

Heath v Wojtowicz

2007 NY Slip Op 32373(U)

July 24, 2007

Supreme Court, New York County

Docket Number: 0040555/1978

Judge: Joan Madden

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

PRESENT: HON. JOAN A. MADDEN
Justice

PART 11

GEORGE HEATH,

Plaintiff,

INDEX NO.
40555/78

-against-

MOTION SEQ. NO.:05

JOHN S. WOJTOWICZ, WILLIAM G. O'DONNELL,
EDWARD M. CHIKOFSKY, MURRAY J. CHIKOFSKY,
ARTISTS ENTERTAINMENT COMPLEX, INC., MARTIN
BREGMAN, WARNER BROS., INC., STATE OF NEW
YORK, CRIME VICTIMS COMPENSATION BOARD,
EDWARD A. MORRISON, and RONALD ZWEIBEL, as
Chairman of the Defendant Board,

Defendants.,

FILED

AUG - 1 2007

COUNTY CLERK'S OFFICE
NEW YORK

The following papers, numbered 1 to _____ were read on this motion to _____

	<u>PAPERS NUMBERED</u>
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits _____	_____
—	_____
Answering Affidavits — Exhibits _____	_____
_____	_____
Replying Affidavits _____	_____

Cross-Motion: Yes No

This court declines the order to show cause of the pro se plaintiff George Heath ("Heath").¹ The proposed order to show cause seeks relief in connection with Heath's alleged

¹In its decision and order dated September 28, 2006, this court directed that Heath seek any relief in the instant action by order to show cause in view of Appellate Division First Department's explicit holding that Heath is precluded by the doctrine res judicata from challenging the court's determination regarding the distribution of the funds at issue here.

rights to royalties accruing from the movie "Dog Day Afternoon, pursuant to a court order issued in October 16, 1981. Heath asserted rights are based on funds allegedly due and owing to the late John S. Wojtowicz, the bank robber whose acts provided the basis for the movie.²

The proposed order to show cause seeks relief that relates to matters that have been previously heard, litigated and decided. Following the death of Mr. Wojtowicz in January 2006, Heath moved for an order seeking, inter alia, to void the Human Resources Administration's lien, which, according to Heath, would result in triggering his right to receive royalties. The court rejected this argument, writing that:

New York's Social Services law explicitly authorizes HRA to proceed against the estate of a decedent in asserting a lien. Specifically, section 104(1) of the Social Services Law provides that "[a] public welfare official may bring an action or proceeding against a person discovered to have real or personal property, or against the estate or the executors, administrators and successors in interest of a person who dies leaving real or personal property . . ." Thus, as HRA is authorized to assert and maintain a lien even where the welfare recipient has died, the death of Mr. Wojtowicz has no effect on HRA's right to continue receiving payments until its lien is fully satisfied.

Heath now argues that "the 20-year statute of limitations applicable to money judgments under CPLR 211(b) should exempt the lien executed by HRA in 1985 for royalties accruing from the movie." This argument is unavailing. Pursuant to section 104(1) of the Social Services

²As explained by the Hon. Diane Lebedeff in her order dated January 12, 2000, "the late Shanelly N. Egeth directed the Board [the New York State Crime Victims Board] to recognize 'a claim by George Heath against 16 2/3% of any funds ultimately due to Wojtowicz' (Index No. 40555/78, judgment of October 16, 1981)." Specifically, the Judgment issued by Judge Egeth on October 16, 1981, dismissed Heath's action against the Crime Victims Compensation Board and its Chairman Ronald Zweibel, subject to the condition that "defendants recognize the existence of a claim by George Heath against 16 2/3% of any funds ultimately due to Wojtowicz after disposition of all other statutorily mandated payments and are directed to pay the same if, as, and when due, unless prior to such time, a further and different order or judgment of this Court bars, limits, or otherwise disposes of any such funds remaining available for distribution."

Law, HRA may recover public assistant benefits paid to a decedent, in this case Mr. Wojtowicz, within ten years of his death. See also In re Bustamante, 256 AD2d 463 (2d Dept 1998).

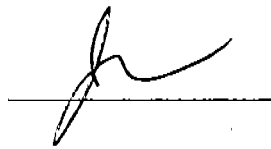
Moreover, an action to recoup these amounts must be commenced within six years of the appointment of a fiduciary. Id. Since Mr. Wojtowicz died in 2006, it cannot be said that the time period for enforcing the HRA lien against his property has expired.

As for Heath's remaining arguments objecting to the distribution of the funds and the constitutionality of these distribution, as the court noted in its previous decision, the Appellate Division, First Department has held that Heath's "challenge to the court's determination as to how the funds at issue should be distributed is barred by the doctrine of res judicata, having been considered and rejected in numerous prior related actions." New York State Crime Victims Board v. Abbott, 247 AD2d 263, lv app dismiss 92 NY2d 100 (1998)(citing Heath v. Warner Communications, Inc., 891 FSupp 167 [SDNY 1995]; New York State Crime Victims Board v. Abbott, 212 AD2d 22 [1st Dept 1995]).

In addition, in 2002, Heath made a motion for an order to hold Time Warner and other parties in contempt for failing to pay him royalties in accordance with a court order issued in 1981; that is the same court order Heath relies on here. The Appellate Division First Department affirmed the denial of Heath's motion, holding, *inter alia*, that there was "no evidence that the New York City Human Resources Administration's lien on the subject funds has been satisfied." New York State Crime Victims Board v. Abbott, 293 AD2d 372 (1st Dept), lv app dismiss, 98 NY2d 693 (2002), lv app dismiss 99 NY2d 579 (2003). Notably, in connection with the proposed order to show cause Heath has not submitted any evidence that the lien has been satisfied. Under these circumstances, the court is bound by the decisions of the Appellate Division, First Department.

Accordingly, as Heath has not shown any entitlement to the relief he seeks, the court declines to the proposed order to show cause.

DATED: July 24, 2007

A handwritten signature in black ink, appearing to be 'J.S.C.', written over a horizontal line.

J.S.C.

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