

<b>Citibank, N.A. v K.L.P. Sportswear, Inc.</b>
2016 NY Slip Op 30939(U)
May 18, 2016
Supreme Court, New York County
Docket Number: 651688/10
Judge: Joan A. Madden
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 11

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CITIBANK, N.A.,

Plaintiff,

INDEX NO. 651688/10

-against-

K.L.P. SPORTSWEAR, INC., D/B/A LUXE ELEVEN,  
and YAACOV GOLOB,

Defendants,

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JOAN A. MADDEN, J.:

Plaintiff's assignee OMLEM Capital, LLC ("OMLEM") moves for an order pursuant to CPLR 2308 and CPLR 5224, compelling defendant judgment debtor, Yaacov Golob to comply with the Subpoena Duces Tecum and Ad Testificandum (the "Subpoena") served on him on October 13, 2015 and produce the documents identified in Schedule A to the Subpoena in his possession, custody and control, and appear and testify regarding his ability to satisfy the judgment in the amount of \$225,88.46 that was entered against him on August 18, 2011.

Defendant Golob opposes the motion and cross-moves for an order pursuant to CPLR 5519© staying the actions of OMLEM with respect to the enforce the judgment, pending the determination of his appeal.

This action bears a 2010 index number and the default judgment against both the corporate and individual defendants dates from 2011. Defendant Golob did not appear in this action until more than three years later, when he filed a proposed order to show cause to vacate

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the default judgment on October 31, 2014. By a decision and order dated December 8, 2014, the motion was granted only to the extent of directing a traverse hearing on the issue of service of process on Golob. The court noted that if the traverse hearing was resolved in plaintiff's favor and service was sustained, the default judgment would stand, since defendant Golob offered no excuse for his default other than lack of personal jurisdiction based on improper service. The traverse hearing was referred to a Special Referee, who held a hearing on May 28, 2015. At the conclusion of the hearing, the Special Referee issued his report recommendation on the record sustaining service of process on Golob.

On June 20, 2015, plaintiff moved to confirm the Special Referee's report and recommendation. Defendant Golob cross-moved to reject the referee's report, and also sought to renew his original motion to vacate the default judgment against him. On September 25, 2015, this court issued a decision and order granting plaintiff's motion and confirming the referee's report and recommendation sustaining service of process on defendant Golob. The court also denied Golob's cross-motion to reject, denied his original motion to vacate the default judgment, and directed that the judgment shall stand.

OMLEM is now seeking to compel discovery from defendant Golub in connection with post-judgment enforcement proceedings. In response, Golob seeks a stay of all enforcement proceedings pending the determination of his appeal of the court's decisions and orders dated December 8, 2014 and September 25, 2015. Although Golob submits copies of a Notice of Appeal and Pre-Argument Statement dated October 29, 2015, a search of the Appellate Division First Department web-site shows that the appeal has not been perfected to date. Thus, as Golob has not perfected his appeal, he has failed to establish grounds for further delaying efforts to

enforce the judgment secured against him nearly five years ago, and his cross-motion for a stay is denied.

Defendant Golob also argues that OMLEM has no “interest” in the judgment and no “right” to execute on the judgment, as OMLEM has not obtained a “valid assignment” of the judgment. OMLEM objects that the assignment refers to a “fictitious judgment” entered on May 18, 2011, since the judgment was actually entered on August 18, 2011 and the assignment was signed and acknowledged on August 3, 2011.

Defendant cites no statutory or case law authority to support his position as to the invalidity of the assignment. CPLR 5019(c) governs the assignment of a judgment by providing a “uniform method by which anyone other than the person who recovered the judgment may enforce it by filing a copy of the instrument upon which ‘his authority [to enforce] is based.’” Weinstein Korn & Miller, *New York Civil Practice*, ¶5019.11. CPLR 5019(c) mandates that that the “instrument,” such as an assignment of the judgment, be filed in the “office of the clerk of the county in which [the judgment] was entered,” and “[u]pon such filing the clerk shall make an appropriate entry on his docket of the judgment.” While CPLR 5019(c) also requires the “instrument” to be “acknowledged in the form required to entitle a deed to be recorded,” the statute “neither affects the assignability of a judgment nor dictates the form or content of the assignment.” Weinstein Korn & Miller, *New York Civil Practice*, ¶5019.11. As a general rule, however, no special language or form is required for an assignment, so long as the intent to effect a present transfer is apparent. See Leon v. Martinez, 84 NY2d 83 (1994).

Here, reading the Assignment of Judgment as a whole, establishes that it contains sufficient accurate information to adequately identify the judgment being assigned, as the

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assignment specifically includes the caption and index number of the underlying action, the court where the action was filed and the judgment entered, and the precise amount of the judgment. Moreover, the assignment contains the mandated acknowledgment and is date-stamped as filed with the New York County Clerk on August 23, 2011. The New York County Clerk's records further show that the assignment was properly filed in the docket department. Notably, while May 18, 2011 is not the date the judgment was entered, it is the date of court's order granting plaintiff's motion for a default judgment and directing the clerk to enter judgment against the two defendants. Under these circumstances, the court is not persuaded that the misstatement, alone, as to the date the judgment was entered, renders the assignment invalid.

The balance of defendant's arguments improperly address the merits of his prior motion to vacate the default judgment against him, which was denied in the court's decision and order dated September 15, 2015.

In view of the foregoing, the motion by OMLEM Capital, LLC as assignee of plaintiff Citibank, N.A., to compel discovery is granted to the extent that defendant Golob shall comply with the Subpoena Duces Tecum and Ad Testificandum within 30 days of the date of this decision and order. If defendant Golob fails to comply within such time period, OMLEM may renew its motion to compel and seek additional sanctions including an order of contempt.

Accordingly, it is


ORDERED that the motion by OMLEM Capital, LLC as assignee of plaintiff Citibank, N.A., is granted and defendant Yaacov Golob shall comply with the Subpoena Duces Tecum and Ad Testificandum dated October 8, 2015, within 30 days of the date of this decision and order; and it is further

ORDERED that if defendant Golob fails to comply within such time period, OMLEM may renew its motion to compel and seek additional sanctions including an order of contempt; and it is further

ORDERED that defendant Golob's cross-motion is denied.

DATED: May *16*, 2016

ENTER:

  
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J.S.C.  
**HON. JOAN A. MADDEN**  
J.S.C.