

A/SL DF V, LLC v Holland
2022 NY Slip Op 32553(U)
July 28, 2022
Supreme Court, New York County
Docket Number: Index No. 154098/2022
Judge: Arlene Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE BLUTH PART 14

Justice

-----X

A/SL DF V, LLC,

Petitioner,

- v -

ALEXA HOLLAND, QUATTRO VITE LLC, PERSHING LLC,
parties which are in possession of property of ROMAZ
PROPERTIES, LTD. AND CARMELLA MARIA HOLLAND
Judgment Debtors of Petitioner,

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 15, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39

were read on this motion to/for

TURNOVER PROCEEDING

**DECISION + ORDER ON
MOTION**

The petition for a turnover is granted and the cross-petition to intervene is denied.

Background

Petitioner is a judgment creditor and seeks to recover monies or other property from the judgment debtors (Romaz Properties Ltd. and Carmella Maria Holland) that are currently in the possession of respondents. Petitioner alleges that the judgment debtors are trying to use Alexa Holland and Quattro Vite LLC to transfer assets to avoid paying the judgment. It insists that the judgment debtors transferred about \$1 million to accounts in the name of Alexa Holland (the daughter of judgment debtor Carmella Maria Holland) and Quattro Vite LLC (a company owned and controlled by Carmella), which is held by respondent Pershing LLC.

Petitioner obtained a judgment in its favor on January 4, 2021 against the judgment debtors for \$5,919,837.74 and no part of the judgment was paid by the debtors although

petitioner recovered about \$750,000 through its own collection efforts. Petitioner details how Carmella wrote herself a check against an account held in the name of Romaz Properties Ltd. on November 25, 2020 with Capital One Bank for \$975,000 and deposited the check into an account in the state of Georgia she had just opened under the name of Quattro Vite LLC. This entity was formed just a few weeks before the check was deposited.

Carmella is purportedly the manager and sole member of Quattro Vite. Petitioner maintains that on January 7, 2021 (just three days after the judgment was entered), Carmella transferred \$900,000 from Quattro Vite from a bank account to a brokerage account held by respondent Pershing. The funds with Pershing were later transferred under the name of Quattro Vite to another account with Pershing on January 13, 2021. Petitioner alleges that in March 2022, Carmella then signed an internal transfer form that sent nearly all the funds held under the name of Quattro Vite in the account to her daughter under another account held by Pershing.

In opposition and in support of the cross-petition, respondents claim that petitioner has failed to meet its prima facie burden for the relief it seeks. They claim that petitioner did not adequately show that the judgment debtors have an interest in the property sought by petitioner. Respondents also argue that \$454,358.58 of the property at issue are funds loaned by Tiziana Romeo Spada (the wife of Carmella's father) to judgment debtor Romaz Properties Ltd. And respondents insist that \$200,000 of the property at issue are funds loaned by Carmella, as custodian for her daughters, to Romaz. Carmella insists that the \$200,000 came from a bequest from her late mother.

In reply, petitioner contends that the evidence shows that respondents were recipients of the judgment debtors' assets. Petitioner contends it offers admissible records in the form of bank and brokerage statements as well as public records that show the movement of funds. Petitioner

argues that it need not provide an affidavit from petitioner because its documents are all the result of subpoenas and public records. It argues that petitioner does not have personal knowledge about the contents of these records.

Petitioner also contends that to the extent that Tiziana Romeo Spada made unsecured loans to judgment debtor Romaz, she would have potential claims against Romaz but not a defense to petitioner's right to satisfy its judgment. Petitioner points out that there is no loan documentation to substantiate these claims nor is there any proof that the loans were secured. Petitioner claims that intervention is not appropriate because this is no indication that there are legitimate competing claims to the money.

Discussion

“In a summary proceeding such as a turnover proceeding pursuant to CPLR 5225(b), a court is authorized to make a summary determination upon the pleadings, papers and admissions to the extent that no triable issues of fact are raised. A court in a turnover proceeding will apply summary judgment analysis and, absent a factual issue requiring a trial, the matter will be summarily determined on the papers presented. Thus, a petition in such a proceeding must be accompanied by competent evidence and opposition must raise a material issue of fact. Where an adverse claimant attempts to intervene and the defenses pleaded in that claimant's papers are without merit, a denial of the application to intervene is warranted because intervention would merely serve to unduly delay the determination of a summary proceeding and prejudice a substantial right of the judgment creditor to receive payment” (*Matter of Centerpointe Corp. Park Partnership 350 v MONY*, 96 AD3d 1401, 1402, 946 NYS2d 354 [4th Dept 2012] [internal quotations and citations omitted]).

Here, petitioner met its burden to show that the judgment debtors have an interest in the accounts cited in the petition. It demonstrated that nearly a million dollars from judgment debtor Romaz Properties Ltd. was sent by check into accounts under the personal control of judgment debtor Carmella Maria Holland (principal of Romaz) and that both respondent Quattro Vite and Alexa Holland are recipients of the judgment debtors' assets.

Respondents and proposed intervenor (Ms. Spada, Carmella's stepmother) failed to raise an issue of fact to defeat the petition. As initial matter, respondents did not attach sufficient documentation to show that \$200,000 of the money was a bequest to Alexa Holland from her grandmother. No will or estate accounting was included or nor any affidavit from the executor or an administrator. The \$200,000 check attached by respondents is barely legible and appears to be made out to Robert Romeo (Alexa's grandfather and Carmella's father). There is no indication this is a bequest from Alexa's grandmother to her granddaughter. Without sufficient substantiation, respondents cannot raise an issue of fact.

And neither Alexa nor Carmella explain when their grandmother/mother passed away or give any details about her estate. Instead, respondents simply offer conclusory and unsubstantiated claims while petitioner provides a detailed analysis of how Carmela (a judgment debtor) funneled money through a corporate entity she controlled to her daughter.

The Court also denies the cross-petition to intervene by Tiziana Romeo Spada. As petitioner points out, Ms. Spada did not attach any loan documentation showing her alleged personal loan to respondent Romaz; conclusory assertions are not enough. That she sent a letter requesting the money back does not raise an issue of fact about whether her claim might have priority over petitioner's effort to satisfy its judgment. Ms. Spada attaches nothing to show her loan was secured or that she pursued a claim and got a judgment against Romaz. And the letter,

dated December 3, 2020 (just a month before the judgment was entered), makes a vague allusion to “approximately \$400,000” she loaned to Romaz on “various occasions” dating back to 2011 (NYSCEF Doc. Nos. 30 and 31). The letter also states that “If within a year, you are unable to pay me back the entire loan, I agree to give you an additional month to find a place to live” (*id.*). This letter is too vague to defeat the petition, raise an issue of fact, or to grant her cross-petition to intervene. It is not clear that Ms. Spada took any affirmative steps to recoup any money.

The fact is that petitioner got a judgment and traced the flow of funds in which the judgment debtors had an interest. And respondents’ unsubstantiated attempt to allege that the judgment debtors either have no interest in the money or that others have superior interest to that of petitioner is wholly without merit.

Accordingly, it is hereby

ORDERED that the petition for a turnover is granted and the cross-petition to intervene is denied; and it is further

ORDERED that petitioner is directed to submit a proposed order and judgment on or before August 3, 2022.

7/28/2022

DATE

CHECK ONE:

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CASE DISPOSED

☐

GRANTED

☐

DENIED

APPLICATION:

☐

SETTLE ORDER

☐

NON-FINAL DISPOSITION

☐

GRANTED IN PART

☒

OTHER

CHECK IF APPROPRIATE:

☐

INCLUDES TRANSFER/REASSIGN

☒

SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE


ARLENE BLUTH, J.S.C.