

**Cohen Goldstein, LLP v Schlachet**

2024 NY Slip Op 32069(U)

June 17, 2024

Supreme Court, New York County

Docket Number: Index No. 652380/2020

Judge: Leslie A. Stroth

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. LESLIE A. STROTH PART 12M**

*Justice*

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COHEN GOLDSTEIN, LLP

Plaintiff,

- v -

DAVID SCHLACHET,

Defendant.

INDEX NO. 652380/2020

MOTION DATE April 2, 2024

MOTION SEQ. NO. 004

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112

were read on this motion to/for RENEWAL.

This action arises from plaintiff Cohen Goldstein, LLP’s representation of Lara Prychodko, the former wife of defendant David Schlachet, during a divorce action and a proceeding in Family Court. Plaintiff alleges that after its discharge from representing Ms. Prychodko, the divorce action was discontinued, and she failed to pay her legal fees. Cohen Goldstein asserts that it brought an action against Ms. Prychodko in New York County, Ind. 653160/2014, which resulted in a judgment entered in favor of plaintiff in the amount of \$63,949.05 on October 18, 2016. Defendant commenced a new divorce action against Ms. Prychodko where she retained Storch Amini P.C. to represent her.

On November 16, 2016, Cohen Goldstein served on defendant a notice of charging lien in the amount of the subject judgment. However, Ms. Prychodko died in 2018 with an IRA of \$350,000, which contents were transferred to an inherited IRA by defendant to his and Ms.

Prychodko's son. Plaintiff asserts as its second cause of action that defendant violated Debtor and Creditor Law §273 by transferring the IRA without fair consideration at a time when Ms. Prychodko's estate was insolvent, and as a third cause of action, pursuant to Debtor and Creditor Law § 278, that the transfer should be disregarded and plaintiff should be entitled to execute the money judgment against the IRA.

Judge Barbara Jaffe by Order dated June 10, 2021 ruled that, having submitted an affirmation instead of an affidavit, plaintiff failed to sustain its prima facie burden for summary judgment and granted defendant's motion to dismiss, finding the following (Exh 1, p 4-5):

Pursuant to Debtor and Creditor Law § 273, a transfer made by a debtor is voidable as to a creditor if the debtor effected the transfer with "actual intent to hinder, delay or defraud any creditor of the debtor," or without receiving a reasonably equivalent value in exchange for the transfer...

Here, defendant demonstrates that the IRA was payable on her death to her son and was thus exempt from execution by any creditor during her lifetime and after her death. (CPLR 5205[c][1] [all property held in trust for judgment debtor, where trust was created by person other than judgment debtor, is exempt from application to satisfaction of money judgment]; *Bank Leumi Trust Co. of New York v Dime Sav. Bank of New York*, 85 NY2d 925 [1995] [IRA exempt from judgment creditor's levy]...

As the IRA is exempt from execution by a judgment creditor, that the transfer of the IRA rendered the former wife insolvent or that she was already insolvent is irrelevant, and plaintiff cites no caselaw on point.

Plaintiff appealed to the Appellate Division, First Department, which provided by Order dated December 2, 2021 (Exh 2):

CPLR 5205(c)(2) exempts from application to the satisfaction of a money judgment "all ... custodial accounts ... established as part of ... any trust or plan [for the benefit of the judgment debtor], which is qualified as an [IRA] under section [408] or . . . [408A] of the . . . Internal Revenue Code." Nothing in the language of CPLR 5205(c)(2) excludes from the scope of the exemption an IRA inherited by a beneficiary from a deceased judgment debtor... Since each of plaintiff's first three causes of action is based on the disposition of the IRA, which is exempt from execution, each of those claims was correctly dismissed.

Thereafter, plaintiff moved to reargue, “pointing out that CPLR 5205(c)(2) was merely a definitional subsection of the law, and that 5205(c)(1) was the operational subsection, which clearly limits the exemption of IRAs from application to satisfy money judgments to only the time while [such IRAs are] held in trust for a judgment debtor” (Goldstein Aff, ¶9). On December 29, 2021, the Second Department issued a ruling in the matter *Van de Walle v Van de Walle*, 200 A.D.3d 1095 (2<sup>nd</sup> Dept 2021) (Exh 3):

The law is clear that a decedent, who is the owner of property up to the time of his death, as far as creditors are concerned, cannot cut off the creditors’ rights by his death and nontestamentary transfer. Here, it is undisputed that, up until his death, the decedent retained control of the beneficiary designation on the retirement accounts. Further, the plaintiffs established, prima facie, that the decedent’s estate was rendered insolvent, including by the conveyance of the interest in the retirement accounts to the defendant upon the decedent’s death and that, as a result, the gratuitous conveyance became fraudulent as to the children.

Plaintiff submitted a letter dated February 3, 2022 to the First Department for the instant matter regarding the ruling in *Van de Walle*, however, it denied plaintiff’s motion for reargument on March 22, 2022 (Exhs 4 & 5).

An action was also commenced by Storch Amini against defendant in the matter *Storch Amini P.C. v. David Schlachet*, Index No. 651911/2020, before Judge Debra James, where identical claims under Debtor and Creditor Law were made for outstanding fees from Ms. Prychodko’s IRA. On June 10, 2022, Judge James denied Storch Amini’s motion for summary judgment and granted the defendant’s cross-motion to dismiss, stating that the facts of this matter, *Cohen Goldstein, LLP v. Schlachet* are “on all fours” with the Storch Amini case, holding that the First Department’s decision in *Cohen Goldstein, LLP v. Schlachet* is controlling (Exh 6). Storch Amini filed an appeal to the Appellate Division, First Department, which by decision dated August 17, 2023 reversed Judge James’ order (Exh 7):

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 AD3d 407 [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 AD3d 1095, 1099-1100 [2d Dept 2021], lv denied 39 NY3d 908 [2023]).

Plaintiff moves here for leave to renew its prior motion for partial summary judgment, pursuant to CPLR 2221, on its second and third causes of action, and upon renewal for the granting of summary judgment. Plaintiff argues that in light of the First Department's adoption of the Second Department's decision in *Van de Walle v Van de Walle*, 200 A.D.3d 1095, in the Storch Amini matter, granting of such is warranted.

\* \* \*

CPLR 2221(e)(2) provides that a motion for leave to renew "shall demonstrate that there has been a change in the law that would change the prior determination." Plaintiff submitted a letter dated February 3, 2022 to the First Department on the instant matter, regarding the ruling in *Van de Walle* (Exhibit 4), before it denied plaintiff's motion to reargue its appeal, as follows:

In *Van de Walle v. Van de Walle*, 2021 NY Slip Op 07574 (2d Dep't 2021), decided on December 29, 2021 (six days after we filed our reargument motion), the Second Department ruled (on p. 6 of the attachment) that the plaintiffs in that case had established their right to judgment as a matter of law on their cause of action under Debtor and Creditor Law §273. The court, quoting *In re Chaikowsky* (cited in our main brief), confirmed that "[t]he law is clear that a decedent, who is the owner of property up to the time of his death, as far as creditors are concerned, cannot cut off the creditors' rights by his death and nontestamentary transfer".

Nonetheless, the First Department denied plaintiff's motion for reargument on March 22, 2022, nearly three months after the *Van de Walle* decision was rendered (Exh 5).

The Court notes that *Storch Amini* and the instant matter are not consolidated, and defendant's motion to consolidate before Judge James was denied by the same order dated June 10, 2022 (Exh 6). As Judge Jaffe indicated in the June 10, 2021 decision, "pursuant to Debtor and Creditor Law §273, a transfer made by a debtor is voidable as to a creditor if the debtor effected the transfer with actual intent to hinder, delay or defraud any creditor of the debtor, or without receiving a reasonably equivalent value in exchange for the transfer" (Debtor and Creditor Law §278) (Exh 1, p 4).

Plaintiff failed to proffer any proof that defendant transferred the contents of the IRA account to an account in the son's name for any reason other than to administer the estate to comply with the Surrogate Court's order. Unlike in *Van de Walle v Van de Walle*, in this matter, the Surrogate's Court by Order dated May 20, 2019, appointed defendant David Schlachet as guardian of the infant and stated that "the guardian is authorized to rollover the IRA account which names the infant as a beneficiary, into a beneficiary IRA at UMPQUA INVESTMENTS of Portland, Oregon" (NYSCEF doc 27). Plaintiff failed to establish that defendant transferred the IRA with any intent to hinder or delay plaintiff's judgment, or to defraud plaintiff, as opposed to complying with the Surrogate's Order.

Furthermore, as Judge Jaffe stated, "defendant offers proof that it notified plaintiff by certified letter dated November 11, 2019, that he was aware of plaintiff's judgment and would be submitting same to the Surrogate's Court (NYSCEF 44)" (Exh 1, p 5). Thus, plaintiff's motion for summary judgment on the second and third causes of action is denied.

\* \* \*

Accordingly, it is hereby

ORDERED, that plaintiff's motion for summary judgment on its second and third causes of action, upon this Court's renewal, is denied.

The foregoing constitutes the decision and order of the Court.

6/17/2024  
DATE

  
HON. LESLIE A. STROTH  
J.S.C.

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: