

**Giuliano McDonnell & Perrone, LLP v Merchant
Cash & Capital, LLC**

2019 NY Slip Op 34112(U)

September 17, 2019

Supreme Court, Nassau County

Docket Number: 609663/2017

Judge: Sharon M.J. Gianelli

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This opinion is uncorrected and not selected for official publication.



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU - IAS/TRIAL PART 20
Present: Hon. Sharon M.J. Gianelli, J.S.C.

GIULIANO MCDONNELL & PERRONE, LLP, X

Plaintiff-Judgment Creditor,

Index No. 609663/2017

-against-

Mot Seq. No. 012

Decision and Order

MERCHANT CASH and CAPITAL, LLC,

Defendant-Judgment Debtor

Papers submitted on this motion: X

Non-Party ACM MCC VI LLC Order to Show Cause _____ X

Non-Party Everett Indart Affidavit in Support _____ X

Memorandum of Law in Support of Motion to Intervene _____ X

Plaintiff's Affirmation in Opposition to Motion to Intervene _____ X

Motion by Non-Party ACM MCC VI LLC to intervene in this action; to stay the Turnover Motion pending an evidentiary hearing concerning the ownership of the funds in Plaintiff's IOLA account; and to schedule an evidentiary hearing.

Background

The underlying action herein is one for non-payment of legal fees and expenses by Defendant to Plaintiff based on a prior attorney-client relationship evidenced by retainer agreements amended in 2015 and 2016. The Court presided over a bench trial of this matter on February 25, 2019. Defendant MCC did not call any witnesses at trial

nor did they offer any documents into evidence. On March 21, 2019, Plaintiff filed and served a proposed Order to Show Cause to amend Plaintiff's complaint to conform to the evidence and allege that this dispute is not otherwise covered by Rules of the Chief Administrator of the Courts (22 NYCRR §137). On March 22, 2019, the Court issued an Order granting judgment in Plaintiff's favor in the amount of \$1,129,497.61 plus interest from September 11, 2017. On or about April 2, 2019, the Court declined to sign Plaintiff's Order to Show Cause. On April 19, 2019, the Supreme Court of the State of New York, County of Nassau, entered judgment accordingly in the amount of \$1,293,743.77, plus post-judgment statutory interest. In an effort to collect on the judgment, Plaintiff served information subpoenas with restraining notices on various entities where Defendant might have assets. Plaintiff also made a turnover motion pursuant to CPLR 5225(a) to collect monies held in Plaintiff's MCC IOLA account (Citibank Account No. xxxxxxxx3368), which both Defendant and Non-Party ACM oppose. On April 24, 2019, Defendant filed a Notice of Appeal of the Court's March 22, 2019 Order and Judgment, as well as an application for a stay. Defendant's application for a stay was denied. Defendant has not satisfied the judgment to date.

On May 6, 2019, Non-Party ACM MCC VI LLC moved this Court by Order to Show Cause (*Motion Seq. No. 12*) seeking an Order of the Court permitting them to intervene in the action herein and to stay the turnover motion pending an evidentiary hearing, claiming to be the rightful owner of the MCC monies held in Plaintiff's MCC IOLA account. Same was signed by the Court granting a temporary stay of Plaintiff's turnover motion pending determination of this motion. Defendant MCC opposed the Turnover to Plaintiff arguing that the funds being held in the IOLA account may no longer be MCC's

and that MCC could not demonstrate that the IOLA funds may not belong to ACM or some other entity. Further, MCC accused Plaintiff of improper maintenance of the IOLA records. The Court, however, decided the Turnover issue in favor of Plaintiff in its Decision and Order in connection with *Motion Sequence No. 10*, dated September 16, 2019. Non-Party ACM opposes the Turnover Motion and seeks intervenor status on the grounds that ACM is the rightful owner of the IOLA funds in question. In support, ACM offers an affidavit of Everett Indart, along with documents, which purport to corroborate ACM's claim, however, ACM's documents are lacking, vague, and inconclusive.

Analysis/Law

CPLR§ 5225(a) -Payment or delivery of property of judgment debtor states:

(a) 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.

Upon review in total, ACM has failed to provide sufficient corroborative information and specificity to be afforded intervenor status. Further, the Court has presided over a trial in this matter and decided several related motions, and has not be provided an adequate basis herein upon which to unduly prolong litigation by granting intervenor status.

The Plaintiff, having prevailed in this Court warrants the full opportunity to satisfy the judgment. Consequently, the Court found Plaintiff's application for permission to

amend its pleading to conform to the evidence, pursuant to CPLR §3025(c) to be warranted and hence the Court permitted same in its Decision and Order in connection with *Motion Seq. No. 11*, dated September 16, 2019.

Upon consideration of all submitted papers and a totality of facts and circumstances herein,

It is

ORDERED, that Non-Party and proposed intervenor ACM MCC VI LLC's ("ACM") Motion to intervene in this action is Denied; and it is

ORDERED, that Non-Party and proposed intervenor ACM MCC VI LLC's ("ACM") motion to stay the Turnover Motion pending an evidentiary hearing is Denied; and it is

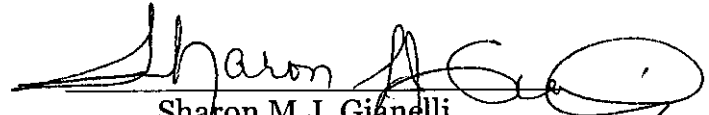
ORDERED, that the temporary stay granted ACM, by Order to Show Cause, dated May 6, 2019, is hereby lifted in light of the determination of the motion herein; and it is

ORDERED, that Non-Party and proposed intervenor ACM MCC VI LLC's ("ACM") motion for an evidentiary hearing is Denied.

Any application not specifically ruled upon herein is denied.

This constitutes the Decision and Order of the Court.

DATED: Mineola, New York
September 17, 2019



Sharon M.J. Gianelli
Justice of the Supreme Court

ENTERED
SEP 19 2019
NASSAU COUNTY
COUNTY CLERK'S OFFICE