

Hirtenstein v Largotta

2011 NY Slip Op 32177(U)

July 26, 2011

Sup Ct, NY County

Docket Number: 109771/09

Judge: Judith J. Gische

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

PRESENT: HON. JUDITH J. GISCHE
J.S.C.

PART 10

Index Number : 109771/2009
HIRTENSTEIN, MICHAEL
VS.
LARGOTTA, SEAN
SEQUENCE NUMBER : 003
OTHER RELIEFS

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. 003
MOTION CAL. NO. _____

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

JUL 27 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 7/26/11

HON. JUDITH J. GISCHE J.S.C.
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 10

-----X

MICHAEL L. HIRTENSTEIN,

Plaintiff,

-against-

SEAN LARGOTTA,

Defendant.

DECISION/ORDER

Index No.: 109771/09
Seq. No.: 003

Present:
Hon. Judith J. Gische
J.S.C.

-----X

Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this motion:

Papers	Numbered
Pltf's n/m [5225(a)]w/RMK affirm, MLH affid, exhs	1

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

Plaintiff, Michael L. Hirtenstein ("Hirtenstein"), brings this motion pursuant to CPLR § 5225(a) to obtain certain personal property from defendant, Sean Largotta ("Largotta"), in order to enforce a default judgment entered in plaintiff's favor in this action on March 12, 2010 by this court (the "Judgment").

Plaintiff personally served defendant on May 20, 2011 by delivering a copy of the notice of motion and accompanying papers to "Jane Doe," a person of suitable age and discretion, at defendant's actual place of business. CPLR §§ 5225(a), 308(2). Plaintiff followed this service by mailing a copy of the papers to the same address on May 23, 2011. CPLR §§ 5225(a), 308(2).

FILED

JUL 27 2011

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Background

Hirtenstein obtained a the Judgment against Largotta in the amount of \$159,172.34, which included interest and costs and disbursements. Hirtenstein now alleges that \$79,172.34, with interest from March 12, 2010, remains unpaid.

Hirtenstein alleges that he and Largotta each have a 50% ownership interest in 49 East Houston LLC, a limited liability company of which they are the only members. Hirtenstein also alleges, upon information and belief, that Largotta has ownership interests in The Lion Restaurant Group, LLC, d/b/a "The Lion Restaurant", and Dorsia 8:30 LLC, d/b/a "Charles Restaurant", both limited liability companies. Hirtenstein moves the Court for an order directing Largotta to turn over to the Sheriff "documents representing his interests" in each of the companies and "to execute and to deliver to the Sheriff of New York County all documents necessary to effectuate this turnover of his interests in those three limited liability companies."

Discussion

Although defendant was properly served pursuant to CPLR §§ 5225(a) and 308(2), defendant has neither appeared nor answered in this action and the motion is submitted on default. Plaintiff's motion is supported by Hirtenstein's personal affidavit.

Pursuant to CPLR § 5225(a), the "court shall order" a judgment debtor to pay money, or if insufficient to deliver personal property, in an amount that satisfies a judgment against him upon a creditor's motion and notice to the debtor. The creditor is required to show that the "judgment debtor is in possession or custody of the money or other personal property in which he has an interest." CPLR § 5225(a). The judgment debtor will not be required "to deliver property that has not clearly been shown to be in

the judgment debtor's possession and control[]"; therefore, "the judgment creditor must . . . [be] armed with a convincing array of evidence[]" , which CPLR §§ 5223 and 5224 may be useful in retrieving. David D. Siegel, McKinney's Consolidated Laws of New York Annotated Book 7B, C5225:1 (1997). Furthermore, "[t]he court may order any person to execute and deliver any document necessary to effect payment or delivery." CPLR § 5225(c).

Additionally, while the member of a limited liability company does not have interest in the company's specific property, the membership interest itself is personal property that the court can charge, with interest, to satisfy the creditor's judgment. Limited Liability Company Law §§ 601, 607(a).

Here, Hirtenstein has demonstrated that it has obtained a judgment against Largotta. Plaintiff contents that \$79,172.34 is outstanding. In order to satisfy the Judgment, plaintiff is entitled to documents representing defendant's interests in 49 East Houston LLC, The Lion Restaurant Group, LLC, d/b/a "The Lion Restaurant", and Dorsia 8:30 LLC, d/b/a "Charles Restaurant" so that it may effectuate the turnover of defendant's property and ultimately enforce its Judgment. Therefore, plaintiff's motion is GRANTED.

Conclusion

In accordance herewith, it is hereby:

ORDERED that plaintiff's, Michael L. Hirtenstein's, motion against defendant, Sean Largotta, is GRANTED and Largotta is directed to deliver documents representing his interests in 49 East Houston LLC, The Lion Restaurant Group, LLC, d/b/a "The Lion Restaurant", and Dorsia 8:30 LLC, d/b/a "Charles Restaurant" so that plaintiff may


effectuate the turnover of defendant's property and ultimately enforce its Judgment; and
it is further

ORDERED that requested relief not expressly addressed herein has nonetheless
been considered by the court and is hereby denied; and it is further

ORDERED that this shall constitute the decision and order of the Court.

Dated: New York, New York
July 26, 2011

So Ordered.



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

FILED

JUL 27 2011

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