

LMG N. LLC v 6th Ave. Capital LLC

2023 NY Slip Op 31540(U)

May 8, 2023

Supreme Court, New York County

Docket Number: Index No. 150566/2023

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

CPLR § 5225(a) provides in relevant part that:

Upon motion of the judgment creditor, upon notice to the judgment debtor, where it is shown that the judgment debtor is in possession of or custody of money or other personal property in which it has an interest, the court shall order that the judgment debtor pay the money or so much of it as it as is sufficient to satisfy the judgment to the judgment creditor and, if the amount to be so paid is insufficient to satisfy the judgment, to deliver any other personal property, or so much of it as is of sufficient value to satisfy the judgment, to a designated sheriff.

The petition for turnover proceeding must be granted pursuant to CPLR 5225(a) because the Judgment Debtor has clearly failed to satisfy the Judgment and the Judgment Debtor is in possession of or custody of money or other personal property in which it has an interest. The Judgment Debtor must turn over and deliver to the Sheriff of New York County the following to be sold in a Sheriff's sale and shall execute and deliver any documents requested to effectuate such relief:

- (a) all right, title, and ownership interest in Judgment Debtor's wholly owned subsidiary, 6th Avenue Capital Management LLC, a Delaware limited liability company,
- (b) all right, title, and ownership interest in Judgment Debtor's wholly owned subsidiary, 6th Avenue Fund Management LLC, a Delaware limited liability company,
- (c) all right, title, and ownership interest in Judgment Debtor's wholly owned subsidiary, Pioneer Business Finance LLC, a Delaware limited liability company,
- (d) all claims and causes of action and any proceeds or receivables arising therefrom belonging to the Judgment Debtor, which have been asserted or could be asserted by the Judgment Debtor against SSC SPV No.1 LLC in *SSC SPV No.1 LLC, et al v 6th Avenue Capital LLC, et al*, Index No. 654453/2020, and

- (e) all claims and causes of action and any proceeds or receivables arising therefrom belonging to the Judgment Debtor, which have been asserted or could be asserted by the Judgment Debtor against Spring Hollis and Star Strong Capital LLC in *6th Avenue Capital, LLC, v Spring Hollis, et al*, Index No. 650393/2022.

The Judgment Debtor's motion to dismiss or stay must be denied. The petition is not duplicative of the Prior Action and should not be barred by CPLR 3211(a)(4) because this petition is a judgment enforcement proceeding and the Prior Action is an action seeking to recover outstanding loans. The fact that there are remaining claims and counterclaims between other parties in the Prior Action does not justify the Judgment Debtor's failure to pay or otherwise entitled to the Judgment Debtor a stay or dismissal in this action.

The Court has considered the Judgment Debtor's remaining arguments and finds them unavailing.

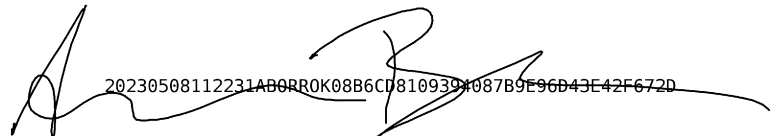
It is hereby ADJUDGED that the petition (Mtn. Seq. No. 1) is granted, and it is further

ORDERED and ADJUDGED that the Judgment Debtor is directed, upon receipt of a certified copy of this order and judgment, to turn over and deliver to the Sheriff of New York County the following to be sold in a Sheriff's sale and shall execute and deliver any documents requested to effectuate such relief:

- (f) all right, title, and ownership interest in Judgment Debtor's wholly owned subsidiary, 6th Avenue Capital Management LLC, a Delaware limited liability company,

- (g) all right, title, and ownership interest in Judgment Debtor’s wholly owned subsidiary, 6th Avenue Fund Management LLC, a Delaware limited liability company,
- (h) all right, title, and ownership interest in Judgment Debtor’s wholly owned subsidiary, Pioneer Business Finance LLC, a Delaware limited liability company,
- (i) all claims and causes of action and any proceeds or receivables arising therefrom belonging to the Judgment Debtor, which have been asserted or could be asserted by the Judgment Debtor against SSC SPV No.1 LLC in *SSC SPV No.1 LLC, et al v 6th Avenue Capital LLC, et al*, Index No. 654453/2020, and
- (j) all claims and causes of action and any proceeds or receivables arising therefrom belonging to the Judgment Debtor, which have been asserted or could be asserted by the Judgment Debtor against Spring Hollis and Star Strong Capital LLC in *6th Avenue Capital, LLC, v Spring Hollis, et al*, Index No. 650393/2022; and it is further

ORDERED that the Judgment Debtors’ motion (Mtn. Seq. No. 2) to dismiss is denied.



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5/8/2023
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: