

Gliklad v Cherney
2015 NY Slip Op 31439(U)
August 3, 2015
Supreme Court, New York County
Docket Number: 602335/09
Judge: Anil C. Singh
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 45

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ALEXANDER GLIKLAD,

Plaintiff,

DECISION AND
ORDER

-against-

Index No.
602335/09

MICHAEL CHERNEY,

Defendant.

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HON. ANIL C. SINGH, J.:

The law firm of Rosenfeld & Kaplan, LLP, a non-party to this action, moves pursuant to CPLR 5240 for a protective order quashing or, in the alternative, limiting the subpoena duces tecum dated April 13, 2015, served by judgment creditor Alexander Gliklad (“Gliklad”) on Rosenfeld & Kaplan. Gliklad opposes the motion.

Gliklad is seeking production of billing records in connection with Rosenfeld & Kaplan’s representation of: a) Michael Cherney’s daughters, Rina and Diana Chernaya, who allegedly received \$23.7 million from their father through ERIP LLC; b) Robert Kessler, Cherney’s agent who allegedly received \$1,511,800.00 as a gift from Cherney; and c) MC Holdings, which is allegedly a shell corporation which received \$816,000 from Cherney, through ERIP. Rina,

Diana, Kessler and MC Holdings are the subject of separate proceedings brought by Gliklad.

Rosenfeld & Kaplan, a New York law firm, has acted as counsel for non-party ERIP, LLC in a turnover proceeding captioned Gliklad v. ERIP and Cherney, Index No. 155518/14 (Sup. Ct., N.Y. Cty., filed June 4, 2014); for non-party Robert Kessler in a fraudulent conveyance action captioned Gliklad v. Kessler, Index No. 653281/14 (Sup. Ct., N.Y. Cty., filed Oct. 27, 2014); and for non-parties Rina Chernaya, Diana Chernaya, and MC Holdings in a turnover proceeding captioned Gliklad v. Rina Chernaya, Diana Chernaya and MC Holdings, Index No. 653254/14 (Sup. Ct., N.Y. Cty., filed Oct. 24, 2014).

Gliklad is seeking billing and payment records relating to non-party ERIP, LLC, an entity which Gliklad has claimed served as an alter ego of Michael Cherney (“Cherney”), the alleged 100% beneficial owner of ERIP, and as to which there is presently an order compelling ERIP to turn over all of its assets to Gliklad.

In the ERIP action, by decision and order of Justice Melvin Schweitzer dated October 3, 2014 (the “ERIP Decision”), the Court granted Gliklad’s petition for turnover and ordered that all of the assets owned by ERIP be turned over in satisfaction of the judgment against Cherney. Justice Schweitzer found that ERIP was an alter ego of Cherney because Cherney had an “interest” in ERIP, and failed

to make any of the legally mandated findings that would permit it to disregard ERIP's corporate form.

On June 25, 2015, the First Department issued an opinion affirming Justice Schweitzer's ruling, holding that Gliklad was entitled to turnover from Cherney of his interest in ERIP (Gliklad v. Chernoi, 129 A.D.3d 604 [1st Dept., 2015]).

Rosenfeld & Kaplan contends that the requests for information as to the source and payment of legal fees from any person or entity is grossly overbroad, as the source of payment of such fees from third parties have no relevancy to collecting on the judgment.

In response, Gliklad asserts that Cherney has used intermediaries to pay his legal fees in an attempt to hide the source of funds. Gliklad contends that he is seeking documents and information evidencing the payment of legal fees to identify the source of Cherney's assets used to pay those fees and any other assets of Cherney about which his lawyers might have knowledge.

Gliklad argues that he is not required to accept Rosenfeld & Kaplan's unsubstantiated allegation that Cherney is not the source of its fee payment. He contends that Rosenfeld & Kaplan's bald, self-serving and unsubstantiated claims that Cherney was not the source of the payments is insufficient, especially where Rosenfeld & Kaplan's clients are closely related to the judgment debtor and are

alleged to have received fraudulent conveyances from Cherney himself. Further, Gliklad contends that Cherney has used intermediaries to pay his legal fees in an attempt to hide the source of funds.

Discussion

“CPLR 5223 compels disclosure of ‘all matter relevant to the satisfaction of the judgment,’ and sets forth a generous standard which permits the creditor a broad range of inquiry through either the judgment debtor or any third person with knowledge of the debtor’s property” (Gryphon Domestic VI, LLC v. GBR Information Services, Inc., 29 A.D.3d 392, 393 [1st Dept., 2006] (internal quotation marks and citation omitted)). A judgment creditor is entitled to broad discovery to assist in prosecuting its turnover claims, particularly since the evidence is largely within the possession of the judgment debtors and transferees (Petrocelli v. Petrocelli Elec. Co., Inc., 121 A.D.3d 596 [1st Dept., 2014]).

I find that the discovery Gliklad seeks is relevant to the satisfaction of the \$505 million judgment. There is a substantial nexus between Cherney and his alter ego ERIP, LLC, as well as with the non-parties, based on the following allegations made by plaintiff: 1) Cherney consistently represented that he funded ERIP with \$100 million; 2) the \$100 million used to fund ERIP was a “gift” to his daughters; 3) Rina Chernaya used ERIP as her personal piggy bank on numerous

occasions, receiving vast sums of money from ERIP's coffers, supposedly under an open-ended "loan" agreement; 4) Diana Chernaya has received vast sums of money from ERIP as well, also under a purported "loan" agreement; 5) Rina and Diana Chernaya both admit that they owe millions of dollars to ERIP; 6) Rina Chernaya has independently received vast sums of money directly from her father, Michael Cherney; 7) Diana Cherney has also received vast sums of money from her father, Michael Cherney, including \$14 million for the purchase of an indirect interest in real property in Tel Aviv; and 8) Robert Kessler, Cherney's New York agent who has managed Cherney's affairs in New York for years, received a purported "birthday gift" of more than \$1.5 million from Cherney, while Cherney was a defendant in the underlying note action.

Gliklad has the right to the documents to establish whether Cherney was the ultimate source of the funds utilized to pay the legal fees of ERIP, Cherney's daughters Diana and Rina, MC Holdings, and Kessler. However, the law firms are not required to reveal the amounts paid for legal services, for the amount paid is irrelevant and will not lead to other discovery. Accordingly, it is

ORDERED that the motion for a protective order is granted to the extent that plaintiff seeks the amounts paid for legal services rendered by the law firms; and it is further

ORDERED that the law firms are directed to provide plaintiff with all non-privileged time records in their possession; and it is further

ORDERED that for items that are privileged, the law firms are directed to provide a privilege log asserting privilege by category; and it is further

ORDERED that the parties are directed to meet and confer within 30 days of the date of this order to devise categories of documents; and it is further

ORDERED that if the parties are unable to agree upon categories of documents, each party will provide a letter to the Court, which will then rule on category of documents the logs will pertain to.

The foregoing constitutes the decision and order of the court.

Date: August 3, 2015
New York, New York



Anil C. Singh