

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

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RICHMOND CAPITAL GROUP LLC,

Index No. 2018-51838

Plaintiff,

-against-

**AFFIRMATION OF AVRAHAM
LESCHES IN SUPPORT OF
APPLICATION TO VACATE
JUDGMENT BY CONFESSION**

CONGREGATION SHULE, INC. D/B/A
CONGREGATION SHULE and AVRAHAM LESCHES,

Defendants.
-----X

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

AVRAHAM LESCHES, being duly affirmed, deposes and says that the following is true and correct, under the penalties of perjury:

1. I am over the age of 18, a named Defendant in this action, and the former president of Defendant Congregation Shule, Inc. (“Congregation”).

2. I respectfully submit this Affirmation in support of Defendants’ application to vacate the Judgment By Confession, entered on June 20, 2018 (Dkt. No. 4) (the “Judgment”), by Plaintiff Richmond Capital, Inc. (“RCG”), in the amount of \$14,662.77, and to stay all judgment enforcement actions taken by RCG, its attorney Marcella Rabinovich, Esq., and NYC Marshal Stephen W. Beigel (the “Marshal”). A copy of the Judgment is annexed as Exh. A.

3. The Judgment was entered upon the Affidavit of Confession of Judgment dated September 19, 2017, which was filed by RCG on June 19, 2018 (Dkt. No. 1) (the “COJ”), and the separate Affidavit of Non-Payment of Michelle Gregg, dated June 19, 2018 (Dkt. No. 2) (“Gregg Aff.”). Copies of the COJ and Gregg Aff. are annexed as Exhs. B and C.

4. As set forth below and in the accompanying Memorandum of Law, the Judgment should be vacated and enforcement stayed because the COJ was entered by RCG without authority since there had been no default under the underlying Merchant Agreement dated September 19, 2017 (the "Agreement"), was entered against New York residents in the wrong county, and did not give Defendants credit for amounts actually paid. A copy of the Agreement is annexed as Exh. D.

I. Background of Defendants

5. Defendant Congregation Shule, Inc. is a small religious corporation of the Jewish faith duly formed on February 22, 2011 and existing in Kings County pursuant to Religious Corporations Law Article 10. Congregation's registered address with the Kings County Clerk's Office is 391 Kingston Avenue, Brooklyn, New York 11225.

6. Congregation's members consist mostly of members of the Chabad-Lubavitch hassidic community. Congregation meets for religious worship in the Crown Heights neighborhood of Brooklyn, New York.

7. I am a resident of Kings County, New York, and maintain an address at 329 A Crown Street, Brooklyn, New York 11225. I am employed by the Brooklyn Chamber of Commerce and a member of the Chabad-Lubavitch community in Crown Heights.

8. Neither Congregation nor I maintain an address for any purpose or own real property in Dutchess County.

II. Background of RCG

9. RCG, a New York limited liability company, is a merchant cash advance ("MCA") funder that purchases the daily receivable of small businesses at discounted rates. As I understand it, in an MCA transaction, the funder purchases a specified percentage of future daily receivables and takes a fixed daily amount each business day by ACH withdrawal from a

merchant's bank account until the purchased amount of receivables is delivered. The merchant is entitled to a reconciliation of the daily amount with the actual amount of receivables received by the merchant each day, such that if no receivables are received, the daily amount must be reduced to zero. Unlike a loan transaction, the MCA funder bears the risk of non-payment by the merchant in the event a merchant has no further receivables.

10. Jonathan Braun, an apparent principal or senior manager of RCG, is a convicted felon, who pleaded guilty in 2011 to conspiracy to import 1,000 kilograms or more of marijuana and money laundering. *See U.S. v. Jonathan Braun*, 10-CR-433-KAM (E.D.N.Y.); a copy of Mr. Braun's June 13, 2018 sentencing memorandum to District Judge Kiyoo A. Matsumoto is annexed as Exh. E. Upon information and belief, Mr. Braun was previously arrested in 2010 for operating a marijuana distribution business in Richmond County that allegedly imported over 10,000 kilograms of marijuana into the United States, bringing in more than \$6 million per week at the heights of his operation. *See* N.Y. Daily News, Staten Island drug king can leave house arrest to visit Lubavitcher rebbe tomb (Dec. 23, 2013), available at <http://www.nydailynews.com/new-york/nyc-crime/staten-island-drug-king-leave-house-arrest-visit-lubavitcher-rebbe-tomb-article-1.1556955> (last visited June 22, 2018), a copy of which is annexed as Exh. F. Mr. Braun's own attorneys' recently requested that Mr. Braun be sentenced to a minimum sentence of 10 years for his crimes. *See* Exh. E. Mr. Braun was previously ordered to forfeit \$1,091,154 in funds from his criminal activities. A copy of the Preliminary Order of Forfeiture, dated April 19, 2013, is annexed as Exh. G.

11. Having lost his prior illicit business, Braun apparently turned to ripping off merchants – and in this case, a religious congregation –by holding confessions of judgment over their heads.¹

III. MCA Funding for Congregation

12. In or about September 2017, Congregation needed additional capital for a renovation project for a new location that Congregation was looking to lease for an affiliated preschool (which is operated by a separate entity).

13. Congregation reached out to an MCA funder, Yellowstone Capital LLC (“Yellowstone”), to get an MCA in the amount of \$47,000 to assist with the project. To obtain funding, Yellowstone required lots of confidential financial information concerning Congregation, including credit card processing statements and bank statements.

14. During the negotiations with Yellowstone, I suddenly received a call from Mr. Braun telling me that Congregation was preapproved for funding of \$40,000 from RCG. I do not know where Mr. Braun obtained Congregation’s contact or financial information, but assume it must have been leaked to him by someone at Yellowstone.

15. Mr. Braun insisted on funding Congregation for its renovation project and we eventually agreed that RCG would purchase some of Congregation’s receivables for \$15,000.

IV. The Agreement and COJ

16. On or about September 19, 2017, an individual purportedly named “Jordan Jensen” of Capital Funding ASAP, emailed me saying “Please sign and Notarize and we can fund. Ty”. A true and correct copy of the email and attachments are annexed as Exh. I. Attached

¹ RCG was recently sued by one of its merchants in an action called, *Evelar Inc. v. Richmond Capital Group LLC, et al.*, N.Y. Co. Sup. Ct. Index No. 652251/2018. A copy of the complaint in that action is annexed as Exh. H. The plaintiff there alleged that brought the action “in response to direct threats made by [RCG] to fabricate rights to file and enforce a confession of judgment against the Plaintiff that Defendants have no entitlement to use.” *Id.* ¶ 1. That complaint refers to vicious and abusive texts messages and other communications from Jonathan Braun of RCG and the plaintiff. *Id.* ¶¶ 25, 31.

was a draft Merchant Agreement, Authorization for ACH debits, and Affidavit of Confession of Judgment. *Id.*

17. Under the Agreement, RCG purchased \$22,485.00 of Defendant's future receivables at a discounted rate of \$15,000, which were to be delivered as a specified percentage of daily receivables. Exh. D, at p. 1. According to the Agreement, Defendant was to deliver \$399 of its receivables to RCG per business day by allowing RCG to debit such amounts until the purchased amount of receivables was received by RCG. *Id.* Without adjustments, it would have taken Congregation approximately 56.5 business days to deliver the purchased amount of receivables.

18. The "specified percentage" of daily receivables sold under the Agreement was 10%. *Id.* The Agreement specifically provided that:

RCG will debit the specific daily amount each business day and upon receipt of the Merchant's monthly bank statements on or about the eighteen day of each month reconcile the Merchant's Account by either crediting or debiting the difference from or back to the Merchant's Account so that the amount debited per month equals the specified percentage.

Id. In other words, if 10% of Congregation's daily receivables was, on average, less than \$399 per day, RCG was *required* by the Agreement to reconcile the amount of the daily payment to a much lower amount such that it would extend the payment delivery time over a longer period than originally contemplated. In other words, the term of payment was of indefinite duration for as long as it takes to recoup the purchased amount from 10% of daily receivables.

19. The Agreement itself was based on the mistaken assumption that Congregation, a synagogue, had daily receipts – which it did not. The only receipts Congregation had were from small, intermittent donations. Therefore, upon reconciliation, to avoid being converted into an unenforceable loan agreement, the daily payments under the Agreement should have been reduced to almost zero.

20. The Agreement provided that “[u]pon breach of any provision in paragraphs 1.10 [sic], 2.9, and/or 3.1, RCG may enter that Confession of Judgment as a judgment with the Clerk of the Court and execute thereon.” Exh. D ¶ 1.10. None of these provisions provide that Congregation would default simply as a result on non-payment (since that would potentially convert the agreement into an unenforceable loan agreement).

21. As relevant to this action, Defendant would be in default under the Agreement where “[Congregation] demonstrates an intent to default on this agreement by threatening to either cease payments or default on any provision within this Agreement” (*id.* ¶ 1.11(e)), or:

(g) Merchant shall use multiple depository accounts without the prior written consent of RCG; (h) Merchant shall change its depositing account without the prior written consent of RCG; (i) Merchant shall perform any act that reduces the value of any Collateral granted under this Agreement; ... or (k) Merchant shall fail to deposit its Receipts into the Account.

Id. ¶ 3.1. No provision of the Agreement provided that the COJ may be entered against Defendant in the event that Defendant’s bank account is frozen by the bank or payment is declined other than through any affirmative act of Defendant. *See id.* ¶¶ 1.10, 2.9 and 3.1. Nor is there any provision that non-payment or insufficient funds in the Account would constitute a default where Congregation had not diverted funds.

22. I signed the COJ on behalf of Congregation and myself. *See* Exh.B. According to the COJ, the Congregation is located at “137 MONTAGUE ST. STE 241, BROOKLYN, NY 11201, in the County of KINGS.” *Id.* ¶ 1. It further stated that “I reside at 329 A Crown St., Brooklyn, NY 11225, in the County of KINGS.” *Id.* ¶ 1.

23. The COJ further provides that Defendants confessed judgment for:

the sum of \$22,485.00 *less any payments* timely made pursuant to the secured Merchant Agreement dated 09/19/2017, plus legal fees to Plaintiff calculated at twenty five percent (25%) of the total of the aforesaid sums, costs, expenses and disbursements and interest at the rate of 9% per annum from 05/14/2018, or the highest amount allowed by law, whichever is greater. Such amount shall be set

forth in an affidavit to be executed by Plaintiff or an affirmation by Plaintiff's attorney, which shall be attached hereto at the time of entry of this Affidavit of Confession of Judgment.

Id. ¶¶ 4-5 (emphasis supplied). Furthermore,

This confession of judgment is for a debt due to Plaintiff arising from Defendants' failure to pay to Plaintiff, Merchant Defendant's accounts-receivable, which were purchased by Plaintiff pursuant to the secured Merchant Agreement dated September 19, 2018, and for Defendants' breach of the secured Merchant Agreement, plus agreed-upon interest, attorneys' fees, costs and disbursements, as agreed-upon by Merchant Defendant and myself, under the secured Merchant Agreement, dated September 19, 2017, of which supporting documents include a Personal Guarantee and/or a UCC-1 financing statement(s).

Id. ¶ 6 (emphasis supplied).

24. I believe I also filled out a form from RCG providing Congregation's bank log-in information, which enabled RCG to monitor Congregation's bank records.

V. Events After Entering the Agreement

25. RCG made withdrawals of \$399 in 2017 from Congregation's account at Chase on 9/20, 9/21, 9/22, 9/25, 9/26, 9/27, 9/28, 9/29, 10/4, 10/20, 10/23, 10/24, 10/25, 10/26, 10/27, 10/30, 10/31, 11/2, 11/16, and 11/17 (20 payments for a total of \$7,980). Copies of reports from Congregation's bank for all payments made to RCG are annexed collectively as Exh. J.

26. In October 2017, Congregation had been experiencing financial difficulties and it was not clear whether the renovation project would be completed. There were few donations coming in and the space that Congregation was attempting to lease was hit with a violation from the Department of Health that prevented Congregation from using it for its intended purpose.

27. There was also a very low balance in Congregation's bank accounts, which caused Yellowstone's and RCG's ACH draw as to be rejected for insufficient funds. The repeated draws against the account eventually caused Chase to close Congregation's account.

28. This slowdown in donations and lack of significant new receivables should have resulted in a reconciliation of daily payments to reflect the reduced income of Congregation. Indeed, Congregation quickly worked out a payment plan to pay off its outstanding advance with Yellowstone.

29. I also attempted to work out a reduced payment plan or reconciliation of the daily payment amounts with RCG, as RCG was required to grant to Congregation under the Agreement. I emailed and called Michelle Gregg at RCG and had email and phone conversations with her, in which I explained the financial difficulties Congregation was facing, but that I was going to work in good faith to deliver the purchased amount of receivables. Copies of my email communications with Ms. Gregg are annexed collectively as Exh. K. RCG had regular access to Congregation's bank accounts because I believe I had signed an Authorization form.

30. I got a call back from Mr. Braun with threats of physical violence and reputational harm. He said to me in substance:

Do you know who I am? I know everyone in your Chabad-Lubavitch community. I am going to come down there and beat the shit out of you in 770 Eastern Parkway [the main Chabad-Lubavitch synagogue in Crown Heights] so that people know that you are a thief, liar and dishonest.

(The vulgarities were those used by Mr. Braun.)

31. Out of fear for my safety, I agreed that Congregation would make two wire payments of \$2,500 on October 16, 2017 and \$2,000 on October 24, 2017. *See* wire confirmation in Exh. J.

32. On or about October 31, 2017, I informed Ms. Gregg that Congregation did not have the income to make payments and about the violation that make it impossible for

Congregation to proceed with its project. In response, Ms. Gregg sent an email saying “you know im [sic] only interested in getting paid back. Not your stories so much.” See Exh. K.

33. I continued over the ensuing weeks to try to work out an affordable payment plan with Ms. Gregg, but I did not hear back from her until about the end of November 2017.

34. In or about early December 2017, I received another threatening and harassing call from Mr. Braun, in which he said in substance:

I am coming to Crown Heights. I am going to beat the shit out of you and publicly embarrass you. I will hang papers all over the lampposts in Crown Heights stating that you are a liar and a thief. I am going to tell people that you are running an illegal operation and a scam.

Mr. Braun again asked what I was going to do to stop this, that he would not agree to a reduced payment and that he wanted payment immediately. Out of fear, Congregation wired him \$1,000 on December 4, 2017. See wire confirmation in Exh. J.

35. In total, Congregation made payments of \$13,480.00 of the \$22,485.00 purchased amount, meaning that Congregation’s total balance was no more than \$9,005.00.

36. On January 4, 2018, I received an email from Ms. Gregg in which she wrote “I NEED YOU TO TRY AND SEND ANOTHER WIRE I HATE WHEN JOHN [BRAUN] IS UP MY ASS FOR A DEADBEAT” Exh. K.

37. At that time, I hired an attorney named Rachel Plaut, Esq., an attorney who I was told knows the MCA industry, to reach out to RCG to settle the dispute. Without waiver of attorney-client communications, Ms. Plaut informed me that after reaching out to Mr. Braun, nothing could be done to settle the dispute. I later learned that Mr. Braun called Ms. Plaut a “cunt” during her call, and stated that he knows where she lives and would come shoot out her windows so that she sees who he is what she is dealing with.

VI. Entry of Judgment

38. On June 19, 2018, without any prior notice or further communication from RCG to me, RCG filed the COJ in Dutchess County, even though neither RCG nor Defendants are located in Dutchess County and the COJ indicates that Defendants are both located in Kings County. *See* Exhs. A and B.²

39. In support of the application for judgment, RCG submitted the Affidavit of Non-Payment by Michelle D. Gregg, dated June 1, 2018 (Dkt. No. 2) (“Gregg Aff.”), which failed to account for the full amount of \$13,081 in payments that were actually made by Congregation prior to filing the COJ. *See* Exh. C ¶¶ 11, 12 (“CSI initially made Specified Percentage Payments of \$11,525.00 through automatic debits; as of June 19, 2018, CSI has continuously failed to remit on collections on receivables purchased by RCG. ... There remains a balance due and owing of \$10,960.00 ...”). Similarly, the Judgment submitted by Ms. Rabinovich provided that the “Amount Paid” was allegedly only “\$11,525.00” and the “Amount Owed” was “10,960.00.” Exh. A. However, these statements by RCG and Ms. Rabinovich were demonstrably false because they do not account for the full \$13,480 that was actually paid by Congregation and the amount owed was only \$9,005.

40. As a result of RCG’s misrepresentations, the Clerk of Court entered the Judgment on June 20, 2018, in the incorrect amount of \$14,662.77, which included \$2,740.00 in attorneys’ fees.

² It is my understanding that RCG was aware that this filing against Kings County residents was improper based on a submission they made in another action, *Richmond Capital Group, LLC v. Thomas A. Suess et al.*, *Richmond Capital Group, LLC v. Thomas A. Suess et al.*, Richmond Co. Sup. Ct. 151518/2017. A true and correct copy of Plaintiff Richmond Capital Group, LLC’s Sur-Reply Memorandum of Law in Response to Defendants’ Citation to New Case on Reply, dated September 27, 2017, is annexed as Exh. L.

VII. Post-Judgment Events and Communications with Mr. Braun

41. On June 20, 2018, I received a call from Mr. Braun in which he asked me, “did you receive my little present?” Mr. Braun demanded immediate payment of \$15,000 dollars. When I asked him to explain where the inflated numbers came from, he replied in substance (with all vulgarities being from Mr. Braun, recited herein to give the Court an impression of Mr. Braun’s character):

- I am going to make you bleed. You are going to regret the day you met me.
- You had the audacity to send that cunt Rachel Plaut, Esq. – who do you think she is? She obviously does not know how this business works. I know everybody in your community.
- Enjoy hanging out with all the molesters on Crown Heights Watch.³ You are like the people in the mikva (communal bathhouse) that molest little kids.
- I am going to send this to COLive.com (a Chabad-Lubavitch community news site). Wait until I get in touch with your friends and family.
- Are you on your knees? Can you suck. Suck my dick.
- I am going to take your money. You stole from me and I’m going to give it to my son’s yeshiva (religious school).
- I will make you suffer for every penny.

42. On June 20, 2018, I learned from Congregation that the Marshal had served a levy and demand on Congregation’s credit card processor, Stripe Payments Company, with a copy of an Execution with Notice to Garnishee, dated June 20, 2018 (the “Execution”). A copy of the Levy and Execution are annexed as Exh. M. This, in effect, prevents Congregation from receiving any credit card donations that come from donors.

43. On June 20, 2018, I wrote to Ms. Gregg with an offer to pay the balance of \$9,005 under the Agreement in a lump payment, because I am afraid that Mr. Braun may attempt to cause physical or reputational harm to me. However, Ms. Gregg did not respond to that offer.

³ Crown Heights Watch is the former name of Jewish Community Watch, a webpage that maintains a “Wall of Shame,” outing alleged and convicted child molesters living in the Crown Heights and greater Jewish community. See <http://www.jewishcommunitywatch.org/wall-of-shame/>.

44. On June 21, 2018, I learned from Congregation that Chase Bank had received a levy from the Marshal that froze Congregation's bank accounts. A copy of the Levy and Execution are annexed as Exh. N. Congregation will be unable to operate and provide religious services to its members without access to its funds.

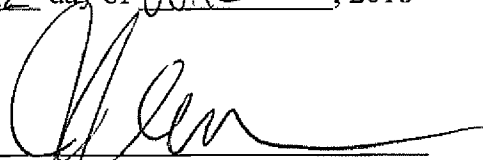
45. Congregation will be irreparably harmed when members refuse to donate to the Synagogue because its credit card processor and bank accounts are levied by the Marshal.

46. On June 21, 2018, I filed a police report and obtained an order of protection against Mr. Braun. Copies of such documents will be available upon the Court's request.

WHEREFORE, I respectfully request that this Honorable Court grant Defendants' application to vacate the Judgment and stay all Judgment enforcement, together with granting Defendants all such other and further relief as is just and equitable.


AVRAHAM LESCHES

Affirmed to before me this
22 day of June, 2018



Notary Public

JACOB H. NEMON
NOTARY PUBLIC-STATE OF NEW YORK
No. 02NE6260838
Qualified in Kings County
My Commission Expires May 07, 2016

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