

CIT Group/Commercial Servs., Inc. v Drimmer

2007 NY Slip Op 31809(U)

June 15, 2007

Supreme Court, New York County

Docket Number: 0118500/2006

Judge: Louis B. York

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SCANNED ON 6/25/2007
[* 1]
SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: _____

PART _____

Index Number : 118500/2006
CIT GROUP/COMMERCIAL

vs
DRIMMER, MITCHELL

Sequence Number : 001
TURNOVER PROCEEDING

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

_____ 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

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or party must appear in person at the Judgment Clerk's Desk (Room 11B).

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

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

Dated: 6/15/07

By
LOUIS B. YORK J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 2

-----X
THE CIT GROUP/COMMERCIAL SERVICES, INC.,

Petitioner,

For a Judgment Pursuant to CPLR 5227, Judgment
to Compel Payment of Debt Owed to Judgment
Debtor

Index No. 118500/06

Judgment/Order

-against-

MITCHELL DRIMMER, MITCHELL DRIMMER
INDUSTRIES, INC., and BERNARD DRIMMER,

Respondents.

-----X

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk
and notice of entry cannot be served based hereon. To
be in effect, counsel or other interested representatives must
appear in person at the County Clerk's Desk (Room

Louis B. York, J.S.C.:

In a prior action, Petitioner CIT Group ("CIT") was awarded \$52,305.93 on default for nonpayment of goods retained by Mitchell Drimmer Industries, Inc. Because this September 17, 2006 judgment has not yet been satisfied, Petitioner brings this proceeding to compel Respondents Mitchell Drimmer and Bernard Drimmer, principal of the judgment debtor company and his father, respectively, to turn over monies directly to Petitioner to satisfy the judgment. This proceeding is being decided on default.

First, Petitioner asserts that CPLR § 5227 prescribes judgment against Respondent Mitchell Drimmer in his individual capacity to repay outstanding loans made from the judgment debtor corporation directly to Petitioner. The section states, in pertinent part:

Upon a special proceeding commenced by the judgment creditor, against any person who it is shown is . . . indebted to the judgment debtor, the court may require such person to pay to the judgment creditor the debt upon maturity, or so much of it as is sufficient to satisfy the judgment . . . or it may direct that a judgment be entered against such person in favor of the judgment creditor.

Petitioner provides numerous accounting and tax return documentation in support of this cause of action. The June 2006 Balance Sheet and the Schedule of Loans to Officers enumerate monies lent out to Respondent Mitchell Drimmer from the judgment debtor corporation and the outstanding balance. (Pl.'s Notice of Petition - Ex. 4). Judgment against Respondent Mitchell Drimmer for any outstanding balance on loans owed to the corporation, not exceeding the unsatisfied judgment, is warranted under CPLR § 5227.

Petitioner then asserts the same cause of action under CPLR § 5227 against Respondent Bernard Drimmer. Evidence of loans out to this Respondent from the corporation is also contained within the June 2006 Balance Sheet and the Schedule of Loans to Officers. (Pl.'s Notice of Petition - Ex. 4). Consequently, Petitioner also has shown its right to judgment against Respondent Bernard Drimmer for any outstanding balance on loans owed to the corporation, not exceeding the unsatisfied judgment. See CPLR § 5227.

Respondent Mitchell Drimmer's outstanding loan to the corporation totals over \$70,000, according to the most recent evidence submitted. (Pl.'s Notice of Petition - Ex. 4, June 2006 Balance Sheet). Respondent Bernard Drimmer's outstanding loan to the corporation totals \$38,186.67, according to the same document. Because the repayment of Respondent Mitchell Drimmer's loan would satisfy the underlying judgment in its entirety, the Court grants judgment against Mitchell Drimmer and issues a stay on judgment against Bernard Drimmer pending non-satisfaction of the underlying judgment.

Petitioner asserts an alternative cause of action against Mitchell Drimmer founded upon the Debtor & Creditor Law of New York. However, Petitioner has failed to establish the fraudulent nature of the conveyances in question. Because a fraudulent transfer is a necessary element of an

action under the Debtor & Creditor sections, this cause of action is denied. For the reasons above, it is therefore

ADJUDGED that respondent Mitchell Drimmer shall pay to petitioner \$52,305.93, with interest from October 17, 2006, not exceeding, however, the amount of the debt owed by the judgment debtor to petitioner; and it is further

ORDERED that judgment be entered against respondent Bernard Drimmer to pay petitioner, because of a debt owed by respondent to Mitchell Drimmer Industries, Inc., the judgment debtor, \$38,186.67, with interest from October 17, 2006, not exceeding, however, the amount of the debt owed by the judgment debtor to petitioner; and it is further

ORDERED that judgment as against Bernard Drimmer is stayed pending non-satisfaction of the underlying judgment pursuant to this judgment; and it is further

ORDERED that petitioner's cause of action against respondent Mitchell Drimmer based upon the Debtor Creditor Law §§ 272, 273, 273-a, 274, 275 and 276 is denied for failure to establish fraudulent transfers out from a judgment debtor after the October 17, 2006 judgment; and it is further

ORDERED that petitioner's demand for legal fees is denied because the basis for such relief, a cause of action under the Debtor Creditor Law § 276-a, has also been denied and it is further

ORDERED that petitioner's demand for costs and disbursements is denied pursuant to CPLR § 5227 as there is no evidence to suggest that respondents Mitchell Drimmer and Bernard Drimmer dispute the indebtedness to Mitchell Drimmer Industries, Inc.

DATED: 6/15/07

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry should be served on all parties to the judgment.
Left
LOUIS B. YORK
J.S.C.
County Clerk