there is no excuse for providing a false or misleading response, Pirogova should put this issue to rest by providing truthful information so this collateral issue can stop distracting from the actual issues in this case.

Far more important is Pirogova’s assertion that she lacks documents responsive to request nos. 21-24, which seek documents sufficient to show her assets and debts at the time of the subject transfers in 2015 (Dkt. 464 at 304). Pirogova claims that “at the time she left the Russian Federation, she left various personal properties, including business and financial documents that would have reflected her assets” (Dkt. 469 at 12-13). However, plaintiff plausibly avers that it seems doubtful that Pirogova would lack any documents responsive to these requests (*see* Dkt. 481 at 18-22). Indeed, she did not personally file an affidavit in opposition to this motion. Thus, among other issues, the court has no idea what documents were left in Russia, where they might currently be, and why--even if she cannot go there herself--she could not hire someone to retrieve them for her.

Under these circumstances, Pirogova (not her counsel) must personally file a detailed Jackson affidavit regarding these categories of documents. For the avoidance of doubt, merely parroting what her counsel stated in his affirmation will not suffice as it does not come close to the level of detail required for a Jackson affidavit. In addition, among the usual required information, the Jackson affidavit shall provide detailed information based on personal knowledge regarding the potential location of records relating to the assets and

liabilities identified in plaintiff's brief and the efforts Pirogova undertook to locate them before representing that she has no responsive documents at all. Pirogova is reminded that documents held by current and former agents, including attorneys and accountants (regardless of where they are located), are considered within her possession, custody and control, and her Jackson affidavit must address her efforts to locate documents from those sources.

Pirogova's Motion to Compel (Seq 16)

As an initial matter, the court again excuses Pirogova's counsel's failure to file a brief in support of her motion and again urges compliance with Part Rule 44. Regardless, the motion lacks merit.

After Pirogova unsuccessfully sought to justify the requested discovery in a conference and in a subsequent deficiency letter, her motion still fails to explain why it is material and necessary to this action (*see* Dkt. 453 ["the court reviewed Pirogova's deficiency letter ... and it does not appear to answer the questions raised during the June 22, 2023 conference and certainly does not justify the scope of her discovery requests. Pirogova should not expect her motion to compel to be granted unless her motion actually does so"]). Instead, her motion merely repeats the same factual background and arguments without actually adding anything materially new. As previously discussed and set forth in plaintiff's opposition brief, the context and validity of the underlying Russian judgment, which was domesticated in a CPLR article 53 proceeding, is irrelevant in this action as the judgment in that proceeding has preclusive effect here (*see PJSC Natl. Bank Trust v Pirogova*, 216 AD3d 476 [1st Dept 2023]). Thus, among other implications, there is no basis to question plaintiff's standing.

Nor has Pirogova provided any cogent explanation for why documents relating to the value of the collateral in Russia would prove that she was not insolvent at the time of the subject transfers. As plaintiff explains, Pirogova still has not proffered any grounds to disregard the Russian court's valuation or explain how such a line of inquiry is reasonably likely to allow her to demonstrate her solvency in 2015 (*see* Dkt. 510 at 16-17). While Pirogova suggests that she should have been entitled to surplus from the sale of the collateral (*see* Dkt. 484 at 10), she does not explain how money she never received or a theoretical (and apparently) unenforceable right to money that she was unable to procure in prior legal proceedings could possibly affect the fair value of her assets within the meaning of DCL § 271.

Pirogova's other arguments are unavailing (*see* Dkt. 510 at 18-19), though the court declines plaintiff's request to impose costs on the ground that the motion is frivolous despite its complete lack of merit.

Accordingly, it is ORDERED that plaintiff's motion to compel is GRANTED IN PART to the extent that by September 21, 2023, Pirogova shall (1) provide a complete response to interrogatory no. 1 and amended interrogatory no. 2; (2) produce all documents in her possession, custody or control responsive to plaintiff's second requests for production, except for request nos. 15, 19 and 20; and (3) e-file a detailed Jackson affidavit consistent with this order regarding request nos. 21-24.

And it is further ORDERED that Pirogova's motion to compel is DENIED.

In light of the history of Pirogova's failure to comply with deadlines and constant requests for extensions, it is further ORDERED that the September 21, 2023 deadline will not be extended.

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9/6/2023
DATE

JENNIFER G. SCHECTER, J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED
- DENIED
- NON-FINAL DISPOSITION
- GRANTED IN PART
- OTHER