

**AC Penguin Prestige Corp. v Two Thousand Fifteen
Artisanal LLC**

2023 NY Slip Op 34532(U)

December 19, 2023

Supreme Court, New York County

Docket Number: Index No. 656190/2017

Judge: Verna L. Saunders

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This opinion is uncorrected and not selected for official publication.

them. According to Schulman, the proper procedure is to implead Highbrook and/or Goodwin Procter into this action before the court can exercise power to order Goodwin Procter to turn money over to petitioner. (NYSCEF Doc. No. 290, *opposition*, pg 10). Furthermore, Schulman contends that, since petitioner is asking for the monies to be turned over in a lump sum, CPLR 5226 is inapplicable because the statute specifically references payments made in installments. In furtherance of this point, Schulman set forth that CPLR 5226 is inapplicable for the additional reason that it is not alleged that Schulman is receiving or will receive the money and that Goodwin Procter is in possession of the money for Highbrook and does not intend to pay it to her absent an order or stipulation. Lastly, she asserts that the \$436,000.00 is necessary for her expenses because she has been unable to find a job since she left Highbrook; that she has other judgments and debts that she is currently working to pay down pursuant to active repayment programs; and that, as head of household, she is responsible for the expenses of her partner who is not working, suffers from disability, and is completely dependent on her (*id.*, at pg 14).

In Mot. Seq. 012, petitioner moves, by OSC, pursuant to CPLR 5232 and 5240, seeking an order extending time to perfect a levy and execution upon any interests of Schulman in personal property not capable of delivery, or upon any debt owed to her, held by Highbrook or any of its agents or affiliates, including without limitation her interest in the \$436,000.00 held by Highbrook. Petitioner argues that granting its request for the standard time of 90-days to perfect the levy is appropriate because its security interest in the \$436,000.00 would be protected and it would vitiate the need to bring a separate action against Highbrook. With regard to service, petitioner asserts that it should be allowed to effectuate service upon Highbrook's counsel via e-mail. Lastly, petitioner contends that since Schulman has been evading service and concealing her address and her counsel has represented that he is not yet authorized to accept service on Schulman's behalf, the court should likewise grant its request for alternative service upon her by e-mail. This application is unopposed.

Both motions are hereby consolidated for disposition.

CPLR 5225(c) provides, in pertinent part: "The court may order any person to execute and deliver any document necessary to effect payment or delivery."

CPLR 5226 provides, in pertinent part: "Upon motion of the judgment creditor, upon notice to the judgment debtor, where it is shown that the judgment debtor is receiving or will receive money from any source, or is attempting to impede the judgment creditor by rendering services without adequate compensation, the court shall order that the judgment debtor make specified installment payments to the judgment creditor... In fixing the amount of the payments, the court shall take into consideration the reasonable requirements of the judgment debtor and his dependents, any payments required to be made by him or deducted from the money he would otherwise receive in satisfaction of other judgments and wage assignments, the amount due on the judgment, and the amount being or to be received, or, if the judgment debtor is attempting to impede the judgment creditor by rendering services without adequate compensation, the reasonable value of the services rendered."

CPLR 5205(d)(2) provides, in pertinent part: "The following personal property is exempt from application to the satisfaction of a money judgment, except such part as a court determines to be unnecessary for the reasonable requirements of the judgment debtor and his dependents: ninety per cent of the earnings of the judgment debtor for his personal services rendered within sixty days before, and at any time after, an income execution is delivered to the sheriff or a motion is made to secure the application of the judgment debtor's earnings to the satisfaction of the judgment."

Upon consideration of the arguments advanced, contrary to Schulman's assertion, the money in question is not beyond the reach of the court to direct Schulman to pay petitioner from all assets in which she has an interest to the extent necessary to satisfy the judgment. "In order to direct the turnover of property not in the possession of the judgment debtor, a special proceeding is required" (CPLR 5225[b]). An order for execution or delivery of documents under CPLR 5225(c) may only be issued against a party whose debt liability has been established, or against that party's garnishee or transferee (see *Muhl v Ardra Ins. Co.*, 246 AD2d 413, 413 [1st Dept 1998], citing *Weinstein-Korn-Miller*, NY Civ Prac P 5225.21]). It has been ably held that CPLR 5225 applies to "money or other personal property in which the judgment debtor has an interest" (*Gryphon Dom. VI, LLC v APP Intl. Fin. Co., B.V.*, 41 AD3d 25, 36 [1st Dept 2007].) As the debt sought is undisputed, and it has been demonstrated that Schulman has an interest in the \$436,000.00 amount, though not currently in her possession, the court has the authority to order Schulman to direct Highbrook and/or Highbrook's attorney, Goodwin Procter, to deliver sufficient portion of the \$436,000.00 amount to satisfy the judgment. Even though petitioner appears to seek a lump sum portion of the \$436,000.00 amount to satisfy the judgment in contravention of the CPLR 5226 provision that payments be made in installments, petitioner also prayed for any such other, further, and different relief as the court may grant (NYSCEF Doc. No. 275, *order to show cause*). Hence, payments of the portion of the \$436,000.00 petitioner seeks shall be made in installments. Furthermore, CPLR 5226 provides that "[i]n fixing the amount of the payments, the court shall take into consideration the reasonable requirements of the judgment debtor and his dependents, any payments required to be made by him or deducted from the money he would otherwise receive in satisfaction of other judgments and wage assignments, the amount due on the judgment, and the amount being or to be received." "The test is what the judgment debtor can reasonably afford to pay, taking into consideration his needs, those of his dependents, and other inroads on his income from other obligations" (*Kaufman v Kaufman*, 29 AD2d 922, 922 [1st Dept 1968].) "CPLR 5226 does not contain a limit on the amount of an installment payment order" (*Allstar Capital, Inc. v Curry*, 2010 NY Slip Op 20188[U]**2 [Sup Ct, NY 2010]). Despite claiming that the entire \$436,000.00 is necessary to paying for her rent, high medical insurance premiums, job search costs, internet, and groceries, Schulman does not provide any proof of such financial obligations to meet the requisite burden (see *Lowy v Bobker*, 383 F Supp 2d 606, 615 [SDNY 2005]; see also *Grand Pac. Fin. Corp. v 97-111 Hale, LLC*, 2015 NY Slip Op 30013[U]**17 [Sup Ct, NY County 2015]). Therefore, petitioner is entitled to sufficient portions of the \$436,000.00 to satisfy the judgment.

Next, the court grants that portion of petitioner's motion (Mot. Seq. 012) seeking an order giving it a 90-day extension to perfect a levy and execution upon any interests of Schulman in personal property not capable of delivery, or upon any debt owed to her, held by Highbrook or any of its agents or affiliates. It has been held that "[u]nder CPLR 5232(a), an execution expires after 90 days, unless the court grants an extension" (*Matter of Dontzin Nagy & Fleissig LLP v HC2 Holdings, Inc.*, 212 AD3d 499, 500 [1st Dept 2023].) To the extent petitioner argues that it should be allowed to effectuate service upon Schulman via e-mail premised on the notion that she has been evading service, and that her counsel has represented that he is not authorized to consent to accepting service on Schulman's behalf, the court agrees. This court granted in a previous order that petitioner serve Schulman via e-mail (NYSCEF Doc. No. 280). As is the case here, it has been found that alternate service using electronic means is appropriate where defendants' physical location is unknown and physical service is impracticable (see *LCX AG v 1.274M U.S. Dollar Coin*, 2022 NY Slip Op 32834[U], *6 [Sup Ct, NY County 2022]). However, the court denies that branch of Mot. Seq. 012 seeking an order directing petitioner to serve Goodwin Procter the decision and order of this court via

e-mail only insofar as petitioner has not demonstrated that it cannot effectuate service in accordance with CPLR 5513(d). All other arguments have been considered and are either without merit or need not be addressed. Accordingly, it is hereby

ORDERED that, as to Mot. Seq. 011, within twenty (20) days after service of this decision and order, defendant Stephanie Schulman shall direct Highbrook Investment Management, L.P to deliver to New York City Marshal Martin Bienstock (or, alternatively, petitioner’s counsel) the amount of \$349,994.52 of the \$436,000.00 held by Goodwin Procter, LLP, in two (2) equal installments until the amount has been paid in full to petitioner, the first payment being due on February 15, 2024 and the second payment being due on March 15, 2024; and it is further

ORDERED that the branch of Mot. Seq. 012 seeking to serve defendant Stephanie Schulman by e-mail is granted, and petitioner shall serve this decision and order upon HighBrook Investment Management, L.P. and Goodwin Procter, LLP pursuant to CPLR 5513(d); and it is further

ORDERED that that branch of Mot. Seq. 012 seeking a 90-day extension to perfect a levy and execution upon any interests of Schulman held by Highbrook or any of its agents or affiliates is granted; and it is further

ORDERED that, within fifteen (15) days after this decision and order is uploaded to NYSCEF, counsel for petitioner shall serve a copy of this decision and order, with notice of entry, upon defendants, HighBrook Investment Management, L.P. and Goodwin Procter, LLP; and it is further

ORDERED that service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of this court.

December 19, 2023


HON. VERNA L. SAUNDERS, JSC

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: