

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

2019 NY Slip Op 34114(U)

September 16, 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.

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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. 010

Decision and Order

MERCHANT CASH and CAPITAL, LLC,

Defendant-Judgment Debtor

X

Papers submitted on this motion:

Plaintiff's Notice of Motion and Affirmation _____ X

Defendant's Affirmation in Opposition _____ X

Defendant's Memorandum of Law in Opposition _____ X

Plaintiff's Reply Affirmation _____ X

Motion by Plaintiff-Judgment Creditor Giuliano McDonnell & Perrone, LLP (hereinafter "Plaintiff") for an Order of the Court, pursuant to CPLR § 5225(a), permitting Plaintiff to withdraw the monies held in trust for and on behalf of Defendant-Judgment Creditor Merchant Cash and Capital, LLC (hereinafter "Defendant"), in Plaintiff's IOLA (Citibank Account No. xxxx3368) in partial satisfaction of the judgment entered in Plaintiff's favor and against Defendant. Defendant opposes (and an entity ACM not a party to this action also opposes claiming ownership of the monies).

Background

The underlying action herein is one for non-payment of legal fees and expenses by Defendant to Plaintiff pursuant to a prior attorney-client relationship evidenced by retainer agreements dated March 1, 2016. The Court presided over a bench trial of this matter on February 25, 2019. 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 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. Defendant appealed the judgment; however, its application for a stay was denied. Defendant has not satisfied the judgment to date.

During the course of Plaintiff's representation of Defendant, Plaintiff received monies on behalf of Defendant pursuant to bankruptcy distributions or settlement agreements with Defendant. In or about May 2017, Plaintiff commenced depositing the checks it received into a New York State Interest on Lawyer Account ("IOLA") in trust for and on behalf of Defendant. As of the date of the motion, the funds in holding totalled \$232,055.40.

In light of Defendant's failure to satisfy the judgment, Plaintiff seeks permission to withdraw the monies in partial satisfaction thereof.

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.

Plaintiff has amply demonstrated that checks have been deposited into the aforementioned IOLA account in trust for and on behalf of Defendant, totalling at least \$232,055.40. Defendant's opposition does not provide a sufficient basis upon which to deny Plaintiff's motion, and non-party ACM has likewise not sufficiently made the case to deny. Plaintiff is entitled to the turnover of those funds in partial satisfaction of the judgment.

Upon consideration of all papers submitted,

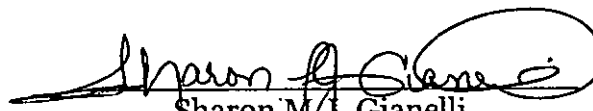
It is

ORDERED, that Plaintiff's motion for an Order of the Court, pursuant to CPLR § 5225(a), permitting Plaintiff to withdraw the monies held in trust for and on behalf of Defendant-Judgment Creditor Merchant Cash and Capital, LLC, in Plaintiff's IOLA (Citibank Account No. xxxx3368) in partial satisfaction of the judgment entered in Plaintiff's favor and against Defendant, is Granted.

Any application not specifically ruled upon herein is denied.

This constitutes the Decision and Order of the Court.

DATED: Mineola, New York
September 16, 2019



Sharon M.J. Gianelli
Justice of the Supreme Court

ENTERED
SEP 18 2019
NASSAU COUNTY
COUNTY CLERK'S OFFICE