

Matter of Pentagon Fed. Credit Union v Keybank N.A.

2024 NY Slip Op 32890(U)

August 16, 2024

Supreme Court, New York County

Docket Number: Index No. 160173/2023

Judge: John J. Kelley

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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. JOHN J. KELLEY PART 56M

Justice

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INDEX NO. 160173/2023

In the Matter of

MOTION DATE 07/12/2024

PENTAGON FEDERAL CREDIT UNION, as successor by merger to PROGRESSIVE CREDIT UNION,

MOTION SEQ. NO. 001

Petitioner,

- v -

**DECISION + ORDER ON
MOTION**

KEYBANK NATIONAL ASSOCIATION,

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14

were read on this motion to/for TURNOVER PROCEEDING.

In this proceeding pursuant to CPLR 5225, the petitioner, Pentagon Federal Credit Union (Pentagon), as successor by merger to Progressive Credit Union (Progressive), seeks an order directing the respondent Keybank National Association (the bank) to turn over the sum of \$2,295,293.31 to satisfy a judgment that had been entered in the Supreme Court, New York County, on February 27, 2023, in favor of Pentagon and against judgment debtor Stuart D. Safier, jointly and severally with several taxicab corporations in which Safier was an officer or primary shareholder. In this regard, Pentagon seeks to compel the bank to turn over assets consisting of (a) deposits held by the bank for the account of Safier, and (b) cash, stocks, bonds, negotiable instruments, and other personal property maintained by the bank in a safe deposit box held under Safier's name, among others. Safier opposes the petition only to the extent of requesting that he be permitted to be present at the time that the bank opens the safe deposit box for Pentagon's benefit, so that he may identify and segregate jewelry contained in the box that allegedly belongs solely to his wife, Linda Safier, and should thus be exempt from execution. The petition is granted, and the bank is directed to turn over, to the petitioner, the

sum of \$11,400.44 that it currently holds on deposit for the account of the judgment debtor, and any and all cash, stocks, bonds, negotiable instruments, and other personal property maintained by the bank in the judgment debtor's safe deposit box, other than jewelry and personal items that Safier asserted belong separately and solely to his wife, up to the value of \$2,295,293.31, less the \$11,400.44 from the bank account, and less a further exemption amount of \$3,600.00 with respect to the assets held in the safe deposit box. The court shall permit Safier's attorney to be present at the opening of the safe deposit box in order to tag and photograph jewelry and items claimed to be the sole and separate property of Safier's wife, while Safier shall be permitted to observe the opening via remote conference. The opening and inventorying of the contents of box shall be conducted on or before September 12, 2024. On the court's own motion, the turnover of any jewelry in the safe deposit box is stayed until September 24, 2024 to permit the judgment debtor to submit an affidavit or affidavits, on personal knowledge, identifying and describing what items of jewelry belong solely to his wife, along with any additional proof that those items of jewelry belong solely to his wife. Safier shall submit such proof on or before September 16, 2024. If he does so, all parties, including Safier and any fact witnesses, shall appear personally in court on September 24, 2024 at 10:00 a.m. for a hearing with respect to the issue of whether the jewelry and personal items are the sole and separate property of the judgment debtor's wife.

Safier was the principal and guarantor of several corporations that had purchased yellow taxicab medallions from the City of New York with loans initiated by Progressive. Progressive perfected a security interest in those medallions. After Progressive merged with Pentagon, Pentagon became the holder of the promissory notes referable to the loans and those security interests. After the corporate owners of the medallions defaulted on their loans, Pentagon commenced an action against them and Safier in the Supreme Court, New York County, entitled *Pentagon Fed. Credit Union, etc., v Ayer Cab Corp.*, to recover on the promissory notes. On February 15, 2023, Pentagon was awarded summary judgment on its causes of action for

repayment under the notes. On February 27, 2023, a judgment was entered against Safier, jointly and severally with each of the four defendant corporations, depending on the particular cause of action, in the total sum of \$2,295,293.31, inclusive of costs, disbursements, and prejudgment contractual interest (*see Pentagon Fed. Credit Union, etc., v Ayer Cab Corp.*, Sup Ct, N.Y. County, Index No. 652632/2021, Feb. 27, 2023). Pentagon established that no portion of that judgment has been satisfied.

