

**Weiss v Ampton Invs., Inc.**

2018 NY Slip Op 33077(U)

November 26, 2018

Supreme Court, New York County

Docket Number: 650408/2015

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
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2

Justice

INDEX NO. 650408/2015

GARY WEISS A/K/A GARY HILTON WEISS,

Plaintiff,

MOTION SEQ. NO. 002

- v -

AMPTON INVESTMENTS, INC., COUNTY HOLDING, INC. A/K/A
COUNTY HOLDING CORP., AND LAURENCE N. STRENGER,
INDIVIDUALLY,

DECISION AND ORDER

Defendants.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 36, 37, 38, 39, 40,
41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 60, 61, 62, 63, 64, 65, 66, 67, 68
were read on this motion to/for VACATE JUDGMENT

Upon the foregoing documents, it is ordered that the motion is denied.

In this action by plaintiff Gary Weiss a/k/a Gary Hilton Weiss (Weiss) to collect on a
promissory note, nonparty Colfin Bulls Funding B, LLC (Colfin) moves, pursuant to CPLR
5015(a), to vacate a default judgment entered by this Court against defendants Ampton
Investments, Inc. (Ampton), County Holding, Inc. (County) and Laurence N. Strenger (Strenger)
on July 27, 2016. After oral argument, and after a review of the motion papers and the relevant
statutes and case law, the motion is denied.

FACTUAL AND PROCEDURAL BACKGROUND:

On June 19, 2015, Colfin domesticated an Illinois judgment against defendants Strenger,
Ampton, Lawrence N. Strenger, P. C., and Lawrence N. Strenger, a Corporation, in the amount
of \$2,548,807.79 in an action styled Colfin Bulls Funding B, LLC v Ampton Investments, Inc.,

*Laurence A. Strenger, a Corporation, Laurence N. Strenger, P.C., and Laurence N. Strenger*, Supreme Court, New York County Index Number 151885/15 (the Colfin action). Doc. 39. Colfin did not levy on the judgment. On February 19, 2016, this Court (Rakower, J.) entered a default judgment in the captioned action in favor of Weiss and against Ampton, County and Strenger in the amount of \$146,191.78 (Doc. 25), and Weiss thereafter levied on the judgment.<sup>1</sup> Doc. 40. Since Weiss levied on his judgment and Colfin did not, he maintains that he has priority over Colfin, pursuant to CPLR 5234 (c), with respect to collecting on their judgments. In an apparent attempt to undermine Weiss' claim that his judgment has priority,<sup>2</sup> Colfin now moves, pursuant to CPLR 5015(a), to vacate the default judgment taken against the defendants in the captioned action, and Weiss opposes the motion.

After oral argument of the instant motion, as well as a review of the motion papers submitted herein, and after considering the papers cited in support of Colfin's motion for a turnover order in the Colfin action, including a so-ordered stipulation dated June 20, 2017 which, inter alia, stayed a marshal's notice of levy and sale of the same date and prevented Strenger from removing any items from his apartment pending the determination of Colfin's motion (Doc. 41), this Court, by interim order dated August 10, 2017, directed, inter alia, that the sale noticed by the marshal's levy was to remain stayed pending further order of this Court and that no items referenced therein were to be removed from Strenger's apartment. Doc. 66. By order in the Colfin action dated November 26, 2018, this Court granted Colfin's application for a turnover order, directing, inter alia, that all stays were lifted to the limited extent of allowing Strenger to

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<sup>1</sup> Unless otherwise noted, all references are to the documents filed with NYSCEF in connection with this matter.

<sup>2</sup> The issue of priority has not yet been decided since it has not been properly raised before this Court. Although Weiss asserts that he has priority, he did not formally ask this Court to make a determination in this regard.

turn over to Colfin all of the items in the Christie's report dated June 13, 2017 and all stock shares and/or certificates he holds in County Holding, Inc. a/k/a County Holding Corp. so that a receiver appointed pursuant to that order can sell the shares or collect Strenger's future distributions, dividends, and/or profits from the company.

### LEGAL CONCLUSIONS:

CPLR 5015(a) allows "[t]he court which rendered a judgment or order" to "relieve a party from [the judgment or order] upon such terms as may be just, on motion of any interested person". Here, Colfin's motion must be denied since it does not have a true interest in the captioned action.

In *Acadia Realty L.P. v Ringel*, 129 AD3d 511 (1<sup>st</sup> Dept 2015), a nonparty sought to intervene in the action, as well as to vacate a default judgment entered in favor of plaintiff as against the defendants. In affirming the denial of the motion to intervene and to vacate the default judgment, the Appellate Division held that the proposed intervenor had no "real, substantial interest in the outcome of [the] litigation" because its right to recover was not extinguished by the default judgment. *Acadia*, 129 AD3d at 511, quoting *Yuppie Puppy Pet Prods., Inc.*, 77 AD3d 197, 201 (1<sup>st</sup> Dept 2010). The Appellate Division further held, among other things, that the fact that plaintiff might be paid prior to the proposed intervenor in a related proceeding was an insufficient basis for intervention. *Acadia*, 129 AD3d at 511-512 citing *Gladstein v Martorella*, 75 AD3d 465, 466 (1<sup>st</sup> Dept 2010); *Taw Int'l Leasing v Overseas Private Inv. Corp.*, 57 AD2d 799, 799-800 (1<sup>st</sup> Dept 1977).

This Court finds *Acadia* to be controlling herein. Since the default judgment taken by Weiss does not prevent Colfin from enforcing its own judgment, Colfin has no real, substantial

interest in the captioned action. Further, the fact that Weiss' judgment may have priority over Colfin's is not a sufficient basis for intervention and, even if it were, the issue of priority has yet to be determined.

Therefore, in light of the foregoing, it is hereby:

ORDERED that the motion is denied; and it is further

ORDERED, that within 20 days of entry of this order, plaintiff is serve the same, with notice of entry, upon all parties to this action, as well as on all parties in the related action entitled *Colfin Bulls Funding B, LLC v Ampton Investments, Inc., Laurence A. Strenger, a Corporation, Laurence N. Strenger, P.C., and Laurence N. Strenger*, Supreme Court, New York County Index Number 151885/15; and it is further

ORDERED that the stay of the sale noticed by the marshal's notice of levy and sale dated June 20, 2017 remains in effect and no articles may be removed from Strenger's apartment, although the stay is vacated to the limited extent of allowing Strenger to turn over to Colfin all of the items in the Christie's report dated June 13, 2017 (Colfin action, Doc. 131) and all stock shares and/or certificates he holds in County Holding, Inc. a/k/a County Holding Corp. so that a receiver can sell the shares, or collect Strenger's future distributions, dividends, and/or profits from the company; and it is further

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

11/26/2018

DATE



KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE