

Herman v Gill

2007 NY Slip Op 30685(U)

March 23, 2007

Supreme Court, New York County

Docket Number: 0100684/2001

Judge: Eileen Bransten

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

Hon. Justice Eileen Bransten

Index Number : 100684/2001

PART 6

HERMAN, GLENN

vs

GILL, RONALD W.

Sequence Number : 006

MONEY JUDGMENT

INDEX NO. 100684/01

MOTION DATE 1-30-07

MOTION SEQ. NO. 06

MOTION CAL. NO. 05

The following papers, numbered 1 to 3 were read on this motion to/for money judgment

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

Answering Affidavits -- Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1
2
3

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE WITH THE ACCOMPANYING MEMORANDUM DECISION.

FILED

APR 13 2007

NEW YORK COUNTY CLERK'S OFFICE

Dated: Mar 23 2007

Mar 23 2007

Eileen Bransten
J.S.C.

Check one: FINAL DISPOSITION

HON. EILEEN BRANSTEN
 NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

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

-----X
GLENN HERMAN and ROBIN HERMAN,

Petitioners,

-against-

RONALD W. GILL,

Respondents.

-----X
PRESENT: EILEEN BRANSTEN, J.

Index No.100684/01
Motion Date: 1/30/07
Motion Seq. No.: 06

FILED

APR 13 2007

NEW YORK
COUNTY CLERK'S OFFICE

Petitioners Glenn Herman and Robin Herman (the "Hermans") move for an Order directing the Clerk to enter Judgment against respondent Ronald W. Gill ("Mr. Gill") in the sum of \$183,704.05. Mr. Gill opposes the motion.

Background

The Hermans and Mr. Gill formed a law partnership that dissolved in January 2000. In accordance with the parties' partnership agreement, disputes concerning dissolution were resolved through arbitration and an award was issued in February 2002. Affirmation in Support ("Supp."), Ex. 2. In June 2003, this Court confirmed the arbitration award and an Amended Judgment "accepted and approved by both parties" was signed in July 2005 and filed approximately one month later. The Amended Judgment, among other things, sets forth that the Hermans are "owed" certain sums by the Partnership or that they "shall receive" certain credits against their share of the partnership's debt. *See, e.g., Supp., Ex. 1, at 3.*

Discussion

The Hermans now move for an Order directing a judgment against Mr. Gill. They contend that:

“All known partnership debts and distributions to third parties have been satisfied [and that they] are not aware of any outstanding existing debts of the former partnership and believe that no money is owed to any outside creditors by the partnership. The only amounts still due and owing are the partners’ indebtedness to the partnership.

“[Mr. Gill] has not to date paid any of the amounts he was determined to owe to the partnership.

“[Mr. Gill’s] indebtedness to the partnership far exceeds [the Hermans’]. Consequently, [Mr. Gill] owes [the Hermans].”

Supp., at ¶¶ 14-17.

According to the Hermans’ calculations, Mr. Gill owes them “\$ 116,549.45 on the Award, plus interest of \$48,076.60 from February 26, 2002 to October 1, 2006, plus \$13,875.00 for the security deposit loss, plus interest on the \$13,875.00 of \$5,203.00 from July 22, 2002 to October 1, 2006. The total therefore which [Mr. Gill] owes to [the Hermans] is \$ 183,704.05.” Supp., at ¶ 44.

Mr. Gill opposes the motion, urging that the Hermans’ accounting is inaccurate.

Affirmation in Opposition (“Opp.”), at ¶ 10. Mr. Gill contends that:

“all the creditors have not been satisfied. HSBC Bank is still seeking payment of its credit card debt, now in excess of \$39,000. To date [Mr. Gill] has made

payments settling an HSBC loan of \$17,468; lease equipment of approximately \$10,000; and other miscellaneous debts [totaling] approximately, \$11,300. Nonetheless, the partnership is still in debt to various leasing companies and creditors.”

Opp., at ¶ 17.

Mr. Gill also asserts that the Hermans are improperly seeking half of the security deposit loss. *See*, Opp., at ¶¶ 12-14.

On reply, the Hermans contend that “[Mr. Gill’s] claim that he has paid and continues to pay the partnership is not supported by factual detail or documentary proof. [His] claim that the partnership is still in debt is also devoid of detail or documentary proof.” Reply, at ¶¶ 3-4. The Hermans assert that Mr. Gill is simply trying to forestall payment of his debt to the partnership.

Based on the parties’ submissions, this Court has absolutely no way of knowing whether the defunct partnership has satisfied all of its debts or how much each partner paid toward debt satisfaction. The Hermans’ papers are insufficient as are Mr. Gill’s. Thus, the parties must proceed with an evidentiary hearing to address payment of partnership debts (what has been paid and who has paid it) and to address what monies are due in accordance with the 2005 judgment.

Accordingly, it is

ORDERED that the issues of (1) whether the partnership's debts have all been satisfied, (2) who paid the debts and how much each party paid, and (3) whether, pursuant to the terms of the parties' 2005 Judgment, the Hermans are entitled to recover money from Mr. Gill, and if so, how much are referred to a Special Referee to hear and report with recommendations, except that, in the event of and upon the filing of a stipulation of the parties, as permitted by CPLR 4317, the Special Referee shall determine the aforesaid issue; and it is further

ORDERED that this motion is held in abeyance pending receipt of the report and recommendations of the Special Referee and a motion pursuant to CPLR 4403; and it is further

ORDERED that within thirty days of the date of this Decision and Order, petitioners shall serve a copy of this Order with notice of entry on the Clerk of the Referee Calendar (Room 119) to arrange for a date for the reference to a Special Referee.

This constitutes the Decision and Order of the Court.

Dated: New York, New York
March 23, 2007

FILED
APR 13 2007
NEW YORK
COUNTY CLERK'S OFFICE

ENTER



Hon. Eileen Branstetter