On or about April 18, 2023, Pentagon caused the bank to be served with a restraining notice, information subpoena, and final demand pursuant to CPLR 5232(a), directing that it pay over to Pentagon the sum of \$2,295,293.31 from any and all of Safier's accounts that he maintained with the bank, and requesting the bank to provide information as to the identity of, and amounts held in, such accounts, and a description of any other property in the bank's possession in which Safier claimed an ownership interest. On April 25, 2023, the bank informed Pentagon that Safier maintained two deposit accounts with the bank, that Safier had executed a signature card, jointly with his wife Linda Safier, as well as with his relatives Stephanie Safier and Jerome I. Safier, to obtain a safe deposit box, that the bank had custody of the safe deposit box, and that \$3,600.00 of the assets held in the box were exempt from execution. The bank further informed Pentagon that the non-exempt balance of the deposit accounts was \$11,400.44

Pentagon commenced this proceeding on October 16, 2023. On October 24, 2023, Pentagon served the bank with copies of the notice of petition and petition herein by delivery thereof to an agent authorized by appointment to accept service of process. Pentagon also served copies of the notice of petition and petition upon Safier and the three other signatories on the safe deposit box account by certified mail, return receipt requested, as permitted by CPLR 5225(a). The bank did not answer the petition or appear in the proceeding. Safier answered the petition, and agreed to cooperate in the opening of the safe deposit box. In his answer, signed only by his attorney, Safier asserted that his "concern is that Pentagon in entering the box will remove assets that are clearly assets of his wife who is a co-owner of the

safe deposit box. These assets would consist of women's jewelry as well as other personal items." In reply, Pentagon contended that the contents of a jointly held safe deposit box are presumed to be jointly owned by the signatories on the safe deposit box account, that any jewelry held in the box was presumptively owned jointly by Safier, his wife, and the two other signatories, and that personal property that is jointly owned by a judgment debtor and another person---even personal property held in a safe deposit box---may be executed upon by the judgment creditor. Pentagon further asserted that, although Safier was entitled to rebut that presumption, he did not do so here since the only allegation concerning the jewelry was made by his attorney, who had no personal knowledge of the ownership status thereof, and whose allegations thus had no evidentiary value.

"CPLR 5225(b) provides for an expedited special proceeding by which a judgment creditor can recover 'money or other personal property' belonging to a judgment debtor 'against a person in possession or custody of money or other personal property in which the judgment debtor has an interest' in order to satisfy a judgment" (*Matter of New York Community Bank v Bank of Am., N.A.*, 169 AD3d 35, 37-38 [1st Dept 2019], quoting *Matter of Signature Bank v HSBC Bank USA, N.A.*, 67 AD3d 917, 918 [2d Dept 2009]). That provision thus is the appropriate provision under which to pursue a turnover proceeding against a bank that holds the judgment debtor's assets on deposit or in a safe deposit box (*see Matter of First Am. Tit. Ins. Co. v Kenderian*, 157 AD3d 891, 891-892 [1st Dept 2018]; *see also Plymouth Venture Partners, II, L.P. v GTR Source, LLC*, 37 NY3d 591, 613-614 [2021] [Wilson, J., dissenting]; Richard C. Reilly, Practice Commentaries, McKinney's Cons Laws of NY, CPLR C5225:1; *see generally Koehler v Bank of Bermuda Ltd.*, 12 NY3d 533, 540-541 [2009]). Pentagon served the bank with the levy, restraining notice, and demand, it properly commenced this proceeding pursuant to CPLR 5225 to secure an order turning over all non-exempt funds in the subject bank accounts and safe deposit box, it properly named and served the bank, and it properly served Safier and his co-signatories on the safe deposit box with all of the papers in this proceeding.

Pentagon established that the “safe deposit box rental agreement” was “controlling on the issue of ownership . . . , that the judgment creditor . . . established that the notice respondents,” i.e., Safier and the other signatories on the safe deposit box account, “are joint tenants of the contents of the box, with rights of survivorship,” and that “[t]he notice respondents failed to come forward with evidence to the contrary, making the box's contents subject to the judgment creditor's levy” (*Matter of New York Community Bank v Bank of Am., N.A.*, 169 AD3d 35, 36 [1st Dept 2019] [applying the presumption of joint ownership of bank accounts, as recognized by Banking Law § 675(b), to the ownership of contents of safe deposit boxes]). In this respect, the court agrees with Pentagon that statements made by Safier’s attorney, who had no personal knowledge of the facts, lacked evidentiary value (see *Tribbs v 326-338 E. 100th, LLC*, 215 AD3d 480, 480 [1st Dept 2023]; *Aames Capital Corp. v Ford*, 294 AD2d 134, 134 [1st Dept 2002]).

