

Cadles of Grassy Meadow, II, LLC v Katz

2009 NY Slip Op 30301(U)

February 9, 2009

Supreme Court, New York County

Docket Number: 106022/06

Judge: Carol R. Edmead

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

PRESENT: EDMEAD
Justice

PART 35

CADLAS OF GRASSY MEADOWS II

INDEX NO. 106022/06

MOTION DATE _____

MOTION SEQ. NO. 03

MOTION CAL. NO. _____

- v -

HOWARD RATZ

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 _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

Motion sequence 003 and 004 are decided in accordance with the accompanying Memorandum Decision. It is hereby

ORDERED that defendant's motion, motion sequence 003, is denied; and it is further

ORDERED that plaintiff's motion, motion sequence 004, is denied with respect to defendant's funds held by Fidelity Investment in Accounts Nos. X86-104027 and X86-104035; and it is further

ORDERED that plaintiff's motion is granted to the following extent:

Dated: 2/19/09

[Signature]

J.S.C.

HON. CAROL EDMEAD

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

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

FILED
FEB 1 2009
COUNTY CLERK'S OFFICE
NEW YORK

Defendant is directed, upon receipt of a certified copy of this order and judgment, to turn over to Cadles of Grassy Meadow, II, Inc. one-half of the funds in defendant's accounts held by Fidelity Investments, Account No. Z67-432873, and to turn over \$177.00, total, from Accounts Nos. 2AA-089893 and 2AX-07730; and it is further

ORDERED that plaintiff's motion is denied with respect to Account No. Z67-426342; and it is further

ORDERED that counsel for defendant shall serve a copy of this Order with notice of entry within twenty-one days of entry, on counsel for plaintiff; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

FILED

FEB 11 2009

COUNTY CLERK'S OFFICE
NEW YORK

Dated 2/9/09

ENTER: *al R el*, J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check If appropriate: DO NOT POST REFERENCE

[* 3]
SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 35

-----x
CADLES OF GRASSY MEADOW, II, LLC,

Plaintiff,

Index No.: 106022/06

-against-

HOWARD B. KATZ,

Defendant.

-----x
CAROL ROBINSON EDMEAD, J.:

FACTUAL BACKGROUND

Motion sequence numbers 003 and 004 are consolidated for disposition.

In motion sequence 003, defendant seeks to have the court impose sanctions against plaintiff for allegedly violating an order of this court, entered June 4, 2008, and further moves, pursuant to CPLR 2221 (d), to reargue certain portions of his crossmotion as determined by the court's order, entered June 4, 2008.

In motion sequence 004, plaintiff moves, pursuant to CPLR 5225 and 5205 (c) (5), to have defendant turn over the funds held in his accounts at Fidelity Investments: Account Nos. 2AA-089893, 2AX-07730, X86-104027, X86-104035, X86-104043, Z67-426342 and Z67-432873.

The facts of this case have been extensively detailed in this court's decision of September 15, 2008, and need not be

DECISION AND ORDER

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COUNTY CLERK'S OFFICE
NEW YORK

reiterated here. Briefly, plaintiff was awarded a judgment against defendant in the Connecticut courts, and entered that judgment for execution against defendant's above-referenced accounts, which are located in New York. In the court's earlier decision, defendant's cross motion to dismiss plaintiff's motion to have defendant turnover the funds in those accounts was granted. That decision was based on plaintiff's failure to comply with the notice requirements of CPLR 5222 (e). In that same motion, the court, after determining that notice to defendant was ineffective, discussed how it would view plaintiff's ability to attach the accounts in question. Plaintiff's motion was dismissed without prejudice to renew.

These instant motions are based on plaintiff renewing its initial turnover motion. Defendant does not argue that, with the instant motion, plaintiff has not met the notice requirements of CPLR 5222 (e).

DISCUSSION

Defendant's motion to impose sanctions against plaintiff and to reargue are denied.

The earlier decision, which forms the basis of defendant's motion, is dated September 15, 2008, and there is no decision of this court on this matter entered on June 4, 2008, as stated by defendant. In his papers, defendant includes a copy of the September 15, 2008, decision, and so it is assumed that the

reference to a June date is a typographical error.

In that earlier decision, once the court granted defendant's crossmotion to dismiss based on lack of notice, the court had no jurisdiction to determine any other matters. *See Mazelier v 634 West 135, LLC*, 22 AD3d 361 (1st Dept 2005). The discussion regarding the ability of plaintiff to restrain the above-referenced accounts was not intended to constitute an order of this court. The only order issued by this court was the denial, without prejudice, of plaintiff's motion to have the funds turned over to it, and the granting of defendant's cross motion to have the restraints lifted on those accounts. Consequently, plaintiff did not violate any order of this court by filing the new motion and by seeking to restrain the accounts. Further, the discussion regarding whether or not certain of the accounts might be exempt from execution was mere dicta, and was not incorporated into the ultimate order. Once the court determined that it lacked jurisdiction based on lack of notice to defendant, it was incapable of rendering a decision on any other matter associated with the case. *See Mazelier v 634 West 135, LLC, supra*. Therefore, defendant's motion to reargue is denied.

Plaintiff's current motion, which has provided proper notice to defendant, now brings before the court the underlying issue as to the enforceability of the judgment against the above-referenced accounts.

Based on this court's extensive discussion of these accounts in the decision of September 15, 2008, the court finds, for the reasons stated in that earlier decision, which the court now incorporates, that Accounts Nos. 2AA-089893 and 2AX-07730 are exempt from execution, except for the funds transferred to those accounts after February 2, 2006, which, from the lists submitted, the court calculates to be \$177.00; Accounts Nos. X86-104027, X86-104035, and X86-104043 are exempt from execution; and Accounts Nos. Z67-426342 and Z67-432873 are subject to execution for up to one-half of the amounts held in said accounts. The court notes that an issue remains as to whether Account No. Z67-426342 has been closed.

CONCLUSION

Based on the forgoing, it is hereby

ORDERED that defendant's motion, motion sequence 003, is denied; and it is further

ORDERED that plaintiff's motion, motion sequence 004, is denied with respect to defendant's funds held by Fidelity Investment in Accounts Nos. X86-104027 and X86-104035; and it is further

ORDERED that plaintiff's motion is granted to the following extent:

Defendant is directed, upon receipt of a certified copy of this order and judgment, to turn over to Cadles of Grassy Meadow,

II, Inc. one-half of the funds in defendant's accounts held by Fidelity Investments, Account No. Z67-432873, and to turn over \$177.00, total, from Accounts Nos. 2AA-089893 and 2AX-07730; and it is further

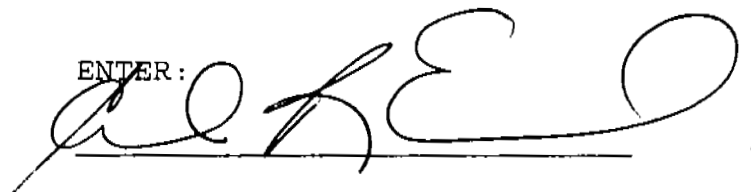
ORDERED that plaintiff's motion is denied with respect to Account No. Z67-426342; and it is further

ORDERED that counsel for defendant shall serve a copy of this Order with notice of entry within twenty-one days of entry, on counsel for plaintiff; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

Dated: February 9, 2009

ENTER:



Carol Robinson Edmead, J.S.C.

HON. CAROL EDMEAD

FILED

FEB 11 2009

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NEW YORK