

Morales v Rolon

2023 NY Slip Op 32578(U)

July 26, 2023

Supreme Court, Kings County

Docket Number: Index No. 500270/2018

Judge: Wayne P. Saitta

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At an IAS Term, Part 29 of the Supreme Court of the State of New York, held in and for the County of Kings, at 360 Adams Street, Brooklyn, New York, on the 26th day of July 2023.

P R E S E N T:

Hon. Wayne P. Saitta, Justice.

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HERIBERTO MORALES,

Plaintiff,

Index No. 500270/2018

-against-

JUAN ROLON and ADA ROLON

DECISION AND ORDER
MS #8 and MS #9

Defendants.

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The following papers numbered on this motion:

NYSCEF Doc Numbers

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____	222, 234, 239
Answering Affidavit (Affirmation) _____	238, 240
Reply Affidavit (Affirmation) _____	
Supplemental Affidavit (Affirmation)	
Pleadings – Exhibits _____	224-232
Stipulations – Minutes _____	
Filed Papers _____	

Defendant ADA ROLON moves for an Order authorizing and directing the Kings County Sheriff’s Department to levy upon and sell at public auction all of Plaintiffs’ claims, causes of action, and interests in this action and in a second action Plaintiff commenced against Defendants herein, captioned Heriberto Morales v. Juan Rolon and Ada Rolon Index No. 525346/2021.

Plaintiff cross-moves for a protective order, pursuant to CPLR § 5240, restraining Defendant ADA ROLON from levying upon the causes of action Plaintiff holds against her.

Defendant ADA ROLON has a money judgment against Plaintiff in the amount of \$65,113.93. Plaintiff has failed to pay any portion of the Judgment.

Defendant ADA ROLON argues that she is entitled to collect on her Judgment by selling Plaintiff's claims, causes of action, and interests in Plaintiff's two pending Actions pursuant to Article 52 of the CPLR and caselaw.

Plaintiff argues that his causes of action are not property, but debts that are too contingent or uncertain to be subject to attachment pursuant CPLR § 5201(a).

Plaintiff also argues, in the alternative, that even if causes of action can be treated as property rather than debt, the Court should find that permitting the sale of these causes of action would violate public policy.

As a preliminary matter, Plaintiff's interest in this action constitutes property rather than a debt. While a debt may consist of a cause of action, the debt must be "past due or is yet to become due, certainly or upon demand of the judgment debtor" (CPLR § 5201[a]). It has been held that a leasehold that is not in arrears is not an attachable debt (*ABKCO Industries v. Apple Films*, 39 NY2d 670 [1976]). However, where a debtor has secured summary judgment as to liability on a claim, that claim is an attachable debt (*Kasen v. Mission Cantina LLC*, 2020 NY Slip Op 30929[U]).

Here, Plaintiff's complaint does not allege a debt past due or certain to come due by date or demand, nor has he been granted summary judgment. Thus, his claims are not attachable debts within the meaning of CPLR § 5201(a).

However, contrary to Plaintiff's argument, his claims in these actions are property subject to attachment pursuant to CPLR § 5201(b) which provides: "A money judgment may be enforced against any property which can be assigned or transferred, whether it consists of a present or future right or interest and whether or not it is vested . . ." (*id.*).

As a claim or cause of action in a lawsuit may be sold or transferred (New York General Obligations Law § 13-101), Plaintiffs' causes of action are attachable property.

However, while Plaintiff's claims are attachable property, the Court may issue a protective order preventing the attachment and sale of a debtor's property pursuant to CPLR § 5240 which provides:

The court may at any time, on its own initiative or the motion of any interested person, and upon such notice as it may require, make an order denying, limiting, conditioning, regulating, extending or modifying the use of any enforcement procedure.

"The purpose of this section is to vest the Court with broad discretionary power to protect persons from unreasonable annoyance and abuse in enforcing judgments" (*Davis-Delaney-Arrow v. Gerson-Ogden*, 427 NYS2d 559, 560 [Sur Ct, New York County 1980]; *Tweedie Const. Co., Inc. v. Stoesser*, 65 AD2d 657 [3rd Dept 1978]; *Cook v. H. R. H. Const. Corp.*, 32 AD2d 806 [2d Dept 1969]).

Unlike the situation in *ABCKO Industries v. Apple Films*, the judgment creditor is the only likely purchaser of the claims. Given the nature of Plaintiff's claims, their sale would be expected to attract no purchasers other than Defendant ADA ROLON.

Defendant ADA ROLON would have no obligation or motive to press the claims in good faith against herself. As the effect of the sale of the claims would be to obliterate the claims altogether, it would be contrary to public policy to allow the sale (*see Davis-Delaney-Arrow v. Gerson-Ogden*, 427 NYS2d 559).

Therefore, the Court shall exercise its discretion pursuant to CPLR § 5240 to deny Defendant ADA ROLON's application to levy Plaintiffs' causes of action.

WHEREFORE, it is ORDERED that Defendant ADA ROLON's motion is denied in its entirety; and it is further,

ORDERED that Plaintiff's cross-motion is granted.

This constitutes the decision and order of the Court.

ENTER,



J.S.C.