

Judgment Creditor LLC v Judgment Debtor Corp.

2024 NY Slip Op 33349(U)

September 19, 2024

Supreme Court, New York County

Docket Number: Index No. 654392/2023

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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JUDGMENT CREDITOR LLC	INDEX NO.	<u>654392/2023</u>
Plaintiff,	MOTION DATE	<u>08/26/2024</u>
- v -	MOTION SEQ. NO.	<u>005</u>
JUDGMENT DEBTOR CORP.,	DECISION + ORDER ON MOTION	
Defendant.		

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 124, 125, 126, 127 were read on this motion to/for DISCOVERY.

Upon the foregoing documents, and for the reasons set forth below, WV Partners, LLC (the **Judgment Creditor**)’s motion (Mtn. Seq. No. 005) to compel Hudson Private Corp. (**Judgment Debtor**) to comply post-judgment discovery and (a) fully respond to request nos. 5, 6, 9, and 10 of the Information Subpoena and produce documents responsive to request nos. 35 and 36 of the Subpoena Duces Tecum and (b) direct Judgment Debtor and its CEO, Christopher Conover, to appear for depositions (NYSCEF Doc. No. 122) is GRANTED.

The Relevant Facts and Circumstances

In a Decision and Order dated April 2, 2024 (the **April 2024 Decision**; NYSCEF Doc. No. 100), the Court granted summary judgment in favor of the Judgment Creditor, finding no issues of material fact regarding the undisputed amounts due by Judgment Debtor under the Ghostbuster and Bombshell Funding Agreements. Consequently, the Court ordered Judgment Creditor to submit judgment on notice. On June 5, 2024, the Court entered a final judgment in favor of

Judgment Creditor for the total amount of \$15,761,608.69 (NYSCEF Doc. No. 107). Following entry of the Judgment, the Judgment Creditor initiated normal post-judgment discovery to locate the Judgment Debtor's assets so that it could levy on the assets and satisfy the Judgment.

Pursuant to the April 2024 Decision, on July 8, 2024 the Judgment Creditor served the Judgment Debtor with (1) an Information Subpoena (NYSCEF Doc. No. 114) and (2) a Subpoena Duces Tecum (NYSCEF Doc. No. 115). Request nos. 5, 6, 9 and 10 of the Information Subpoena seeks:

5. Identify all proceeds, monies or funds received or collected on account of, related to, pursuant to, or in connection with any of the following: (i) the motion picture productions entitled: "Bombshell" and/or "Ghostbusters: Afterlife", (ii) the Settlement Agreement dated July 8, 2022 between Hudson, Plaintiff and Bron Creative USA, Corp. ("Settlement Agreement"), and/or (iii) the enforcement of Affidavit in Support of Confession of Judgment ("Confession of Judgment") executed by Bron Creative simultaneously with the Settlement Agreement, and/or any judgment entered pursuant to the Confession of Judgment, specifying also the amount, the date received or collected, and current location of the Proceeds and bank accounts where the proceeds, monies or funds were deposited.

6. Identify all motion picture productions in which Judgment Debtor has or had any legal, equitable, or beneficial interest, or in which Judgment Debtor invested or provided financing or capital, specifying also all proceeds, monies or funds received or collected or to which Judgment Debtor is entitled to collect or receive on account of, related to, pursuant to, or in connection with such motion picture productions.

9. Identify all accounts held at any bank, savings and loan association, or other financial institution, in which You have a legal, equitable, or beneficial ownership interest. For each, state:

- (a) The account number and type of each account.
- (b) The name of the bank and address of the branch at which each account is held.
- (c) The name(s) under which each account is held.
- (d) The balance of each account as of the date of this request and Your answer to this request.
- (e) The name and address of each institution holding safe deposit boxes or other depositories, and for each depository, identify the contents therein

10. Identify all transferees and all accounts held at any bank, savings and loan association, or other financial institution, including but not limited to those of Hudson Valley Wealth Management and other affiliates of the Judgment Debtor, to which Judgment Debtor transferred proceeds, monies or funds received or collected on account of, related to, pursuant to, or in connection with any of the following: (i) the motion picture productions entitled: “Bombshell” and/or “Ghostbusters: Afterlife”, (ii) the Settlement Agreement and/or (iii) the enforcement of Confession of Judgment, and/or any judgment entered pursuant to the Confession of Judgment. For each, state:

- (f) The account number and type of each account.
- (g) The name of the bank and address of the branch at which each account is held.
- (h) The name(s) under which each account is held.
- (i) The balance of each account as of the date of this request and Your answer to this request.
- (j) The name and address of each institution holding safe deposit boxes or other depositories, and for each depository, identify the contents therein

(NYSCEF Doc. No. 114 ¶¶ 5, 6, 9 and 10). Request nos. 35 and 36 of the Subpoena Duces

Tecum ask:

35. All documents, including but not limited to Bank Account Records, relating to all of the Bank Accounts, including but not limited to those of Hudson Valley Wealth Management and other affiliates of the Judgment Debtor, to which Judgment Debtor transferred proceeds, monies or funds received or collected on account of, related to, pursuant to, or in connection with any of the following: (i) the motion picture productions entitled: “Bombshell” and/or “Ghostbusters: Afterlife”, (ii) the Settlement Agreement dated July 8, 2022 between Hudson, Plaintiff and Bron Creative USA, Corp. (“Settlement Agreement”), and/or (iii) the enforcement of Affidavit in Support of Confession of Judgment (“Confession of Judgment”) executed by Bron Creative simultaneously with the Settlement Agreement, and/or any judgment entered pursuant to the Confession of Judgment.

