

Cohen Goldstein, LLP v Schlachet

2025 NY Slip Op 31330(U)

April 9, 2025

Supreme Court, New York County

Docket Number: Index No. 652380/2020

Judge: Leslie A. Stroth

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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. LESLIE A. STROTH PART 12M

Justice

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COHEN GOLDSTEIN, LLP

Plaintiff,

- v -

DAVID SCHLACHET,

Defendant.

-----X

INDEX NO. 652380/2020

MOTION DATE N/A

MOTION SEQ. NO. 006

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 006) 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 149

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

By decision and order dated June 17, 2024, this Court denied plaintiff’s motion for summary judgment on its second and third causes of action, following this Court’s granting of plaintiff’s motion for renewal (Nyscef doc 115). Plaintiff moves herein, pursuant to CPLR 2221, for an order granting it leave to reargue its prior motion for partial summary judgment on its second and third causes of action in its complaint, and upon such reargument, pursuant to CPLR 3212(e), granting it partial summary judgment on the second and third causes of action. Oral argument was held on February 4, 2025, and the parties were directed to submit supplemental papers. Same were provided only on behalf of plaintiff (Nyscef doc. 149).

Plaintiff argues, *inter alia*, that the Court relied on the wrong version of Debtor and Creditor Law §273, as on December 6, 2019, New York’s former Governor signed a bill which enacted the Uniform Voidable Transactions Act (Exh G) and amended the then-current Debtor and Creditor Law §273 to its now-current version that excludes the intent requirement of the former §273 (see Exh H). As a result, the now current law only applies to transfers made on or after its effective date of April 4, 2020, and the intent requirement does not apply to a transfer

made before such effective date. Thus, plaintiff maintains that defendant's transfer of Prychodko's IRA in July 2019 violated the then-in-force Debtor and Creditor Law §273, even if there was no intent to defraud. However, on December 2, 2021, a date after the Debtor and Creditor Law §273 was changed, the Appellate Division affirmed the original decision by Judge Barbara Jaffe (entered on June 10, 2021), dismissing plaintiff's first, second, and third causes of action, and did not address the change.

Plaintiff also bases its motion to reargue on the *Storch Amini* case before Judge Debra J. James, J.S.C., arguing that under the same facts as in the instant action, the First Department on August 17, 2023 granted summary judgment on Storch Amini's cause of action against the same defendant as in this case for constructive fraudulent conveyance under Debtor and Creditor Law §273: "Since the judgment debtor's [Prychodko'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" (*Storch Amini P.C. v. Schlachet*, 219 A.D.3d 419 (1st Dept 2023)). The Court further stated in that decision that "[t]o the extent *Cohen Goldstein, LLP v. Schlachet* (200 AD3d 407 [1st Dept 2021]) held to the contrary, that holding should not be followed (*Id.*).

In opposition to plaintiff's motion to reargue, defendant Schlachet argues that plaintiff's motion is a third successive reargument and renewal application, that this Court's decision of June 17, 2024 declined plaintiff's arguments, and that an appellate court will not consider an issue on a subsequent appeal that was raised in an earlier adjudication (see *Rubeo v. National Grange Mut. Ins. Co.*, 93 N.Y.2d 750 (1999)). Defendant maintains that plaintiff failed to make argument regarding the change in the Uniform Voidable Transactions Act in its previous motions and cannot raise it now, after the Appellate Division reviewed and affirmed Judge Jaffe's

decision, (*Cohen Goldstein, LLP v. Schlachet*, 200 A.D.3d 407 (1st Dept 2021)). Defendant does not address plaintiff's arguments regarding the *Storch Amini* decision by the Appellate Division.

First, the Court notes that this Court's decision of June 17, 2024, which plaintiff moves to reargue, had already granted plaintiff's motion for renewal and upon renewal denied plaintiff's motion for summary judgment on its second and third causes of action. Plaintiff moves here, again, to reargue the Court's denial of its motion for summary judgment on the second and third causes of action, in part based on similar grounds relied upon in the first renewal motion, including the First Department's adoption of the Second Department's decision in *Van de Walle v Van de Walle*, 200 A.D.3d 1095 (2nd Dept 2021) as it pertains to the *Storch Amini* matter.

With respect to plaintiff's argument that this Court relied on the wrong version of the Debtor and Creditor Law §273 in issuing its ruling, plaintiff neither made this argument in its prior motion nor did it file the two copies regarding the bill that it now submits. Nonetheless, for the reasons stated above, the Court finds such argument unpersuasive. As this Court indicated in its decision, "[u]nlike 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" (Exh A, p 5).

Although this Court indicated that plaintiff failed to establish that defendant transferred the IRA with any intent to hinder or delay plaintiff's judgment, or to defraud plaintiff, the more persuasive argument made by defendant was that it was complying with the Surrogate Court's Order. Plaintiff failed to submit any proof that defendant transferred the contents of the IRA

account to an account in the minor son’s name for any reason other than to administer the estate to comply with the Surrogate’s Court order dated May 20, 2019 (Nyscef doc 27).

To the extent that the First Department reviewed these same facts and ruled differently in *Storch v. Amini*, specifically abrogating its own decision in this matter, the parties and this Court are bound by that decision. The matter was not remitted to this Court for further review nor was any guidance given to this Court as to how to reconcile the Appellate Division’s finding that the subject IRA is no longer exempt and its transfer was thus fraudulent, with the referenced Surrogate Court’s directive to make that very transfer. As such, this Court must deny plaintiff’s motion and refer the parties to the Appellate Division to seek clarification and/or relief. In view of the foregoing, plaintiff’s motion to reargue this Court’s denial of its summary judgment motion on the second and third causes of action is denied. At the very least, there are issues of fact relating to the subject IRA that must now be resolved.

Accordingly, it is hereby

ORDERED, that plaintiff’s motion for leave to reargue and for partial summary judgment is denied in its entirety.

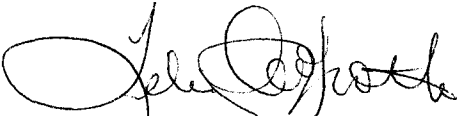
The foregoing constitutes the decision and order of the Court.

4/9/2025
DATE

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION OTHER

APPLICATION: GRANTED SETTLE ORDER SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE


HON. LESLIE A. STORCH
J.S.C.