

River Seafoods, Inc. v J.P. Morgan Chase & Co.

2003 NY Slip Op 30033(U)

July 7, 2003

Supreme Court, New York County

Docket Number: 0107239/7239

Judge: Charles J. Tejada

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

PRESENT: Hon. Charles J. Tejada, Justice

PART 50N

River Seafoods, Inc.,

Petitioner

INDEX NO. 107239/03

v.

MOTION DATE

J.P. Morgan Chase & Co.,

Respondent

MOTION SEQ. NO. 001

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for _____

Papers Numbered

Notice of Motion/Order to Show Cause - Affidavits - Exhibits _____

Answering Affidavits - Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is granted consistent with the attached Decision and Order, and it is further,

ORDERED that respondent, J.P. MORGAN CHASE & CO., pay to petitioner, RIVER SEAFOODS, INC., the amount of FORTY THREE THOUSAND ONE HUNDRED FIFTY-EIGHT DOLLARS and 88 cents (\$43,158.88), and that petitioner, RIVER SEAFOODS, INC., shall have execution thereon.

Dated: JUL 07 2003

ENTER:  J.S.C.

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: PART 50

River Seafoods, Inc.,

Petitioner,

Index. No.107239/03
DECISION and ORDER

J.P. Morgan Chase & Co.,

Respondent

Petitioner moves this Court pursuant to Article 52 of the Civil Practice Law and Rules (CPLR) for a judgment against J.P. Morgan Chase & Co. (Chase) in the amount of \$43,962.93 as compensatory damages, plus punitive damages in the amount of \$87,925.86 for violating a restraining notice that had been served on the bank to place a hold on the judgment debtor Touris Products, Inc.'s (Touris) account.

On October 18,2002, Chase responded in writing stating that “pursuant to the document notice served upon the Bank, a hold has been placed on the judgment debtor(s) account(s).” Notwithstanding the hold on the account, Chase allowed Touris to access nearly all the funds. Petitioner contends that Chase should be personally liable for the amount Touris was allowed to withdraw.

The material facts that gave rise to this controversy are not in dispute. However, Chase opposes petitioner’s motion contending that a restraining notice is effective only if funds or other property is available at the time the notice is served. Consequently, Chase contends that since the Touris’ account contained no funds at the time Chase received the restraining notice, the notice was a nullity.

Under CPLR §5222(b), a party served with a restraining notice “is forbidden to make or suffer any sale, assignment, transfer or interference with any property in which he or she has an interest, except upon direction of the sheriff or pursuant to **an** order of the court.” (See Mckinney’s Cons Laws of **NY** ,Book 7B, §5222 subd [b]). Thus, the restraining notice serves as a type of injunction prohibiting the transfer of the judgment debtor’s property. This notice may be served on either the judgment debtor himself or upon a third-party--a person who owes a debt to the judgment debtor or who is in possession of property in which the judgment debtor has an interest.

Here, Chase held **an** account for Touris under account number 252501056665. “When served upon a third party, the injunctive effect of the restraining notice continues for one year or until such time as the judgment is satisfied or vacated, whichever occurs first, and extends to property both ‘then in and thereafter coming into possession or custody’ of the garnishee. *Broome v. Citibank. N. A.*, 166 Misc.2d 283, 632 N.Y.S.2d 410 (N.Y. Civ. Ct. Queens County 1995); *citing* CPLR 5222, subd [b]; see *generally* Siegel, New York Practice, §508.

In this case, the chronology of events is uncomplicated. Petitioner served a Restraining Notice and an Information Subpoena on Chase on October 9, 2002. On October 18, 2002, Chase responded by letter informing petitioner that pursuant to the notice, a hold had been placed on Touris’ account. However, Chase did not answer the information subpoena. Petitioner’s counsel wrote Chase with respect to the specific information requested in the subpoena.

On January 2, 2003, Chase responded by again stating that “a hold had been placed on the

judgment debtor's account." Chase answered some but not all of petitioner's requests.

On January 24, 2003, petitioner served a *Subpoena Duces Tecum* on Chase requesting account statements and copies of cancelled checks. At this point, petitioner learned that on December 10, 2002, approximately two months after it put Chase on notice of its interest, Touris' account was credited with an aggregate amount of \$46,962.00, and that despite the hold, Touris was allowed to withdraw nearly all the funds.

On or about March 19, 2003, petitioner received from Chase the sum of \$1,773.00, the balance of Touris' account.

Thus, although Touris' account contained no available funds at the time the restraining notice was served, this Court finds that Chase knew or should have known of petitioner's interest in any funds that were thereafter deposited into Touris' account since Chase reassured petitioner on two separate occasions that a hold had been placed on the account pursuant to the restraining notice.

Furthermore, the Court of Appeals noted in *Aspen Indus. v. Marine Midland Bank*, 52 N.Y.2d 575, 421 N.E.2d 808, 439 N.Y.S.2d 316 (1981) that: "[V]iolation of the restraining notice by the party served is punishable by contempt (CPLR 5222, subd. [a]; 5251) and subjects the garnishee to personal liability in a separate plenary action or a special proceeding under CPLR article 52 brought by the aggrieved judgment creditor." (citations omitted).

Lastly, petitioner seeks punitive damages in the amount of \$87,925.86 for Chase's misrepresentation and negligence. However, this Court finds that petitioner has failed to make a prima facie showing that punitive damages are warranted.

Based on the foregoing, it is

ORDERED that respondent, J.P. MORGAN CHASE & CO., pay to petitioner, RIVER SEAFOODS, INC., the amount of FORTY THREE THOUSAND ONE HUNDRED FIFTY-EIGHT DOLLARS and 88 cents (\$43,158.88), which represents the balance of monies owed to petitioner after receiving \$1,773.00, fi-om Touris' account, and that petitioner, RIVER SEAFOODS, INC., shall have execution thereon.

This constitutes the decision and order of this Court.

Dated: July 7, 2003

New York City, New York

Enter:



J.S.C.