

Medallion Bank v Papa of 5 Hacking Corp.
2018 NY Slip Op 31261(U)
June 20, 2018
Supreme Court, New York County
Docket Number: 651613/2017
Judge: Barry Ostrager
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. BARRY R. OSTRAGER
Justice

PART 61

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MEDALLION BANK and MEDALLION FINANCIAL CORP.,
Plaintiffs,

INDEX NO. 651613/2017

MOTION DATE 4/23/2018

- v -

MOTION SEQ. NO. 001

PAPA OF 5 HACKING CORP. and SYMON GARBER,
Defendants.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number 12, 13, 14, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 27, 28

were read on this application to/for Extend - Time

OSTRAGER, BARRY R., J.S.C.:

Before the Court is a motion by plaintiffs Medallion Bank and Medallion Financial Corp. (“Medallion”) for an order pursuant to CPLR § 5232(a) extending the ninety-day period to perfect the levies of Medallion’s various executions of a judgment entered in plaintiffs’ favor against the defendant judgment debtors Symon Garber and Papa of 5 Hacking Corp. on March 28, 2017. Based on the papers submitted and oral argument on the record on June 20, 2018, the motion is granted.

This action was commenced by Medallion’s filing on March 9, 2017 of a Confession of Judgment signed by defendant Symon Garber in his individual capacity, as Guarantor, and in his representative capacity as President of Papa of 5 Hacking Corp., the Borrower under a Note

dated March 12, 2014 in the principal sum of \$1,842,375.00 (NYSCEF Doc. Nos. 1-9). Based on the Confession of Judgment and supporting papers, the Clerk entered judgment on March 28, 2017 in favor of plaintiffs Medallion Financial Corp and Medallion Bank against defendants Papa of 5 Hacking Corp. and Symon Garber, jointly and severally, in the total sum of \$1,738,206.01 (NYSCEF Doc. No. 10). Thereafter, on January 23, 2018, Medallion served an execution on the New York City Marshal regarding Garber's personal property and interest in eleven specified companies (NYSCEF Doc. No. 15).

Medallion filed this motion precisely 90 days thereafter, on April 23, 2018, asserting that the Marshal has been unable to execute on the judgment, despite diligent efforts by Medallion and the Marshal to identify property subject to the execution. Medallion thus requests that the Court extend for an additional 180 days Medallion's time to perfect the levy. Defendant Garber has opposed the motion, contending in his affidavit that he has "no interests in the entities or other property Plaintiffs listed in their January 16, 2018 execution that were capable of being turned over." (NYSCEF Doc. No. 23). Citing CPLR §5232(a) and *New York State Commr. Of Taxation & Fin. v Bank of New York*, 275 AD2d 287, 288-89 (1st Dep't 2000), Garber's counsel argues that the motion must be denied as a levy expires and becomes void after 90 days unless an order of extension has been **obtained** before that time. Counsel further argues that an extension will only harass Garber and the garnishees (NYSCEF Doc. No. 22, at p 3).

In reply, Medallion offers some documents that cast doubt on Garber's contention that he has no interest in any property identified in the execution capable of being turned over (NYSCEF Doc. Nos. 26-28). Further, counsel argues that defense counsel has misread the First Department's decision in the *Bank of New York* case and cites to *Matter of Kitson & Kitson v City of Yonkers*, 10 AD3d 21, 26 (2d Dep't 2004) for the proposition that a "motion for an

extension of a levy may be made after the levy has expired, since there is no provision in the CPLR prohibiting an extension after the levy has expired (see CPLR 5240).” (NYSCEF Doc. No. 25).

The Court finds Medallion’s position persuasive. CPLR §5232(a) indicates that the judgment creditor need only commence a proceeding to obtain property or monies to satisfy a judgment within the 90-day period following execution, stating (with emphasis added) that:

At the expiration of ninety days after a levy is made by service of the execution, or of such further time as the court, upon motion of the judgment creditor ... has provided, the levy shall be void except as to property or debts which have been transferred or paid to the sheriff ... ***or as to which a proceeding under sections 5225 or 5227 has been brought.***

Although Medallion has moved here pursuant to CPLR §5232(a) rather than having commenced a special proceeding pursuant to section 5225 or 5227, the statutes offer comparable means of enforcing a money judgment and the same rationale applies here to allow the extension.

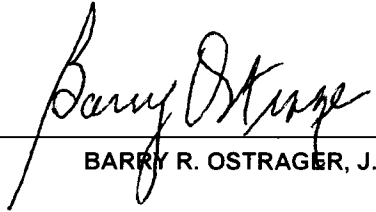
What is more, defense counsel has omitted key language when quoting the First Department’s decision in the *Bank of New York* case. The entire sentence in fact confirms that the judgment creditor need only commence a proceeding within 90 days to avoid expiration of the levy. Specifically, the Court cited CPLR §5232(a) and stated that: “The statute unequivocally states that a levy becomes void 90 days after service is made ***unless a special proceeding specified by the particular provision has been commenced or an order of extension has been obtained.***” 275 AD2d at 288 (emphasis added). In other words, the “mere commencement within the 90 days satisfies the requirement; the proceeding need not be heard or determined within that time.” Siegel, David D., *New York Practice*, §496 (6th ed. 2018).

Applying this law to the facts of this case, the Court determines that Medallion’s filing of this motion on April 23, 2018, within 90 days of the service of the execution on January 23,

constitutes a timely request for an extension of time to perfect the levies and that the extension will not constitute harassment of the judgment debtor or garnishees and is otherwise appropriate. Accordingly, it is hereby

ORDERED that plaintiffs' motion is granted and the time for plaintiffs and/or the appropriate Marshal or Sheriff to perfect the levies is extended until October 19, 2018. Plaintiffs are directed to mail a copy of this order to each garnishee's last known address, in addition to e-filing a copy of this order with notice of entry, which shall constitute service on the defendants.

6/20/2018
DATE


BARRY R. OSTRAGER, J.S.C.

BARRY R. OSTRAGER
JSC

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	DO NOT POST		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	