

Red Pine Hospitality Partners, LLC v Shtromandel
2022 NY Slip Op 30283(U)
January 27, 2022
Supreme Court, Kings County
Docket Number: Index No. 522968/21
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

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RED PINE HOSPITALITY PARTNERS LLC,
Petitioner, Decision and order

- against - Index No. 522968/21

ALEC SHTROMANDEL, 611 DEGRAW LLC, 611
DEGRAW INVESTOR INC., GREENWICH STREET
EQUITIES, LTD., and YAKOV SHTROMANDEL,
a/k/a JACOB SHTROMANDEL,
Respondents, January 27, 2022

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PRESENT: HON. LEON RUCHELSMAN

The petitioner has moved pursuant to CPLR §2221 seeking the
reargue a decision and order dated December 20, 2021 which denied
petitioner's request seeking a turnover of certain assets held by
the respondent Alec Shtromandel. The respondents oppose the
motion and after reviewing all the arguments this court now makes
the following determination.

As recorded in the prior order, on April 9, 2021 this court
granted the petitioner's motion seeking summary judgement in lieu
of a complaint regarding a promissory note executed by the
respondent Alec Shtromandel. On July 12, 2021 the court denied
the respondent's motion seeking to void enforcement of the
judgement on the grounds the note was usurious. The petitioner
then instituted this special proceeding seeking the turnover of
money or property to the petitioner or the sheriff. The court
denied the petitioner's motion seeking summary judgement arguing
there were procedural and substantive reasons such turnover could
not be determined as a matter of law. The petitioner now moves

seeking to reargue that determination asserting that since the court already entered judgement and the respondent admitted he was the owner of the pledged collateral there could be no basis to deny summary judgement seeking turnover.

Conclusions of Law

A motion to reargue must be based upon the fact the court overlooked or misapprehended fact or law or for some other reason mistakenly arrived at in its earlier decision (Deutsche Bank National Trust Co., v. Russo, 170 AD3d 952, 96 NYS2d 617 [2d Dept., 2019]).

CPLR §5225(b) only governs situations where the person who has control or possession of the money being sought is not the judgement debtor. Where the person in possession of the money is the judgement debtor then CPLR §5225(a) governs. Thus, the petitioner argues that in Miraglia v. Essex Insurance Company, 96 AD3d 945, 947 NYS2d 138 [2d Dept., 2012] the court held that pursuant CPLR §5225(b) "a judgment creditor must first establish that the judgment debtor has an interest in the property held by the third party, and then must demonstrate either that the judgment debtor is entitled to possess the property or that the judgment creditor has a right to the property superior to that of the party who possesses it" (id). The petitioner argues that "a membership interest in a limited liability company is "clearly

assignable and transferrable," and, therefore, such interest is "property" for purposes of CPLR Article 52" (see, Affirmation in Support of Motion for Leave to Reargue, ¶27). However, there is no evidence supporting that contention. Moreover, the mere fact another individual, Yenyk, did not oppose the petition on the grounds he is the owner of the entities does not mean that defendant Shtromandel is the owner of the entities. Thus, there is no "admission" that Shtromandel is the owner of the pledged collateral.

Even if true that Shtromandel is the owner of the pledged collateral and then CPLR §5225(a) applies, the petitioner has not addressed any of the procedural or substantive conclusions reached in the original decision why the petitioner is not entitled to summary judgement other than to note that such requirements are simply not necessary. The petitioner essentially argues that since judgement has been entered then a mere motion without any affidavit from someone with knowledge is not needed. There is no basis supporting dispensing with the general requirements necessary to secure a motion seeking summary judgement.

Nor has the petitioner addressed substantive reasons summary judgement was denied, namely questions whether the Uniform Commercial Code is implicated pursuant to the agreement between the parties. If such UCC is implicated then such would

be the case regardless of whether the entry of judgement forecloses any questions about its legitimacy. The agreement may demand certain procedural and notice safeguards be employed. These matters are questions of fact foreclosing a summary determination. Therefore, the motion seeking reargument is denied.

So ordered.

ENTER:



DATED: January 27, 2022
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC