

Eastrich Savoy LLC v DMG Savoy, LLC

2023 NY Slip Op 31808(U)

May 24, 2023

Supreme Court, New York County

Docket Number: Index No. 653030/2022

Judge: Melissa A. Crane

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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. MELISSA A. CRANE PART 60M

Justice

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EASTRICH SAVOY LLC, INDEX NO. 653030/2022
Plaintiff, MOTION DATE 05/19/2023
MOTION SEQ. NO. 004

- v -

DMG SAVOY, LLC, DMG INVESTMENTS LLC
Defendant.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 58, 59, 60, 61, 62, 63, 64, 65, 67, 68

were read on this motion to/for

MODIFY ORDER/JUDGMENT

Background

This case involves a failed transaction between plaintiff, Eastrich Savoy LLC (“Eastrich”) and defendants, DMG Savoy, LLC and DMG Investments LLC (the “DMG Defendants”). The court presumes familiarity with the facts underlying this case, as set forth in its prior decision (Doc 56 [4/19/23 Decision, MS 03]) but provides the following facts as relevant to this motion.

Plaintiff obtained a \$9,446,364.79 judgment against defendants in February 2023 (Doc 63). In October 2022, the sale of the underlying property closed for \$6,102,971.44. The court required defendants to hold the sale proceeds in a Cathay Bank account in Texas pursuant to the parties’ 12/5/22 so-ordered stipulation (Docs 41, 64). In March and April 2023, defendants made several wire payments to plaintiff totaling \$4 million (Doc 65 [wire transfers]; *see also* Doc 60 [Kevin Guan Aff (plaintiff’s Director)]). The wire payments were from a different bank account than the Cathay Bank account holding the sale proceeds (*compare* Doc 64 *with* Doc 65).

In its Decision and Order resolving MS 03, the court found that Eastrich was entitled to the proceeds in the Texas bank account but denied the motion, without prejudice, as there was no affidavit of service accompanying the motion (Doc 56 [4/19/23 Decision]).

In Motion Sequence No. 04, Eastrich now moves for an order: (1) pursuant to CPLR 5225, requiring the DMG Defendants to pay Eastrich \$5,446,364.79, plus post-judgment interest, in satisfaction of the judgment entered on February 2, 2023 (Doc 46 [Judgment]); (2) pursuant to CPLR 2221, modifying the Court's December 5, 2022 dated order to direct the DMG Defendants to pay Eastrich the proceeds in the relevant bank account; and (3) directing the DMG Defendants' compliance with the foregoing within five (5) business days (Doc 58 [Notice of Motion]). The motion is unopposed.

Discussion

CPLR 5225 (a) provides that the court can order a judgment debtor to turnover assets in its possession to the judgment creditor, even if the assets are located outside of New York State (*see e.g. Gryphon Dom. VI, LLC v APP Intl. Fin. Co., B.V.*, 41 AD3d 25 [1st Dept 2007], *lv denied* 10 NY3d 705 [2008]). A judgment creditor that seeks a turnover order pursuant to CPLR 5225 (a) must serve the notice of motion "on the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested" (CPLR 5225 [a]). Plaintiff has properly served this motion on defendants (*see* Docs 67-68).

Under CPLR 5225 (a), "where it is shown that the judgment debtor is in possession or custody of money or other personal property in which [judgment creditor] has an interest, the court shall order that the judgment debtor pay the money, or so much of it as is sufficient to satisfy the judgment"

Here, Eastrich has established that the judgment has not been satisfied completely and that it is entitled to the funds the DMG Defendants are maintaining in their Texas Cathay Bank account (*see* Doc 56 [4/19/23 Decision]; *see also* Doc 41 [So-Ordered Stip.]; Doc 63 [Judgment]; Doc 60 [Guan Affidavit]; Doc 65 [Wire Confirmations]). Specifically, plaintiff established that \$5,446,364.79 remains unpaid on the judgment, and that accrued post-judgment interest \$113,011.97 of post-judgment interest that accrued through April 26, 2023 (Doc 60 [Guan Aff]). The total amount owed through April 26, 2023 is \$5,559,376.76. Plaintiff also established that it has an interest in the funds held in the Cathay Bank account pursuant to the forbearance agreement (*id.*; *see also* Doc 61 [forbearance agreement]).

The DMG Defendants have not opposed or otherwise objected to the motion.

The court grants the motion absent opposition. The court's December 5, 2022 so-ordered stipulation is modified and superseded to the extent set forth below (Doc 41 [requiring defendants to maintain the \$6,102,971.44 sale proceeds in the Cathay Bank account ending 2602 during the pendency of this action "unless otherwise ordered by the Court"]).

Accordingly, it is

ORDERED that plaintiff's turnover motion (Motion Seq. No. 04) seeking turnover of funds in the Cathay Bank account controlled by defendants with the last four digits is granted absent opposition. Within 14 days of receipt of a copy of this order with notice of entry, Cathay Bank, located at 9440 Bellaire Blvd, Houston TX 77036, shall, turn over to the petitioner, EASTRICH SAVOY LLC, funds in the account ending 2602 up to a maximum amount of \$5,559,376.76; and it is further

ORDERED that the restraints imposed on Cathay Bank and defendants with respect to the account contained in the 12/5/22 so-ordered stipulation shall otherwise remain in effect for 30 days from entry of this decision and order; and it is further

ORDERED that petitioner must serve a copy of this order with notice of entry upon Cathay Bank and the defendants, by overnight mail with return receipt requested, within 7 days of the e-filing date of this decision and order.

5/24/2023

DATE



MELISSA A. CRANE, 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