

<b>Distressed Holdings, LLC v Ehrler</b>
2011 NY Slip Op 34020(U)
March 18, 2011
Supreme Court, Nassau County
Docket Number: 22030/10
Judge: Thomas A. Adams
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. THOMAS A. ADAMS,  
Acting Supreme Court Justice

TRIAL/IAS, PART 33  
NASSAU COUNTY

DISTRESSED HOLDINGS, LLC,

Plaintiff(s),

MOTION DATE: 2/18/11

INDEX NO.: 22030/10

-against-

SEQ. NO. 1

RHONDA EHRLER,

Defendant(s)

The defendant/judgment debtor's motion, pursuant to CPLR §5403, to vacate the plaintiff/judgment creditor's November 30, 2010 \$191,289.48 judgment (see defendant's Exhibit K) is determined as hereinafter provided.

On November 30, 2010, pursuant to CPLR §5402, the plaintiff/judgment creditor filed a \$191,289.48 Florida judgment against the defendant/judgment debtor with the Nassau County Clerk. In accordance with §5403, on December 29, 2010 the plaintiff served the defendant with notice of the November 30, 2010 filing by first class mail to her 432 Centre Island Road, Oyster Bay residence (see defendant's Exhibit L). Finally, on January 4, 2011, pursuant to CPLR §5222-a(b), the plaintiff served an information subpoena and restraining notice upon the defendant's bank, i.e., the Bank of America. The notice included an exemption notice and exemption claim form (see plaintiff's Exhibit L).

The defendant seeks to vacate the plaintiff's judgment on the ground that, while she resides at the aforementioned address, she did not receive a copy of either the notice of filing of the foreign judgment from the plaintiff (see CPLR §5403) or the restraining notice with exemption notice and exemption claim form from the bank (see CPLR §5222-a[b][3]; plaintiff's 1/28/11 affidavit, paras. 16 & 17).

The defendant/judgment debtor's mere denial of receipt is, however, insufficient to rebut the presumption created by the

plaintiff/judgment creditor's affidavit of service that a proper mailing occurred (see ATM One v Landaverde, 2 NY3d 472,478; Kihl v Pfeffer, 94 NY2d 118,122; Engel v Lichterman, 62 NY2d 943,944-945).

Accordingly, the defendant/judgment debtor's motion, pursuant to CPLR §5403, to vacate the plaintiff/judgment creditor's November 30, 2010 judgment is denied.

Dated: \_\_\_\_\_

MAR 18 2011



\_\_\_\_\_  
A.J.S.C.  
X X X

**ENTERED**  
MAR 25 2011  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE