

<b>Matter of Manhatian Leasing Enters., Ltd. v Esposito</b>
2019 NY Slip Op 30594(U)
March 7, 2019
Supreme Court, New York County
Docket Number: 160455/2017
Judge: John J. Kelley
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. JOHN J. KELLEY** PART IAS MOTION 56EFM

*Justice*

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INDEX NO. 160455/2017

In the Matter of

MOTION DATE 11/30/2017

MANHATTAN LEASING ENTERPRISES, LTD.,

MOTION SEQ. NO. 001

Petitioner,

- v -

FRANK ESPOSITO, ESPOSITO PARTNERS, ESPOSITO PARTNERS, PLLC, MICHAEL SANFORD, M.H. SANFORD & CO. LLC,

**DECISION, ORDER and JUDGMENT**

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40

were read on this motion to/for TURNOVER PROCEEDING.

In this turnover proceeding pursuant to CPLR 5225(b), the petitioner seeks to compel the Esposito respondents (Frank Esposito, Esposito Partners, and Esposito Partners, PLLC) to turn over money that they purportedly hold in their escrow account on behalf of the Sanford respondents (Michael Sanford and M.H. Sanford & Co., LLC). In their answer, the Esposito respondents denied all allegations of liability, and thereafter submitted proof that the petitioner's underlying judgment secured against the Sanford respondents had been vacated. The petition is denied, and the proceeding is dismissed on that ground.

The petitioner is in the business of leasing out collectible luxury automobiles. On May 9, 2014, the petitioner commenced an action in the Supreme Court, Nassau County, against the Sanford respondents to recover for breach of a lease of such a vehicle. On December 3, 2014, the parties executed a stipulation of settlement, pursuant to which the Sanford respondents agreed to make periodic payments to bring their lease obligations current. That stipulation also provided that, if the Sanford respondents defaulted, the petitioner was

required to provide them with a five-day grace period during which it would provide notice of the default, and that the Sanford respondents would have an additional two days to cure their default after receipt of that notice. The stipulation further provided that, if the petitioner timely provided such notice and the Sanford respondents did not cure their default, the petitioner could accelerate the debt and, without further notice, enter judgment against them for the entire lease obligation. On May 16, 2017, the petitioner submitted an affidavit to the Nassau County Clerk averring that the Sanford respondents were in default of the stipulation of settlement, that the petitioner timely and properly provided the Sanford respondents with notice of that default, and that the Sanford respondents failed timely to cure the default. Based on that affidavit, the petitioner secured a judgment against them in the total amount of \$107,773.85.

The petitioner thereafter commenced two proceedings against the Sanford respondents to recover possession of the vehicle and commenced a third proceeding to obtain the Sanford respondents' interest in a limited liability company to satisfy the judgment debt. The petitioner served a restraining notice upon the Esposito respondents, who were attorneys for the Sanford respondents. On November 27, 2017, the petitioner commenced this turnover proceeding against the Esposito respondents and the Sanford respondents. The petitioner alleges that the Esposito respondents maintain an escrow account in which they hold funds on behalf of the Sanford respondents and that a substantial portion of those funds should be disgorged to satisfy the latter's obligations under the Nassau County judgment.

On October 16, 2018, while this proceeding was pending, the Supreme Court, Nassau County (Sher, J.), granted the Sanford respondents' motion pursuant to CPLR 5015(a)(3) to vacate the default judgment that forms the basis of this proceeding. Justice Sher found that, in asserting the right to accelerate the Sanford respondents' obligations under the 2014 stipulation of settlement, the petitioner did not afford them five-days notice of the default or a two-day period thereafter to cure any such default, as required by the stipulation. Hence, she concluded that the Sanford respondents never were in default under the stipulation, and that the petitioner

secured the 2014 judgment by misrepresenting to the Nassau County Clerk that it had indeed provided timely notice of default before entering judgment. After vacating the judgment, Justice Sher directed the parties to commence discovery, and she scheduled a preliminary conference for November 29, 2018. That conference was conducted, a compliance conference was conducted on January 14, 2019, and a status conference is scheduled for May 21, 2019.

CPLR 5225(b) provides, in relevant part:

“Upon a special proceeding commenced by the judgment creditor, against a person in possession or custody of money or other personal property in which the judgment debtor has an interest, or against a person who is a transferee of money or other personal property from the judgment debtor, where it is shown that the judgment debtor is entitled to the possession of such property or that the judgment creditor’s rights to the property are superior to those of the transferee, the court shall require such person to pay the money, or so much of it as is sufficient to satisfy the judgment, to the judgment creditor and, if the amount to be so paid is insufficient to satisfy the judgment, to deliver any other personal property, or so much of it as is of sufficient value to satisfy the judgment, to a designated sheriff.”

This provision of law thus presupposes that, to prosecute a turnover proceeding against a third party to recover money belonging to a judgment debtor, there must be a valid judgment that was duly entered but remains unsatisfied. “[A] person other than the judgment debtor” who “owes a debt to the judgment debtor or obligor or . . . is in the possession or custody of property in which he or she knows or has reason to believe the judgment debtor or obligor has an interest,” is “forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any such property, or pay over or otherwise dispose of any such debt, to any person other than the sheriff . . . until the expiration of one year after the notice is served upon him or her, *or until the judgment or order is satisfied or vacated, whichever event first occurs*” (CPLR 5222[b] [emphasis added]; *see generally International Ribbon Mills, Ltd. v Arjan Ribbons, Inc.*, 36 NY2d 121 [1975]). Where, as here, the judgment is vacated, the garnishee no longer has an obligation to retain the property, and any turnover proceeding against the garnishee has been rendered academic (*see Comiteau v Douglas Elliman of LI, LLC*, 2016 NY Misc LEXIS 5657 [Sup Ct, Suffolk County, Feb. 10, 2016]; *cf. Matter of Schwartz v Muir*, 297 AD2d 743 [2d Dept

2002] [in the absence of an order vacating a judgment, the creditor may prosecute a turnover proceeding against a third party who holds the debtor's assets]).

The petitioner's remaining contentions are without merit.

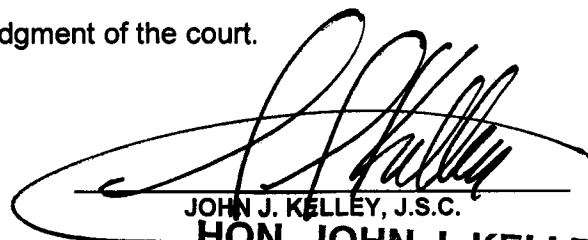
Accordingly, it is

ORDERED that the petition is denied; and it is,

ADJUDGED that the proceeding is dismissed.

This constitutes the Decision, Order, and Judgment of the court.

3/7/2019  
DATE

  
JOHN J. KELLEY, J.S.C.  
**HON. JOHN J. KELLEY**  
J.S.C.

CHECK ONE:  CASE DISPOSED  NON-FINAL DISPOSITION

APPLICATION:  GRANTED  DENIED  GRANTED IN PART  OTHER

CHECK IF APPROPRIATE:  SETTLE ORDER  SUBMIT ORDER  REFERENCE

INCLUDES TRANSFER/REASSIGN  FIDUCIARY APPOINTMENT