

Manhattan Laminates Ltd. v PBS&S Design Ctr. Inc.
2011 NY Slip Op 33662(U)
January 4, 2011
Supreme Court, Nassau County
Docket Number: 015375-07
Judge: Timothy S. Driscoll
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**SUPREME COURT-STATE OF NEW YORK
SHORT FORM ORDER**

Present:

HON. TIMOTHY S. DRISCOLL
Justice Supreme Court

-----x
MANHATTAN LAMINATES LTD.,

**TRIAL/IAS PART: 20
NASSAU COUNTY**

Plaintiff,

-against-

Index No: 015375-07

Motion Seq. Nos. 7 & 8

**PBS&S DESIGN CENTER INC., KJP GROUP, INC.,
KENNETH J. PICKLYK, MARION E. BROOKS,
RICHARD SORKIN and PAUL G. STEWART,**

Submission Date: 11/16/10

Defendants,

-----x

Papers Read on these Motions:

- Notice of Motion, Affirmation in Support,
Affidavits in Support (2) and Exhibits.....x**
- Notice of Amended and Corrected Motion,
Amended and Corrected Affirmation in Support,
Affidavits in Support (2) and Exhibits.....x**

This matter is before the Court for decision on the motion and amended motion filed by Defendants Kenneth J. Picklyk and Paul G. Stewart on October 21 and October 22, 2010, respectively, and submitted on November 16, 2010. As the motion and amended motion seek identical relief, the Court's decision will address the merits of the amended motion. For the reasons set forth below, the Court grants the motion and amended motion.

BACKGROUND

A. Relief Sought

Defendants Kenneth J. Picklyk (“Picklyk”) and Paul G. Stewart (“Stewart”) move for an Order 1) vacating the judgment (“Judgment”) previously entered against Defendants Picklyk and Stewart, as well as the other Defendants, on June 17, 2009; and 2) reentering that Judgment solely against PBS&S and Sorkin.¹

B. The Parties’ Background

The background of the parties is set forth in detail in prior decisions of the Court, including a decision dated December 14, 2009 (“2009 Decision”) in which the Court, *inter alia*,¹) denied the motion of Defendants Picklyk and Stewart to vacate the Judgment against them with respect to the principal sum (“Principal”) of \$100,972.02; and 2) granted the motion of Defendants Picklyk and Stewart to vacate the Judgment against them with respect to interest, finance charges, costs and counsel fees. The 2009 Decision was based on the Court’s conclusion that, prior to the bankruptcy filings (“Filings”) by Picklyk and Stewart, the Court (Austin, J.) had made the judicial determination that Plaintiff was entitled to judgment against the Defendants for the Principal, and the entry of the Judgment for the Principal was a ministerial act unaffected by the automatic stay generated by the Filings.

In his Affidavit in Support, Stewart affirms as follows:

Stewart filed a Chapter 7 Bankruptcy Petition (“Bankruptcy Petition”) on January 12, 2009 which specifically named Plaintiff among the creditors. On April 7, 2009, the Bankruptcy Court granted Stewart a Discharge of Debtors (“Discharge”) and so notified Plaintiff. The Judgment was entered on June 17, 2009. Stewart submits that, as it has been over a year since the Discharge, the Court should vacate the Judgment against him and reinstate the Judgment “against the other Defendants, PBS&S Design Center, Inc. and Richard Sorkin” (Stewart Aff. at ¶ 7)” pursuant to applicable provisions of the New York Debtor and Creditor Law.

¹ The Court’s review of the Judgment reflects that it was entered by the Nassau County Clerk on June 2, 2009, and awarded Plaintiff relief against three (3) Defendants, in addition to Defendants Stewart and Picklyk.

In his Affidavit in Support, Picklyk affirms as follows:

Picklyk filed a Bankruptcy Petition on January 12, 2009 which specifically named Plaintiff among the creditors. Picklyk received a Discharge on April 7, 2009 of which Plaintiff received notice. Picklyk submits that, as more than one year has passed since the Discharge which included the debt to Plaintiff, the Court should vacate the judgment against Picklyk and reinstate the Judgment “against the other Defendants, PBS&S Design Center, Inc. and Richard Sorkin” (Picklyk Aff. at ¶ 6).

C. The Parties’ Positions

Picklyk and Stewart submit that, as more than a year has passed since the Discharges, the Court should vacate the Judgment as against Picklyk and Stewart, pursuant to Article 6, Section 150(1) of the New York Debtor and Creditor Law.

Plaintiff has submitted no opposition or other response to the instant motion.

RULING OF THE COURT

Section 150 of the Debtor and Creditor Law provides as follows:

§ 150. Cancellation of record of judgment discharged in bankruptcy

1. At any time after one year has elapsed since a bankrupt or debtor was discharged from his debts, pursuant to the acts of congress relating to bankruptcy, the bankrupt or debtor, his receiver, trustee or any other interested person or corporation, may apply, upon proof of the bankrupt's or debtor's discharge, to the court in which a judgment was rendered against him, or if rendered in a court not of record, to the court of which it has become a judgment by docketing it therein, for an order, directing that a discharge or a qualified discharge of record be marked upon the docket of the judgment.

2. If it appears upon the hearing that the bankrupt or debtor has been discharged from the payment of that judgment or the debt upon which it was recovered, an order must be made directing that a discharge or qualified discharge be marked on the docket of the judgment.

3. If it appears that any lien of the judgment upon real property owned by the bankrupt or debtor prior to the commencement of the bankruptcy proceedings was invalidated or surrendered in the bankruptcy proceedings or set aside in an action brought by the receiver or trustee, the order shall direct that a discharge be marked on the docket of the judgment.

4. If (a) it does not appear whether the judgment was a lien on real property owned by the bankrupt or debtor prior to the commencement of the bankruptcy proceedings, or

(b) if it appears that the judgment was a lien on such real property and it is not established to the satisfaction of the court that the lien was invalidated or surrendered in the bankruptcy proceedings or set aside in an action brought by the receiver or trustee, the order shall direct that a qualified discharge be marked on the docket of the judgment. If the court directs that a qualified discharge be marked on the docket of the judgment it shall specify in its order which of the two grounds stated above was the basis of its order.

5. Upon presentation of the order for entry, or of a certified copy thereof for filing, as the case may be, and upon payment of the fees to which he is entitled, the clerk of the court where the order was made, or the clerk of any court where a transcript of the judgment has been filed and docketed, shall mark on the docket thereof an entry substantially as follows: In the case of a discharge, "Discharged by order of the court; see order entered (or filed) . . . (stating the date of entry or filing of the order)"; in the case of a qualified discharge, "Qualified discharge by order of the court; see order entered (or filed) . . . (stating the date of the entry or filing of the order)."

6. Notice of the application, accompanied by copies of the papers upon which it is made, must be served upon the judgment creditor, or his attorney of record in the action in which the judgment was rendered, in the manner as prescribed for service of a notice in an action, if the residence or place of business of the judgment creditor, or of his attorney, is known. Upon proof by affidavit that the address of neither the judgment creditor nor his attorney is known, and that the address of neither can be ascertained after due diligence, or that the judgment creditor is a non-resident of this state, and his attorney is dead, or removed from the state, or cannot be found within the state, a judge or justice of the court may, by order, direct that the notice of the application be published in a newspaper designated in the order, once a week for not more than three weeks. Such publication, shown by the affidavit of the publisher, shall be sufficient service upon the judgment creditor, of the application.

Debtor and Creditor Law § 150 provides generally that, subsequent to one year after discharge, a debtor may make application to the court in which a judgment was rendered for the cancellation of record of that judgment. Upon notice, and a hearing, that court must determine whether the docket of the judgment should be marked "discharge" or "qualified discharge." An order to that effect must be signed by that court. *Brooklyn Jenapo Federal Credit Union v. Shain*, 47 B.R. 309 (Bankr. E.D.N.Y. 1985).

In *Harbas v. Abby Gilmore & Covington Fabrics Corp.*, 2009 N.Y. Misc. LEXIS 6309 (Sup. Ct. N.Y. Cty. 2009), a *pro se* plaintiff moved, pursuant to Debtor and Creditor Law § 150, for an order "vacating" two judgments in light of his subsequent discharge in bankruptcy. *Id.* at

pp. 1-2. The Court noted that Debtor and Creditor Law § 150 does not provide for vacatur of discharged judgments but, in consideration of the wide latitude afforded to self-represented litigants, *sua sponte* deemed the motion to be one seeking an order discharging the judgments, and ruled that plaintiff was entitled to an order directing that a discharge of record be marked upon the docket of the judgments. *Id.* at pp. 2-3. *See also Rukeyser v. Tostevin*, 188 A.D. 629 (1st Dept. 1919) (court must grant order canceling and discharging judgment of record where it appears that debt upon which judgment was recovered was discharged).

The Court grants Defendants' motion and amended motion and directs Defendants to submit a new judgment on ten (10) days notice against all Defendants other than Picklyk and Stewart. In granting the motion and amended motion, the Court notes that Defendants 1) have erroneously alleged that Judgment was entered June 17, 2009, when it in fact was entered June 2, 2009; and 2) have sought entry of a new judgment against only PBS&S and Sorkin although the June 2, 2009 Judgment provides that Plaintiff shall recover against Defendants PBS&S, Sorkin and KJP, in addition to Defendants Stewart and Picklyk. The Court anticipates the proposed judgment accurately reflecting the terms of the prior Judgment, as well as reflecting the proper parties (*i.e.*, all parties other than moving Defendants Picklyk and Stewart) against whom Plaintiff may recover.

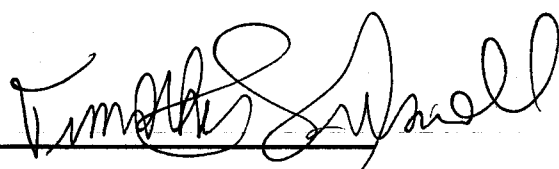
All matters not decided herein are hereby denied.

This constitutes the decision and order of the Court.

ENTER

DATED: Mineola, NY

January 4, 2011



HON. TIMOTHY S. DRISCOLL

J.S.C.

ENTERED
JAN 06 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE