

Colon v 108 W. 95th St. Hous. Dev.

2024 NY Slip Op 30084(U)

January 8, 2024

Supreme Court, New York County

Docket Number: Index No. 153236/2023

Judge: Shahabuddeen Abid Ally

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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. SHAHABUDDEN ABID ALLY PART **16TR**

Justice

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JULIO COLON and JENNIFER GARCIA,
Judgment-Petitioner,

INDEX NO. 153236/2023

MOTION DATE 06/26/2023

MOTION SEQ. NO. 001

- v -

108 WEST 95TH STREET HOUSING DEVELOPMENT
FUND CORPORATION,

Respondent,

**DECISION + ORDER ON
MOTION**

LUIS RIVERA, JR and LUIS RIVERA III,

Judgment Debtors.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1-13
were read on this motion to/for TURNOVER PROCEEDING.

In this judgment enforcement proceeding, petitioners move for an order: (1) pursuant to CPLR § 5225(a), directing judgment debtors to pay to petitioner money sufficient to satisfy outstanding judgments or, 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; (2) pursuant to CPLR § 5225(b), in the event that judgment debtors refuse to tender the shares in satisfaction of the judgment amounts due, directing that the 250 shares of respondent 108 West 95th Street Housing Development Fund Corporation (“108 West 95th”), a cooperative apartment building, be turned over to the Sheriff; or (3) in the alternative, respondents 108 West 95th be directed that the shares belonging to judgment debtor Luis Rivera, Jr. be issued in petitioners’ names. Judgment debtor Luis Rivera III has filed

opposition, but neither respondent nor judgment debtor Luis Rivera, Jr. have filed opposition nor otherwise appeared in this proceeding. Upon the above cited papers, the petition is denied.

In a prior proceeding,¹ petitioners brought an action against judgment debtors for fraud, alleging that Luis Rivera, Jr. fraudulently contracted with petitioners for the sale and purchase of the cooperative apartment located at 108 West 95th Street, Apt. 6FW, New York, NY 10025 (the “Apartment”). Petitioners further alleged in that action that as a result of Luis Rivera, Jr.’s representations, petitioners invested considerable sums of money in the form of contract deposit and in renovations to the Apartment. Luis Rivera III answered, and eventually entered into a stipulation of settlement with petitioners whereby Luis Rivera III agreed to pay the sum of \$45,000 to petitioners in settlement of claims against him. Luis Rivera, Jr. defaulted and petitioners obtained a judgment against him in the amount of \$295,354.04. Petitioners aver that Luis Rivera, Jr. has made no payments toward the outstanding judgment and owes \$498,306.73 as of the filing date of this petition. Luis Rivera III has paid \$30,684.11 of the settlement amount as of the filing date of this petition.

Judgment debtors own 250 shares of 108 West 95th, representing ownership interest in the Apartment. From the time of the underlying action through the filing of this petition, the Apartment has been occupied by Luis Rivera III and his wife. Though there has been no documentation provided that sets forth specific terms of the judgment debtors’ co-ownership, both are listed together on the stock certificate representing the 250 shares. Luis Rivera III maintains that Luis Rivera, Jr. no longer resides in New York and has relinquished possession of the Apartment.

¹ *Colon and Garcia v Rivera and Rivera*, Index No. 153683/2014 (Sup. Ct., New York County 2014).

Petitioners now seek enforcement of the judgment by way of delivery to them of Luis Rivera, Jr.'s interest in the 250 shares. Petitioners contend that this interest is only asset upon which the judgment against Luis Rivera, Jr. can be satisfied. Luis Rivera III opposes delivery of the shares, arguing that in light of his anticipated satisfaction of his portion of the judgment, permitting his ouster from the Apartment would be inequitable. In reply, petitioners assert that they do not seek to satisfy any part of the judgment from Luis Rivera III's portion of the shares or to disturb his occupancy and co-ownership of the Apartment.

Discussion

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

Upon motion of the judgment creditor, upon notice to the judgment debtor, where it is shown that the judgment debtor is in possession or custody of money or other personal property in which he 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, 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.

Pursuant to CPLR § 5225(c), a court is authorized to direct persons or entities to “execute and deliver” documents sufficient to effectuate delivery of such property. Upon its receipt of a judgment debtor's personal property by the designated sheriff, personal property delivered by a turnover order shall be sold at public auction according to the procedures set forth in the CPLR (CPLR § 5233[a]).

In the context of a judgment enforcement proceeding, shares in a cooperative apartment are considered personal property and are therefore subject to delivery pursuant to CPLR § 5225 (*State Tax Commissioner v Shor*, 43 NY2d 151 [1977]).


Here, it is undisputed that petitioners are judgment creditors and are owed outstanding payments from both debtors. Notably, petitioners do not seek sale of Luis Rivera, Jr.'s interest in

the shares. Petitioners also aver that they do not at this time seek to enforce the judgment against Luis Rivera III and do not seek to disturb his and his wife’s possession of the Apartment. However, with regard to personal property, CPLR § 5225(a) authorizes a court only to direct delivery of the personal property to a designated sheriff for sale or other distribution sufficient to satisfy the judgment (CPLR § 5233). This Court therefore lacks authority to compel delivery of the shares such that it would have no possibility of disturbing the Luis Rivera III’s co-ownership of the shares or occupancy of the unit.

Accordingly, it is hereby:

ORDERED and ADJUDGED that the petition is denied and this proceeding is dismissed.

This constitutes the decision and order of the Court.

<u>01/08/2024</u> DATE			 SHAHAD UDDIN ABID ALLY, A.J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE