

Harbas v Gilmore

2009 NY Slip Op 32276(U)

October 2, 2009

Supreme Court, New York County

Docket Number: 5964/1992

Judge: Paul G. Feinman

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

PRESENT: HON. PAUL G. FEINMAN

PART 12

Index Number : 005964/1992
HARBAS, STEPHEN
 vs.
GILMORE, ABBY
 SEQUENCE NUMBER : 009
 VACATE STAY/ORDER/JUDGMENT

INDEX NO. 005964/1992
 MOTION DATE 8/3/09
 MOTION SEQ. NO. 009
 MOTION CAL. NO. 45

this motion to/for vs

PAPERS NUMBERED

1

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 IS DECIDED IN ACCORDANCE WITH
 THE ANNEXED DECISION AND ORDER.

FILED
 OCT 06 2009
 COUNTY CLERK'S OFFICE
 NEW YORK

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

Dated: 10/2/09

[Signature]

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: CIVIL TERM: PART 12

-----X
STEPHEN HARBAS,
Plaintiff,

against

ABBY GILMORE & COVINGTON FABRICS
CORP,
Defendants.

Index Number 5964/1992
Submission Date 8/3/09
Mot. Seq. No. 009
Calendar No. 45

DECISION AND ORDER

-----X
For the Plaintiff:
Stephen Harbas, *pro se*
128 Magnolia Ave.
Jersey City NJ 07306

For the Defendants:
did not appear

Papers considered in review of this motion to vacate two monetary judgments:

Papers	Numbered
Notice of Motion and Affidavits Annexed	1

FILED
OCT 06 2009
COUNTY CLERK'S OFFICE
NEW YORK

PAUL G. FEINMAN, J.:

Plaintiff, who is self-represented, moves for an order "vacating" two monetary judgments awarded in 1996 and 1998 in favor of defendants against him, pursuant to Debtor and Creditor Law § 150. For the reasons which follow, the motion is deemed, *sua sponte*, to be one seeking an order discharging the judgments and granted.

On October 17, 1996, a judgment was entered on behalf of defendants as against plaintiff in the amount of \$3,428.75 (Mot. Ex E-1 - E4; E-9). An affirmed bill of costs, awarded pursuant to the decision and order of the Appellate Division, First Department, entered on November 18, 1997, awarded \$3,000.00 to defendants in the same action (Mot. Ex. E-7), and a second judgment was entered on March 31, 1999, in that amount (Mot. Ex. E-7; E-9).

On September 26, 2001, plaintiff filed a Chapter 13 bankruptcy petition and listed the two defendants as creditors due to the monetary judgments in their favor. (Mot. Ex. E-10 - E-

11). The bankruptcy plan was confirmed on February 13, 2002, in the United States Bankruptcy Court, District of New Jersey (Mot. Ex. E-12 - E-13). By letter dated September 29, 2004, plaintiff was informed by the Chapter 13 Standing Trustee that he had successfully paid off the Chapter 13 plan, and that a final report would be prepared and issued to the Bankruptcy Court which would then issue a Discharge Order (Mot. Ex. E-14). The Bankruptcy Court granted him a full discharge of his debts on December 27, 2004. (Mot. Ex. E-17). Plaintiff now seeks vacatur of the money judgments.

Debtor and Creditor Law § 150 provides that a debtor who has been awarded a discharge of his debts, may petition the court, after one year has elapsed from the order granting the discharge, for an order directing that a discharge of record be marked upon the docket of the judgment. The statute further provides that if it appears that the debt has, in fact, been discharged, an order must be made directing that a discharge of record be marked upon the docket of the judgment. Here, plaintiff's motion papers request that the judgments be "vacated," however, since the statute does not provide for vacatur of discharged judgments, and courts generally give wide latitude to self-represented litigants, plaintiff's motion is hereby deemed, *sua sponte*, to be one seeking an order discharging the judgments, and that the discharge be marked upon the dockets of the judgments.

Plaintiff provides photocopies of the various documents establishing the bankruptcy and swears that the photocopies are true copies of the originals (Mot., Harbas Aff. at 2). He also states that the defendants have not moved to enforce the judgments since the Chapter 13 filing (Mot. Harbas Aff. at 2). As plaintiff has established the discharge of his bankruptcy, and more than year has elapsed since the order discharging plaintiff's debts, he is entitled to an order directing that a discharge of record be marked upon the docket of the judgments. Accordingly, it

is

ORDERED upon proof of service of a copy of this order with notice of its entry upon the defendants, that the Clerk of Court mark upon the dockets of the judgment numbered 907907, dated October 17, 1996, and the judgment numbered 117945, dated March 31, 1999 that they are discharged.

This constitutes the decision and order of the court.

Dated: October 2, 2009
New York, New York



J.S.C.

FILED
OCT 06 2009
COUNTY CLERKS OFFICE
NEW YORK