

**Storch Amini P.C. v Schlachet**

2023 NY Slip Op 33524(U)

October 6, 2023

Supreme Court, New York County

Docket Number: Index No. 651911/2020

Judge: Debra A. James

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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. DEBRA A. JAMES**

**PART 59**

*Justice*

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STORCH AMINI P.C.,

Plaintiff,

- v -

DAVID SCHLACHET,

Defendant.

-----X

INDEX NO. 651911/2020

MOTION DATE 09/19/2023

MOTION SEQ. NO. 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 74, 75, 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, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122

were read on this motion to/for JUDGMENT - MONEY.

Upon the foregoing documents, it is

ORDERED that the motion of plaintiff STORCH AMINI PC for a money judgment against defendant DAVID SCHLACHET on its second cause of action for constructive fraudulent conveyance in the amount of \$301,780.85, and for an order directing defendant to turn-over to plaintiff all cash and securities in Steward Partners Investment Solutions Account No. X1700 is DENIED; and it is further

ORDERED that counsel are directed to post on NYSCEF a proposed preliminary discovery conference order or competing proposed preliminary discovery conference order(s) at least two days before October 24, 2023, on which date counsel shall appear

via Microsoft Teams, unless such appearance be waived by the court.

DECISION

By Order entered on August 17, 2023, in the herein action, the Appellate Division, First Department reasoned:

The decedent judgment debtor's Individual Retirement Account (IRA) ceased to be exempt from application to the satisfaction of plaintiff's judgment upon her death, whereupon the assets of the IRA were no longer "held in trust for a judgment debtor" (CPLR 5205[c]). To the extent (Cohen Goldstein, LLP v. Schlachet, 200 A.D.3d 407, 154 N.Y.S.3d 778 [1st Dept. 2021]) held to the contrary, that holding should not be followed. Since the judgment debtor's IRA lost its exemption upon her death, and the gratuitous transfers from the IRA after her death rendered her estate insolvent, plaintiff has established that those transfers were fraudulent conveyances (see Van de Walle v. Van de Walle, 200 A.D.3d 1095, 1099-1100, 161 N.Y.S.3d 221 [2d Dept. 2021], lv denied 39 N.Y.3d 908, 2023 WL 1827998 [2023]).

On its motion seeking entry of a money judgment, plaintiff has not annexed a copy of any judgment entered against Lara Prychodko, who is now deceased. Plaintiff correctly cites the decision of the Court of Appeals in American Sur Co v Conner, 251 NY 1, \*7 (1929) for the proposition "We think the effect of these provisions is to abrogate the ancient rule whereby a judgment and a lien were essential preliminaries to equitable relief against a fraudulent conveyance." However, this court agrees with defendant that American Sur Co does not support plaintiff's contention that with respect to the underlying debt

and its claim for monetary damages, plaintiff need not establish through admissible evidence the amount of the debt. The court likewise agrees with defendant that the decision of the Appellate Division, First Department, in the herein action merely held that the IRA transfers were fraudulent conveyances. Under American Sur Co, supra, while plaintiff is entitled to the equitable remedy that directs such "fraudulent conveyance(s) . . . be set aside. . . to the extent necessary to satisfy [its] claim'" (see Matter of Application of City of Syracuse Industrial Development Agency, 156 AD3d 1329, 1332-1333 [4<sup>th</sup> Dept 2017]) (1)(a) pursuant to Debtor & Creditor Law § 278, nothing in that opinion authorizes the court to enter judgment for a monetary amount in favor of plaintiff, without plaintiff proffering requisite proof of the amount of the claim.

In Constitution Realty v Oltarsh (309 AD2d 714, 715 [1<sup>st</sup> Dept 2003]), the court held that "'A court of equity. . . may award a personal judgment against a party in lieu of setting aside a transfer'", where the setting aside and attachment remedies are unavailing. The Constitution Realty court went on to state that given the "numerous questions of fact", a hearing was necessary to determine such damages. As argued by defendant, the issues of facts with respect to the extent to which the fraudulent conveyances impaired the value of the asset preclude summary disposition here.

In its reply affirmation, plaintiff alleges that Laura Prychodko "never disputed any of Plaintiff's invoices". Even considering plaintiff's statement made for the first time in further support of its motion (see Indymac Bank, FSB v Baroi, 214 AD3d 414, 415 [1<sup>st</sup> Dept 2023]), this court finds precedent that plaintiff "cannot create an account stated so as to bind the estate of the deceased with respect to transactions in which the deceased [herself] had engaged during her lifetime." (In re Isaac's Estate, 34 Misc2d 127 [Surrogate's Court, New York County 1962], citing Matter of Lopez, 274 App Div 819).<sup>1</sup> Finally, although plaintiff interposes a claim based upon the doctrine of necessities ("Count" III of the subject complaint) under which Laura Prychodko received an award of the subject attorney's fees against defendant, no such determination has been made or included in the record before the court, and

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<sup>1</sup>The court notes that there is no account stated cause of action alleged in the complaint at bar.

plaintiff presents no evidence supporting such an adjudication at this juncture. Moreover, an evidentiary hearing would be required to determine the appropriate award. See Frankel v Frankel, 2 NY3d 601, 605 (2004).

*Debra A. James*

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10/6/2023

DATE

DEBRA A. JAMES, 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