

First Women's Bank v Court Living Corp.

2007 NY Slip Op 31222(U)

May 8, 2007

Supreme Court, New York County

Docket Number: 0004736/1989

Judge: Judith J. Gische

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

HON. JUDITH J. GISCHE

PRESENT: _____
Justice

PART 10

Index Number : 004736/1989

FIRST WOMEN'S BANK

vs

COURT LIVING

Sequence Number : 009

MONEY JUDGMENT 85226

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

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

FILED

MAY 16 2007

NEW YORK COUNTY CLERK'S OFFICE

MOTION IS DECIDED IN ACCORDANCE WITH THE ACCOMPANYING MEMORANDUM DECISION.

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

Dated: MAY 08 2007

HON. JUDITH J. GISCHE J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 10

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The First Women's Bank,

Plaintiff,

-Against-

Court Living Corporation and
Louis V. Greco, Jr.,

Defendant.

-----x

DECISION/ORDER

Index No.: 004736/89
Seq. #: 009

Present:
Hon. Judith J. Gische
J.s.c.

Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this (these) motion(s):

Papers	Numbered
Ptiff's n/m [§5226] w/SV affirm, exhs	1
Greco opp w/JEJ affirm, LVG affid, exhs	2
Ptiff's reply w/SV affirm	3

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MAY 16 2007
NEW YORK
COUNTY CLERK'S OFFICE

Upon the foregoing papers, the decision and order of the court is as follows:

The court has before it plaintiff's motion for an order pursuant to CPLR § 5226, directing defendant Louis V. Greco, Jr. ("Greco") to pay the money judgment plaintiff obtained and entered against him in equal monthly installments of \$8,333 until the judgment is satisfied. Greco opposes the motion in all respects. A prior motion for the same relief was denied without prejudice, on February 15, 2007, because it was improperly served.

The underlying dispute between the parties has an extensive history, spanning almost two decades. This court's prior order of September 27, 2005 set forth a detailed recitation of the parties' claims, and described how the case has evolved to the point where it is now, and plaintiff's efforts to date to recover its judgment from the

defendants which is incorporated by reference. The court will more narrowly focus on the disputes raised by this motion.

Background

Plaintiff is in the process of trying to obtain financial information from and about Greco to satisfy the judgment it has against Greco and Court Living Corp., jointly and severally. To that effect, it has served subpoenas for information and deposed Greco and his wife, Linda Greco. Greco provided plaintiff with a copy of his 2004 Federal income tax return showing he had a salary of \$96,373 that year and adjusted gross income of \$105,746.

Greco and his wife have testified that Greco works for Second Development Services, Inc. ("Second Development") as a consultant, without compensation. Linda Greco is an officer of Second Development which is in the business of "building buildings" that are then sold to buyers. Greco has testified he is the officer of other companies owned, etc., by his wife, and that she has authorized him to sign documents from time to time, although he receives no remuneration for his services.

Plaintiff alleges that this is a bald scheme by Greco to avoid his creditors because there are 10 to 12 money judgments against him at this time, including the judgment in this case. CPLR § 5226. Thus, plaintiff contends that the statutory limitations on the garnishment of wages set forth in CPLR § 5205 are inapplicable or superceded by CPLR § 5226 which provides in relevant part as follows:

"§ 5226. Installment payment order

Upon motion of the judgment creditor, upon notice to the judgment debtor, where it is shown that the judgment debtor is receiving or will receive money from any source, or is attempting to impede the judgment creditor by rendering services without adequate compensation, the court shall order that the judgment debtor make specified installment payments to the judgment creditor."

In opposition, defendant argues that plaintiff has not proved he has other income, or is trying to avoid the judgment against him. Greco contends that plaintiff's claims are entirely without merit and that the 2004 Federal tax return is *prima facie* evidence of his income. Greco contends that 10% of his income is already being garnished pursuant to CPLR § 5205 (d) and plaintiff is not entitled to any greater sum.

Discussion

Relying upon the deposition testimony of Greco and Linda Greco, plaintiff has easily established that Greco is rendering services in his capacity as an officer to Linda Greco's businesses and without reasonable compensation.

Although Greco has testified that he is self employed, and he filed a Schedule SE with his Federal tax return in 2004, he admits he is paid a \$300 a week "stipend" by Second Development and Linda Greco has also stated that the company can, at her sole discretion, pay Greco additional compensation, if it chooses to.

Greco and Linda Greco have each separately testified, when deposed, that Greco regularly performs tasks for Linda Greco's other companies at her request, but she does not pay him, nor does he receive, monetary payment for these services. While Greco tries to minimize the services he performs for these other entities as simply signing "transactional documents," the significance of his having the authority to

sign as an officer cannot be so lightly swept aside. These are quintessential hallmarks of authority and control.

Since Linda Greco is the sole officer of Second Development and other entities, the relationship between her, as principal, and the defendant cannot be overlooked. Chemical Bank v. Sylvester Builders, Inc., 124 Misc.2d 148 (Sup Ct., N.Y. Co. 183) (debtor providing services gratis to his fiancée's corporation).

Having established that Greco is receiving or can receive additional compensation for his services, it is appropriate that there be a hearing to ascertain: 1) the fair and reasonable value of the services rendered by Greco to Linda Greco's companies, and 2) the proportion of said fair and reasonable compensation Greco should be ordered to pay to plaintiff in specified installments. Chemical Bank v. Sylvester Builders, Inc., *supra*; Posso v. Fernandez, 11 Misc3d 1067 (a) (Sup Ct., Suffolk Co., 2006). The hearing will be before a special referee who is to report his or her findings and recommendations to the court.

Since it is unclear whether plaintiff has completed its remaining discovery, the court orders that plaintiff shall serve a copy of this decision/order upon the office of the special referee so a referee can be assigned to hear the issues framed herein. Further, all discovery issues and disputes are referred to the referee assigned to the hearing.

Conclusion

Accordingly,

It is hereby

ORDERED that plaintiff's motion, for the judgment it obtained to be paid in monthly

installments, pursuant to CPLR § 5226 is granted and a special referee shall hear and report to ascertain: 1) the fair and reasonable value of the services rendered by Greco to Linda Greco's companies, and 2) the proportion of said fair and reasonable compensation Greco should be ordered to pay to plaintiff in specified installments; and it is further

ORDERED that all discovery issues or disputes that may arise in connection with this reference are also referred to the referee assigned to the hearing; and it is further

ORDERED that any relief not expressly addressed has nonetheless been considered and is hereby denied.

This shall constitute the decision and order of the Court.

Dated: **New York, New York**
May 8, 2007

So Ordered:



Hon. Judith J. Gische, J.S.C.

FILED
MAY 16 2007
NEW YORK
COUNTY CLERK'S OFFICE