

**National Coll. Student Loan Trust 2007-3 v J.P.
Morgan Chase**

2015 NY Slip Op 31780(U)

September 21, 2015

Supreme Court, New York County

Docket Number: 153112/2015

Judge: Debra A. James

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

PRESENT: DEBRA A. JAMES
Justice

PART 59

NATIONAL COLLEGIATE STUDENT LOAN TRUST
2007-3, A DELAWARE STATUTORY TRUST

Index No.: 153112/2015

Motion Date: 09/17/2015

Petitioner (Judgment Creditor),

Motion Seq. No.: 001 & 002

- v -

J.P. MORGAN CHASE and BABAODIN A. IMORU,

Respondents-Garnishees,

and

ABIDE LEGZIM and ASSIBI GBAMBARA,

Judgment-Debtors.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING

The following papers, numbered 1 to 2 were read on this order to show cause to vacate restraint on bank account.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits

Answering Affidavits - Exhibits

Replying Affidavits - Exhibits

PAPERS NUMBERED

1

2

Cross-Motion: [] Yes [x] No

Upon the foregoing papers, the show cause order of respondent garnishee Babodin A. Imorou to vacate the restraint on certain joint bank account(s) xxxxxxxxxxxxxxxxxxxxxxxx1000 shall be granted.

In National Collegiate Student Loan Trust 2007-3 v Legzim, New York Supreme Court,

Check One: [x] FINAL DISPOSITION [] NON-FINAL DISPOSITION

Check if appropriate: [] DO NOT POST [] REFERENCE

[] SETTLE/SUBMIT ORDER/JUDG.

New York County, Index No. 150507/2014, on December 16, 2014, a judgment in the amount of \$60,087.88, including collection costs and disbursements, was entered on default. Such judgment represents damages in the amount of \$35,000, plus interest, collection costs and disbursements in an action against the judgment-debtor/ borrower on her student loan promissory dated August 13, 2007, which was guaranteed by her mother, the co-judgment debtor.

In the petition herein, petitioner judgment creditor seeks to execute against the joint bank account of the judgment- debtor/mother and the non-party respondent garnishee, the husband of the judgment debtor mother.

Banking Law § 675 (b) provides, in pertinent part:

The making of such deposit...in such form [as joint tenants] shall, in the absence of fraud or undue influence, be prima facie evidence, in any action or proceeding to which the banking organization...of the intention of both depositors...to create a joint tenancy and to vest title to such deposit...and additions and accruals thereon, in such survivor. The burden of proof in refuting such prima facie evidence is upon the party or parties challenging the title of the survivor.

As argued by petitioner upon proof that respondent garnishee at bar “made deposits...in a banking organization in the name of the depositor and another person”, here his wife, one of the judgment debtors in this proceeding, such deposits and “all additions and accruals thereon” became the property of respondent garnishee and his wife as joint tenants. Under Banking Law § 657(b), the making of such joint account created a rebuttable presumption that respondent’s wife, the judgment debtor herein, owns half of the funds in such joint bank account. See Johnson v Filpatrick, 233 AD2d 205 (1996).

To rebut such presumption, the burden of proof is on respondent garnishee, the husband, who added his wife’s (one of the judgment creditor’s name) to the account. See Baez v City of New York, 278 AD2d 83, 83-84 (1st Dept 2000) (“a rebuttable presumption shifts the

burden of proof"). Based on the testimony at the evidentiary hearing of the respondent garnishee, joint account holder, and the monthly bank statements from J.P. Morgan Chase Bank issued on the joint account, the court finds that respondent garnishee has rebutted the presumption.

The court credits the testimony of respondent garnishee that in 2002 that he opened the bank account, which is the subject of the restraint and consisted of funds that he alone deposited. He married his wife in November 2011 and, upon advice of his immigration lawyer, added his wife's name to the account in 2012. Respondent garnishee submitted a monthly bank statement for the account for December 8, 2011 through January 9, 2012, which listed only his name on the account. By his bank statement of March 8, 2013 through April 5, 2013, his wife's/respondent judgment debtor's name was added to the account.

Although respondent provided a record that shows that wife/respondent garnishee received an automatic teller machine card on the account, respondent garnishee testified consistently that his wife never used the card to make any deposits or withdrawals. Further, respondent garnishee submitted monthly bank statements on the subject accounts from December 8, 2011 through and including January 8, 2015, which show that the copies of the checks on the checking account were signed by respondent garnishee only. The checks are for the most part made payable to utilities and rental bills, for the same apartment and utilities as pre-date respondent garnishee's marriage to judgment debtor wife. Also, such statements show recurring weekly direct deposit checks that represent compensation only paid respondent, both before and after his marriage to judgment-debtor wife. There is no evidence

of different payroll deposits made to the joint account following the marriage. None of the bank statements have copies of any checks signed by the judgment-debtor wife on the subject checking account.

On that basis, the court finds that the evidence establishes that the judgment-debtor/wife's "name was added to the bank...account solely for the convenience" of the account holders. Hom v Hom, 101 AD3d 816, 818 (2nd Dept 2012). The court accepts the testimony of respondent garnishee husband that the subject bank accounts were funded with his own money, without any contribution from judgment debtor wife. See Hom, supra. The court also finds that the monthly bank statements establish by a fair preponderance of the credible evidence that the bills paid were for obligations, such as rental and utilities, undertaken by respondent garnishee prior to his marriage to judgment debtor wife, and were not for any of her obligations. Further the court credits respondent's statements under oath that although he loves his wife, he never intended to give her a gift of half of the monies in the bank accounts, and continues to deposit only his monies and withdraws money from the accounts from time to time to give to his wife/judgment debtor to spend on household needs and other expenses. There is no evidence that anyone but respondent garnishee maintains the accounts, or that respondent judgment-debtor wife has ever withdrew any funds therefrom. Thus, there is no evidence that judgment-debtor wife ever, much less regularly used the banking accounts at issue here. Compare Bingham v Zolt, 231 AD2d 479 (1st Dept 1996).

Accordingly, it is

ORDERED that the motion of respondent garnishee to vacate the restraint on the joint bank account at Chase Manhattan Bank, which is the subject of the notice of garnishee in New York County Supreme Court Index No. 150607/2014, is granted; and it is further

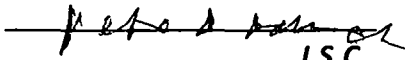
ORDERED that the foregoing restraint on the subject bank accounts ending xxxxxxxxxxxxxxxxxxxxxxx1000 is removed and lifted; and it is further

ORDERED that the petition for an order directing the garnishees Chase Manhattan Bank and Babaodin A. Imoru to turn over \$35,831.97 from the subject joint bank account to petitioner is denied and dismissed, with prejudice.

This is the decision and order of the court.

Dated: September 21, 2015

ENTER:


DEBRA A. JAMES J.S.C.