

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

2019 NY Slip Op 34124(U)

September 18, 2019

Supreme Court, Nassau County

Docket Number: 609663/2017

Judge: Sharon M.J. Gianelli

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

0

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 MCDONNEL & PERRONE, LLP, X

*Plaintiff-Judgment Creditor,*

Index No. 609663/2017

-against-

Mot Seq. No. 014

Decision and Order

MERCHANT CASH and CAPITAL, LLC,

*Defendant-Judgment Debtor*

\_\_\_\_\_  
Papers submitted on this motion: X  
Plaintiff Notice of Motion and Affirmation \_\_\_\_\_ X  
Defendant Affirmation in Opposition \_\_\_\_\_ X  
Plaintiff Reply Affirmation \_\_\_\_\_ X

Motion by Plaintiff (*Mot. Seq. No. 014*), pursuant to CPLR § 602(b) for an Order directing that the action pending in this Court, Supreme Court, Nassau County under Index No. 609663/17 (“Action No. 1”) be consolidated with the action pending in Supreme Court, New York County under Index No. 653712/19 (“Action No. 2”), and place venue in Nassau County, on the ground that the two actions arise from the same incident and amending the caption pursuant to CPLR § 602(a).

*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, here in Supreme Court, Nassau County. 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 (*Motion Seq. No. 10*), 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 opposed.

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. By Motion dated April 25, 2019, Plaintiff moved the Court for an Order pursuant to CPLR § 3025(c) permitting Plaintiff to amend its pleading to conform to the evidence (*Motion Seq. No. 011*). Defendant opposed. Plaintiff's motion to amend was granted by Decision and Order, dated September 16, 2019 (*Gianelli, J.*).

Also by Decision and Order, dated September 16, 2019, (*Gianelli, J.*) the Court granted Plaintiff's Turnover Motion (*Mot. Seq. No. 10*) pursuant to CPLR § 5225(a) to withdraw monies held in Plaintiff's MCC IOLA account (*Citibank Account No. xxxxxxxx3368*).

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 this Court granting a temporary stay of Plaintiff's Turnover Motion pending determination of the Non-Party motion. Non-Party ACM opposed the Turnover Motion on the grounds that ACM is the rightful owner of the IOLA funds in question. In support, ACM offered an affidavit of Everett Indart, along with documents which purported to corroborate ACM's claim, but which the Court, in total, found lacking in sufficient corroborative information and specificity.

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, as well as other irregularities. By Decision and Order, dated September 17, 2019, the Court decided *Motion Sequence No. 12*, in favor of Plaintiff.

By Motion, dated August 2, 2019 (*Motion Seq. No. 14*), Plaintiff here now moves to consolidate this matter pending before this Court under Index No. 609663/17 with

the action pending in Supreme Court, New York County under Index No. 653712/19 (“Action No. 2”), and place venue in Nassau County.

*Analysis/Law*

CPLR § 602(a) provides that consolidation among actions should be granted where there are common questions of law and/or fact. A court may order that actions be consolidated in the interest of justice and judicial economy when the actions arise out of the same incident and where it is highly probable that the same witnesses and evidence will be presented at trial. Here, at the heart of both actions is Plaintiff’s effort to collect on a judgment owed to Plaintiff by Defendant, Merchant Cash and Capital, LLC.

However, the related matters before this Court have been resolved (*i.e. Motion Seq. Nos. 10, 11, 12, and 13*). The Court having ruled on these matters, leaves no matters now pending before this Court.

Accordingly,

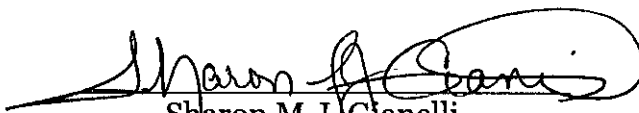
It is

ORDERED, that Plaintiff’s motion (*Mot. Seq. No. 014*), pursuant to CPLR § 602(b) for an Order directing that the action pending in this Court, Supreme Court, Nassau County under Index No. 609663/17 (“Action No. 1”) be consolidated with the action pending in Supreme Court, New York County under Index No. 653712/19 (“Action No. 2”), and place venue in Nassau County 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 18, 2019



Sharon M.J. Gianelli  
Justice of the Supreme Court

**ENTERED**

SEP 19 2019

NASSAU COUNTY  
COUNTY CLERK'S OFFICE