

**Matter of 624 W. 47th St., LLC v Morgan Stanley**

2022 NY Slip Op 30219(U)

January 21, 2022

Supreme Court, New York County

Docket Number: Index No. 153114/2021

Judge: John J. Kelley

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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. JOHN J. KELLEY PART 56M

Justice

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INDEX NO. 153114/2021

In the Matter of

MOTION DATE 11/15/2021

624 WEST 47TH STREET, LLC,

MOTION SEQ. NO. 001

Petitioner,

- v -

DECISION, ORDER, and JUDGMENT

MORGAN STANLEY,

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16

were read on this motion to/for TURNOVER PROCEEDING.

This is a proceeding pursuant to CPLR 5225(b), pursuant to which the petitioner, 624 West 47th Street, LLC, seeks to compel the respondent, Morgan Stanley, to turn over funds that it holds in accounts maintained in the name of Selvant Investing Group, Ltd. (Selvant). The petitioner seeks the turnover in satisfaction of a September 10, 2020 judgment entered in its favor and against one of Selvant's directors and beneficial owners, Alexander Boyko, in the total sum of \$306,902.03. Morgan Stanley opposes the petition only to the extent that it could be deemed to seek a monetary award against Morgan Stanley itself. The petition is granted, and Morgan Stanley is directed to turn over the assets in Selvant's accounts to the extent of turning over, to the petitioner, the sum of \$306,902.03, plus simple interest at 9% per annum from September 10, 2020, from those accounts.

The facts of the underlying dispute are set forth in some detail in this court's October 18, 2021 order in the related matter entitled 624 West 47th Street, LLC v Flom, commenced in this court under Index No. 653320/2017 (hereinafter the underlying action). In short, the petitioner,

which was a plaintiff in the underlying action, therein secured a judgment against Boyko in the sum \$306,902.03, plus an award of attorneys' fees. On April 20, 2021, the petitioner served a restraining notice upon Morgan Stanley. The court notes that it referred the issue of the amount of attorneys' fees to which the plaintiff was entitled in the underlying action to a referee to hear and report, and that the referee determined, on October 21, 2021, that the plaintiff was entitled to an award of \$83,650.30 in fees and disbursements. The referee's report is pending.

The petitioner thereafter moved in the underlying action to compel Boyko to turn over the sum of \$306,902.03 from the accounts held by Selvant with Morgan Stanley. The court concluded that Boyko was an equitable owner of the accounts. The court found that Boyko had control over the accounts, remained a signatory thereon, held a beneficial interest in those accounts, and paid private debts out of those accounts, notwithstanding the fact that his son, Andrey Boyko, is nominally the only shareholder of Selvant. Specifically, in its October 18, 2021 order, this court directed that, on or before December 20, 2021, Alexander Boyko was to

“take all steps necessary and sign and submit to Morgan Stanley Dean Witter & Co. all papers necessary to turn over and transfer, to the plaintiff . . . or to the Sheriff of the City of New York, on behalf of the plaintiff, the sum of \$306,902.03, plus simple interest at 9% per annum from September 10, 2020, from accounts maintained at Morgan Stanley Dean Witter & Co. in the name of Selvant Investing Group, Ltd., including, but not limited to, accounts ending in the numbers 163, 254, and 128.”

In that order, this court also denied Boyko's cross motion to vacate the restraining notice served upon Morgan Stanley.

On November 22, 2021, the petitioner provided Boyko's attorneys with forms from Morgan Stanley and requested them to instruct Boyko to fill out and execute them so as to permit Morgan Stanley to effectuate the turnover of assets from the Selvant accounts to the petitioner. Boyko's attorney responded that “Boyko cannot sign the Morgan Stanley form, nor can he authorize any transfer of funds on behalf of Selvant Investing Group Ltd., because he is no longer a director of the company and, therefore, lacks authority” to execute the necessary documents.

By order to show cause dated December 15, 2021, the petitioner moved to hold Boyko in contempt in the underlying action for failing and refusing to take the steps necessary to turn over Selvant's assets. That motion is pending.

CPLR 5225(b) provides, in relevant part, that

“[u]pon a special proceeding commenced by the judgment creditor, against a person in possession or custody of money or other personal property in which the judgment debtor has an interest, . . . where it is shown that the judgment debtor is entitled to the possession of such property . . . , the court shall require such person to 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.”

This provision is the appropriate provision under which to pursue a turnover proceeding against a bank that holds the judgment debtor's assets on deposit (*see Koehler v Bank of Bermuda Ltd.*, 12 NY3d 533, 540-541 [2009]; *Matter of First Am. Tit. Ins. Co. v Kenderian*, 157 AD3d 891, 891-892 [1st Dept 2018]; *see also Plymouth Venture Partners, II, L.P. v GTR Source, LLC*, \_\_\_\_ NY3d \_\_\_\_, 2021 NY Slip Op 07055, \*7 [Dec. 16, 2021] [Wilson, J., dissenting]; Richard C. Reilly, Practice Commentaries, McKinney's Cons Laws of NY, CPLR C5225:1; *cf. Commonwealth of the N. Mariana Is. v Canadian Imperial Bank of Commerce*, 21 NY3d 55, 59 n 3 [2013] [Court of Appeals declines to reach the defendant bank's contention that CPLR 5227, referable to persons indebted to the judgment debtor, is the appropriate statute under which a turnover proceeding should be commenced against a bank that holds the debtor's assets on deposit, rather than CPLR 5225(b), referable to persons in possession or custody of money belonging to debtor]).

The petitioner established that Morgan Stanley is in possession and custody of money in which Boyko has a beneficial interest and that Boyko would otherwise be entitled to that money. Hence, it has established its right to the issuance of an order directing Morgan Stanley to turn over those assets to it, up to the amount of the judgment debt plus simple interest at 9% per annum from September 10, 2020. The court further directs that, even after the turnover of that

amount, the restraining notice served upon Morgan Stanley shall remain in effect in the amount of \$83,650.30 to account for any future award of fees and disbursements.

Accordingly, it is

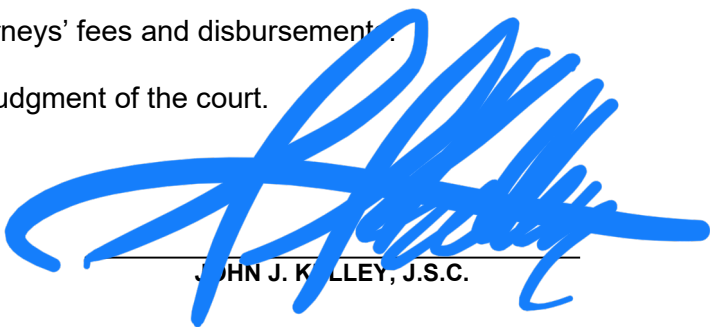
ADJUDGED that the petition is granted; and it is,

ORDERED that, on or before February 11, 2022, Morgan Stanley Dean Witter & Co. shall transfer, to the petitioner, 624 West 47th Street, LLC, or to the Sheriff of the City of New York on behalf of the petitioner, the sum of \$306,902.03, plus simple interest at 9% per annum from September 10, 2020, from accounts maintained at Morgan Stanley Dean Witter & Co. in the name of Selvant Investing Group, Ltd., including, but not limited to, accounts ending in the numbers 163, 254, and 128; and it is further,

ORDERED that, notwithstanding the turnover of the sum set forth above, the restraining notice served upon Morgan Stanley Dean Witter & Co. on April 20, 2021, shall remain in force and effect up to the sum of \$83,650.30, pending further order of the court, to protect the petitioner's right to collect any future award of attorneys' fees and disbursement.

This constitutes the Decision, Order, and Judgment of the court.

1/21/2022  
DATE



JOHN J. KOLLEY, J.S.C.

|                       |                                     |                            |                          |                       |
|-----------------------|-------------------------------------|----------------------------|--------------------------|-----------------------|
| CHECK ONE:            | <input checked="" type="checkbox"/> | CASE DISPOSED              | <input type="checkbox"/> | NON-FINAL DISPOSITION |
|                       | <input checked="" type="checkbox"/> | GRANTED                    | <input type="checkbox"/> | GRANTED IN PART       |
| APPLICATION:          | <input type="checkbox"/>            | SETTLE ORDER               | <input type="checkbox"/> | SUBMIT ORDER          |
| CHECK IF APPROPRIATE: | <input type="checkbox"/>            | INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> | FIDUCIARY APPOINTMENT |
|                       |                                     |                            | <input type="checkbox"/> | DENIED                |
|                       |                                     |                            | <input type="checkbox"/> | OTHER                 |
|                       |                                     |                            | <input type="checkbox"/> | REFERENCE             |