

Dougenis v J.P. Morgan Chase Bank, N.A.
2022 NY Slip Op 34031(U)
November 29, 2022
Supreme Court, New York County
Docket Number: Index No. 159089/2022
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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MIRIAM DOUGENIS

Petitioner/Judgment-Creditor,

- v -

J.P. MORGAN CHASE BANK, N.A.,

Respondent/Garnishee.

INDEX NO. 159089/2022

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 12, 13, 14, 15, 16, 17

were read on this motion for a TURNOVER PROCEEDING.

Upon the foregoing documents, the Petitioner’s motion is granted as unopposed to the extent that (i) after the satisfaction of any unpaid taxes or debts legally entitled to priority over the unsatisfied judgments, Petitioner may seek a turnover of any amounts remaining in the J.P. Morgan Chase Bank, N. A. (**Chase**) accounts in the name of the now deceased judgment debtor, Peter Marcelle (the **Decedent**) and (ii) where the remaining amounts in the Chase accounts do not cover Petitioner’s unsatisfied judgments against the Decedent, Petitioner may seek a turnover of any other property belonging to the Decedent after any such property has satisfied any unpaid taxes or debts legally entitled to priority over the unsatisfied judgments. The branch of the motion seeking leave to serve the attorney of the Decedent’s executor, Ms. McCormick, by email is denied for failure to show that conventional means of service are impracticable.

Relevant Facts

Petitioner commenced this turnover proceeding to satisfy two outstanding judgments against the Decedent. The first of Petitioner's unsatisfied judgments against the Decedent is for \$30,130.53, together with interest from July 9, 2020. The second unsatisfied judgment is for attorney's fees in favor of Petitioner for \$56,345.21, together with interest from November 30, 2021. Petitioner has offered an affidavit from a related proceeding where Ms. McCormick attested that the Decedent "had a bank account with Chase . . . [which, as of] March 4, 2022 . . . contained \$212,055.09" (NYSCEF Doc. No. 8, ¶ 12). Petitioner states that the amount in the Chase account is likely more than adequate to cover the unsatisfied judgments (NYSCEF Doc. No. 1, ¶ 23; the **Petition**). The **Petition** also identifies the Decedent's undeposited Merrill Lynch check for over \$100,000.00 (*id.*, ¶ 23).

The **Petition** states that the estate may owe debts such as unpaid taxes or debts legally entitled to preference over the unsatisfied judgments (NYSCEF Doc. No. 9, at 4-5). For instance, the **Petition** identifies \$40,000.00 to \$50,000.00 in New York State taxes owed by the estate (NYSCEF Doc. No. 1, ¶ 25). That said, the **Petition** also states that Petitioner is unaware of any other debts owed by the estate (NYSCEF Doc. No. 9, at 5).

Petitioner seeks: (a) a turnover of funds in the Decedent's Chase account sufficient to satisfy the unsatisfied judgments against the Decedent, (b) an order allowing the judgment creditor to enforce or collect on the unsatisfied judgment against the Decedent and (c) leave to permit service upon Ms. McCormick's attorney via email and consider such service sufficient under CPLR 5225(b).

Discussion

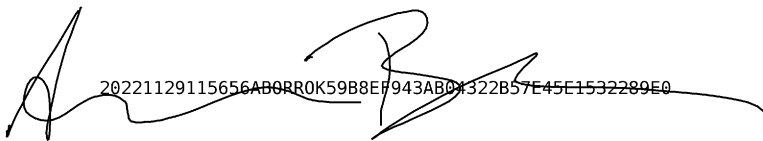
Pursuant to CPLR 5225, a creditor may seek an order directing the payment or delivery of money or property the debtor has an interest in, including (a) property in possession of the debtor and (b) property in possession of a third party. Ms. McCormick has been appointed as the executor of the Decedent's estate. Petitioner has shown that (i) Petitioner holds an unsatisfied judgment against the Decedent, (ii) Chase holds the Decedent's property in which Petitioner has an interest, (iii) Petitioner served Chase properly and (iv) the Decedent's estate has other property in which Petitioner has an interest including, among other things, an undeposited Merrill Lynch check for over \$100,000.00. And so, pursuant to CPLR 5225(b), Petitioner is entitled to an order, after any priority debts or taxes have been satisfied, (x) directing Chase to turn over the remaining funds in the Decedent's Chase account and (y) allowing Petitioner to seek turnover of any of the Decedent's other identified and as-yet-unidentified assets.

If service of process is impracticable, pursuant to CPLR 308, New York courts have broad discretion to direct a method of service reasonably calculated to give notice (*Dobkin v Chapman*, 21 NY2d 490 [1968]). Notice of a CPLR 5225(b) special proceeding must be served on the judgment debtor like a summons or by registered or certified mail, return receipt requested. Here, Petitioner has not shown that service upon Ms. McCormick's lawyer in the same method as a summons or by registered mail is impracticable. And so, the Court can not grant Petitioner's request for alternate service of process.

Accordingly, it is

ORDERED that Chase turn over any funds remaining within the Decedent’s Chase accounts after the satisfaction of any unpaid taxes or debts legally entitled to priority over the unsatisfied judgments; and it is further

ORDERED that, to the extent that the funds within the Decedent’s Chase account do not cover Petitioner’s unsatisfied judgments, Petitioner may seek a turnover of any of the Decedent’s other identified and as-yet-to-be-identified assets after those assets have satisfied any unpaid taxes or debts legally entitled to priority over the unsatisfied judgments.



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11/29/2022

DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE