

Levy v Belesis

2021 NY Slip Op 30531(U)

February 25, 2021

Supreme Court, New York County

Docket Number: 155002/2020

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 14

Justice

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INDEX NO. 155002/2020

SCOTT LEVY, JASON MESSNER, CARLOS CARVALHO,
DENNIS URBANSKI, DAVID DENIS, ANTHONY ADAMS,
BRIAN BOEHRINGER, MICHELLE SONTAG, RONALD
WEBER, BUD SOLK, WILLIAM RUSSELL, JAMI AGINS,
ROGER JENNINGS, THOMAS SEITZ, STUART
WEISENFELD, THOMAS KENNEDY, LAUREN
WEISENTHAL,

MOTION DATE N/A

MOTION SEQ. NO. 001

Plaintiff,

**DECISION + ORDER ON
MOTION**

- v -

ANASTASIOS BELESIS,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43

were read on this motion to/for MISC. SPECIAL PROCEEDINGS.

The motion by non-party Tabitha Belesis (“Movant”) to vacate the restraints on her bank accounts is denied.

Background

Movant claims that she is the estranged wife of defendant and is the sole caretaker of her son. She claims that bank accounts that plaintiff restrained are operated by her alone and that defendant had no connection to these two accounts. Movant insists that she is unable to cover her family’s monthly expenses and emphasizes that plaintiffs did not obtain a judgment against her. She also argues that plaintiffs failed to serve the required exemption notices for restraining a judgment debtor’s bank account. She complains that these are her personal accounts and should not be restricted. And she points out that she has never been a defendant in any of the

proceedings referenced by plaintiffs. Movant insists that the money belongs to her and defendant has no access to it.

In opposition, plaintiffs point out that defendant was the CEO of a financial firm and has been a party to numerous lawsuits related to allegations of securities fraud. Plaintiffs were among defendant's former clients and victims of defendant's fraudulent schemes. Eventually, defendant agreed to pay plaintiffs \$900,000 in three equal installments. Plaintiffs claim that defendant failed to make these payments. They subsequently filed a confession of judgment in this Court.

Plaintiffs claim that the restraints against Movants are appropriate because defendant engaged in a multi-year scheme to shield his assets from creditors. They point out that defendant set up an LLC and then transferred his interest in the company to his wife. Then he started funneling assets through the LLC. Plaintiffs point to deposition transcripts in which they claim defendant admitted that he transferred all of his assets to his wife between 2012 and 2013. Plaintiffs claim that defendant misrepresented various holdings in other corporate entities he controlled and that he uses the money in Movant's account to pay for his personal expenses. Plaintiffs contend that Movant does not work and conclude that the money in her accounts is the result of fraudulent conveyances from defendant.

Discussion

The Court denies the motion. This case is but one litigation involving defendant. The record before this Court shows numerous fraudulent conveyances, broken promises to make payments and, most importantly, admissions under oath that defendant transferred his assets to Movant.

However, the key fact for this Court is that Movant does not work and has monthly expenses of nearly \$20,000.¹ This money has to come from somewhere. When pressed on this matter at oral argument on February 23, 2021, counsel for Movant suggested that the money deposited in Movant's accounts comes from loans secured by defendant (possibly from family friends), and there is no question that defendant is the one who supplies the money at issue here. This is not a case where Movant demonstrated that the money in the restrained accounts derived solely from her own efforts, such as paychecks, loans she secured in her own name or other income streams. Instead, Movant argues that the account belongs to her. Although that may be true, it does not refute plaintiffs' contention that defendant is moving money that should be used to satisfy plaintiffs' judgment.

The Court emphasizes that it has no interest in restricting Movant's ability to take care of her child, and at oral argument there was mention of funds in the child's bank account(s). However, the Court cannot ignore the circumstantial evidence in this case, all of which suggests that her husband (the defendant) is funneling money to her while the judgment owed to plaintiffs remains unpaid. That is unacceptable. Defendant agreed to pay plaintiffs; he cannot actively avoid that obligation and send his wife significant money each month. The Court recognizes that it might appear unfair to Movant; but defendant must take responsibility for his obligations. Plaintiffs simply want the money defendant agreed to pay them. Movant's culpability is not at issue—the fact is that she should not be receiving significant funds from defendant while he still avoids his obligations to plaintiffs.

¹ The Court is concerned only with the source of the funds in these accounts, not with the amount of Movant's monthly expenses. It is wholly irrelevant whether her monthly rent is \$11,000 or \$1,500.

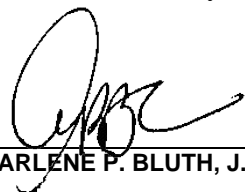
As plaintiffs point out, they are not seeking an income execution so Movant is not entitled to an exemption under CPLR 5205(d)(2). The Court also finds that there was proper service of the restraining notice pursuant to CPLR 5222-a(1)

Accordingly, it is hereby

ORDERED that the motion by non-party Tabitha Belesis is denied. All stays are vacated.

2/25/2021

DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE