

VNB N.Y. Corp. v Lewitin
2017 NY Slip Op 32124(U)
October 6, 2017
Supreme Court, New York County
Docket Number: 650805/2011
Judge: Saliann Scarpulla
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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: COMMERCIAL DIVISION PART 39

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VNB NEW YORK CORP.,

Plaintiff,

INDEX NO. 650805/2011

MOTION SEQ. NO. 005

- v -

MARGUERITE LEWITIN,

Defendant.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91

were read on this application to/for

Seizure/replevin

HON. SALIANN SCARPULLA:

On October 5, 2011, judgment was entered in favor of plaintiff/judgment creditor VNB New York Corp.'s ("VNB")¹, and against defendant/judgment debtor Marguerite Lewitin a/k/a Margot Lewitin ("Margot") in the amount of \$249,816.99 in an action seeking payment on a promissory note. The judgment remains partially unsatisfied.² The

¹ VNB merged with VNB New York LLC ("VNBNY"), making VNBNY the successor in interest.

² VNBNY's vice president attests that \$219,087.25 of the judgment, plus interest thereon from June 20, 2014, remains unsatisfied, but that calculation is not entirely accurate. Compare Exhibit C to VNBNY's Aff. (applying \$94,000.00 as the "Appraised Value of [Margot's New Hampshire] Property" to the judgment), with Order to Show Cause Oral Argument Tr. 4:14-17 ("Court: [D]o you disagree that the 1099 you gave [Margot] . . . valued the [same] property at 115,000? . . . Mr. Corona: I don't disagree with that.").

promissory note underlying the judgment was secured by artwork in Margot's possession created by her father, Landes Lewitin, which now consists of 91 pieces of artwork ("Collateral").

VNB now moves pursuant to CPLR § 5225 for an order: (1) compelling Margot to deliver all artwork constituting the Collateral to either VNB or the City Marshal Martin Bienstock; and 2) directing the City Marshal to break open, enter and search for the Collateral at any place the Collateral may be reasonably located if it is not delivered.

CPLR § 5225 (a) provides that if the judgment debtor is unable to pay the money to satisfy the judgment, "[u]pon motion of the judgment creditor, upon notice to the judgment debtor . . . the court shall order that the judgment debtor deliver any other personal property [in the judgment debtor's possession] . . . to a designated sheriff."

It is undisputed that Margot has not satisfied the judgment in full. Margot also does not dispute VNB has a secured interest in the Collateral or that the Collateral is in her possession. Instead, Margot disputes the accuracy of VNB's appraisal of the Collateral, arguing that the Collateral "has no monetary value." Unfortunately, the Collateral's monetary value is not a bar to VNB's right to the Collateral as a secured lender and a judgment creditor.

Accordingly, I grant VNB's request for the turnover of the Collateral, and apply the average of the appraisals submitted by the parties, *i.e.*, \$64,800.00, toward the

satisfaction of the October 5, 2011 judgment, unless the proceeds from any sale of the Collateral are higher.³

For the foregoing reasons, it is hereby

ORDERED that plaintiff VNB New York Corp.'s motion for relief pursuant to CPLR § 5525 is granted in part and denied in part; and it is further

ORDERED that plaintiff VNB New York Corp.'s motion is granted to the extent of directing defendant Marguerite Lewitin a/k/a Margot Lewitin to turn over to the New York County Sheriff, the 91 pieces of Landes Lewitin's artwork that are presently owned by defendant Marguerite Lewitin a/k/a Margot Lewitin and in her possession, within thirty (30) days of the date of this decision and order, and it is further

ORDERED that VNB is directed to apply \$64,800 toward satisfaction of the October 5, 2011 judgment obtained by plaintiff VNB New York Corp. against defendant Marguerite Lewitin a/k/a Margot Lewitin, unless the Collateral is sold for a higher amount, in which case such higher amount shall be applied toward satisfaction of the judgment; and it is further

ORDERED that plaintiff VNB New York Corp.'s request that the Court direct the City Marshall to break open, enter and search for the 91 pieces of Landes Lewitin's artwork owned by defendant Marguerite Lewitin a/k/a Margot Lewitin at any place it

³ Both parties have completed appraisals of the Collateral. VNB's appraiser valued the Collateral at \$34,800.00 and in reaching that valuation, applied a 60% blockage discount and deducted \$5,000.00 in additional sales/marketing expenses. Margot's appraiser valued the Collateral at \$94,800.00.

may be reasonably located is denied without prejudice to renewal if Margot Lewitin does not voluntarily comply with this order within the thirty (30) day period.

This constitutes the decision and order of the Court.

10/6/2017
DATE

Saliann Scarpulla
SALIANN SCARPUILLA, J.S.C.

CHECK ONE:

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CASE DISPOSED

GRANTED

SETTLE ORDER

DO NOT POST

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DENIED

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☐
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NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☐

OTHER

☐

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: