

**Keizman v Isaac Hershko and Natasha & Co.**

2008 NY Slip Op 33568(U)

November 25, 2008

Supreme Court, Queens County

Docket Number: 24792/2008

Judge: Valerie Brathwaite Nelson

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE VALERIE BRATHWAITE NELSON IA Part 7  
Justice

	x		
ADI KEIZMAN,		Index Number <u>24792</u>	2008
Petitioner-Judgment-Creditor,		Motion Date <u>November 25,</u>	2008
- against -		Motion	
ISAAC HERSHKO and NATASHA & CO.,		Cal. Number <u>23</u>	
Respondents-Judgment-Debtors		Motion Seq. No. <u>2</u>	
and			
MADISON HOME EQUITIES, INC., et al.,			
Additional-Respondents.			
	x		

The following papers numbered 1 to 11 read on this motion by petitioner Adi Keizman pursuant to CPLR 5228(a) to appoint him as the temporary receiver of certain real and personal property of respondents Issac Hershko and Natasha & Co. to satisfy judgments rendered against respondents Issac Hershko, Natasha & Co. and Esther Hershko.

Papers  
Numbered

Order to Show Cause-Petition -Affidavits-Exhibits.. 1-11

Upon the foregoing papers it is ordered that the motion is determined as follows:

In this special proceeding, petitioner seeks to enforce an amended money judgment which he allegedly obtained against Issac Hershko and Natasha & Co. by selling the real properties known as 62-58 102<sup>nd</sup> Street, Rego Park, New York and 62-54 102<sup>nd</sup> Street, Rego Park, New York (the Rego Park properties), and seizing the rents collected by respondent Issac Hershko and Hershko's agents, from

the tenants at those premises, in satisfaction of the amended money judgment.<sup>1</sup>

Petitioner commenced this special proceeding by filing a copy of the instant order to show cause (apparently in lieu of a notice of petition) and a petition with the County Clerk. By this order to show cause, petitioner moves for leave, pursuant to CPLR 5228(a), to appoint him as the temporary receiver of the Rego Park properties for the purpose of selling such properties, and seizing the rents pertaining thereto, to satisfy the amended money judgment.

The order to show cause directed that service of a copy of the order, together with the supporting papers, be served upon respondents Issac Hershko and Natasha & Co. on or before November 13, 2008. The order also directed that after service upon respondents Issac Hershko and Natasha & Co., petitioner was to cause delivery of copies of the order to the tenants at the Rego Park properties, and on the return date of the order, counsel for petitioner was to report regarding the service made under the terms of the order to show cause.

Respondents Issac Hershko and Natasha & Co., and "additional" respondents Madison Home Equities, Inc., Resource Mortgage Banking Ltd., and Fairmont Funding Ltd. have not appeared in opposition to this motion. There is no indication that any tenants at the Rego Park properties have appeared in relation to this motion.

In support of his motion, petitioner offers, among other things, an affidavit of service dated November 24, 2008, indicating that service of copies of the order to show cause, the petition, and supporting papers was made by "personal service" upon both respondents Issac Hershko and Natasha & Co. on November 7, 2008. Such affidavit, however, does not include a statement as to the time when service was made (see CPLR 306) and fails to make clear as to whom the copies of the order to show cause and petition were delivered in relation to service upon respondent Natasha & Co. The affidavit does not include a description of the person or persons to whom the copies were delivered (see CPLR 306). To the extent

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Although counsel for petitioner, in his affidavit dated October 21, 2008, submitted pursuant to 22 NYCRR 202.7(f), makes mention of another money judgment dated September 22, 2008 obtained in a special proceeding entitled Keizman v Sultzer, (Supreme Court, New York County, Index No. 602673/2007) against Esther Hershko and others, petitioner makes no claim or allegations regarding such judgment in his petition herein.

the affidavit can be read to indicate that service upon respondent Natasha & Co. was made by personal delivery upon respondent Issac Hershko, petitioner does not allege that respondent Natasha & Co. is a sole proprietorship owned by respondent Issac Hershko. Rather, petitioner alleges in his petition that respondent Natasha & Co. is a New York corporation.

"In order to acquire personal jurisdiction over a domestic corporation by personal service, service must be effectuated pursuant to CPLR 311 (subd 1). That subdivision provides that personal service upon a domestic corporation shall be made by delivering process to any one of several listed corporate representatives (see McDonald v Ames Supply Co., 22 NY2d 111, 114-115 [1968]; Faravelli v Bankers Trust Co., 85 AD2d 335, 339-340 [1982], affd 59 NY2d 615 [1983]; Burnside v Suburban Syracuse Airport, 62 AD2d 1135 [1978])" (see Lakeside Concrete Corp. v Pine Hollow Bldg. Corp., 104 AD2d 551 [1984], affd 65 NY2d 865 [1985]). The November 24, 2008 affidavit of service contains no statement that respondent Issac Hershko is an officer, director, managing or general agent, cashier, assistant cashier or agent authorized by appointment or law to receive service on behalf of defendant Natasha & Co. (CPLR 311). The affidavit of service dated November 24, 2008, on its face, is insufficient to constitute prima facie evidence of proper service of process upon respondents Issac Hershko and Natasha & Co.

In addition, with respect to a motion for leave to appoint a temporary receiver pursuant to CPLR 5228(a), notice must be given, as far as practicable, to any other judgment creditors of the judgment debtor (see CPLR 5228[a]). Petitioner has failed to state whether any other judgment creditors of respondents Issac Hershko and Natasha & Co. exist, and therefore, it is unclear whether notice to any other judgment creditors of the instant motion was warranted. Petitioner submits an affidavit of service of a copy of the order to show cause upon additional respondent Fairmont Funding, Ltd., as an alleged holder of a mortgage against the Rego Park properties, but has failed to show that the other additional respondents Madison Home Equities, Inc. and Resource Mortgage Banking Ltd., which are also alleged mortgage holders, were given notice of the motion.

CPLR 5228 permits the court to appoint a receiver of property "... in which the judgment debtor has an interest or to do any other acts designed to satisfy the judgment." The appointment of a receiver pursuant to CPLR 5228(a) is discretionary (see Drucker v Drucker, 53 Misc 2d 446, 447 [1967]; 11 Weinstein-Korn-Miller, New York Civil Practice ¶ 5228.04). When deciding whether to grant the motion to appoint a receiver for the purpose of managing or

selling property in which a judgment debtor has an interest for the purpose of satisfying an outstanding judgment, the court may consider the "(1) alternative remedies available to the creditor ...; (2) the degree to which receivership will increase the likelihood of satisfaction ...; and (3) the risk of fraud or insolvency if a receiver is not appointed" (United States v Zitron, 1990 WL 13278, \*1, 1990 US Dist LEXIS 1049, \*2 [SD NY, Feb. 2, 1990, Carter, J.] [citations omitted]; see Hotel 71 Mezz Lender LLC v Falor, 58 AD3d 270 [2008]; Matter of Chlopecki v Chlopecki, 296 AD2d 640, 641 [2002]; Lefebvre v Shea, 212 AD2d 884, 885 [1995]).

Although petitioner claims to have obtained an amended money judgment against respondents Issac Hershko and Natasha & Co., in the action entitled Keizman v Hershko (Supreme Court, New York County, Index No. 103461/2002), the amended money judgment was awarded against Issac Hershko and Natasha Jewelry Manufacturing, L.L.C.<sup>2</sup> Petitioner nevertheless has named Natasha & Co. as a respondent herein, and his counsel characterizes the judgment debtors as respondents Issac Hershko and "Natasha Jewelry Manufacturing LLC a/k/a Natasha & Co." Thus, to the extent counsel for petitioner asserts that restraining notices were filed with banks in the New York metropolitan area in relation to "the judgment debtors," and in the absence of any copy of the restraining notices provided herein, it is unclear as to the name of the judgment debtor utilized by petitioner on the restraining notices. The court, therefore, cannot determine from these submissions whether Natasha Jewelry Manufacturing, L.L.C. has any bank account in this area and whether the alternative remedy of a property execution directing the City Marshal to levy against a bank account of Natasha Jewelry Manufacturing, L.L.C. is available to petitioner as a means of satisfying the amended money judgment. Petitioner also has failed to demonstrate that he filed a copy of a certificate of disposition from the Clerk of New York County,

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Judicial Hearing Officer (JHO) Ira Gammerman noted in his order and judgment (one paper), entered on December 5, 2006 in the New York County action under Index No. 103461/2002, that the named defendant "Natasha & Co.," was in fact "a New York corporation incorporated as Natasha Jewelry Manufacturing, L.L.C., 'Natasha & Co.' evidently being a d/b/a" (see order and judgment, at 1, n 2). JHO Gammerman directed the caption be amended substituting "Natasha Jewelry Manufacturing, L.L.C. d/b/a Natasha & Co.," for defendant Natasha & Co., so to reflect the corporation's true name and awarded judgment against defendants Issac Hershko and Natasha Jewelry Manufacturing, L.L.C. (see order and judgment, at 6-7, and 58).

indicating the amendment of the New York County docket, (reflecting the amended judgment), with the Clerk of Queens County, to effect the change in the Queens County docket, as required under the "Uniform Transcript and Certificate Act" (Judiciary Law § 255-c).

Under these circumstances, the motion is denied.

Dated:

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VALERIE BRATHWAITE NELSON, J.S.C.