

Cadle Co. v Patton

2016 NY Slip Op 30356(U)

February 26, 2016

Supreme Court, New York County

Docket Number: 161960/15

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 2

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THE CADLE COMPANY, assignee and successor in
interest to JDC Finance Company I, L.P.,

Plaintiff,

-against-

DECISION/ORDER
Index No.: 161960/15
Seq. No.: 001

DONALD KENNETH PATTON,

Defendant.

PRESENT:
Hon. Kathryn E. Freed,
J.S.C.

-----X
HON. KATHRYN E. FREED:

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motions:

PAPERS

NUMBERED

SUMMONS, NOT. OF MOT. AND AFFS. ANNEXED

1-4 (Exs. A-D)

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THIS MOTION IS AS FOLLOWS:

Plaintiff, The Cadle Company, as assignee and successor in interest to JDC Finance Company I, L.P., moves, pursuant to CPLR 3213, for summary judgment in lieu of complaint on a judgment entered against defendant Donald Kenneth Patton by plaintiff's assignor in 1996. Plaintiff also moves, pursuant to CPLR 5014, to renew the judgment entered against defendant in 1996. Defendant does not oppose the motion. After a review of the papers, and after a review of the relevant statutes and case law, the motion is **granted**.

FACTUAL AND PROCEDURAL BACKGROUND:

On February 13, 1996, JDC Finance Company I, L.P. ("JDC") obtained a judgment against defendant in the amount of \$3,116,404.24. Ex. A. A certified copy of the assignment of the

judgment, entered in the office of the New York County Clerk on March 3, 1999, establishes that the judgment was assigned by JDC Finance Company I, LP to The Cadle Company, located at 100 North Center Street, Newton Falls Ohio 44444, effective December 4, 1998. A certified copy of the Clerk's docket reflects that, as of June 4, 2014, interest in the amount of \$155,192.28 had been collected as a result of a marshal's return in partial satisfaction of the amount of interest owed by defendant. Ex. B.

In an affidavit submitted in support of the motion dated November 18, 2015, Shawn Brickle, an account officer for plaintiff, states that the principal amount of the judgment remains outstanding, although \$167,352.28 in post-judgment interest has been collected by a city marshal by means of an income execution. Ex. C. Brickle maintains that the judgment has been outstanding for 7,219 days and that the total amount of the judgment and accrued post-judgment interest at 9% owed, less the \$167,352.28 paid towards interest, is \$8,496,275.97.

PLAINTIFF'S CONTENTIONS:

Plaintiff argues that it is entitled to summary judgment in lieu of complaint pursuant to CPLR 3213 in the amount of \$3,116,404.24, plus interest at the rate of 9% per annum from February 13, 1996, less \$167,352.28, received on account of the income execution, plus the costs and disbursements of this action. Additionally, plaintiff asserts that the judgment should be renewed pursuant to CPLR 5014 since 10 years have elapsed since the first docketing of the judgment and the judgment has gone uncollected.

CONCLUSIONS OF LAW:

A party may move for summary judgment in lieu of complaint where an action is based upon

a judgment. See *Lawrence v Kennedy*, 95 AD3d 955, 957 (2d Dept 2012). A motion for summary judgment in lieu of complaint is governed by the same standards as a motion for summary judgment brought pursuant to CPLR 3212. See *Gateway State Bank v Shangri-La Private Club for Women, Inc.*, 113 AD2d 791 (2d Dept 1985). It is well settled that the burden is on the moving party to make a prima facie showing that it is entitled to summary judgment as a matter of law. See *Zuckerman v City of New York*, 49 NY2d 557, 562 (1980).

Here, plaintiff established its entitlement to summary judgment in lieu of complaint pursuant to CPLR 3213. See *The Cadle Co. v Biberaj*, 307 AD2d 889 (1st Dept 2003), *rearg denied* NY App Div LEXIS 12670 (1st Dept 2003). In support of the motion, plaintiff submitted a copy of the original judgment filed by JDC against defendant in New York County on February 13, 1996 in the sum of \$3,116,404.24, a certified copy of the assignment of the judgment from JDC to plaintiff effective December 4, 1998, and proof that defendant has paid \$167,352.28 towards interest owed on the judgment. Although defendant has been served with the motion, he has not opposed the same.

Additionally, plaintiff is entitled to renewal of the judgment pursuant to CPLR 5014. A New York money judgment is enforceable for 20 years. See CPLR 211(b). A judgment creditor is permitted to commence an action to renew the judgment pursuant to CPLR 5014 “where [10] years have elapsed since the judgment was originally docketed.” *Pangburn v Klug*, 244 AD2d 394, 395 (2d Dept 1997). Such action must be commenced “during the year prior to the expiration of ten years since the first docketing of the judgment.” CPLR 5014. An assignee of a judgment is an “original party” to a judgment for the purpose of renewal of a judgment. *Id.*, citing *Saxe v Peck*, 139 A.D. 419 (3d Dept 1910). Here, plaintiff has established its prima facie entitlement to judgment as a matter of law awarding it a renewal judgment pursuant to CPLR 5014(1) by submitting proof that of the prior judgment entered February 13, 1996, that the judgment was first docketed at least nine

years ago, that the judgment was assigned by JDC Finance Company I, LP to The Cadle Company, located at 100 North Center Street, Newton Falls Ohio 44444, effective December 4, 1998, and that the judgment remains unsatisfied except for a partial payment of \$167,352.28 in interest thereon.¹ See *Rose v Gulizia*, 104 AD3d 757, 758 (2d Dept 2013).

Therefore, in accordance with the foregoing, it is hereby:

ORDERED that plaintiff's motion for summary judgment in lieu of complaint is granted; and it is further,

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff, the Cadle Company, and against defendant, Donald Kenneth Patton, in the amount of \$3,116,404.24, plus interest at the rate of 9% per annum from February 13, 1996, as calculated by the Clerk, less \$167,352.28 received on account of an income execution on defendant, together with costs and disbursements, as taxed by the Clerk; and it is further,

ORDERED that plaintiff, the Cadle Company, may enter a renewal judgment against defendant, Donald Kenneth Patton, in the amount of \$3,116,404.24, plus interest at the rate of 9% per annum from February 13, 1996, as calculated by the Clerk, less \$167,352.28 received on account of an income execution on defendant, together with costs and disbursements, as taxed by the Clerk; and it is further,

¹Although the certified Clerk's minutes establish that defendant paid \$155,192.28 in interest "by marshal's return", Brickle admits on behalf of plaintiff that the marshal has collected additional monies, bringing the total collected towards interest owed to \$167,352.28.

ORDERED that the Clerk may enter judgment accordingly; and it is further,

ORDERED that this constitutes the decision and order of the court.

DATED: February 26, 2016



Hon. Kathryn E. Freed

J.S.C.

**HON. KATHRYN FREED
JUSTICE OF SUPREME COURT**