

Chase Coll. Sch. Inc. v Moniodes
2016 NY Slip Op 32847(U)
May 11, 2016
Supreme Court, Nassau County
Docket Number: 600907/14
Judge: Randy Sue Marber
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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

Present: **HON. RANDY SUE MARBER**

JUSTICE

TRIAL/IAS PART 10

CHASE COLLEGIATE SCHOOL INC.,

X

Plaintiff,

-against-

Index No.: 600907/14
Motion Sequence...01
Motion Date...05/06/16
XXX

NICHOLAS MONIODES,

Defendant.

X

Papers Submitted:

Notice of Motion.....X

Supplemental Affirmation.....X

Upon the foregoing papers, the unopposed motion by the Plaintiff, seeking an order, pursuant to CPLR § 5240, denying the exemption claim of the Defendant-Judgment Debtor, is determined as hereinafter provided.

On November 13, 2013, the Plaintiff recovered a judgment against the Defendant in the amount of \$89,462.35 plus costs taxed at \$427.60 from the Superior Court of the State of Connecticut. Thereafter, on February 28, 2014, the Plaintiff commenced this plenary action to obtain a New York judgment based upon the Connecticut judgment. (hereinafter the "Judgment") (*See* Copy of the Judgment annexed to the Supplemental Affirmation as Exhibit "B") Based upon the Defendant's default, on June 5, 2014, the

Judgment was entered in the Nassau County Clerk's Office. The attorney for the Plaintiff claims that the Judgment in the amount of \$90,937.35 remains unpaid.

Apparently, in an attempt to enforce the Judgment, the Plaintiff's counsel served an information subpoena with restraining notice and the Exemption Claim Notice and Exemption Claim Form required by CPLR § 5222-a (b) (4) upon the Bank of America, N.A. The Plaintiff's counsel did not include a copy of the information subpoena with restraining notice as an exhibit. Pursuant to CPLR § 5222-a (b) (3), the exemption claim form was forwarded to the Defendant. The Defendant returned the claim form to Bank of America, N.A., seeking an exemption based upon the claim that the funds in the account comprised "income earned in the last 60 days (90% of which is exempt)". Bank of America, N.A. provided the Plaintiff's counsel with a copy of the Defendant's exemption claim form on April 18, 2016. The Defendant also sent a copy of the exemption claim form to the Plaintiff's attorney, which she received on April 19, 2016.

On April 21, 2016, the Plaintiff submitted this motion pursuant to CPLR §§ 5222-a (d) and 5240 seeking to contest the Defendant's exemption claim. The Defendant has not opposed the instant motion although counsel for the Defendant previously stipulated to an adjournment of the original return date.

The Defendant has not submitted any documentation supporting his exemption claim. The Plaintiff moved to object to the claimed exemption within 8 days of the date the exemption claim was received. Therefore, the motion is timely.

The Plaintiff's counsel has submitted sufficient proof that since the Defendant has failed to provide any proof, whatsoever, to establish the funds in the restrained account were exempt, there is a reasonable basis upon which to believe that the funds are not exempt.

CPLR §§ 5222-a (d) requires that there be a hearing to decide the motion. This Court held such hearing on May 6, 2016 and the Defendant nor his counsel appeared. A determination of the motion is required to be made within 5 days of the hearing.

It appears from a review of the documentation presented as well as from the record of the hearing held on May 6, 2016, that all necessary parties have been served with notice of this application, and further, that denying the Defendant's exemption claim is appropriate.

Accordingly, it is hereby

ORDERED, that this post-judgment application by the Plaintiff seeking an order pursuant to CPLR § 5240, denying the exemption claim of the Defendant-Judgment Debtor, is **GRANTED**; and it is further

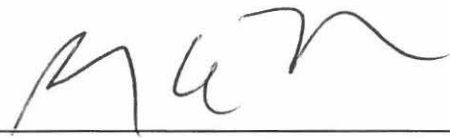
ORDERED, that the restrained funds on deposit with Bank of America, N.A. shall be restrained until such time as the proper proceeding for turnover of said funds is made; and it is further

ORDERED, that the Plaintiff's counsel shall serve a copy of this Order upon the Defendant, NICHOLAS MONIODES, by **CERTIFIED MAIL, RETURN RECEIPT REQUESTED AND BY REGULAR MAIL** within two (2) days of the date of this Order.

All applications not specifically addressed are Denied.

This constitutes the decision and order of the Court.

DATED: Mineola, New York
May 11, 2016



Hon. Randy Sue Marber, J.S.C.
XXX

HON. RANDY SUE MARBER

ENTERED

MAY 13 2016

NASSAU COUNTY
COUNTY CLERK'S OFFICE