

**Wells Fargo Vendor Fin. Servs. LLC v JPMorgan
Chase Bank**

2021 NY Slip Op 32276(U)

November 1, 2021

Supreme Court, Kings County

Docket Number: Index No. 525801/2019

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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 WELLS FARGO VENDOR FINANCIAL SERVICES LLC,
 Plaintiff,

Decision and Order

- against -

Index No. 525801/2019

JPMORGAN CHASE BANK, TAHIR BHUTTA
 & FEZA BEGUM

Defendants,

November 1, 2021

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 PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved pursuant to CPLR §5234 seeking to liquidate the contents of a safe deposit box in the name of defendants Bhutta and his wife Begum. The defendants oppose the motion. Papers were submitted by the parties and after reviewing all the arguments this court now makes the following determination.

As recorded in a prior order, in a related action entitled Wells Fargo Financial Services, LLC v. Elslaw et al., Index Number 524393/2017 the court entered judgement against various defendants including Tahir Bhutta d/b/a Big Sasco Tool and Equipment rental Corp in the amount of \$708,751.80. In efforts to recover upon the judgement the plaintiff became aware of a safe deposit box owned by Bhutta and Begum and has now moved seeking to liquidate the contents of the box in order to partially satisfy the judgement. The defendants have sought a stay pursuant to CPLR 5519.

Conclusions of Law

CPLR §5519(a)(4) states that "service upon the adverse party of a notice of appeal...stays all proceedings to enforce the judgment or order appealed from pending the appeal...where...the judgment or order directs the assignment or delivery of personal property, and the property is placed in the custody of an officer designated by the court of original instance to abide the direction of the court to which the appeal is taken" (id). The basis for that statute staying the transfer of money or personal property pursuant to an order or judgement is explained by the Practice Commentaries. "If there were no provision for such a stay, a judgment, such as one for money only, could be collected by a victorious plaintiff by use of the enforcement devices of Article 52 notwithstanding that an appellate court might then overturn the judgment and dismiss the plaintiff's action. That would in turn necessitate restitution...but there would be no guarantee that the plaintiff, having collected the judgment, would not have squandered the proceeds. If the plaintiff should be insolvent, the defendant's restitution judgment would be valueless. A stay of enforcement avoids that prospect" (id). Thus, the sole basis for this statute is to avoid the production of money or personal property only to have to seek its recovery

upon a successful appeal. This holds true whether the items to be furnished are personal property or money.

The plaintiff presents two reasons why in spite of the above statute permitting such stays in fact no stay should be granted. First, plaintiff argues that the defendants never notified the plaintiff of the stay contemporaneously when the appeals were filed. However, there is no such requirement for such notice. Indeed, the statute provides that merely serving the notice of appeal stays all enforcement seeking personal items.

Moreover, the plaintiff argues the appeals filed by the defendants have no merit. Even if that is true, and this court cannot make that determination, there is no requirement in the statute that an evaluation of the merits of an appeal must first be demonstrated before a stay can be imposed. The stay is a statutory creation designed to protect personal property during an appeal. Therefore, regardless of the merits of any appeal the personal property is protected thereby. Moreover, there is no merit to the argument that waiting for an appeal will cause prejudice to the plaintiff. Complying with the provisions of the CPLR surely cannot be deemed prejudice regardless of the merits of any appeals filed.

Thus, the motion seeking to liquidate the contents of the safe deposit box is denied at this time without prejudice pending the resolution of the appeal. Any motion can be filed at any time in this vein after the appeals are decided.

So ordered.

ENTER:

DATED: November 1, 2021
Brooklyn NY



Hon. Leon Ruchelsman
JSC