

Iseev v Weingrad

2022 NY Slip Op 34256(U)

December 15, 2022

Supreme Court, New York County

Docket Number: Index No. 161036/2021

Judge: Sabrina Kraus

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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. SABRINA KRAUS PART 57TR

Justice

-----X

RUSTAM ISEEV,

Plaintiff,

- v -

STEPHEN WEINGRAD, ROSEMARY WEINGRAD, RENEE
WEINGRAD

Defendant.

-----X

INDEX NO. 161036/2021

MOTION DATE 12/08/2022

MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126

were read on this motion to/for

JUDGMENT - DEFAULT

On December 9, 2021, the above-entitled proceeding was commenced against the respondent Stephen Weingrad, Esq. for contempt pursuant to Section 753 of the Judiciary Law and CPLR § 5251, turn over pursuant to CPLR § 5225(a), and other relief by the filing Verified Petition with supporting exhibits.

The contempt proceeding was commenced due to Weingrad's failure to comply with two orders sanctioning him for engaging in frivolous conduct in two prior actions *Shchukin House OU, et al v. Rustam Iseev*, Index 150005/2020 and *Shchukin House v. Iseev* 155936/2016.

On September 8, 2022, petitioner moved by OSC seeking a leave of court (i) pursuant to CPLR 5240, to extend the restraining notices served by petitioner on JP Morgan Chase Bank or to serve a new restraining notice on JP Morgan Chase Bank; (ii) pursuant to CPLR 3025, to amend the petition excluding originally requested relief against Respondent Stephen Weingrad and requesting JP Morgan Chase Bank turn over the monies and/or personal property maintained

by Respondent in the name of Stephen Weingrad ; (iii) pursuant to CPLR § 401, join JP Morgan Chase Bank as a respondent.

On October 11, 2022, after oral arguments, this Court granted request to extend the restraining notices served by petitioner on JP Morgan Chase Bank and join JP Morgan Chase Bank as a respondent, while denying other reliefs requested by parties.

On October 28, 2022, respondents filed “Answer and Counter Petition and Third-party Impleader,” repeating the allegation of criminal and ethical violations against Petitioner and his counsel, filed previously in opposition.

On November 21, 2022, a Notice of Default against petitioner and his counsel was filed. On November 22, 2022, Weingrad made the current motion for default.

On December 8, 2021, petitioner cross-moved for an order pursuant to CPLR § 5225(b), directing the J.P. MORGAN CHASE BANK, N.A. deliver to petitioner or their attorneys or the Sheriff of the City of New York, monies maintained in the name of Weingrad, or portions thereof having a value not less than \$32,280.00; or directing Weingrad, Esq. pursuant to CPLR § 5225(a) to turn over to petitioner monies maintained with JP Morgan Chase Bank and any other accounts, wherever located, until the Judgment is satisfied, but not less than \$32,280.00, plus all applicable interest, costs, poundage, fees, and disbursements; and awarding sanctions against respondents.

The motion by Weingrad is denied and the cross-motion is granted in part.

DISCUSSION

There is no basis for the relief sought by Weingard in law or fact and the court finds that the relief requested does border on the frivolous. Weingrad is cautioned that while this court has

repeatedly declined petitioner's request to impose further sanctions on Weingrad, further frivolous conduct on his part may indeed result in additional sanctions.

Weingrad has previously acknowledged that the judgment is outstanding, that he has the ability to pay it but does not wish to do so and that neither Rosemary Weingrad nor Renee Weingrad have any real interest in the frozen account for turn over monies maintained with JP Morgan Chase Bank.

Weingrad's motion for default is denied since the purported counterclaim is in violation of CPLR §402. Crossclaims in this proceeding may only be had by leave of court (CPLR §402; *Balaban v. Phillips*, 138 Misc.2d 990 (N.Y. City Ct. 1988); *see also Siegel*, N.Y. Prac. § 552 (6th ed.)). Here leave was neither sought nor granted.

The cross-motion is granted to the extent of directing the bank to turn over the monies due, and is otherwise denied, as it is undisputed that the judgment has not been satisfied to date.

WHEREFORE it is hereby:

ORDERED that Weingrad's motion for a default judgment is denied; and it is further

ORDERED that J.P. MORGAN CHASE BANK, N.A. is directed deliver to the Sheriff of the City of New York, monies maintained in the name of Stephen Weingrad, or portions thereof having a value not less than \$32,280.00, plus applicable fees and poundage; and it is further

ORDERED that, within 20 days from entry of this order, petitioner shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for*

Electronically Filed Cases (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that any relief not expressly addressed has nonetheless been considered and is hereby denied; and it is further

ORDERED that this constitutes the decision and order of this court.



202212151142055BKRAUSC001406E22024331A1D4AFBD39D6BEE7

12/15/2022

DATE

SABRINA KRAUS, 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