

Healthcare Capital Management, LLC v Abrams

2003 NY Slip Op 30178(U)

July 9, 2003

Supreme Court, New York County

Docket Number: 110632/01

Judge: Walter B. Tolub

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: WALTER B. TOLUB
Justice

PART 15

Healthcare Capital Mgmt, LLC
- v -
Abraham S.

INDEX NO. 110432 - 01
MOTION DATE _____
MOTION SEQ. NO. 06
MOTION CAL. NO. _____

SCANNED

JUL 17 2003

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

**MOTION IS DECIDED IN ACCORDANCE WITH
THE ACCOMPANYING MEMORANDUM DECISION**

Dated: 7/9/03

WALTER B. TOLUB
S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

-----x
HEALTHCARE CAPITAL MANAGEMENT, LLC and
HEALTH CAPITAL INVESTORS, INC.,

Plaintiffs,

-against-

Index N^o 110632/01

GEORGE ABRAMS, LAWRENCE GINSBURG,
KENNETH ROBERTS and WOLF, BLOCK, SCHORR
and SOLIS-COHEN LLP,

Defendants,

-----x
WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP,

Third-party Plaintiff,

-against-

STEVEN B. NITSBERG,

Third-Party Defendant.

-----x

WALTER B. TOLUB, J.:

Plaintiffs Healthcare Capital Management (HCM) and Health
Capital Investors, Inc. (HCI) commenced this action seeking
damages from defendants George Abrahams, Lawrence Ginsburg and
Kenneth Roberts, and from defendant/third party plaintiff Wolf,
Block, Schorr and Solis-Cohen LLP (Wolf, Block), for claims of
legal malpractice. Defendants counterclaimed against HCM and
HCI, and commenced a third - party action against Steven B.
Nitsberg (Nitsberg), president of HCM and HCI, alleging breach of
a legal retainer agreement, payment of legal services and account
stated. On January 8, 2001, a judgment was entered in favor of
Wolf, Block on its counterclaim against HCM, in the total amount

of \$88,733.07, and against HCI in the total amount of \$3,458.54. In an attempt to satisfy this judgment, Wolf, Block seeks an order directing the New York County Sheriff to sell, at a public auction, plaintiffs' cause of action herein, captioned *Healthcare Capital Management, LLC and Health Capital Investors^p Inc. v Wolf, Block et al.*

To briefly summarize the facts, in 1999, HCM **was** in the business of financing accounts receivable in the health care industry, when it retained Wolf, Block to render legal services on its behalf in connection with certain transactional and litigation matters. With Wolf, Block as its legal counsel, HCM sold several of its accounts receivable to Litchfield Financial Corp. (Litchfield) including **that** of Millennium Medical Diagnostic, P.C. (Millennium). However, by the time of the closing, the Millennium account was no longer an account receivable, but was, instead, an account in a surplus position. Apparently, HCM did not know this, but Litchfield did. The transactional documents prepared for the closing by Wolf, Block, did not contemplate this change in Millennium's status, and as a result, Millennium sustained a loss of its surplus. Millennium then filed an action against both Litchfield and HCM to recover its surplus. Wolf, Block represented HCM in that action. Defendants also performed **legal** work pertinent to HCM's dissolution at the end of 1999.

Plaintiffs commenced this action for legal malpractice, alleging, among other things, that HCM expended or incurred a loss of \$250,000, as a result of the Millennium action. Plaintiffs' claims also contain allegations that, not only did Wolf, Block err in its preparation of the transactional documents, and at one point, acknowledge its error, but that Wolf, Block failed to obtain general releases protecting HCM, while successfully obtaining general releases protecting Litchfield. Plaintiffs further accuse Wolf, Block of wrongfully revealing confidential information to Millennium and Litchfield. Wolf, Block counterclaimed for approximately \$90,000.00, in legal fees, and commenced the third-party action.

This action and third-party action have generated many motions, including Wolf, Block's motion to dismiss the complaint for failure to state a cause of action, and for summary judgment on its counterclaim for account stated. Both of these motions were denied by this court in an order dated January 2, 2002.

By decision and order of the Supreme Court, Appellate Division, First Department, entered on December 12, 2002, this court's decision was modified to the extent that **Wolf, Block** was granted partial summary judgment on its account stated counterclaims. Judgment against HCM and HCI, in the amounts of \$88,733.07, and \$3,458.54, respectively, **was** entered in the County Clerk's Office on January 8, 2003.

Wolf, Block asserts that the judgment remains unsatisfied and that, the now dissolved HCM, owns no personal property outside of this cause of action. Therefore, Wolf, Block seeks to collect on the judgment by demanding that this court direct the New York County Sheriff to sell at a public auction, plaintiffs' cause of action, as captioned above: *Healthcare Capital Management, LLC and Health Capital Investors, Inc. v Wolf, Block et al.*

It is well settled that a money judgment may be enforced against any debt and that a debt may consist of a cause of action (CPLR 5201[a]), that a judgment creditor can seek to have a receiver appointed for the cause of action (CPLR 5228), or that the judgment creditor can seek to intervene in his judgment debtor's action (CPLR 5227) (See, Davis-Delaney-Arrow, Inc. v Gerson-Oaden, Inc., (104 Misc 2d 7, 8 [Sup Ct, NY County 1980])). However, the courts also recognize "that innumerable situations can give rise to abuse of the aforementioned enforcement of judgment devices" (id), and are empowered, by CPLR 5240, to properly address such situations.

Pursuant to CPLR 5240:

The court may at any time, on its own initiative or the motion of any interested person, and upon such notice as it may require, make an order denying, limiting, conditioning, regulating, extending or modifying the use of any enforcement procedure.

This statute "grants the courts broad discretionary power to

control and regulate the enforcement of a money judgment under article 52 to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts" (Guardian Loan Co., v Early, 47 NY2d 515, 519 [1979][citations and quotations omitted]). The facts underlying this motion and cause of action, compel this court to prevent an unjust result.

The "personal property" Wolf, Block seeks to sell the malpractice action against itself, in which plaintiffs seek damages in excess of \$1,000,000, based upon the legal representation provided **by** Wolf, Block. Plaintiffs allege that the defendants' negligence and failure to properly represent and protect their interests, caused them to suffer monetary damages and their 1999 dissolution, a matter also handled by defendants.

A stay of the enforcement **of** a judgment granted for attorneys' fees due is appropriate where a pending claim for malpractice, if successful, will provide a substantial setoff of the subject judgment. See Julien v. Liebert, 246 AD2d 479, 479 (1st Dept. 1998); see also Campione v. Rose Hill Property Assoc., Inc., 216 AD2d 130, 130 (1st Dept. 1995) (holding stay of enforcement of judgment granted as to counterclaim appropriate pending determination of related rights in the main action). Therefore, the motion to for an order directing the sheriff to sell at public auction plaintiff's cause of action is denied.

Further, the court, pursuant to CPLR 5240, hereby issues a stay of the use any enforcement procedure to execute upon that judgment.

Accordingly, it is

ORDERED that the motion **by** defendants for an order directing the New York County Sherif to sell, at public auction, plaintiff's cause of action, is denied; and it **is** further

ORDERED that the use of any enforcement procedure to obtain satisfaction of the judgment entered January 8, 2003 in favor of Wolf, Block, Schorr and Solis-Cohen against Healthcare Capital Investors, Inc. is hereby stayed pending resolution of the issues pending in the malpractice action.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 7/9/03



HON. WALTER B. TOLUB, J.S.C.