

Colgate v Broadwall Mgt. Corp.

2007 NY Slip Op 33955(U)

December 4, 2007

Supreme Court, New York County

Docket Number: 0109763/1994

Judge: Richard B. Lowe

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

PRESENT: LOWE
Justice

PART 56

COLGATE, MARLENE S.

INDEX NO. 109763/94

MOTION DATE 9/21/07

MOTION SEQ. NO. 02

MOTION CAL. NO. _____

- v -
BROADWELL MANAGEMENT CORP.

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

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM DECISION

FILED

DEC 10 2007

NEW YORK
COUNTY CLERK'S OFFICE

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

Dated: 12/14/07

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: I.A.S. PART 56

-----X
MARLENE S. COLGATE.,

Plaintiff-judgment Creditor,

-against-

BROADWALL MANAGEMENT CORP.

Defendants-Judgment Creditor
-----X

FILED

DEC 10 2007

NEW YORK
COUNTY CLERK'S OFFICE

Index No. 109763/94
DECISION AND ORDER

RICHARD B. LOWE, III, J:

Defendant, Broadwall Management Corp. ("Broadwall"), moves pursuant to CPLR 5015(a)(3) to vacate a 1994 judgment, or, in the alternative for an order requiring plaintiff to accept the principal amount of the judgment, without accrued interest.

Background

The judgment in this matter arises from a rent overcharge complaint that plaintiff, Marlene S. Colgate, filed with the New York State Division of Housing and Community Renewal ("DHCR") in 1981. In January, 1992, DHCR awarded plaintiff \$38,685.36 in rent overcharge damages. Thereafter, Broadwall filed an Article 78 petition in this court seeking to annul DHCR's determination. The Article 78 proceeding was dismissed in June 1993 and plaintiff filed the DHCR order as a judgment with the County Clerk and the County Clerk entered judgment against Broadwall in the amount of \$38,685.36 on April 5, 1994. (D'Orazio Aff, Ex. I) Thereafter, Broadwall moved to vacate the judgment, which motion was denied. However, based on Broadwall's arguments, the court amended the judgment and on November 28, 1994, issued an amended decision reducing the principal amount of the judgment to \$20,145.00. Broadwall did not appeal the November 28, 1994 decision. On December 9, 1994

the County Clerk amended the April 5th judgment by crossing out the original amount, inserting the new amount and noting, "Judgment Amended Pursuant to a Memorandum Decision dated November 28, 1994 signed by Justice Richard B. Lowe." The County Clerk initialed the change¹ and the judgment was returned to the County Clerk's file. (D'Orazio Aff, Ex. I)

Broadwall now argues that the judgment must be vacated because plaintiff did not file an amended judgment and that plaintiff is not entitled to interest because she failed to enter the amended judgment. Alternatively, Broadwall contends that if the court finds that the judgment was entered that, before plaintiff is permitted to collect the principal amount, the court should require her to show that she did not satisfy the judgment by continuing to take rent credits. Broadwall also argues that it is unconscionable to permit plaintiff to collect post-judgment interest, because Broadwall did not have notice of the judgment and plaintiff took no action to enforce the judgment.

In opposition, plaintiff produces a certified copy of the New York County Clerk minutes that demonstrates the judgment and the amended judgment were duly entered pursuant to CPLR 5016(a)² and she argues that pursuant to CPLR 5003 every money judgment shall bear interest from the date of entry; that she attempted to collect the judgment but was unable to do so and that Broadwall had notice of the judgment and could have stopped interest from accruing by satisfying the judgment.

¹ According to the New York County Clerk this is the standard procedure for entering an amended judgment. The amended judgment also corrected the defendant's name, pursuant to the court's November 28, 1994 order.

² CPLR 5016(a) states: "What constitutes entry. A judgment is entered when, after it has been signed by the clerk, it is filed by him."

Discussion

Broadwall's motion to vacate the judgment, or, alternatively for an order declaring that plaintiff is not entitled to post-judgment interest is denied. Plaintiff has submitted proof that the amended judgment was duly entered and filed by the county clerk on December 9, 1994, pursuant to Section 5016(a) of the CPLR (*See also, Mason v. Corbin*, 29 A.D. 602 [3rd Dept. 1898]; *Wise v. Cohen*, 37 N.Y. Civ. Proc. R. 152 [1st Dept. 1906]) Moreover, plaintiff is entitled to interest from the date of entry of the amended judgment. Interest is not a penalty; rather it is simply the cost of having the use of another person's money for a specified period. (*See, Love v. State of New York*, 78 N.Y.2d 540, 545 [1991]) Here, the documentary evidence demonstrates that plaintiff initially made attempts to enforce the judgment which were unsuccessful. However, even if plaintiff had done nothing, courts in this state have held:

In the ordinary course of practice the judgment bears interest until the party against who it is entered satisfies it. If both sides sit still, the interest goes from the date of entry. The basic scheme of the statute [CPLR 5003] as far as interest borne by the judgment is concerned, is that if the party charged wants to stop interest, he satisfies the judgment.

(*Feldman v. Brodsky*, 12 A.D.2d 347, 349 [1st Dept 1961]; *aff'd* 11 N.Y.2d 692 [1962]; *Lanni v. Spallina*, 39 Misc. 2d 639, 642 [Sup. Ct. Monroe County 1963][“Interest is not cut off by the statute because the judgment is not enforced.”]; *Libertore v. Olivieri Development*, 303 A.D.2d 494 [4th Dept. 2003][same]) Moreover, Broadwall has failed to demonstrate that plaintiff should be estopped from collecting interest because of some action by the judgment creditor that would make it inequitable or oppressive that she get interest on her judgment. (*Lanni v. Spallini*, 39 Misc. 2d at 642; *see also, Pollock v. Collipp*, 138 A.D.2d 584 [2nd Dept. 1988][there was no

conduct on the part of the plaintiff that prevented defendant from satisfying the judgment]) Here, the record indicates that Broadwall not only knew about the judgment, but unsuccessfully attempted to vacate it and that plaintiff made ultimately fruitless *pro se* attempts to collect the judgment.

Finally, Broadwall has failed to come forward with a scintilla of evidence that plaintiff somehow obtained a satisfaction of the amended judgment by failing to pay her rent after the amended judgment was entered.

Conclusion


Accordingly, it is ORDERED that Broadwall's motion to vacate the judgment or otherwise limit payment on the judgment to the principal amount only (excluding post-judgment interest) is denied.

This decision constitutes the order of the court

DATE: December 4, 2007

FILED
DEC 10 2007
NEW YORK
COUNTY CLERK'S OFFICE

ENTER:



HON. RICHARD B. LOWE, III

J.S.C.