Nonetheless, in the interests of justice and fundamental fairness, although the court directs the bank to turn over the non-exempt portion of the subject bank accounts, and all personal property in the safe deposit box up to the amount of the judgment debt other than the subject jewelry and “personal items” that allegedly belong solely to Linda Safier, the bank shall retain custody and possession of that jewelry and those items pending further order of the court. The bank and Pentagon are directed to open and inventory the contents of the safe deposit box on or before September 12, 2024, with notice to Safier’s attorney, who may be present at the opening and inventorying of the box to tag and photograph the jewelry and other items alleged to be the sole and separate property of Safier’s wife, with Safier permitted to observe via remote conference hookup. Safier is directed, on or before September 16, 2024, to submit an affidavit or affidavits of a person or persons with knowledge, identifying the particular items of jewelry and personal items allegedly belonging separately and solely to Linda Safier, and attesting that said jewelry and personal items in fact belong solely to Linda Safier, along with any and all other documentary proof that those assets belong solely to Linda Safier, after which this court will

conduct an evidentiary hearing on September 24, 2024 at 10:00 a.m., and issue a supplemental order with respect to those assets.

Accordingly, it is,

ORDERED that the petition is granted to the extent that the respondent Keybank National Association is directed to turn over, to the petitioner, the sum of \$11,400.44 that it currently holds on deposit for the account of the judgment debtor Stuart D. Safier, and any and all cash, stocks, bonds, negotiable instruments, and other personal property maintained by the bank in the judgment debtor's safe deposit box that is held jointly by the judgment debtor and Linda Safier, Stephanie Safier, and Jerome I. Safier, other than jewelry alleged to be the sole and separate property of Linda Safier, up to the value of \$2,295,293.31, less the \$11,400.44 from the bank account, and less a further exemption amount of \$3,600.00 with respect to the assets held in the safe deposit box; and it is further,

ORDERED that, on or before three hours prior to the close of business on September 12, 2024, the petitioner and the respondent Keybank National Association shall, at the branch of Keybank National Association in which the safe deposit box is maintained, open the safe deposit box, inventory its contents, and deliver to the petitioner any contents of value other than jewelry and other items alleged to be the sole and separate property of Linda Safier; and it is further,

ORDERED that the petitioner and the respondent Keybank National Association shall notify the attorney for judgment debtor Stuart D. Safier of the date and time when the safe deposit box shall be opened, its contents inventoried, and any contents of value other than jewelry and other items alleged to be the sole and separate property of Linda Safier are delivered to the petitioner; and it is further,

ORDERED that the attorney for judgment debtor Stuart D. Safier shall be permitted to attend the opening and inventorying of the contents of the safe deposit box, Stuart D. Safier shall be permitted to observe the opening and inventorying of the contents of the safe deposit box by remote conference hookup, the attorney for judgment debtor Stuart D. Safier shall be

permitted at the opening of the box to tag and photograph jewelry and other items alleged to be the sole and separate property of Linda Safier, those items shall not be delivered to the petitioner at that time, and the respondent Keybank National Association shall retain those items in its possession pending further order of the court; and it is further,

ORDERED that, on or before September 16, 2024, Stuart D. Safier is directed to submit an affidavit or affidavits of a person or persons with actual knowledge of the facts that identify the particular pieces of jewelry and personal items that allegedly belong separately and solely to Linda Safier, and attest to the fact that said jewelry and personal items belong separately and solely to Linda Safier, along with any and all other documentary proof that said jewelry and personal items belong solely to Linda Safier; and it is further,

ORDERED that, if Stuart D. Safier timely serves and files such affidavit or affidavits and supporting documentation with the court, the parties and any relevant fact witnesses, including Linda Safier, if she be so advised, are directed to appear in person on September 24, 2024, at 10:00 a.m., for an evidentiary hearing to determine the issue of whether the subject jewelry and personal items are the sole and separate property of Linda Safier, after which the court will issue a supplemental order with respect to the disposition of those assets; and it is further,

ORDERED that, within seven days of the entry of this order, the petitioner shall serve a copy of this order with notice of entry upon Keybank National Association, Stuart D. Safier, Linda Safier, Stephanie Safier, and Jerome I. Safier, both by regular mail and by certified mail, return receipt requested; and it is further,

ORDERED that the respondent Keybank National Association is directed, within 30 days of service upon it of a copy of this order, with notice of entry, to deliver, to Jean A. Occhiogrosso, Esq., Vedder Price, P.C., 1633 Broadway, 31st Floor, New York, New York 10019, as attorney for the petitioner, Pentagon Federal Credit Union, the sum \$11,400.44 that it currently holds on account for the notice respondent and judgment debtor Stuart D. Safier, by

certified, bank, or treasurer's check, payable jointly to Vedder Price, P.C., and Pentagon Federal Credit Union

This constitutes the Decision and Order of the court.

8/16/2024

DATE



JOHN J. KELLEY, 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