

**State Farm Fire & Cas. Co. v Estate of  
D'Angelo**

2007 NY Slip Op 30157(U)

February 20, 2007

Supreme Court, Suffolk County

Docket Number: 0036150

Judge: Edward D. Burke

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**SUPREME COURT - STATE OF NEW YORK  
IAS/TRIAL PART 9 - SUFFOLK COUNTY**

**PRESENT:**

Hon. EDWARD D. BURKE  
Acting Justice of Supreme Court

Motion R/D : 01/31/07  
Adj. Date : 02/07/07  
Mot Seq # : 001 MG  
002 MD  
CDISPSJ

-----X  
STATE FARM FIRE & CASUALTY COMPANY,  
  
Petitioner(s),  
  
- against -  
  
ESTATE OF RICHARD D'ANGELO, by  
RICHARD D'ANGELO, as Administrator,  
  
Respondent(s).  
-----X

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Upon the following papers numbered 1 to 10 read on this motion by the petition(#001) served and filed, the opposing papers, the separate cross-motion (#002) by the respondent to dismiss and the opposing papers and replies thereto ; Notice of Motion/Order to Show Cause and supporting papers 1 to 3; Notice of Cross Motion and supporting papers \_\_\_\_\_; Answering Affidavits and supporting papers \_\_\_\_\_; Replying Affidavits and supporting papers \_\_\_\_\_; Other \_\_\_\_\_; (and after hearing counsel in support and opposed to the motion) it is,

**ORDERED** that the petition (#001) served and filed in this special proceeding commenced for an order and judgment pursuant to CPLR 5014 and/or 5203 and the separate cross-motion (#002) by the respondent to dismiss said petition are decided as follows:

Petitioner, a judgment-creditor of the respondent's decedent by virtue of a 1996 money judgment awarded to the petitioner in an action before the United States District Court, Eastern District of New York, commenced this action against the respondent as administrator of the Estate of Richard D'Angelo (judgment-debtor), for an order and judgment renewing the aforesaid judgment pursuant to CPLR 5014 and/or extending the lien arising on said judgment pursuant to CPLR 5203. Respondent opposes the granting of the relief demanded by the petitioner on substantive grounds and cross-moves for dismissal on asserted legal defenses in bar.

The record adduced on the instant applications reveals the existence of the following facts: On February 9, 1996, the petitioner obtained a money judgment in the amount of \$235,994.88 in the United States District Court, Eastern District against Richard D'Angelo, now deceased. The plaintiff

entered the judgment roll on February 14, 1996 and, thereafter, on March 11, 1996, filed a transcript of said judgment with the Clerk of Suffolk County who, in turn, docketed same pursuant to CPLR 5018(b). Said filing and docketing gave rise to a judgment lien in favor of the petitioner for a ten (10) year period that began on February 14, 1996, the date on which the judgment roll was filed with the Clerk of the issuing court.

Thereafter, an execution upon the aforesaid judgment was issued as the judgment-debtor owned real property known as No. 149 West 11<sup>th</sup> Street in Huntington Station, New York. By notice dated July 31, 1997, the Sheriff of Suffolk County, who had seized the aforesaid real property under this execution, published a notice scheduling a public sale of said real property for September 29, 1997. Said sale was, however, stayed on September 24, 1997, when the judgment-debtor and his wife purportedly commenced an action in this court and therein moved for an order staying and vacating the public sale of the premises by the Sheriff of Suffolk County. By order dated December 16, 1998, the Honorable Howard Berler, J.S.C. denied this application to stay the public sale of the subject real property and dismissed the proceeding for want of the service and filing of process and pleadings.

Immediately thereafter, the judgment-debtor's wife, as part of a purported appeal of Justice Berler's December 16, 1998 order, obtained from the Supreme Court, Appellate Division, Second Department, a temporary stay of the sale of the subject premises by the Sheriff of Suffolk County. Said stay was lifted, however, on January 13, 1999 when Appellate Division denied the motion on its merits to stay the sale pending the appeal.

In March of 1999, the Sheriff re-noticed the public sale of the subject premises for April 27, 1999. Said sale was, however, stayed upon the filing of a petition in bankruptcy by the judgment-debtor on April 21, 1999. On April 10, 2000, the bankruptcy petition was dismissed and the automatic stay arising on its filing terminated.

On May 17, 2000, the judgment-debtor filed proceedings in the United States District Court for the Eastern District of New York to vacate the petitioner's money judgment of February 9, 1996<sup>1</sup>. Said application was denied by order dated September 20, 2000 and affirmed by the Second Circuit on March 29, 2002.

Within a month after issuance of the March 29, 2002 determination of the Court of Appeals for the Second Circuit, the judgment debtor died on April 22, 2002. Prior thereto, the petitioner had issued a new execution to the Sheriff of Suffolk County in an attempt to force the public sale of the Huntington Station premises. The execution was, however, returned in 2003 when it became apparent that the judgment-debtor had died on April 22, 2002.

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<sup>1</sup>A previous application by the judgment-debtor to the issuing court for the same relief had been denied by order dated April 14, 1999 (Hurley, J.) which order was affirmed by the Second Circuit by order dated December 20, 1999.

Upon a decision and order of the Surrogate's Court of Nassau County, dated July 26, 2006. Surrogate Riordan granted the petition of the petitioner herein for the appointment of an administrator of the estate of the judgment-debtor. After an unsuccessful attempt by Richard D'Angelo, a son of the decedent, to reargue the July 26, 2006 determination of the Surrogate, the said Richard D'Angelo qualified as administrator of the estate of the deceased judgment-debtor.

Petitioner then commenced this special proceeding for an order and judgment renewing the February 1996 judgment awarding it money damages from the deceased judgment-debtor pursuant to CPLR 5014(1) or, in the alternative, for an order extending the judgment lien pursuant to CPLR 5203(6) that attached thereto for the periods during which the petitioner had been stayed from executing thereon by the legal machinations of the deceased judgment-debtor. The respondent, in his capacity as administrator of the estate of the deceased judgment-debtor, opposes the relief requested on the merits thereof and, by motion sequenced (#002), seeks dismissal of the petition upon two (2) grounds asserting defenses in bar, namely, that the relief demanded by the petitioner is time-barred and/or that the petitioner's claims may not be prosecuted and determined herein absent the joinder of a corporation which the respondent, in his individual capacity, owns and/or operates or otherwise controls.

The court first considers the motion to dismiss (#002) and the legal defenses asserted therein by the respondent which the court deems interposed pursuant to CPLR 404(a). Review of the moving papers indicates that respondent's claims for dismissal of the petitioner's demands for renewal of its 1996 judgment pursuant to CPLR 5014(1) for an extension of its judgment lien pursuant to CPLR 5203 are not time-barred under any limitations periods set forth in the aforesaid statutes or under other statutory limitations periods applicable to the petitioner's claims for relief. In addition, the moving papers failed to demonstrate the respondent's entitlement to a dismissal of the petition on the grounds that the petitioner's claims may not be prosecuted absent the joinder of a corporation in which the defendant, individually, has an interest (CPLR 1001, *et. seq.*). The moving papers failed to demonstrate that the subject corporation has any cognizable legal interests in the matters at issue herein which would be affected by the judgment rendered or that the doctrines of collateral estoppel and/or *res judicata* do not preclude re-litigation of claims between the parties that arise out of the subject matter of this litigation. The motion (#002) by the respondent to dismiss the petition served and filed in this special proceeding is, thus, denied.

In light of the lengthy responses to the merits of the petitioner's claims for relief that are set forth in the affidavit of respondent Richard D'Angelo and the affirmation of his counsel, both dated January 22, 2007 and the absence of any request for leave to serve and file an answer as contemplated by CPLR 404(a), the court finds that the service and filing of an answer by the respondent is unnecessary. The court thus deems the January 22, 2007 affidavit of Richard D'Angelo as an answer and the legal arguments of his counsel set forth in her affirmation dated January 22, 2007 as opposing legal papers.

Upon review of the papers submitted in support of the petition and in opposition thereto, the court grants the petitioner's demands for relief pursuant to CPLR 5014(1). The record adduced established, indisputably, that a transcript of the judgment obtained by the petitioner in the United States District Court in February of 1996 was duly filed with the Clerk of Suffolk County pursuant to CPLR 5018(b) and that ten (10) years have elapsed since the first docketing of the judgment as required by CPLR 5014(1). Under these circumstances, the petitioner is entitled to a renewal of its judgment pursuant to CPLR 5014(1) as all of the requirements for the granting of such relief have been satisfied (CPLR 5014; *First National Bank of Long Island v Brooks*, 1 Misc3d 905[A], 781 NYS2d 624). Petitioner is thus awarded a renewal judgment of the type contemplated by CPLR 5014(3). Nothing in the opposing papers submitted by the respondent rebutted the petitioner's *prima facie* demonstration of its entitlement to a renewal of its judgment pursuant to CPLR 5014(1). Upon entry of said judgment, the judgment lien shall re-attach for another ten (10) year period (*First National Bank of Long Island v Brooks, supra*).

The court further finds that the petitioner is, alternatively, entitled to relief it demanded pursuant to CPLR 5203(b). The moving papers clearly established that the petitioner was stayed from enforcing its judgment due to the repeated stays obtained by the judgment-debtor prior to his death in April of 2002. The opposing papers failed to rebut the petitioner's *prima facie* showing of its entitlement to the relief it demanded pursuant to CPLR 5203. Petitioner is thus entitled to an extension of its judgment lien, but only for the period of time which the petitioner was stayed from enforcing the judgment. The court hereby fixes and determines said period of time to be four (4) years and six (6) months having commenced on September 24, 1997, when the first stay was obtained by the judgment-debtor, and ending on March 29, 2002, the date on which the Second Circuit Court of Appeals affirmed the denial of the judgment-creditor's third application for a vacatur of the underlying judgment.

In view of the foregoing, the motion (#002) by respondent is denied and the petition (#001) is granted to the extent set forth above.

*Settle judgment.*

Dated: February 20, 2007.

  
EDWARD D. BURKE, A.J.S.C.