

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DUANE A. HART IA Part 18
Justice

Application of: _____ x
WESTCLIFF PARTNERS, INC., as Assignee
of THE CIT GROUP/EQUIPMENT FINANCING,
INC.,

Index
Number 13443 2005

Motion
Date May 3, 2006

For a Judgment Pursuant to CPLR 5236
for the Sale of Real Property,

Motion
Cal. No. 32

_____Petitioner,

_____ - against -

CARMINE AGNELLO,

_____Respondent/Judgment Debtor.

THE CITY OF NEW YORK ENVIRONMENTAL
CONTROL BOARD, THE NEW YORK CITY
DEPARTMENT ON FINANCE, UNITED STATES
OF AMERICA, JOHN NAPOLITANO and
VICTORIA GOTTI,

Additional Respondents.

_____ x

The following papers numbered 1 to 9 read on this motion by
respondent/judgment debtor Carmine Agnello ("Agnello") to vacate an
execution, void the levy made pursuant to the execution and to set
aside the Sheriff's execution sale of property

Papers
Numbered

Order to Show Cause - Affidavits - Exhibits 1-3
Answering Affidavits - Exhibits 4-6
Reply Affidavits 7-9

Upon the foregoing papers it is ordered that the motion is
denied.

This proceeding was initially brought by notice of petition
pursuant to CPLR 5206(e) to compel the sale of the interest of
Agnello in Parcel I (Block 1018, Lot 319), Tuckerton Street,

Queens, New York and Parcel II (Block 10107, Lot 63), 97-13 150th Street, Jamaica, New York (the "Parcels"), in an attempt to satisfy an October 2001 money judgment (the "Money Judgment") awarded to Westcliff's predecessor, Cit Group/Equipment Financing, Inc. ("Cit Group"). In an attempt to settle the proceeding, on October 3, 2005 Westcliff and Agnello entered into a stipulation of settlement (the "Stipulation"). Pursuant to the Stipulation, the petition was amended to reflect that the proceeding was being brought pursuant to CPLR 5236. Agnello also acknowledged that \$261,257.32 is owed on the Money Judgment and agreed, *inter alia*, to pay this amount out of the net proceeds from the sale of property described as 146-46 Liberty Avenue, Jamaica, New York (the "Liberty Avenue Property"), which sale was to occur on or before October 12, 2005. It was also agreed that any remaining balance owed after applying the net proceeds from the sale of the Liberty Avenue Property would be paid from the next subsequent sale of any other properties owned by Agnello whether sold by private sale or foreclosure. Westcliff agreed to forbear from any further enforcement of the Money Judgment and to discontinue the proceeding upon Agnello's compliance with the terms of the Stipulation. In the event of default, Agnello agreed, *inter alia*, to waive any right to challenge or impede any subsequent attempts by Westcliff to enforce the Money Judgment.

In November 2005, upon Agnello's default under the Stipulation, Westcliff filed a motion seeking a court order to enforce the Stipulation and to compel the sale of the Parcels. The application was denied by this court's order dated January 23, 2006 for failure to provide proof of service upon respondents. Thereafter, Westcliff opted to enforce the Money Judgment through a property execution filed with the Queens County Sheriff to sell one of the Parcels. The instant motion ensued.

Agnello does not deny that he is in default under the Stipulation. Indeed, counsel for Agnello states in his March 21, 2006 affirmation in support of the instant order to show cause, that "[t]he closing of the sale of the Liberty Avenue Property was adjourned and has yet to take place due to a claim having been asserted against the Liberty Avenue Property by Agnello's ex-wife, Victoria Gotti." Nevertheless, Agnello argues, having commenced the instant litigation seeking a judgment of foreclosure and sale, Westcliff has elected its remedy and is now precluded from proceeding with an execution sale of the Parcels. Agnello also argues that CIT Group and Westcliff failed to have docketed with the Queens County Clerk's Office a certificate of change reflecting that Westcliff has succeeded to the interest of CIT Group as required by CPLR 5019(d). Having failed to comply with CPLR 5019(d), Agnello maintains, Westcliff cannot take any action in Queens County to enforce the Money Judgment obtained by CIT Group in Nassau County. Both arguments are unavailing.

When a stipulation between parties is clear and unambiguous on its face, it will be enforced according to its terms and without resort to extrinsic evidence (see Greenfield v Philles Records, Inc., 98 NY2d 562 [2002]; W.W.W. Assocs. v Giancontieri, 77 NY2d 157 [1990]; Rodriguez v Booth Memorial Med. Ctr., 14 AD3d 688 [2005]). Here, the duties and obligations of Agnello and Westcliff are clear and unambiguous. Agnello has admittedly defaulted under the terms of the Stipulation and, thus, has waived any challenge to Westcliff's attempts to enforce the Money Judgment.

CPLR 5019(c) states that a person who becomes entitled to enforce a judgment shall file a copy of the instrument on which his authority is based. Filing operates as constructive notice of the change in judgment creditors and establishes the assignee's authority to enforce the judgment (see Tri City Roofers, Inc. v Northeastern Industrial Park, 61 NY2d 779 [1984]; 10 Weinstein-Korn-Miller 2d, NY Civ Prac ¶ 5019.16). "The provision should not be construed as a condition precedent to the validity of the assignment as between the parties to the instrument" (10 Weinstein-Korn-Miller 2d, supra). Thus, Agnello's argument that Westcliff, as assignee, is precluded from taking any action to enforce the Money Judgment in Queens County is baseless. Moreover, CPLR 5019(d) applies to the duty of the clerk of the court or county to make an appropriate entry on the docket to reflect changes affecting any judgment. This provision does not set forth any affirmative action required by an assignee or assignor of an instrument.

Accordingly, the motion is denied.

Dated:

J.S.C.