

Matter of Solow Management Corp. v Tanger

2005 NY Slip Op 30031(U)

December 13, 2005

Supreme Court, New York County

Docket Number: 0004044/0441

Judge: Robert D. Lippmann

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

PRESENT: HON. ROBERT D. LIPPMANN
Justice

PART 21

In the Matter of the Application of
SOLOW MANAGEMENT CORP.,

Plaintiff,

- v -

STEVEN TANGER and DEBRA TANGER,

Defendant.

INDEX NO. 004044/91

MOTION DATE _____

MOTION SEQ. NO. 011

MOTION CAL. NO. 112

The following papers, numbered 1 to 7 were read on this motion to/for collect poundage.

PAPERS NUMBERED

Notice of Motion/Order to Show Cause – Affidavits – Exhibits 1

Answering Affidavits – Exhibits _____ 2, 3, 4, 5, 6

Replying Affidavits _____ 7

Cross Motion: Yes No

FILED
JAN 05 2006
COUNTY CLERK'S OFFICE
NEW YORK

Upon the forgoing papers, the motion brought by City Marshal Jerome Janney pursuant to CPLR 8012 (b), for an order awarding him poundage and statutory fees, settling the amount of the fee, and determining which party or parties shall pay the fees, is granted for the reasons that follow (see attached Order).

The Marshal's claim for poundage fees of \$32, 916.55 arises out of an attempt to enforce a \$655,241.10 judgment against defendants on the ground that they interfered with collection efforts of the judgment when they filed an undertaking on appeal staying

all enforcement proceedings. The fee awarded to the Marshal is akin to commission based upon a percentage of the moneys recovered pursuant to a levy or execution of attachment (*Alvarez v Brooklyn Hospital-Caledonian Hosp*, 255 A.D.2d 278, 280 [2nd Dept 1998]). The entitlement to collect poundage is entirely statutory,(*see* CPLR 8012[b]; *Personeni v Aquino*, 6 NY2d 35, 37 [1959]; *Yusuf v City of New York*, 309 AD2d 721 [1st Dept 2003]). Pursuant to the statute, is to be strictly construed, the Marshal's right to poundage is contingent upon "collecting money by virtue of * * * an order of attachment" (CPLR 8012[b][1]; *see also Yusuf*, 309 AD2d 721). A judicially created exception to the rule of actual collection or receipt of money has been created for circumstances where a party affirmatively interferes with execution of process (*Thornton v Montefiore Hosp.*, 117 AD2d 552 [1st Dept 1983]; *see also* 14 Weinstein-Korn-Miller, NY Civ Prac ¶ 8012.04).*

Here, the Court agrees with the Marshal that defendants interfered with the execution of process when they obtained a stay of all proceedings after the Marshal levied upon assets that Merrill Lynch was holding on their behalf (*see e.g., Martin v Consol. Edison Co. of New York, Inc.*, 177 AD2d 548 [2d Dept 1991]). Accordingly, the motion of New York City Marshal Jerome Janof is hereby granted in all respects and an order with respect to same is attached.

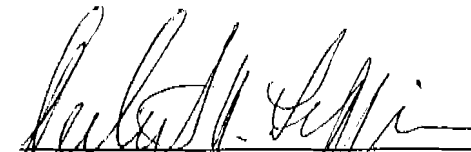
*The statutory exceptions for permitting the retention of poundage, not relevant here, provide for situations where a settlement is made after a levy by virtue of an execution, or where an execution is vacated or set aside (CPLR 8012[b][1], [2]).

Counsel for plaintiff and defendants are directed to appear before this Court at 10:00 a.m. on Friday January 20, 2006 at 80 Centre Street, Room 280, NY, NY 10013, Part 21, for a hearing on the issue of attorneys' fees. All submissions with respect to the hearing are due January 16, 2006.

This constitutes the decision of the Court.

Dated: December 13, 2005.

ENTER:


ROBERT D. LIPPMANN, J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

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At an IAS Part 21 of the Supreme Court of the State of New York, held in and for the County of New York at The County Courthouse located at 80 Centre Street, New York, NY on the 13th day of December, 2005

PRESENT: HON. ROBERT D. LIPPMANN, J.S.C.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application of
SOLOW MANAGEMENT CORP.,

Plaintiff,

- v -

ORDER
Index No. 4044/91

STEVEN TANGER and DEBRA TANGER,
Defendants.

UPON THE MOTION OF NEW YORK CITY MARSHAL JEROME JANOF, by his attorneys, Litwak & Litwak, Counselors at Law, P.C., pursuant to CPLR 8012(b), dated August 17, 2005, for an order awarding him poundage fees, setting the amount of the fee, and determining which party or parties shall pay the fee, and there being opposition by the plaintiff Solow Management Corp. by their attorneys Rosenberg Estis, P.C., and the court having received and reviewed the Affidavit of Steven Tanger as well as the opposition submitted by Rosenberg & Estis, P.C., counsel for defendants Steven Tanger and Debra Tanger, and this matter having come before this Court on December 8, 2005, and oral argument having been had thereon, and on all the papers and pleadings heretofore had herein, and due deliberation having been had on all the issues

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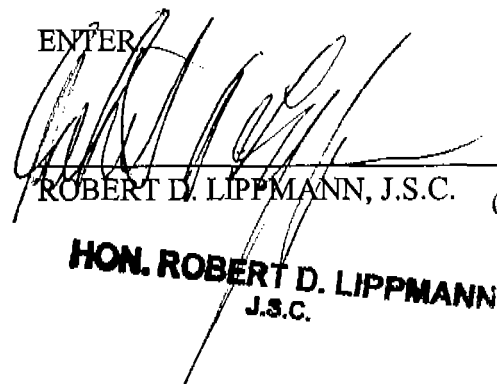
and matter raised therein, and the Court having found that Marshal Jerome Janof, at the request of plaintiff, levied an execution upon property belonging to the defendants, it is hereby

ORDERED that the motion of New York City Marshal Jerome Janof be and the same is hereby granted in all respects; and it is further

ORDERED that New York City Marshal Jerome Janof is awarded poundage in the amount of \$32,916.55, based upon five percent interest of \$655,241.10, the total judgment awarded to plaintiff, and the defendants having interfered with the levy asserted upon Merrill Lynch, a garnishee of the judgment debtors; and it is further

ORDERED that the party required and ordered to pay the Marshal's poundage is the defendants Steven Tanger and Debra Tanger, as the judgment debtors who affirmatively interfered with the execution of process.

Dated: December 13, 2005.

ENTER

ROBERT D. LIPPMANN, J.S.C.
HON. ROBERT D. LIPPMANN
J.S.C.

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