

**Platzer, Swergold, Karlin, Goldberg & Jaslow, LLP v
Rubin**

2009 NY Slip Op 32254(U)

September 30, 2009

Supreme Court, New York County

Docket Number: 109412/09

Judge: Judith J. Gische

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

PRESENT: JUDITH J. GISCHE, J.S.C.
Justice

PART 10

Platzere, Swergold et al

INDEX NO.

109412-109

MOTION DATE

MOTION SEQ. NO.

001

MOTION CAL. NO.

- v -

RUBIN

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

motion (s) and cross-motion(s)
decided in accordance with
the annexed decision/order
of even date.

FILED

OCT 01 2009

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 9/30/09

JUDITH J. GISCHE, J.S.C.
J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

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

Supreme Court of the State of New York
County of New York: IAS 10

-----x
Platzer, Swergold, Karlin, Goldberg
& Jaslow, LLP,

Petitioner,

-against-

Israel Rubin and Greenberg Traurig, LLP,

Respondents.
-----x

Hon. Judith J. Gische:

Decision/Order

Index # 109412/09

Seq. # 001

Present:

Hon. Judith J. Gische

Pursuant to CPLR 2219(a) the court considered the following numbered papers in connection with this petition/motion.

PAPERS

OSC, petition, exhibits.....	1
IR affirm.....	2
HR affirm. in opp.....	3

FILED
OCT 01 2009
COUNTY CLERK'S OFFICE
NEW YORK

Upon the foregoing papers the decision and order of the court is as follows:

This is a special proceeding brought by petitioner pursuant to CPLR §5225 ("turnover proceeding") to enforce a judgment entered in its favor in connection with a separately pending plenary action entitled *Martin Evans as Guardian, etc. against Andrea Perl, individually and as Trustee of the Shari Perl Family Trust, etc.* (N Y Co. index # 602898/05) ("plenary action"). The judgment was entered in the amount of \$12,496.43 in favor of petitioner and against "Andrea Perl, as Trustee of the Shari Perl Family Trust." It represents the reasonable value of legal fees provided by petitioner through June 26, 2008.

Pursuant to a stipulation and order made in the plenary action, certain monies are being held in escrow by the respondents herein. The respondents were formerly

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Andrea Perl's attorney in her individual capacity in the plenary action. The monies represent the net proceeds of a closing of the sale of a property located at 145-147 Mulberry Street in Manhattan and owned by an entity known as 145-147 Mulberry Realty Co. LLC ("LLC"). It is also undisputed that the Shari Perl Family Trust held a 20% interest in the LLC.

The escrow agreement provides in pertinent part:

" The sum of one million six hundred thousand dollars (\$1,600,000) shall be placed in escrow to ensure the payment of the legitimate obligations of the Calvin Perl Revocable Trust and the expenses of winding down and dissolving the LLC. The parties shall agree on an release an agreed amount, from the escrow, the attorney's fees due from the LLC to Platzner, Swergold, Karlin, Levine, Goldberg & Jaslow, LLP within 30 days after the closing. If the parties do not so agree, any party may make an application to the Court for the determination of such fees..."

No agreement was reached, resulting ultimately in an application to the Court, a testimonial hearing before a Special Referee and the judgment that is the subject of this turnover proceeding.

Petitioner claims that it has a valid judgment and that a portion of the escrowed proceeds are clearly the property of the trust. It seeks to have the escrow agent (respondent) turn over the monies in satisfaction of the judgment. The respondent takes no position on this application and stands ready to comply with the Court's direction.

The opposition interposed is from Herbert Rubin. Sometime in or around June 2008, Andrea Perl resigned as co-trustee of the Shari Perl Family Trust. In her place, Herbert Rubin was appointed as co-trustee. Trustee Rubin has continued to serve with Guardian Evans, who was previously appointed as co-trustee of the Shari Perl Family Trust.

[* 4]

Trustee Rubin's opposition is two fold: [1] He claims that because the judgment is against Andrea Perl as Trustee and not against the current Trustees, the judgment cannot be enforced against Trust assets; [2] He argues that the court had no authority to interpose a judgment against the trustee in the first instance because both trustees had not agreed to hire petitioner law firm. He does not dispute that a portion of the monies in the escrow belong to the trust.

To the extent that Trustee Rubin seeks in this proceeding to collaterally attack the judgment, his arguments are procedurally infirm. A turnover proceeding is not a vehicle for attacking the underlying judgment. In this regard it is significant that co-trustees Evans and Rubin participated in the proceedings in the plenary action that resulted in the judgment and had a full and fair opportunity to contest the entry of a judgment at that time. Their objections were heard and determined by the Court and/or the Special Referee. They had the right to appeal such judgment in the plenary action.¹ They do not have the right to challenge the validity of the underlying judgment in this collateral proceeding.

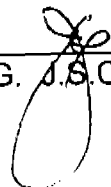
Trustee Rubin's issue about the form of judgment is technical in nature. It is clear from the course of litigation in the plenary action that Court intended the judgment to be paid from trust assets. While the judgment names Andrea Perl as trustee, she clearly was the trustee at the time the debt underlying the judgment was incurred. Trustee Rubin is the successor in interest to Andrea Perl in connection with such trust. He cannot avoid enforcement of a duly rendered judgment, that creates a debt against the trust, by claiming that the judgment fails to name him, as the successor in interest.

¹It is unclear whether such an appeal has been filed.

Accordingly the turnover petition is granted. Respondent is directed to turn over the sum of \$12,496.43 within 10 days of the entry of this order.

Dated: New York, New York
September 30, 2009

SO ORDERED:



J.G. J.S.C.

FILED
OCT 01 2009
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