

Bregman v NBC Universal, Inc.
2009 NY Slip Op 31180(U)
May 28, 2009
Supreme Court, New York County
Docket Number: 111953/08
Judge: Jane S. Solomon
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JANE S. SOLOMON
J.S.C.
Justice

PART 55

Elizabeth Bregman

INDEX NO. 111953/08

MOTION DATE _____

- v -

NBC Universal

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

The following papers, numbered 1 to 21 were read on this motion to/for turnover proceeds

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

~~Notice of Motion~~
Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1-5

6-16

17-21

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered ^{and adjudged} that this ~~motion~~ petition is decided in accordance with the annexed memorandum decision, order and judgment.

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 5/28/09

J.S.
JANE S. SOLOMON ^{J.S.C.}

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check If appropriate: DO NOT POST REFERENCE

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

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 55

-----x
ELIZABETH BREGMAN,

Petitioner,

Index No.: 111953/08

For a Judgment Pursuant to CPLR 5225(b)
and 5227 to Compel Payment of Debt and
Delivery of Property,

-against-

NBC UNIVERSAL, INC.,

DECISION, ORDER and
JUDGMENT

Respondent,

-and-

BREGMAN PRODUCTIONS, INC.,
MAYFAIR PRODUCTIONS, LTD. and
MIKRISS PRODUCTIONS, LTD.,

UNFILED JUDGMENT

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141B).**

Interveners

-----x
SOLOMON, J.

Petitioner Elizabeth Bregman is the ex-wife of Martin Bregman (Martin), a film producer. On October 26, 2007, the New York County Clerk entered a Judgment Upon Confession (Judgment) in her favor against Martin for \$2,481,320.92, titled *Elizabeth Bregman a/k/a Betty Bregman v Martin Bregman*, Supreme Court, New York County, index number 114450/07. In January 2008, petitioner served a restraining notice (Restraining Notice) on respondent NBC Universal, Inc. (NBCU), as garnishee, with respect to "payments on account of motion pictures produced by Martin Bregman." Thereafter NBCU turned over documentary material pertaining to such films. This petition followed; what is sought

is "all rights of Martin Bregman, directly, through his loanout companies, or otherwise, to participation in the proceeds of the distribution of the [listed] motion pictures."

Bregman Productions, Inc., Mayfair Productions, Ltd. and Mikriss Productions, Ltd. (together, the Bregman Intervenors) cross-moved to intervene under CPLR 5225(b), 5227 and 5239, and intervention was granted, by an interim order dated January 12, 2009. BBD Films, Inc. also sought to intervene, but that motion was withdrawn by stipulation.

The petition alleges that the Bregman Intervenors are "loanout companies". A "loanout company" is described as a corporation set up and controlled by an individual "talent," such as an actor, writer, director or producer, that contracts with movie studios to "loan out" the individual's services for a fee (see Petition, paragraph 7). Petitioner identifies 12 films that Martin produced for NBCU's predecessor in interest through loanout companies, which she contends are owed fees by NBCU.¹ After it received the Restraining Notice, NBCU stopped making contingent payments for the twelve films. Petitioner seeks an order directing payment of those funds to her.

NBCU is obligated, not to Martin, but to the Bregman Intervenors arising from two of Martin's films. Martin is

¹Generally speaking, contingent payments are due after revenue from a film has exceeded an agreed-upon threshold.

[* 4]:
president of the Bregman Intervenors, and at oral argument it was learned that he is a shareholder as well, but not the sole shareholder. NBCU makes contingent payments from 5 other of his films to BBD Films, originally a target of petitioner's restraint, but since released by stipulation because Martin has no interest in the company.

No property interest owned by Martin has been identified beyond his share in profits as a shareholder in loanout companies, including the Bregman Intervenors. Not all money paid by NBCU to a loanout company is distributed to shareholders. For example, petitioner herself is a shareholder in another of Martin's loanout companies, non-party Artists Entertainment Complex, Inc. (AEC), which has not paid distributions to shareholders although it has received payments from NBCU in connection with Martin's film "Dog Day Afternoon" (Aff. of Elizabeth Bregman, paragraph 5). This is, at least in part, because AEC is paying off bank debt incurred to finance other, less successful films he produced (*id.*, at paragraph 7).

DISCUSSION

CPLR Article 52 provides mechanisms for enforcing money judgments, including the collection by a judgment creditor of debts owed by third parties to the judgment debtor (CPLR 5227). A restraining notice served upon a third party is effective only if at the time of service the third party owes a debt to the

judgment debtor, or is in possession of property that it knows or has reason to believe the judgment debtor has an interest, or if the judgment creditor states in the restraining notice a specific debt or interest in property owned by the judgment debtor (CPLR 5222[b], and see *Greenwood Packing Corp. v Triangle Meat & Provisions Corp.*, 120 AD2d 701 [2d Dept 1986], *lv to appeal denied* 68 NY2d 612 [1986]). The instant turnover petition must be denied if petitioner cannot show that NBCU was Martin's debtor when the Restraining Notice was served, or that NBCU knew or had reason to believe that it was holding property in which Martin has an interest. Clearly, NBCU was not Martin's debtor; moreover, the Restraining Notice does not specify a particular debt owed to Martin, or identify specific property in which he has an interest. Therefore, the only issue is whether NBCU knew or had reason to believe that it held property in which Martin has an interest.

Petitioner contends that NBCU's obligation to make contingent payments arising from films Martin produced represents a property right, and NBCU had reason to believe that Martin could have an interest in those payments.

The circumstances described above pertaining to BBD Films and AEC illustrate that, while NBCU may be required to make payments arising from Martin's films, Martin may not receive any proceeds. Petitioner's own experience with AEC shows a

* 6]

shareholder of a loanout company may not receive any revenue. In short, petitioner has not shown that NBCU owed Martin a debt when the Restraining Notice was served, nor that it knew or had reason to believe that it was holding his property (CPLR 5222[b]). The nexus between contingent payments from NBCU to Martin's pocket is too remote to create a restrainable property right within the meaning of Article 52.

The Bregman Intervenors further argue that petitioner has not demonstrated any good faith basis for interfering with the contracts between NBCU and the Bregman Intervenors. They describe petitioner's efforts vis a vis NBCU as an attempt to circumvent the proper legal procedure for collecting money from those parties having direct contractual privity with Martin. Although petitioner alleges that Martin treats the Bregman Intervenors as his alter egos, she has not taken action against them directly, and by serving the Restraining Notice on NBCU, she has sought an end run around her burden of proof necessary to pierce the corporate veil. Their argument is well-founded to the extent that petitioner's claim is more properly brought directly against the loanout companies, and discovery from those companies may be appropriate. Since the Restraining Notice is vacated, however, there is no basis for proceeding in this action. Accordingly, it hereby is

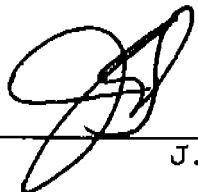
ORDERED and ADJUDGED that the petition is denied, the

Restraining Notice is vacated, and this proceeding is dismissed;
and it further is

ORDERED that the balance of the cross-motion is moot.

Dated: May 28, 2009

ENTER:



J.S.C.

**JANE S. SOLOMON
J.S.C.**

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