

17-19 W. 34th St. Realty Co., LLC v Yampolsky

2022 NY Slip Op 31839(U)

June 10, 2022

Supreme Court, New York County

Docket Number: Index No. 160866/2020

Judge: Arlene 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 BLUTH PART 14

Justice

-----X

17-19 WEST 34TH STREET REALTY CO., LLC,

Plaintiff,

- v -

SVETLANA YAMPOLSKY, D.D.S., P.C., SVETLANA
YAMPOLSKY

Defendants.

-----X

INDEX NO. 160866/2020

MOTION DATE N/A

MOTION SEQ. NO. 007

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 007) 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

The motion by plaintiff to enjoin non-party Rosen & Deutch D.D.S., P.C. from disbursing funds due under a consulting agreement with defendant Yampolsky is granted.

In connection with plaintiff’s post-judgment collection efforts, it moves to enjoin Rosen & Deutch D.D.S., P.C. (“RD”) from paying defendant Yampolsky funds due to her under a consulting agreement for thirty days so that plaintiff can attach the payments prior to payment to Yampolsky. Plaintiff contends that RD bought defendant’s dental practice and that the agreement provides that defendant is to receive 25% of the gross revenue generated by the practice up to a maximum of \$425,000. Plaintiff argues that this provision of the agreement does not constitute wages because it is not contingent on any services provided by Yampolsky.

Plaintiff acknowledges it has been able to execute 10% of the monies paid by RD under the consulting agreement with respect to services provided by Yampolsky but that this amounts

to just under \$2,000, an insignificant amount compared to the nearly \$250,000 judgment entered against defendants.

In opposition, defendants insist that plaintiff cannot garnish her income above the statutory limit. They argue that plaintiff is simply frustrated it cannot collect money from defendants that they do not have and the money plaintiff seeks to attach is not (as plaintiff argues) assets.

Discussion

CPLR 5231:

(a) Form. An income execution shall specify, in addition to the requirements of subdivision (a) of section 5230: (i) the name and address of the person or entity from whom the judgment debtor is receiving or will receive money; (ii) the amount of money, the frequency of its payment and the amount of the installments to be collected therefrom; and (iii) shall contain a notice to the judgment debtor that he or she shall commence payment of the installments specified to the sheriff forthwith and that, upon his or her default, the execution will be served upon the person or entity from whom he or she is receiving or will receive money. Provided, however, that if a judgment creditor issues an amended execution pursuant to section five thousand two hundred thirty of this article because the applicable interest rate changes pursuant to section five thousand four of this chapter, the income execution need only specify paragraphs (i) and (ii) of this subdivision.

(b) Issuance. Where a judgment debtor is receiving or will receive money from any source, an income execution for installments therefrom of not more than ten percent thereof may be issued and delivered to the sheriff of the county in which the judgment debtor resides or, where the judgment debtor is a non-resident, the county in which he is employed; provided, however, that (i) no amount shall be withheld from the judgment debtor's earnings pursuant to an income execution for any week unless the disposable earnings of the judgment debtor for that week exceed the greater of thirty times the federal minimum hourly wage prescribed in the Fair Labor Standards Act of 1938 or thirty times the state minimum hourly wage prescribed in section six hundred fifty-two of the labor law as in effect at the time the earnings are payable; (ii) the amount withheld from the judgment debtor's earnings pursuant to an income execution for any week shall not exceed twenty-five percent of the disposable earnings of the judgment debtor for that week, or, the amount by which the disposable earnings of the judgment debtor for that week exceed the greater of thirty times the federal minimum hourly wage prescribed by the Fair Labor Standards Act of 1938 or thirty times the state minimum hourly wage prescribed in section six hundred fifty-two of the labor law as in effect at the time

the earnings are payable, whichever is less; (iii) if the earnings of the judgment debtor are also subject to deductions for alimony, support or maintenance for family members or former spouses pursuant to section five thousand two hundred forty-one or section five thousand two hundred forty-two of this article, the amount withheld from the judgment debtor's earnings pursuant to this section shall not exceed the amount by which twenty-five percent of the disposable earnings of the judgment debtor for that week exceeds the amount deducted from the judgment debtor's earnings in accordance with section five thousand two hundred forty-one or section five thousand two hundred forty-two of this article. Nothing in this section shall be construed to modify, abrogate, impair, or affect any exemption from the satisfaction of a money judgment otherwise granted by law.


(c) Definition of earnings and disposable earnings. (i) As used herein earnings means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

The Court grants the motion. The money that plaintiff seeks to attach is part of an agreement to sell defendant's dental practice. The proceeds of that sale are not income and therefore not subject to the restrictions on garnishing income. The agreement provides that RD will make monthly payments to Yampolsky in an amount equal to 25% of the practice's revenue until the total equals \$425,000 less certain expenses (NYSCEF Doc. No. 155, exh A, ¶ 5). There are no services provided by Yampolsky in connection with these payments; it is not "compensation paid or payable for personal services" as defined above. In fact, this provision is easily distinguishable from paragraph 4, which expressly states Yampolsky is to be paid \$600 for *services* (*id.* ¶ 4). Therefore, plaintiff is entitled to collect these assets as part of its effort to satisfy its judgment.

Accordingly, it is hereby

ORDERED that Rosen & Deutch D.D.S., P.C. is enjoined from disbursing funds under the consulting agreement with defendant Svetlana Yampolsky, DDS (NYSCEF Doc. No. 155,

exh A) until it has provided plaintiff with 30 days' notice when payments are due and owing (and in what amount) to allow plaintiff to attach these payments.

<u>6/10/2022</u> DATE					 ARLENE BLUTH, 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"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER		<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT		<input type="checkbox"/>	REFERENCE