

Amir v Easton & Echtman, P.C.

2007 NY Slip Op 33754(U)

November 14, 2007

Supreme Court, New York County

Docket Number: 0108711/2007

Judge: Walter Tolub

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: I.A.S. PART 15

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PERETZ AMIR,

Petitioner,

Index No. 108711/07
Mtn. Seqs. 005, 006

-against-

EASTON & ECHTMAN, P.C., IRWIN ECHTMAN,
DAVID ETKIND and ECHTMAN & ETKIND, P.C.,

Respondents.

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WALTER TOLUB, J.:

Motion sequences 005 and 006 are consolidated for disposition and decided in accordance with this memorandum decision. By motion sequence 005, Petitioner seeks an order; (1) directing that money deposited in Pictet & Cie, Bankers in the name of Eastman & Echtman, P.C be turned over to Petitioner's attorneys up to the amount of \$1,762,454.80 plus interest from May 18, 2007 to the date of payment; (2) an order directing that if money has been withdrawn from the account, to advise of the amounts of withdrawals, the dates and payees thereof and advise why each such payment is not a fraudulent conveyance; (3) an order directing that money deposited in JP Morgan/Chase in the name of Eastman & Echtman, P.C. be turned over to Petitioner's attorneys up to the amount of \$1,762,454.80 plus interest from May 18, 2007 to the date of payment; (4) an order directing that if money has been withdrawn from the account, to advise of the amounts of the withdrawals, the dates and the payees thereof and advise why such payment is not a fraudulent conveyance.

[* 3]

By motion sequence 006, Petitioner seeks to reargue the decision of this court dated September 24, 2007 which denied Petitioner's motion to hold Easton & Echtman P.C. and Irwin Echtman in contempt of court.

Facts

On May 18, 2007 a judgment was entered in the favor of Peretz Amir as judgment creditor against Eastman & Echtman, P.C. ("Eastman") as judgment debtor in the sum of \$960,000 with interest at 9% thereon from February 4, 1998 in the sum of \$802,424.80, making the total sum owed \$1,762,454.80. No portion of that judgment has been satisfied.

Irwin Echtman is the sole principal and shareholder of Easton. The May 18, 2007 judgment emanates from a counterclaim by Peretz Amir in a Declaratory Judgment action brought by Easton. The basis of the counterclaim was Peretz's claim for his share of legal fees received by Easton.

Petitioner brought a motion for contempt against Easton and Mr. Echtman for refusing to obey information subpoenas (Mtn. Seqs. 001 and 003). This court denied that motion and Petitioner now seeks to reargue that order (Mtn. Seq. 006). Petitioner also filed a motion for the turnover of funds in the amount owed to Petitioner (Mtn. Seq. 005).

Discussion

Motion Sequence 005: Turnover

By this motion Petitioner seeks an order; (1) directing that monies in deposit in Pictet & Cie, Bankers in the name of Eastman be turned over to Petitioner's attorneys up to the amount of \$1,762,454.80 plus interest from May 18, 2007 to the date of payment; (2) an order directing that if monies have been withdrawn from the account, to advise of the amounts of withdrawals, the dates and payees thereof and advise why each such payment is not a fraudulent conveyance; (3) an order directing that monies in deposit in JP Morgan/Chase in the name of Eastman be turned over to Petitioner's attorneys up to the amount of \$1,762,454.80 plus interest from May 18, 2007 to the date of payment; (4) an order directing that if monies have been withdrawn from the account, to advise of the amounts of the withdrawals, the dates and the payees thereof and advise why such payment is not a fraudulent conveyance. Petitioner's motion is granted in its entirety.

Petitioner claims that in response to an Information Subpoena served on HSBC, it was revealed that HSBC issued a Dollar Draft from the judgment debtor's account(s) at HSBC in the sum of \$801,748.47 on January 24, 2003, which was then deposited to the judgment debtor's account in Pictet & Cie, Bankers, Geneva, Switzerland ("Pictet"). Petitioner also claims that in response to Information Subpoenas served on JP Morgan/Chase ("Chase"), Petitioner became aware of a Dollar Draft issued by

[*5]
HSBC from the judgment debtor's account in the amount of \$1,000,000 on June 18, 2002 which was deposited into the account of the judgment debtor in th Chase.

Respondents consent to produce the information sought regarding the Pictet and Chase bank accounts. Information relating to the account at Pictet is limited to the date of its inception in 2003 through the present. Additionally, information relating to the accounts at Chase are limited to the period of June 1, 2002 through the present. Respondents are ordered to turnover such information as Petitioner requested in his order to show cause within twenty days of service of a copy of this order with notice of entry.

Respondents have also contented to, and are ordered to, turn over any funds held at Pictet and Chase up to the amount of the judgment plus interest. Petitioner will lift any restraints if it is necessary for the release of funds owed to them. Respondents are ordered to turnover such funds within twenty days of service of a copy of this order with notice of entry.

Respondents are also ordered to advise of any withdrawals made from said accounts, the amounts of the withdrawals, the dates and payees of such withdrawals and an explanation of why such a withdrawal or payment is not a fraudulent conveyance.

Motion Sequence 006: Reargue

By motion sequence 006, Petitioner seeks to reargue the

decision of this court dated September 24, 2007 which denied Petitioner's motion to hold Easton & Echtman P.C. and Irwin Echtman in contempt of court.

Petitioner's motion for contempt contained two prongs. The first was to hold the judgment debtor, Eastman, in contempt for failure to respond to an Information Subpoena served upon it. The second prong was to hold Mr. Irwin Echtman, the principal and sole shareholder of the judgment debtor, a non-party, in contempt for his failure to respond to the Information Subpoena served upon him.

This court's September 24, 2007 decision denied the entire motion because the Information Subpoenas did not comply with CPLR §5224(a)(3)(i), which provides that certifications be placed on Information Subpoenas. However, that decision overlooked the fact that the Certification requirement specifically excludes a judgment debtor from having to be served with said Certification. Accordingly, to the extent that the September 24, 2007 decision applies to Eastman the Information Subpoenas are valid and Eastman is required to comply. This court declines to hold Eastman in contempt at the time of this decision in light of the above decision in motion sequence 005. Eastman is to provide any outstanding information required by the Information Subpoena within twenty days of a copy of this order with notice of entry. Accordingly it is

ORDERED that Petitioner's motion (sequence 005) is granted and Respondents are ordered to comply with said decision within twenty day of service of a copy of the decision with notice of entry; and it is further

ORDERED that Petitioner's motion to reargue is granted and that upon reargument, to the extent that the September 24, 2007 decision applies to Eastman the Information Subpoenas are valid and Eastman is required to comply within twenty days of service of a copy of the decision with notice of entry; and it is further

ORDERED that failure to comply with this decision and order will result in the issuance of a contempt order.

Counsel for the parties are directed to appear for a conference on January 11, 2008 at 11:00am in room 335 at 60 Centre Street.

This constitutes the decision of the court.

Dated:

11/14/07

FILED

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COURT CLERK
NEW JERSEY

ENTER:


WALTER B. TOLUB J. S. C.