

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

PRESENT: HON. ARTHUR F. ENGORON PART IAS MOTION 37EFM

Justice

-----X

THE PEOPLE OF THE STATE OF NEW YORK, BY
LETITIA JAMES, ATTORNEY GENERAL OF THE STATE
OF NEW YORK,

Petitioner,

INDEX NO. 452357/2020

MOTION DATE 11/25/2020

MOTION SEQ. NO. 001

- v -

LEASING EXPENSES COMPANY LLC, NLS EQUIPMENT
FINANCE LLC, LEONARD MEZEI, ARIEL SCHACHTER,
SARA KRIEGER, JAY COHEN, UNKNOWN JAY COHEN
FAMILY TRUST, FIELDSTON CAPITAL LLC, JS
VENTURES HOLDINGS LLC, JOHN DOES 1-10

**DECISION + ORDER ON
MOTION**

Respondents.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 18, 19, 21, 25, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 55, 56, 57, 59, 62, 64, 65, 66, 69, 73, 74, 75, 76, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 110, 111, 117, 119, 123, 124

were read on this motion for INJUNCTION.

Upon the foregoing documents, it is hereby ordered that the petition is granted.

In this special proceeding, the People of the State of New York, by Attorney General Letitia James (hereinafter, "OAG"), seeks to enjoin respondents from attempting to enforce what she deems to be fraudulent equipment leases that were previously rescinded in a Decision and Order filed on June 8, 2020 by the Hon. Lucy Billings ("the Prior Proceeding"). The First Department unanimously affirmed Justice Billings' Decision and Order on February 11, 2021.

The Prior Proceeding, *inter alia*, found Northern Leasing engaged in ongoing fraud when it used independent sales organizations ("ISOs") to urge lessees to sign leases, all the while knowing that the ISOs were engaging in fraudulent practices such as obscuring or misrepresenting the key terms of the leases. The Prior Proceeding resulted in an order that: (1) enjoined Northern Leasing and related entities "from conducting the business of equipment finance leasing or collection of debts under equipment finance leases and from purchasing, financing, transferring, servicing, or enforcing equipment finance leases"; (2) rescinded all leases entered into after April 11, 2013; (3) ordered restitution of all funds collected from lessees and lease guarantors since that date; (4) ordered vacatur of over 30,000 default judgments filed in New York City Civil Court cases against out-of-state victims; (5) ordered disgorgement of all fees paid to Northern Leasing's attorneys; and (6) ordered dissolution of Northern Leasing.

In the instant special proceeding, OAG alleges that respondents are using a new entity, respondent Leasing Expenses Company LLC (“LEC”), to continue to enforce the rescinded leases by making unauthorized bank account withdrawals from the fraud victims and their guarantors; and respondents are using a new entity, respondent NLS Equipment Finance LLC (“NLS-EF”) to continue Northern Leasing’s fraudulent scheme of originating and collecting on new leases that are essentially identical to the rescinded leases. Petitioner also claims and has provided evidence that LEC and NLS-EF are “alter egos” of Northern Leasing; share “owners, officers, directors and personnel” and “telephone numbers and other contact information with Northern Leasing; commingle funds with each other; and, apparently, direct lease proceeds to the owners of Northern Leasing.”

Petitioners assert that since at least 2019, NLS-EF has stepped into the shoes of Northern Leasing, originating new leases using “the same fraudulent and deceptive practices” that Northern Leasing utilized in its heyday, “including forgery, to trap individuals into outrageously priced non-cancelable equipment finance leases for inexpensive credit card swiping equipment”. “The types of fraudulent practices alleged – including false promises of savings, false offers of a free trial, and concealing that the transaction involved a non-cancelable lease – are parallel to those found in” the Prior Proceeding.

In opposition, respondents set forth a myriad of hyper-technical and conclusory defenses. As an initial matter, respondents placed great emphasis on their confidence that Justice Billings’ Decision and Order in the Prior Proceeding would be overturned on appeal, an argument now rendered moot because, as noted above, the First Department unanimously affirmed Justice Billings’ Order. Respondents then assert that there are enough differences between the operation of Northern Leasing and LEC such that the order from the Prior Proceeding is inapplicable to respondents in the instant proceeding. Such an argument misuses the forest for the trees. The fact that respondents have taken steps to distinguish the new operation from the old one does not negate their liability. By way of example, respondent Cohen seems to assert that because he took care to ensure that NLS-EF is 50% owned by “a generation skipping trust with Cohen’s children as beneficiaries” as opposed to him personally, the operations are sufficiently distinct such that Cohen cannot be found to have violated the Prior Proceeding’s order. Allowing such an argument to prevail would all but obliterate the spirit and purpose underlying Justice Billings’ previous findings, as any entity or individual found to have engaged in fraud could immediately rebrand its fraudulent practices *just enough* and re-direct proceeds to family members as an end-run around justice.

Respondents next assert that summary judgment is inappropriate and that a trial is necessary as respondents have denied the allegations in the petition. However, this argument fails as conclusory, self-serving affidavits, without more, are insufficient to rebut a *prima facie* case of summary judgment. Aur v Manhattan Greenpoint Ltd., 132 AD3d 595, 596 (1st Dep’t 2015).

Respondent LEC additionally asserts that it should be able to enforce leases, notwithstanding their previous rescission, if the lessees had not returned the equipment. As OAG asserts, LEC’s “blame the victim” argument illustrates the disregard with which it has treated Justice Billings’ order, and further evidences its erroneous belief that it can simply step into Northern Leasing’s

shoes and continue to engage in conduct previously enjoined simply because it has a different name.

An individual defendant can be held liable as an officer or director for an entity’s fraud under Executive Law § 63(12) where OAG can prove that the individual defendant “either personally participate[d] in the fraud or ha[d] actual notice of its existence.” OAG has met this burden. Respondents have failed to rebut petitioner’s showing that LEC unlawfully enforced leases that were rescinded by the Northern Leasing Decision and Order; that NLS-EF originated leases as part of the Northern Leasing respondents’ fraudulent scheme prior to the Prior Proceeding’s Decision and Order, and they have continued engaging in fraudulent leasing practices since that time. Accordingly, respondents must disgorge any funds they acquired from LEC and NLS-EF’s conduct so they may be returned as restitution to the victims of respondents’ scheme.

Petition granted. Petitioner to settle order within 10 days.

<u>2/25/2021</u>			<u>ARTHUR F. ENGORON, J.S.C.</u>
DATE			
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input checked="" type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE