

Tao Liu v Chang

2024 NY Slip Op 31834(U)

May 14, 2024

Supreme Court, New York County

Docket Number: Index No. 654560/2023

Judge: Louis L. Nock

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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. LOUIS L. NOCK PART **38M**

Justice

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TAO LIU,

Plaintiff,

- v -

SOBIN CHANG, JP MORGAN CHASE BANK, N.A.,
CHARLES SCHWAB & CO., INC., AQUAVIT HOLDINGS,
LLC, AQUAVIT LIFE SCIENCES INC., AQUAVIT
PHARMACEUTICALS, INC., IRIS MANAGEMENT
CONSULTING SERVICES, and LLC D/B/A AQUAVIT
CUSTOMER SOLUTIONS,

Defendants.

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INDEX NO. 654560/2023
MOTION DATE 09/18/2023
MOTION SEQ. NO. 001

**DECISION + ORDER ON
PETITION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34

were read on this motion to/for TURNOVER PROCEEDING.

LOUIS L. NOCK, J.S.C.

Petitioner/Judgment-Creditor Tao Liu commenced this special proceeding pursuant to CPLR 5225, seeking turnover of funds held in the accounts of respondents JP Morgan Chase Bank, N.A. (“Chase”) and Charles Schwab & Co., Inc. (“Charles Schwab”), for the benefit of judgment debtor Sobin Chang. Petitioner also seeks to void certain transactions between Chang and respondents Aquavit Holdings, LLC (“Holdings”), Aquavit Life Sciences Inc. (“ALS”), Aquavit Pharmaceuticals, Inc. (“Pharma”), and Iris Management Consulting Services LLC (“Iris”), pursuant to Debtor and Creditor Law §§ 273, 274, and 276. Petitioner alleges that these transfers were made to frustrate enforcement of the judgment. Upon the foregoing documents, the petition is granted in part and denied in part.

On January 3, 2023, the court, by the Hon. Frank P. Nervo, issued a decision following an inquest on paper submissions in the matter of *Liu v Chang*, Index No. 656209/2020, in which

the court found in favor of Liu and directed judgment against Chang in the amount of \$149,080.68, plus \$25,630.39 in attorneys' fees, with interest, costs and disbursements (inquest decision, NYSCEF Doc. No. 9). According to petitioner, the total judgment amount of \$211,516.28 (judgment, NYSCEF Doc. No. 4) remains outstanding.

In the first two causes of action, petitioner seeks turnover of funds held in accounts maintained by respondents Chase and Charles Schwab for Chang's benefit. "Upon a special proceeding commenced by the judgment creditor, against a person in possession or custody of money or other personal property in which the judgment debtor has an interest . . . where it is shown that the judgment debtor is entitled to the possession of such property . . . the court shall require such person to pay the money, or so much of it as is sufficient to satisfy the judgment, to the judgment creditor" (CPLR 5225 [b]). A court may direct that a bank turnover funds held on account for a judgment debtor (*Gryphon Dom. VI, LLC v APP Intern. Fin. Co., B.V.*, 41 AD3d 25, 36 [1st Dept 2007]), and may also direct turnover of funds from a brokerage account (*Canandaigua Natl. Bank & Tr. Co. v Brighton Sec. Corp.*, 214 AD3d 1443, 1443 [4th Dept 2023]).

In opposition, Chang does not dispute that the money in the accounts is hers or that the accounts are not properly subject to a turnover proceeding. Instead, she first argues that the petition should be denied because of her pending appeal of the underlying judgment. Chang moved to vacate the judgment in the original action, which was denied on August 14, 2023 (*see, Liu v Chang*, 208 NYS3d 191, 2024 NY Slip Op 02370 [1st Dept 2024]). Chang appealed the decision nine days later (notice of appeal, NYSCEF Doc. No. 31). The Appellate Division, First Department, recently decided Chang's appeal, affirming Justice Nervo's denial of the motion to vacate the judgment (*Liu, supra*, 208 NYS3d 191). Accordingly, this argument is moot. Chang

further argues that the judgment is far in excess of petitioner's actual damages, but collateral attacks on judgments are disfavored except where the court lacks jurisdiction or the judgment was procured by fraud (*Bartel v Farrell Lines*, 215 AD3d 517, 522 [1st Dept 2023]). Chang does not allege that the underlying judgment was rendered in absence of jurisdiction over her, or by fraud. Accordingly, the court will grant the petition as to the first two causes of action and direct turnover of the funds in the Chase and Charles Schwab accounts.

For the third and fourth causes of action, petitioner alleges that transfers of funds from Chang to the corporate accounts of Holdings, Pharma, ALS, and Iris (the "entity respondents") are voidable under the Debtor and Creditor Law as either made "with actual intent to hinder, delay or defraud any creditor or debtor" (Debtor and Creditor Law § 273), or "without receiving reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation" (Debtor and Creditor Law § 274). The fifth cause of action seeks a judgment declaring that the entity respondents are Chang's alter egos and thus liable for her debt to petitioner. As an initial matter, there is no separate cause of action for alter ego liability or corporate veil piercing under New York law, and, therefore, the fifth cause of action must be dismissed (*9 E. 38th St. Assoc., L.P. v George Feher Assoc., Inc.*, 226 AD2d 167, 168 [1st Dept 1996]).

Regarding the claims under the Debtor and Creditor Law, when a judgment creditor seeks turnover of funds held by a garnishee, it must establish its superior right to possession of the funds (*Matter of MRI Enterprises, Inc. v Hausknecht*, 142 AD3d 1078, 1080 [2d Dept 2016]) ["a judgment creditor must first establish that the judgment debtor has an interest in the property held by the third party, and then must demonstrate either that the judgment debtor is entitled to possess the property or that the judgment creditor has a right to the property superior to that of

the party who possesses it”]; *Petrocelli v Petrocelli Elec. Co., Inc.*, 121 AD3d 596 [1st Dept 2014] [“The burden of proof in a turnover proceeding rests with the judgment creditor to establish that contested transfers were without adequate consideration or otherwise fraudulent”]). Here, petitioner alleges that on the day of the decision in the underlying action but prior to the entry of judgment against her, Chang transferred over \$500,000 from her personal accounts with Chase to the account of Holdings (petition, NYSCEF Doc. No. 1, ¶ 60). Chang allegedly then made subsequent transfers from Holdings’ account to the accounts of the other entity respondents (*id.*). Petitioner maintains that these transfers are voidable because the entity respondents are Chang’s alter egos, and exclusively in her control. However, petitioner’s allegations in this respect, including that Chang was rendered insolvent by these transfers, are largely made upon information and belief. Chang, in a detailed affidavit in opposition to the petition, states that the entity respondents are not her alter egos, and the transactions in question were not made in an attempt to frustrate the judgment (Chang affidavit, NYSCEF Doc. No. 26, ¶¶ 45-55). Indeed, she avers specific details regarding the operations and composition of each of the entity respondents to support her claim that she does not control them (*id.*, ¶¶ 37-43).

Upon the hearing of a petition, “The court shall make a summary determination upon the pleadings, papers and admissions to the extent that no triable issues of fact are raised” (CPLR 409 [b]). “If triable issues of fact are raised they shall be tried forthwith and the court shall make a final determination thereon” (CPLR 410). Here, triable issues of fact exist regarding both the nature of the relationship between Chang and the entity respondents, as well as whether the transfers were made without fair consideration or with actual intent to frustrate enforcement of the judgment. “[P]etitioner is entitled to broad discovery to assist in prosecuting the claims, particularly since the evidence is largely within the possession of the judgment debtors and the

transferees” (*Petrocelli*, 121 AD3d at 596). The court will schedule a conference to set an expeditious discovery schedule on the matter. For that reason, the court also reserves decision on the sixth cause of action for attorneys’ fees until the resolution of the remaining causes of action.

Accordingly, it is hereby

ADJUDGED that the petition is granted as to the first and second causes of action, and it is further

ORDERED and ADJUDGED that respondents JP Morgan Chase Bank, N.A., and Charles Schwab & Co., Inc., are directed, upon receipt of a certified copy of this order and judgment, to turn over to the petitioner, Tao Liu, funds in the accounts of Sobin Chang, judgment debtor, held by said respondents, up to a maximum amount of \$211,516.28; and it is further

ADJUDGED that upon such turn-over of funds, the respondents JP Morgan Chase Bank, N.A., and Charles Schwab & Co., Inc., shall be discharged of all liability with respect to said funds to the extent of payment made as herein provided; and it is further

ORDERED that the balance of the petition is severed and shall continue; and it is further

ORDERED that the parties shall appear for a discovery conference in Room 1166, 111 Centre Street, New York, New York, on June 5, 2024, at 2:15 PM.

This constitutes the decision, order, and judgment of the court.

ENTER:



<u>5/14/2024</u>				<u>LOUIS L. NOCK, J.S.C.</u>	
DATE					
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	<input checked="" type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>		DENIED		<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT
				<input type="checkbox"/>	REFERENCE