

Ogbolu v 125 Prop. Masters, Inc.

2025 NY Slip Op 31851(U)

May 23, 2025

Supreme Court, New York County

Docket Number: Index No. 158881/2021

Judge: Paul A. Goetz

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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. PAUL A. GOETZ PART 47

Justice

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COLLINS OGBOLU,

Plaintiff,

- v -

125 PROPERTY MASTERS, INC., LENOX DENTAL &
MEDICAL ARTS, MANHATTAN ESTHETICS
SPECIALISTS, LENOX LASER & ESTHETICS
SPECIALISTS, DMITRIY MILOSLAVSKIY, SHAUL
HUBSCHER, SANFORD JACOBY, JOHN DOES

Defendant.

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INDEX NO. 158881/2021

MOTION DATE N/A, N/A, N/A

MOTION SEQ. NO. 010 011 012

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 010) 322, 323, 324, 325, 326, 327, 328, 330, 331, 332, 365, 366, 367, 368, 371, 372, 373, 374

were read on this motion to/for STAY.

The following e-filed documents, listed by NYSCEF document number (Motion 011) 333, 334, 335, 336, 337, 339, 340, 341, 342, 343, 364, 369, 375

were read on this motion to/for POST JUDGMENT OTHER.

The following e-filed documents, listed by NYSCEF document number (Motion 012) 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 356, 357, 358, 359, 360, 361, 362, 363, 370, 376

were read on this motion to/for STAY.

Upon the foregoing documents, it is

Defendants, Shaul Hubscher (MS #10), Sanford Jacoby (MS #11); and Dmitriy Miloslavskiy (MS #12) each move separately to vacate enforcement restraints and legal holds on several of their bank accounts which they argue are exempt from judgment enforcement. They also seek a stay on all enforcement activity against these accounts.

Motion Sequence 10 – Shaul Hubscher

Defendant, Hubscher seeks to vacate enforcement restraints on four different accounts. He argues that two account, the Account 8474, and Account 5383 qualify as tax-deferred retirement assets under 26 U.S.C. § 408 and are exempt from collection under CPLR § 5205(c).

CPLR § 5205(c) provides: “Additions to an asset described in paragraph two of subsection (a) of section 408 of the Internal Revenue Code... shall be considered exempt property.” Section 408 pertains to Individual Retirement Accounts (“IRAs”) and thus CPLR 5205 provides that restrain or levy on IRA accounts are improper. “[T]he judgment debtor has the burden of claiming and proving the applicability of an exemption because only he or she knows the source of the funds which may qualify for an exemption” (*Matter of Balanoff v Niosi*, 16 AD3d 53, 56 [2d Dept 2005]). Here, Hubscher submits an affidavit claiming that the accounts are IRAs in his name only (NYSCEF Doc No 324 ¶ 2-3). He does not however, submit any documentation from JPMorgan Chase indicating that the accounts are IRAs. In opposition plaintiff submits a letter received in response to a subpoena served on Chase, identify the accounts as “Securities Accounts” not as IRAs. While IRAs can hold securities, defendant has not met his burden of establishing that the account is exempt (*Balanoff*, 16 AD3d at 56 [holding that “if property or funds are easily identifiable as exempt, the judgment debtor does not have the burden of claiming the exemption in order to benefit from its application,” however, when as here, the nature of the account is not easily identifiable, debtor must produce documentation, in evidentiary form to meet burden]).

Hubscher also seeks to vacate enforcement restraints on a jointly held checking account (Account 6313), and a jointly held savings account (Account 2777) by Hubscher and his wife, Polina Khazina. Hubscher argues that the accounts are primarily funded by his wife and that since his wife is not a debtor in this action that the accounts should not be restrained.

“When two or more persons open a bank account, making a deposit of cash, securities, or other property, a presumption of joint tenancy with right of survivorship arises” (*New York Community Bank v Bank of Am., N.A.*, 169 AD3d 35, 38 [1st Dept 2019]). “If the presumption is applied, each named tenant “is possessed of the whole of the account so as to make the account vulnerable to the levy of a money judgment by the judgment creditor of one of the joint tenants” (*id.*). “The statutory presumption of joint ownership, however, may be rebutted by showing that the true situation as to ownership is different and that the account was established in joint names solely as a matter of convenience, not with the intention of conferring any beneficial property interest on the other individual” (*id.*).

Here, while Khazina submits an affidavit where she avers that the majority of the funds in the account are from her earnings, “[t]o defeat the presumption, however, there must be direct proof that no joint tenancy was intended” (*id.*). Hubscher has not submitted evidence that defeats this presumption. Indeed, the affidavits submitted indicate that the accounts were used to support shared household expenses and obligations, thereby strengthening the presumption that these accounts were intended to be jointly owned.

Accordingly, Hubscher’s motion must be denied and the restraints on the accounts will not be vacated.

Motion Sequence 11 – Jacoby

Defendant, Jacoby seeks to vacate enforcement restraints on nine different accounts. Four of these accounts, Account 7595, Account 0737, Account 8283, and Account 7296 are jointly held by Jacoby and his wife, Sari Hadasa Jacoby. Jacoby makes the same arguments as Hubscher did in MS #10, claiming that the accounts are primarily funded by his wife who is not a judgment debtor and that the accounts should not be restrained. However, as set out above the

argument is rejected because Jacoby has failed to rebut the presumption that accounts jointly held by a married couple create a joint tenancies, and therefore may be used to satisfy the judgment creditor's judgment against either of the joint tenants.

Jacoby also argues that five accounts in his name at Charles Schwab & Co., Inc. (Accounts 0597, 8379, 1365, 3928, and 0426) which name his wife and his children as beneficiary of the accounts should be exempt. However, Jacoby cites no legal authority as to why these accounts should be exempt. As it is movants' burden to make a showing of why an account should be exempt (*Balanoff*, 16 AD3d at 56) absent such a showing the restraints must not be lifted. While Jacoby argues "the court may exercise its inherent equitable power ... to ensure that it is not made the instrument of injustice" (*Guardian Loan Co., Inc. v Early*, 47 NY2d 515, 520 [1979]), it is unclear how restraining plaintiff from enforcing a judgment would be serving justice in this matter.

Accordingly, Jacoby's motion must be denied and the restraints on the accounts will not be vacated.

Motion Sequence 12 - Dmitriy Miloslavskiy

Defendant, Miloslavskiy seeks to vacate enforcement restraints on five different accounts. He argues that the Accounts 5758, 6582, 3859, 1441, and 7943 qualify as tax-deferred retirement assets under 26 U.S.C. § 408, and are exempt from collection under CPLR § 5205(c). In support Miloslavskiy submits an affidavit averring that these five accounts are IRAs (NYSCEF Doc No 346 at ¶ 2). However, plaintiff submits documentation received from Schwab indicating that only accounts 5758, 6582, and 3859 are IRAs (NYSCEF Doc No 360 – 363). Accounts 7943 and 1441 are Individual Brokerage Accounts and that should not be exempt under any authority (NYSCEF Doc No 358 and 359).

Accordingly, the motion to lift the restraints on the two non-exempt Schwab brokerage accounts 1441 and 7943 will be denied.

Cross Motion

Defendants cross-move on their own motions to strike plaintiff's opposition to these motions arguing that the affirmations include improper legal arguments and unauthenticated exhibits. Defendants seek sanctions for this alleged misconduct. In light of the above defendants' cross-motion will be denied.

Accordingly it is,

ORDERED that defendant, Shaul Hubscher's motion (MS #10) is denied, and the temporary restraining order issued on April 16, 2025 is vacated, and it is further

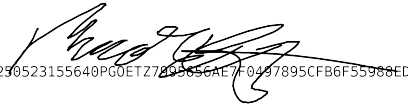
ORDERED that defendant, Shaul Hubscher, and his wife, Polina Khazina, are directed to return any funds removed from their joint accounts since April 16, 2025, (other than payments made to third parties) within 10 days of this order; and it is further

ORDERED that defendant, Sanford Jacoby's motion (MS #11) is denied and the temporary restraining order issued on April 22, 2025 is vacated, and it is further

ORDERED that defendant, Sanford Jacoby, and his wife, Sari Hadasa Jacoby are directed to return any funds removed from their joint accounts since April 16, 2025, (other than payments made to third parties) within 10 days of this order; and it is further

ORDERED that defendant, Dmitriy Miloslavskiy's motion (MS #12) is granted to the extent that the restraints on accounts 5758, 6582, and 3859 are vacated, and is denied as to accounts 1441 and 7943 and the temporary restraining order issued on May 2, 2025 is vacated

ORDERED that the cross-motion for sanctions is denied.


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5/23/2025
DATE

PAUL A. GOETZ, 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