

Holdrum Invs. NV v Edelman
2019 NY Slip Op 31721(U)
June 14, 2019
Supreme Court, New York County
Docket Number: 650950/2011
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 2

-----X
Holdrum Investments NV,

Plaintiff,

-against-

Asher B. Edelman,

Defendant.

-----X

Hon. Kathryn E. Freed, J.S.C.:

DECISION AND ORDER

Ind. No. 650950/2011

Mot. Seq. 014

The following e-filed documents, listed by NYSCEF document numbers 232-236, 238 and 243-247 were considered on this motion.

Plaintiff Holdrum Investments NV moves, pursuant to Limited Liability Company Law § 607, for an order charging defendant Asher B. Edelman's membership interests in certain limited liability companies with payment of the unsatisfied portion of a judgment and, pursuant to CPLR 5225 (a), to compel defendant to turn over his shares in certain companies.

Factual Background and Underlying Allegations

Plaintiff obtained a judgment (the judgment) in the amount of \$231,568.15 against defendant in this action on April 13, 2017. NYSCEF Doc. 209. The judgment is final, has not been appealed, and is unsatisfied (Davis affirmation, ¶ 5). As part of its attempt to enforce the Judgment, plaintiff served restraining notices on Artemis USA, LLC (Artemis) and Art Assure

Ltd., LLC (Art Assure). Defendant maintains that he does "not have personal membership interest in [Artemis and Art Assure]" (defendant affidavit, ¶¶ 3-4). He also states that he is "only a fifty (50%) percent shareholder in Edelman Arts, Inc." (*id.*, ¶ 5).

In its motion, plaintiff seeks to charge defendant's membership interests in Artemis, Art Assure and The Edelman Family LLC (Family) and to direct the turnover of defendant's shares in Edelman Arts, Inc. (Edelman Arts) and Edelman Management Company, Inc. (Edelman Management). Defendant has not addressed his membership interest in Family or his ownership interest in Edelman Management. Defendant asserts that plaintiff should be relying on CPLR 5224 (b), which requires a special proceeding, rather than a motion.

Plaintiff has annexed a copy of defendant's 2016 federal tax return (the Tax Return) dated October 2, 2017. The Tax Return indicates that defendant claimed ownership interests in Artemis, Art Assure, Edelman Arts, Edelman Management and Family. In his affidavit, defendant does not address the Tax Return or present any evidence that he sold or transferred his ownership interests in any of these entities, or whether he received any proceeds for any such transfers.

Limited Liability Company Law § 607

Limited Liability Law § 607 (a) provides as follows:

"On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the membership interest of the member with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the membership interest. This chapter does not deprive any member of the benefit of any exemption laws applicable to his or her membership interest."

Turnover Proceedings

CPLR 5225 (a) states as follows:

"Property in the possession of judgment debtor. Upon motion of the judgment creditor, upon notice to the judgment debtor, where it is shown that the judgment debtor is in possession or custody of money or other personal property in which he has an interest, the court shall order that the judgment debtor 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. Notice of the motion shall be served on the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested."

"Courts have broad discretionary power, under CPLR article 52, to control and regulate the enforcement of a money judgement in order to prevent unreasonable annoyance, expense, ,

embarrassment, disadvantage or other prejudice" (*Gryphon Dom. VI, LLC v APP Intl. Fin. Co.*, 58 AD3d 498, 498 [1st Dept 2009]; see also *JPMorgan Chase Bank, N.A. v Motorola, Inc.*, 47 AD3d 293, 307 [1st Dept 2007]). However, "the primary purpose of article 52 is to facilitate the enforcement of judgments" (*Cruz v TD Bank, N.A.*, 22 NY3d 66, 74 [2013]).

Legal Conclusions

Initially, defendant contends that plaintiff should be enforcing the judgment through a special proceeding, pursuant to CPLR 5225 (b). While plaintiff has the option of commencing a special proceeding, the clear language of CPLR 5225 (a) permits plaintiff, the judgment creditor, to proceed "[u]pon motion . . . where it is shown that the judgment debtor is in possession or custody of money or other personal property in which he has an interest." Since CPLR 5225 (a) allows plaintiff to seek relief through a motion (see Siegel, NY Prac § 510 [5th Ed 2011]; see also *Borges v Placeres*, 61 Misc3d 1220 (A), 2018 NY Slip Op 51622 (U) [Civ Ct, NY Cty 2018]; *Arrowhead Capital Finance, Ltd. v Seven Art Entertainment, Inc.*, 2017 WL 3394604 [SD NY 2017]), this Court declines to require plaintiff to proceed by a special proceeding.

Next, this Court notes that defendant has not addressed his membership interest in Family or his ownership interest in Edelman Management and consequently, the portion of plaintiff's motion that seeks to charge defendant's interest in Family and to direct the turnover of his shares of Edelman Management must be granted. While defendant states that he has only a 50% ownership interest in Edelman Arts, the value of the shares to satisfy defendant's debt is not a relevant factor. CPLR 5225 permits plaintiff to seek intangible property, such as stock, including stock in a limited liability company (see *Matter of Sirotkin v Jordan, LLC*, 141 AD3d 670, 671 [2d Dept 2016]; see also *JPMorgan Chase Bank, N.A. v Motorola*, 47 AD3d 293, 301). Accordingly, the portion of plaintiff's motion that seeks the turnover of defendant's shares in Edelman Arts is granted.

Finally, defendant has stated that he does "not have personal membership interest in [Artemis and Art Assure]" (defendant affidavit, ¶¶ 3-4). However, defendant has not contested the accuracy of the Tax Return, which shows that he claimed ownership interests in both of those entities. Additionally, he has not stated that he does not have "an interest" and CPLR 5225 (a) permits a judgment creditor to seek relief against a judgment debtor "in possession or custody of money or other personal property in which he has an interest." Consequently, in light of defendant's failure to set forth any

factual basis for disputing his claimed ownership interests in Artemis and Art Assure, as set forth in the Tax Return, and defendant's failure to deny that he has "an interest" in these entities and that the shares are in his possession or custody, plaintiff has established that defendant does have interests in Artemis and Art Assure in his possession or control (see Siegel, NY Prac § 510). Therefore, the portion of plaintiff's motion that seeks to charge defendant's membership interests in Artemis and Art Assure pursuant to Limited Liability Company Law § 607 is granted.

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

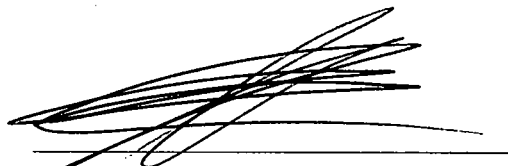
ORDERED that pursuant to CPLR 5225(a), defendant Asher B. Edelman shall turn over to plaintiff Holdrum Investments NA, or its attorneys, any funds held by defendant in Edelman Management Company, Inc. and Edelman Arts, Inc. in full or partial satisfaction of the judgment entered in this action on April 13, 2017 (NYSCEF Doc. 209), in the amount of \$231,568.15, together with statutory interest accrued since April 13, 2017; and it is further

ORDERED that pursuant to New York Limited Liability Company Law § 607, the membership interest of judgment debtor Asher B. Edelman in The Edelman Family LLC, Artemis USA, LLC and Art Assure Ltd., LLC shall be charged with payment of the judgment; and it is further

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

Dated: June 14, 2019

ENTER:



HON. KATHRYN E. FREED, J.S.C.