

Schulman v North Fork Bank

2009 NY Slip Op 30627(U)

March 6, 2009

Supreme Court, New York County

Docket Number: 116595/07

Judge: Emily Jane Goodman

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EMILY JANE GOODMAN

PART 17

PRESENT: _____ Justice

Index Number : 116595/2007
SCHULMAN, RICHARD
 VS.
NORT FORK BANK
 SEQUENCE NUMBER : 001
 TURNOVER PROCEEDING

INDEX NO. _____
 MOTION DATE _____
 MOTION SEQ. NO. _____
 MOTION CAL. NO. _____

his motion to/for _____

PAPERS NUMBERED

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

is granted
as stated
per the is decided

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

Dated: 3/17/09

EJG
 EMILY JANE GOODMAN
 J.S.C.

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 17

-----X

RICHARD SCHULMAN,

Index#116595/07

Petitioner,

-against-

Motion Seq.#001

NORTH FORK BANK, a division of
CAPITAL ONE, N.A., successor in
interest to GREENPOINT BANK,

Respondent.

-----X

EMILY JANE GOODMAN, J.S.C.:

Petitioner, a judgment creditor, moves for an order directing Respondent to turnover monies that Respondent has already released to a judgment debtor, after Respondent's receipt of a subpoena with restraining notice. Alternatively, Petitioner seeks a judgment against Respondent in the amount of \$55,137.05, plus interest.

Petitioner alleges that he received a judgment against the judgment debtor in 2007, in the amount of \$54,712.89, of which only \$3,134.00 has been collected. By certified mail, addressed to Legal Holds and Levies Greenpoint Bank 109 E 42nd St. NY NY, Petitioner's attorney forwarded a subpoena with restraining notice as to accounts in which "Heshy Itzkowitz a/k/a Hershy Itzkowitz and Pearl Itzkowitz a/k/a Perel Itzkowitz" had any interest (the restraining notice). Petitioner claims that after the restraining notice was received by the bank on July 11, 2007 (which receipt is admitted), Respondent nevertheless allowed the judgment debtor to withdraw \$55,137.05 from two accounts held at North Fork Bank in the name of "Hershy Itzkowitz."

Respondent opposes the Petition on the grounds that the restraining notice did not contain "any additional identifying information for either of the Judgment Debtors such as an address, social security numbers or account number," and notes that Petitioner was actually in possession of the address of the judgment debtor. Respondent submits an affidavit explaining that, upon receipt of a restraining notice, its procedure is to perform a search of names, but not to restrain the account unless it receives two pieces of identifying information matching the account, such as a name and address or name and social security number. Respondent explains that this procedure protects against unnecessary restraints on accounts of individuals who bear the same name as a judgment debtor.¹

However, Respondent also states that its policy dictates that if an account is found for one of the names searched, but there is no additional identifying information, a clerk will call the attorney or send the attorney a detailed letter regarding what further information is needed, which Respondent admits was not done in this case.²

¹For example, the bank notes that it has over 170 accounts with the last name Itzkowitz.

²Apparently the letter dated July 13, 2007, sent to Petitioner's attorney, is not the letter sent when a match is found. That letter referred to "ITZKOVITZ, PEARL" (using a V and not a W) and "ITZKOWITZ, HESHY" and provided that the bank had "No Record of Account/Based on information provided" and that "If you have any further information (NFB account numbers, TIN#s Ss#) to submit regarding this matter please call the undersigned" Respondent complains that Petitioner's attorney waited three months before serving a second restraining notice which included the judgment debtor's name, address and social security number.

Lastly, Respondent argues that as of July 11, 2007, only a total of \$2,262.40 could have been restrained because that was the balance in the account on July 11, 2007. Even assuming the judgment debtor would continue to deposit money after the account was restrained, which Respondent maintains is speculative, the most Petitioner could have recovered was \$21,658.07.

In reply, Petitioner reduces the amount sought by turnover to \$21,658.07. Petitioner also complains that Respondent never informed him of the bank's policy requiring the form of identification. Further, Petitioner states that even if there are 170 accounts with the last name Itzkowitz, there was not likely more than one with the name Hershy Itzkowitz. Moreover, despite the additional "e" added to the name on the Exhibit A Questionnaire to Financial Institutions, Petitioner maintains that the bank was still obligated to check all the names.

Discussion

CPLR 5222 specifies the information which must be included on a restraining notice, which is "the parties to the action, the date that the judgment or order was entered, the court in which it was entered, the amount of the judgment or order and the amount then due thereon, the names of all parties in whose favor and against whom the judgment or order was entered".

The additional requirements imposed by Respondent are not mandated by the statute. Rather, the test is one of reasonableness, as the statute only speaks of restraining accounts

when the person "is in the possession or custody of property in which he or she knows or has reason to believe the judgment debtor has an interest" (see S&S Machinery Corp. V Manufacturers Hanover Trust Company, 219 AD2d 249 [1st Dept 1996] [issue is whether bank's search and response to a restraining notice is reasonable]). Thus, in Digitrex v Johnson (491 F Supp 66 [SDNY 1980]), the court held that CPLR 5222 (b) did not require the judgment creditor to identify the judgment debtor's bank account number, despite the fact that it was the bank's policy to require that information, because that policy was not reasonable.

Here, the bank had reason to believe the judgment debtor had accounts with the bank. There is no need for the Court to reach the issue of whether the bank's policy was reasonable because Respondent concedes that it failed to follow its own policy. The bank never explains how it could have correctly searched the listed names on the restraining order and not found any accounts. Although Respondent complains that the individual processing the restraining notice may have not located the account because the Questionnaire annexed to the restraining notice spelled the debtor's name with an additional "e" (as "Hershey"), the restraining notice specifies the first names "Heshy" and "Hershy". Moreover, the bank should have searched all the referenced names. Accordingly, the only reasonable conclusion to be drawn is that the bank clerk made an error, to the detriment of Petitioner.

However, the amount to be turned over should be limited to the amount in the accounts as of date that the debtor would have

received notice that his accounts were restrained, as they should have been on July 11, 2007. It is not a reasonable assumption, and therefore it is pure speculation, to assume that once the judgment debtor learned that his accounts were restrained, that he would nevertheless continue to make deposits into those accounts. As no evidence has been proffered as to the date when the debtor would have received notice of the restraint (presumably, from the bank), the specific amount to be turned over will be determined upon settlement of an Order and Judgment.

Settle Order and Judgment.

This constitutes the Decision and Order of the Court.

Dated: March 6, 2009

ENTER:



J.S.C
EMILY JANE GOODMAN