

Itria Ventures LLC v JPMorgan Chase Bank, NA

2019 NY Slip Op 30287(U)

February 7, 2019

Supreme Court, New York County

Docket Number: 158569/2018

Judge: Eileen A. Rakower

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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: PART 6

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ITRIA VENTURES LLC,
Petitioner,

Index No.
158569/2018

DECISION AND
ORDER

- v -

Mot. Seq. #01

JPMORGAN CHASE BANK, NA;
RELIANCE MOTORS LLC; FIRST HOME BANK;
NEXTGEAR CAPITAL INC.;
PRIVATE MORTGAGE INVESTMENTS LLC SERIES 3;
US CAPITAL PARTNERS INC.; 1 WEST CAPITAL
LLC; BUSINESS MERCHANT FUNDING;
EMPIRE FUNDING; WORLD GLOBAL CAPITAL,
LLC D/B/A YES FUNDING; YELLOWSTONE
CAPITAL WEST LLC; GTR SOURCE, LLC;
ACE FUNDING SOURCE, LLC; and
RICHARD J. PAGNOTTA,
Respondents.

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HON. EILEEN A. RAKOWER, J.S.C.

Petitioner, Itria Ventures LLC (“Petitioner” or “Itria”), commences this special proceeding seeking an Order compelling Respondents to turnover to Petitioner any funds or other property maintained in their possession from Judgment Debtor Reliance Motors, LLC (“Reliance Motors”), including but not limited to, any funds maintained or formerly maintained in any deposit account with Respondent JPMorgan Chase Bank, N.A. (“Chase Bank”) and believed to have been turned over by Chase to Respondent Marshal Richard J. Pagnotta (“Marshal Pagnotta”).

The action was commenced by the filing of a Verified Petition and accompanying Order to Show Cause on September 14, 2018. On September 17, 2018, the Court entered the Order to Show Cause with Temporary Restraints

restraining Respondents, including Chase Bank, from disposing of the funds of Reliance Motors and setting a hearing date of October 30, 2018.

On October 22, 2018, Respondent Ace Funding Source, LLC (“Ace Funding”) filed an Answer with Counterclaim on October 22, 2018 and a Notice of Cross-Motion on October 26, 2018. Ace Funding asserts that since it levied first upon Reliance Motors’ funds at Chase Bank which Marshal Pagnotta is now holding, it has a superior claim over Itria and all other competing creditors to those funds. Ace Funding cross moves for an Order dismissing the Petition, declaring its rights to those funds as superior to all other competing creditors, and directing Marshal Pagnotta to distribute the funds to Ace Funding. In the alternative, Ace Funding seeks an Order directing discovery and an evidentiary hearing to determine which funds are identifiable proceeds and the priority of the rights as to such funds.

On October 30, 2018, the Court heard oral argument on Petitioner’s motion and Ace Funding’s cross motion.¹ Petitioner sought discovery as to whether Chase Bank was presently holding any funds of Reliance Motors, and if not the location of approximately \$200,000.00 that Reliance Motors had represented was being held by Chase Bank. The Court continued the Temporary Restraining Order until December 4, 2018 to allow Petitioner to obtain discovery.

On November 9, 2018, Petitioner served information subpoenas on Ace Funding and Marshal Pagnotta. Petitioner learned that on September 10, 2018, Pagnotta received from Chase Bank \$14,923.08 and since that, he has held and continues to hold that sum in trust.

On November 9, 2018, Petitioner also served an information subpoena upon Chase Bank. On November 30, 2018, after Chase Bank failed to respond to the information subpoena, Petitioner filed a motion returnable on December 17, 2018 to (i) compel Chase Bank to comply with an information subpoena; (ii) award costs and damages including attorneys’ fees; (iii) impose a penalty; and (iv) adjourn the hearing of December 4, 2018 or convert this matter to plenary hearing and schedule a trial. The December 4, 2018 hearing was adjourned pending Petitioner’s motion to compel. On January 4, 2019, Petitioner withdrew its motion to compel.

¹ Petitioner has not submitted a copy of the transcript from its court appearance on October 30, 2018. The information contained in this decision is taken from the Supplemental Affirmation of Jennifer S. Manheim, Esq. submitted in further support of the Verified Petition and Order to Show Cause on November 30, 2018.

Discussion

Petitioner appears to have obtained discovery from Chase Bank and Marshal Pagnotta. Petitioner has not apprised the Court as to what was discovered from Chase Bank's records – i.e. what, if any, funds of Reliance Motors are currently being held at Chase Bank, and whether Petitioner is seeking to recover any of the remaining funds.

As for the funds transferred from Chase Bank to Marshal Pagnotta on September 10, 2018 in the amount of \$14,923.08, Itria and Ace Funding each assert priority. Itria claims priority over those funds on the basis that it perfected its security interest in the funds maintained by Chase Bank on February 6, 2016 at which time no other interested creditors perfected their security interests or enforced their judgments. Ace Funding claims priority over those funds on the basis that it levied first in time upon the funds and took the funds free of security interests based upon the precedent established in *Gladstein v. Martorella*, 75 A.D. 3d 465, 468 (1st Dept 2010).

In accordance with NY UCC 9-332(b) and *Gladstein*, Ace Funding has demonstrated priority over the funds of Reliance Motors that Chase Bank transferred to Marshal Pagnotta, who levied and holds the funds on behalf of Ace Funding. No creditor, including Itria, levied prior to Ace Funding, and there is no evidence that Ace Funding colluded with Reliance Motors. Furthermore, even if Ace Funding did not take the funds free of Itria's security interest, Itria can only maintain perfection of any purported security interest in the proceeds to the extent that the funds are "identifiable cash proceeds" of a perfected security interest. Itria asserted that it needed discovery including records from Chase Bank to determine whether it could trace the funds in the subject Chase Bank account to its perfected security interest. Itria has now obtained discovery from Chase Bank, and Itria has not submitted a Supplemental Affirmation demonstrating that the subject funds are the proceeds of any security interest it holds. Nor has Itria submitted a Supplemental Affirmation asserting what additional discovery it would need to establish the same.

Wherefore, it is hereby,

ORDERED that the Petition is denied; and it is further

ORDERED that the Cross Motion is granted to the extent that Ace Funding Source, LLC has demonstrated priority to the funds levied by Marshal Richard J.

Pagnotta on behalf of Ace Funding Source, LLC, from Respondent JPMorgan Chase Bank on September 10, 2018 in the amount of \$14,923.08; and it is further

ORDERED AND ADJUDGED that Marshal Richard J. Pagnotta is directed, upon receipt of a certified copy of this order and judgment, to turn over to Ace Funding Source, LLC, funds in the amount of \$14,923.08, levied on Ace Funding Source LLC's behalf; and it is further

ORDERED that upon such turn-over of funds, Marshal Richard J. Pagnotta shall be discharged of all liability on this account to the extent of payment made.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

DATED: FEBRUARY 7, 2019



EILEEN A. RAKOWER, J.S.C.