

Matter of Rockman v Nassau County Sheriff's Dept.
2021 NY Slip Op 34326(U)
May 25, 2021
Supreme Court, Nassau County
Docket Number: Index No. 612361/2017
Judge: Thomas Rademaker
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SUPREME COURT: STATE OF NEW YORK
COUNTY OF NASSAU

PRESENT:

HON. THOMAS RADEMAKER
J.S.C.

In the Matter of the Application of
GEORGE ROCKMAN,

Petitioner,

- against -

NASSAU COUNTY SHERIFF'S
DEPARTMENT and ANA ROCKMAN
a/k/a ANA GAMERO,

Respondent.

TRIAL/LAS PART 21

Index No. 612361/2017

Submission Date: 04/02/2021

Sequence No.: 004, 005

DECISION AND ORDER

The Court is presented with two Orders to Show Cause filed by the Respondent Ana Rockman A/k/a Ana Gamero ("Respondent"). The Nassau County Sheriff's Department has not taken a position with respect to this matter.

In Motion Sequence 004, the Respondent seeks an Order of the Court which *inter alia*, vacates the the Respondent's Default, and upon vacatur permits the Respondent to serve an Answer; dismisses and vacates the execution with notice to garnishee; cancels and vacates the Sheriff's sale, along with Sheriff's Sale-Legal Notice; grants the Respondent a stay in this proceeding pending the appeal with regard to the divorce action; issues respondent a protective order, or in the alternative, issues a protective order which denies, limits, conditions, regulates and or conditions the use of the instant enforcement proceeding; reduces the balance due and owing by the Respondent to the Petitioner; exempts various assets including but not limited to the real estate known as 13 Crystal Street Elmont, New York, as well as the disability and social security accounts; and awards

Respondent sanctions in the form of reasonable attorneys fees, costs, and disbursements.

In Motion Sequence 005, the Respondent moves by Order to Show Cause, and seeks, *inter alia*, leave to reargue “the Order of this Court that denied Respondent’s motion in its entirety,” and upon such re-argument vacate the Order of the Court dated October 22, 2020, and grant the Respondent’s motion in its entirety, and upon granting the Respondent’s motion, award the Respondent reasonable attorney’s fees, costs, and disbursements.”

The matter at bar involves a Petition which had been filed by George Rockman (“Petitioner”), which sought the enforcement of an Ulster County Judgment in the amount of \$105,539.99, in which the Petitioner was the Judgment Creditor and Respondent was the judgment Debtor (“Ulster Judgment”). The Petitioner sought enforcement of the Ulster Judgment against real property known at 13 Crystal Street, Elmont, NY 11501 (“Real Property”), which is occupied by the Respondent.

In its September 28, 2018 Short Form Order, the Court addressed the Petitioner’s application for Order pursuant to CPLR 5206[e], directing the Sheriff to seize the Respondent’s Real Property to satisfy the Ulster Judgment. The Court granted the Petition without opposition, but noted the appearance of Respondent in a related matter between the parties, and considered correspondences addressed to the Court by counsels for both the Petitioner and the Respondent. The Court’s Order directed the Petitioner to settle order and judgment upon the Respondent and her former counsel by overnight express mail service. (*Rockman v. Rockman*, et al, Sup Ct., Nassau County, September 28, 2018, Brandveen, J., “Short Form Order,” Index No. 612361/2017)(“Short Form Order”)

Although the Short Form Order provides that the Petition was granted “without opposition,” the Court considered and reviewed correspondences submitted by Respondent’s counsel at the time and the Short Form Order provides that the Decision was to be noticed to both the Respondent and

her then counsel. The Respondent's former counsel was given an opportunity to file a counter order and had in fact submitted a Proposed Counter Order, which provided for denial of the relief sought by the Petitioner.

On January 23, 2019, the Court signed a Judgment which decreed that the Real Property at issue in this matter was to be sold and that the first \$150,000 of the proceeds of the sale above existing liens and encumbrances were to be paid to the Respondent, and that the Petitioner was to receive satisfaction of the Ulster Judgment, in the sum of \$105,539.99, along with statutory interest at 9% per annum from the date of entry of the judgment in the office of the Clerk of Ulster County until paid, and with the remainder in excess of the above judgment amount to be received by the Respondent. This Judgment was entered with the Nassau County Clerk on January 23, 2019.

A motion to vacate a default is addressed to the trial court's sound discretion and it is incumbent upon defendant to demonstrate a reasonable excuse for his or her default and the existence of a potentially meritorious defense. (*Merlino v. Merlino*, 171 AD3d 911 [2nd Dept 2019]).

The Respondent's motion seeking re-argument is addressed to the Court's Order of Dismissal dated October 22, 2020, in the Nassau County Sheriff was "empowered" to carry out the Court's Judgment entered on January 23, 2019. (*Rockman v. Rockman*, et al, Sup Ct., Nassau County, October 22, 2020, Brandveen, J., "Order of Dismissal," Index No. 612361/2017)

A motion for leave to reargue is addressed to the sound discretion of the Court which decided the prior motion and may be granted upon a showing that the court overlooked or misapprehended the facts or law, or for some reason mistakenly arrived at its earlier decision. (*Beverage Marketing USA, Inc. v. South Beverage Co., Inc.*, 58 A.D.3d 657 [2d Dept., 2009]); See CPLR § 2221. A motion for leave to reargue "shall not include any matters of fact not offered on the prior motion" and "is not designed to provide an unsuccessful party with successive opportunities to reargue issues

previously decided, or to present arguments different from those originally presented.”(*Mazinov v. Rella*, 79 A.D.3d. 979, 980 [2d Dept. 2010]; quoting *McGill v. Goldman*, 261 A.D.2d 593, 594 [2d Dept., 1999]; CPLR § 2221).

Specifically, CPLR § 2221 sets forth as follows:

(d) A motion for leave to reargue:

1. Shall be identified specifically as such;
2. Shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion; and
3. Shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry. This rule shall not apply to motions to reargue a decision made by the appellate division or the court of appeals.

After a close reading of the evidence and facts presented to the Court through these motion and in their moving papers, the Court did not overlook or misapprehend any facts or law in reaching its Decision.

In fact, the Court’s Decision in Motion Sequences 002 & 003, which permits the execution of the Ulster Judgment, was decided two years after the Respondent’s initial “default.” Furthermore, the Respondent’s underlying default in this matter is not excusable, as she was represented by counsel at time, and had been given opportunities to oppose the Petition. Both the considerable passage of time from the initial default, and the failure of the Respondent to move for re-argument of these motions in a timely fashion defeats both of her motions.

The Respondent did not file a motion to renew. A motion for leave to renew must be based upon new facts not offered on the prior motion that would change the prior determination or demonstrate that there has been a change in the law that would change the prior determination. (CPLR § 2221[e][2]). The motion for leave to renew shall contain reasonable justification for the

failure to present such facts on the prior motion. (CPLR § 2221[e][3]).

The Respondent does not present new facts that were not known or were not discoverable prior of the filing of the initial motion. "The Supreme Court lacks discretion to grant renewal where the moving party omits a reasonable justification for failing to present the new facts on the original motion." (*Sobin v. Tylutki*, 59 AD3d 701, 702 [2nd Dept 2009]).

The Court finds it to be a provident exercise of discretion to deny the Respondent's motion to renew as she failed to offer a reasonable justification as to why the alleged new facts were not submitted earlier. (*Renna v. Gullo*, 19 AD3d 472 [2nd Dept 2005]).

Accordingly, the both motion sequences 004 and 005 are **DENIED** in their entirety and in all respects.

All other requested relief, not specifically addressed herein, is hereby **DENIED**.

This constitutes the Decision and Order of the Court.

DATED: Mineola, New York
May 25, 2021

ENTER:



HON. THOMAS RADEMAKER, J.S.C.

ENTERED

May 28 2021

NASSAU COUNTY
COUNTY CLERK'S OFFICE