

**Interasian Digital Tech. Holdings Ltd. v Fidelity  
Brokerage Servs., LLC**

2023 NY Slip Op 30861(U)

March 20, 2023

Supreme Court, New York County

Docket Number: Index No. 650153/2023

Judge: Leslie A. Stroth

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. LESLIE A. STROTH PART 12

Justice

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INTERASIAN DIGITAL TECHNOLOGY HOLDINGS LTD.,

Petitioner/Judgement Creditor,

- v -

FIDELITY BROKERAGE SERVICES, LLC,

Respondent,

JAMES PARK,

Respondent/Judgement Debtor.  
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INDEX NO. 650153/2023

MOTION DATE 1/25/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 9, 10, 11, 12, 13 were read on this motion to/for TURNOVER PROCEEDING.

In this turnover proceeding, petitioner/judgment creditor Interasian Digital Technology Holdings Ltd. (petitioner or Interasian) seeks to recover assets of respondent/judgment debtor James Park (respondent-debtor), held in the custody of respondent Fidelity Brokerage Services, LLC (respondent-bank). Respondent-debtor intervenes and opposes the petition, and respondent-bank takes no position as to the relief requested.

**I. Alleged Facts**

Petitioner is the judgment creditor of a judgment entered on July 31, 2013 (the 2013 judgment) in its favor against respondent and Praxton, LLC – who is not a party to this proceeding – in the total amount of \$7,283,690.00, in a Supreme Court action captioned: *Interasian Digital Technology Holdings, LTD v James Park and Praxton, LLC*, index No. 600006/2010 (Sup Ct, NY County).

Notably, the 2013 judgment was entered on consent of respondent-debtor. *See* NYSCEF doc. no. 10. In the underlying action, respondent-debtor executed an “Affidavit in Support of Entry of Judgment,” in which he acknowledged that the judgment is for a debt justly owed by him. *See* NYSCEF doc. no. 45, in *Interasian Digital Technology Holdings, LTD v James Park and Praxton, LLC*, Sup Ct, NY County, index No. 600006/2010. In fact, respondent-debtor explicitly authorized the entry of judgment against him in favor of Interasian in such form as “the Court may direct in New York County, New York, as well as any county in any state in the United States, or any other jurisdiction in which my assets may be located or found.” *Id.* at ¶ 4.

In an attempt to satisfy the 2013 judgment, petitioner sent an information subpoena with restraining notice on December 14, 2022 to respondent-bank at 350 Park Avenue, New York, NY 19922. In response same, respondent-bank indicated respondent-debtor maintained four retirement accounts with the bank in his name: (1) a transfer on death individual account, (2) a SEP IRA account, (2) a traditional IRA account, and (4) a Roth IRA account. Respondent-debtor concedes that all four accounts were established in 2019, six years after entry of the 2013 judgment. *See* Creditor’s Response, NYSCEF doc. no. 12 at ¶ 3.

On December 30, 2022, respondent-debtor sent Interasian an exemption claim form regarding his funds held with respondent-bank, in which he claimed an exemption from execution as “Money held in a Retirement Plan in accordance to the IRS Code including IRA’s [sic].” *See* Petitioner’s Exhibit D, NYSCEF doc. no 5. Interasian brings the instant special proceeding for a turnover order, in which it requests that respondent-bank turn over the monies in respondent-debtor’s accounts to satisfy the judgment against him.

## II. Procedural History

By order to show cause dated January 12, 2023, this Court granted a temporary restraining order freezing the subject funds in respondent-debtor's name to the extent of the amount of the judgement pending the hearing of the petition. This Court directed personal service of the order to show cause, the papers upon which it was granted, and the verified petition upon respondent on or before January 17, 2023. The matter was returnable on January 25, 2023, at which counsel for petitioner and respondent-bank appeared. Counsel for respondent-bank represented that it takes no position on the instant petition. Respondent-debtor filed opposition papers but did not appear, and the Court deemed the matter submitted. By interim order, the Court extended the temporary restraining order pending the determination of the order to show cause, which now ensues.

### I. Analysis

A judgment creditor is permitted to commence a special proceeding "against a person in possession or custody of money...where it is shown that the judgment debtor is entitled to the possession of such property...the court shall require such person to pay the money, or so much of it as is sufficient to satisfy the judgment, to the judgment creditor." *See* CPLR 5225. However, the CPLR creates an exception for individual retirement funds, which are generally prohibited from being applied to satisfy a judgment. *See* CPLR 5205 (c)(2). Nevertheless, CPLR 5205 (c)(5) creates a carveout to that general exception, prescribing that:

*Additions to an asset described in paragraph two of this subdivision shall not be exempt from application to the satisfaction of a money judgment if (i) made after the date that is ninety days before the interposition of the claim on which such judgment was entered, or (ii) deemed to be voidable transactions under article ten of the debtor and creditor law. (Emphasis added).*

Stated otherwise, when funds are added to an IRA plan after a judgment is entered or when the transfer constitutes a fraudulent conveyance, such funds can be attached to satisfy a pre-existing judgment. *See* CPLR 5205 (c)(5).

Petitioner argues that respondent-debtor deposited the subject funds into his retirement accounts held by respondent-bank long after entry of the 2013 judgment, and, in fact, none of the accounts were even created until the Summer of 2019 – more than six years after the entry of the judgment. Therefore, petitioner seeks an order requiring respondent-bank to turn over all funds in its possession that are in respondent-debtors's name in order to satisfy the 2013 judgment, pursuant to CPLR 5225.

Respondent-debtor James Parks submits opposition papers in which he acknowledges the judgment against him. *See* Creditor's Response, NYSCEF doc. no. 12 at ¶ 3. He avers that the underlying dispute related to a matter between his ex-wife and her brother, who controls Interasian. *See id.* at He states that he was named in the underlying action because he jointly held funds with his ex-wife and that he was recently divorced in 2013, so did not have the financial means to defend himself in that matter. *Id.* at Respondent further attests that:

6. In 2019, it came to my attention that retirement accounts were exempt from [j]udgements and so I created and funded a self-employed SEP-IRA [ ]Simplified Employee Pension-Individual Retirement Account with Fidelity.

7. In 2019, I resided in New York City. I opened a SEP-IRA with Fidelity and deposited \$28,195.00. I also took an IRS income tax deduction of \$28,195.00.

8. In 2020, I moved my Permanent Residence to Pennsylvania. I deposited \$34,157.00 into my SEP-IRA at Fidelity and took an IRS income tax deduction of \$34,157.00.

9. In 2021, I moved my permanent residence to Las Vegas, NV. I deposited \$17,191.00 into my SEP-IRA at Fidelity and I took an IRS Income tax deduction of \$17,191.00. I also opened a ROTH-IRA and deposited \$7,000.00.

10. In 2022, as a permanent resident of Las Vegas, NV, I deposited \$18,000.00 into my SEP-IRA at Fidelity. I also contributed another \$7,000.00 into my ROTH-IRA.

11. I have received no notice of a Domestication of a Foreign Judgment which is required by Nevada State Law to execute a foreign New York State Judgment. (*Id.* at 12 at 1-2).

Although respondent-debtor admits to the judgment against him, he argues that, as he now is a citizen of Nevada, Nevada state law governs the execution of the judgment and the funds contained in his retirement accounts. Respondent-debtor contends that the applicable Nevada

statute relating to property exempt from execution outright exempts all retirement funds and makes no mention of later additions to a retirement account. *See* NRS 21.090. Alternatively, respondent argues that petitioner misapplies CPLR 5205 and that his funds remain exempt from collection, because petitioner “interposed” its claim by way of the instant petition on January 10, 2023, and he transferred the funds at issue more than 90 days before such “interposition.”

As to respondent-debtor’s argument that Nevada law should be applied, a conflict does exist between New York law and Nevada law. Nevada exempts all retirement funds from collection on a judgment without exception, while New York does not exempt additions to retirement funds to satisfy a money judgment if the additions were made after interposition of the claim on which such judgment was entered. In determining which state’s laws apply to the instant turnover proceeding, the Court must look to the state which has the greatest outcome-interest in an action. *See Matter of Istim, Inc. v Chem. Bank*, 78 NY2d 342, 347 (1991) (holding that the interests analysis approach applies to turnover proceedings).

In determining whether Nevada or New York law governs whether respondent’s funds are exempted from collection, it is important to identify the litigation in which this issue is being resolved. This is a turnover proceeding brought by Interasian, a Malaysian corporation, to recover funds from respondent, a resident of Nevada, in a New York court under New York law seeking funds located in a New York bank branch based on a consent judgment in an action which Interasian also chose to bring in New York.

The Court of Appeals has promulgated a two-step approach in applying a choice of law interest analysis:

[W]e first look to the purposes of the statutes in conflict and identify the policies which the States seek to promote through application of their laws. Then, based upon the facts of the case which relate to the statutes’ purpose, we determine which State has the greater interest in having its law applied. *Matter of Istim, Inc. v Chem. Bank*, 78 NY2d 342, 348 (1991), citing *Schultz v Boy Scouts of Am., Inc.*, 65 NY2d 189, 197 (1985).

The purpose of CPLR 5205, part of the Exempt Income Protection Act (EIPA), is to "...protect persons with exempt funds in their bank accounts from unlawful restraint." *Jackson v Bank of Am., N.A.*, 40 Misc 3d 949, 965 (Sup Ct, Kings County 2013), *affd*, 149 AD3d 815 (2d Dept 2017); *see also Midland Funding LLC v Singleton*, 34 Misc 3d 798, 800 (NY Dist Ct 2011). The legislature elected not to protect additions to retirement accounts from collection on a judgment that were made after the interposition of a claim on which the judgment was entered. The purpose of Nevada Revised Statutes (NRS) 21.090 is "to secure to the debtor the necessary means of gaining a livelihood, while doing as little injury as possible to the creditor." *In re Fox*, 129 Nev 377, 380 (2013) (emphasis added), quoting *In re Galvez*, 115 Nev. 417, 419 (1999), *superseded on other grounds by* NRS 21.090 (1)(g).

New York has more than sufficient interest to justify application of its statutory policy. As previously noted, although neither party is domiciled in New York, the bank accounts and the significant proceedings are all in New York. Even more importantly, respondent previously resided in New York and opened the subject accounts in New York. In the circumstances of this case, there is no contrary interest in another state to suggest that New York's policies should not control – especially given that the purpose of the applicable Nevada statute intends to do as little injury to the creditor as possible. *See In re Fox*, 129 Nev at 380. Therefore, additions to respondent-debtor's retirement accounts following the interposition of the claims on which the 2013 judgment was entered are not exempt from collection, pursuant to CPLR 5205 (c)(5).

The Court finds respondent's remaining arguments unavailing. The date of the "interposition" of the claim on which a judgment is entered pursuant to CPLR 5205 is the date that the commencement documents were filed in the relevant action. *See e.g. Belco Drug Corp. v Bear Stearns & Co., Inc.*, 1999 WL 399903, at \*2 (Nassau County Ct, Apr. 12 1999, No. 310021/98);

*Keawsri v Ramen-Ya Inc.*, 17-CV-02406 (LJL), 2022 WL 17813236, at \*2 (SD NY 2022), *reconsideration denied*, 17-CV-02406 (LJL), 2023 WL 374012 (SD NY 2023). The case that respondent-debtor cites in support of his position is inapposite, as it deals with the effect of a 1989 amendment to CPLR 5204 with respect to funds rolling over into an IRA account, which is not at issue in this matter. *See Matter of Bank Leumi Tr. Co. of New York v Dime Sav. Bank of New York*, 85 NY2d 925, 926 (1995). Here, the controlling date is October 8, 2009, or 90 days before the filing of the summons and complaint in the underlying action which resulted in the 2013 judgment. Pursuant to CPLR 5205 (c)(5), assets added to respondent's retirement plan anytime after October 8, 2009 are not protected from being applied to satisfy the 2013 judgment.

In sum, respondent-debtor acknowledges the debt at issue here, submitted to New York's jurisdiction in the underlying matter, and permitted the judgment to be entered as the Court may direct in New York County, New York. *See* NYSCEF doc. no. 45, in *Interasian Digital Technology Holdings, LTD v James Park and Praxton, LLC*, Sup Ct, NY County, index No. 600006/2010. Crucially, respondent-debtor admitted that, "[i]n 2019, it came to my attention that retirement accounts were exempt from [j]udgements and so I created and funded a self-employed SEP-IRA [ ]Simplified Employee Pension-Individual Retirement Account with Fidelity." Creditor's Response, NYSCEF doc. no. 12 at 1-2. Respondent-debtor therefore admits that his retirement account held with respondent-bank were created after the filing of the summons and complaint in the prior matter. Therefore, applying New York law, such funds are not exempt from being used to satisfy the 2013 judgment.

Accordingly, it is hereby

ADJUDGED that the petition is granted; and it is further

ORDERED and ADJUDGED that Fidelity Brokerage Services, LLC is directed, upon receipt of a certified copy of this order and judgment, to turn over to the petitioner, Interasian Digital Technology Holdings Ltd., funds in the account of James Park, judgment debtor, held in said Bank, up to a maximum amount of \$ 7,283,690.00; and it is further

ADJUDGED that upon such turn-over of funds, the respondent Fidelity Brokerage Services, LLC Bank shall be discharged of all liability with respect to said funds to the extent of payment made as herein provided.

The foregoing constitutes the decision and order of the Court.

3/20/2023  
DATE

  
LESLIE A. STROTH, 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