36. All cancelled checks (front and back) and wire and electronic transfer confirmations for any and all Bank Accounts, including but not limited to those of Hudson Valley Wealth Management and other affiliates of the Judgment Debtor, to which Judgment Debtor transferred proceeds, monies or funds received or collected on account of, related to, pursuant to, or in connection with any of the following: (i) the motion picture productions entitled: “Bombshell” and/or “Ghostbusters: Afterlife”, (ii) the Settlement Agreement, and/or (iii) the

Confession of Judgment, and/or any judgment entered pursuant to the Confession of Judgment.

(NYSCEF Doc. No. 115 ¶¶ 35, 36). The Judgment Debtor was required to respond to the Information Subpoena by July 17, 2024 and to the Subpoena Duces Tecum by July 29, 2024. However, the Judgment Debtor did not timely respond and instead responded on July 31, 2024 and on August 2, 2024.

Following review of the responses, the Judgment Creditor moved to compel arguing that the responses are highly deficient. In their opposition papers, Mr. Conover an officer of the Judgment Debtor and certain non-party transferees argues that (i) the Judgment Creditor should have to rely on its subpoena to the banks for bank records, etc. and that Judgment Debtor should not be required to produce any such records and (ii) that the transferee of Judgment Debtor's assets which he does not dispute that he is in control of isn't a party to this case thus they should not be required to produce discovery. The arguments fails.

Discussion

Article 52 of the CPLR provides for extensive post-judgment discovery which discovery is properly heard in this Court (*Penavic v. Omar Khan*, WL 17548435, at *1 [Sup. Ct. NY. Cnty., 2022]; *Gibson, Dunn & Crutcher LLP v World Class Capital Group, LLC*, 194 AD3d 567 [1st Dept 2021]). CPLR 5223 serves as a post-judgment discovery tool that helps reveal all information relevant to satisfying the judgment. This standard is broad, enabling the creditor to seek discovery either from the judgment debtor or any third party with knowledge of the debtor's assets (*Pala Assets Holdings Ltd v. Rolta, LLC*, WL 5004378, at *4 [Sup. Ct. N.Y. Cnty., 2022]).

I. Judgment Debtor's Objections are Meritless

The Judgment Creditor is entitled to fulsome discovery in seeking to enforce its Judgment and discovery is not cut off merely because the assets in question were transferred to non-parties who are controlled by Mr. Conover – an officer of the Judgment Debtor (*id.* at *5; *Plenitude Capital LLC*, at *3). This information is relevant and critical to the Judgment Creditor's legitimate judgment collection efforts. To the extent that Mr. Conover has access to the information, he must provide it and no later than 48 hours before any scheduled deposition. The affirmation of Mr. Conover (NYSCEF Doc. No. 82) disclosed that the Judgment Debtor transferred at least \$1,084,076.63 to Hudson Valley Wealth Management – a company where he does not indicate that he does not have custody or control over their records. As such they must be produced (*Lupe Development Partners, LLC*, at *3; *Plenitude Capital LLC*, at *3). The records also show substantial transfers to counsel to the Judgment Debtor. No information is provided as to what these transfers were for.

Mr. Conover's conclusory chart set forth in his affidavit is plainly insufficient. None of the requested information is provided as an exhibit – including, by way of example, bank records, cancelled checks, wire transfers, etc. – all of which the Judgment Debtor was required to provide.

It is simply false that the Judgment Debtor does not and was not provided with information as to why its production was insufficient or why the Judgment Creditor rejected its position that documents within the custody and control of its principal officer were somehow shielded from

production as part of the Judgment Creditor's legitimate efforts to find assets to satisfy the Judgment. All the more troubling in the Judgment Debtor's position that the Judgment Creditor must look to the transferee for this information is that the transferee (also controlled by Mr. Conover) has moved to quash the subpoena served on his other company (*tr.* 9.20.24), Hudson Valley Wealth Management.

Lastly, for the avoidance of doubt, the Subpoenas are not overbroad. The Subpoenas seek relevant information dating back to 2019, which corresponds with the timeline of the Bombshell Funding Agreement entered into on November 27, 2019.

Finally, the Court notes that Judgment Debtor has failed to identify and disclose the location of the proceeds from the movies or other amounts it is entitled to collect together with corroborating documents which was requested pursuant to the subpoenas.

II. Judgment Debtor Must Attend a Deposition 48 Hours after it provides the fulsome discovery required by the Subpoenas

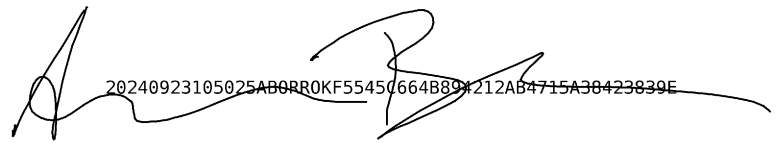
At oral argument, the parties indicated that Mr. Conover has agreed to appear at a deposition next week. However, the Judgment Debtor has not produced the documents to date that it must produce. Thus, the Judgment Debtor must produce the documents 48 hours before the scheduled deposition, or the deposition shall be adjourned. If the documents are not produced, the Judgment Creditor may move for contempt and sanctions and the deposition of Mr. Conover shall be adjourned for 48 hours after it has been produced. If the Judgment Creditor incurs costs

as a result of the need to reschedule the deposition, they may move by order to show cause to recovery such costs.

Accordingly, it is hereby

ORDERED that Judgment Creditor' motion to compel is granted; and it is further

ORDERED that the documents compelled to be produced shall be produced at least 48 hours before Mr. Conover's deposition.


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9/19/2024
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE