

Trinity Ctr. LLC v City Natl. Bank

2025 NY Slip Op 33269(U)

September 2, 2025

Supreme Court, New York County

Docket Number: Index No. 651472/2024

Judge: Nicholas W. Moyne

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 41M

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TRINITY CENTRE LLC

Plaintiff,

- v -

CITY NATIONAL BANK,

Defendant.

INDEX NO. 651472/2024

MOTION DATE 06/07/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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HON. NICHOLAS W. MOYNE:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

Upon the foregoing documents, it is

The motions before the Court pertain to a legal dispute between Trinity Centre LLC (Plaintiff) and City National Bank (Defendant), stemming from an initial judgment Trinity Centre LLC secured against NBTV, Inc. and Nicholas Buzzell (Judgment Debtors). Trinity Centre LLC, as a landlord, had previously won a summary judgment against NBTV, Inc. and Nicholas Buzzell for unpaid rent and additional charges, totaling over \$2.2 million, after they defaulted on a lease agreement, despite their claims of impossibility of performance due to the COVID-19 pandemic and protests. Following this, Trinity Centre LLC issued restraining notices to City National Bank, where the Judgment Debtors held accounts, aiming to freeze their assets. City National Bank acknowledged receipt of these notices but asserted its own right of set-off due to pre-existing loans it had extended to NBTV, Inc. and related entities, totaling over \$700,000, which were secured by various agreements and had also gone into default. The core of the current litigation revolves around whether City National Bank violated the restraining notices by exercising its right of set-off and by accepting a \$275,000 settlement payment from the Judgment Debtors, which Trinity Centre LLC argues should have been turned over to satisfy its outstanding judgment.

Plaintiff moves for partial summary judgment as to liability on Counts I, II, and III of the complaint. Defendant City National Bank cross-moves for summary judgment seeking dismissal of the complaint in its entirety.

BACKGROUND

Trinity, as landlord, was awarded a summary judgment against the Judgment Debtors on September 26, 2022, in the principal amount of approximately \$1.8 million, with a final judgment entered on January 30, 2023, totaling approximately \$2.2 million. This judgment remains largely unsatisfied.

On or about January 31, 2023, Trinity served Restraining Notices on various third parties, including CNB, concerning the Judgment Debtors' assets. The Restraining Notices specifically forbade CNB from "make or suffer any sale, assignment, or transfer of, or any interference with any property in which [Judgment Debtors] have an interest." The notices further stipulated that "All property in which the judgment debtor or obligor is known or believed to have an interest then in and thereafter coming into the possession or custody of such a person...shall be subject to the notice."

CNB, through its counsel, acknowledged receipt of these Restraining Notices via a letter dated February 7, 2023. In this letter, CNB asserted its intention to exercise a right of set-off against the Judgment Debtors' deposit accounts, citing its status as a secured creditor and the superiority of its set-off rights under New York Debtor and Creditor Law § 151.

CNB had previously extended various loans to NBTV and NBTV Channels, LLC ("NBTV Channels"), which were secured by security agreements and guaranties from Michael Buzzell and Nicholas Buzzell. These loans were in default prior to the service of Trinity's Restraining Notices. Specifically, the following transactions involving CNB and the Judgment Debtors (or related entities) occurred around the time of the restraining notices:

1. January 30, 2023 Set-Offs: CNB foreclosed on funds in deposit accounts maintained by NBTV and NBTV Channels, applying \$11,762.53 from an NBTV account and \$214,218.05 from an NBTV Channels account to the outstanding balance of the Revolving Note. This occurred one day before the Restraining Notices were served on CNB.

2. March 1, 2023 Set-Off: CNB applied an additional \$6,063.31 from an NBTV Channels deposit account to the Revolving Note balance. This occurred after the Restraining Notices were served.
3. June 5, 2023 Wire Payment: NBTV Channels wired \$170,000 to CNB, which was applied to amounts owed under the Revolving Note and Term Loan. This payment did not come from an account maintained by CNB.
4. July 6, 2023 Wire Payment: NBTV Channels wired \$50,000 to CNB, applied to the Revolving Note. This payment also did not come from an account maintained by CNB.
5. October 31, 2023 Settlement Payment: As part of a settlement agreement (dated October 23, 2023) resolving CNB's lawsuit against NBTV, NBTV Channels, Michael Buzzell, and Nicholas Buzzell, CNB received a \$275,000 settlement payment. This payment did not come from any account maintained by CNB. CNB's lawsuit was subsequently discontinued with prejudice on November 2, 2023.

Trinity asserts that CNB's acceptance of the wire payments and the settlement payment, and its failure to turn over these funds to Trinity, constitutes negligent violation (Count I), grossly negligent violation (Count II), and civil contempt (Count III) of the Restraining Notices. CNB denies these allegations, arguing that its set-off rights were superior, and that the wire and settlement payments became CNB's property upon receipt, thus not implicating CPLR § 5222.

STANDARD OF REVIEW

Summary judgment shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party (CPLR § 3212[b]). The proponent of a summary judgment motion, herein "moving party", must make a prima facie showing of entitlement to judgment as a matter of law, producing sufficient evidence to demonstrate an absence of any material issues of fact (*see Pullman v Silverman*, 28 NY3d 1060, 1062-1063 [2016]). The moving party's failure to make a prima facie showing of entitlement requires a denial of the motion, regardless of the sufficiency of the opposing papers (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012] [internal citations omitted]). "Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require

a trial of the action” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Conclusory allegations, expressions of hope, or mere denials are insufficient to either warrant or defeat summary judgment (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *McGahee v Kennedy*, 48 NY2d 832, 834 [1979]).

When reviewing a motion for summary judgment, the non-moving party’s facts must be accepted as true and the benefit all favorable inferences which may be drawn therefrom (*Asabor v Archdiocese of New York*, 102 AD3d 524, 527 [1st Dept 2013]; *Demshick v Community Hous. Mgt. Corp.*, 34 AD3d 518, 520 [2d Dept 2006]). Accordingly, a motion should not be granted where there is any doubt as to the existence of a factual issue, conflicting inferences may be drawn, or where there are issues of credibility, as those are the functions of a jury (*Id.*).

DISCUSSION

I. Trinity's Motion for Partial Summary Judgment as to Liability

Trinity moves for partial summary judgment on Counts I, II, and III, arguing that CNB violated the Restraining Notices by accepting the wire payments and settlement payment from the Judgment Debtors (or NBTV Channels, closely related to the debtors) after the notices were served, and by failing to remit these funds to Trinity.

The circumstances here are governed by Article 52 of the CPLR, which details the mechanisms for enforcement of money judgments in New York. Those mechanisms “may include the imposition of a restraining notice against a judgment [debtor's assets] to secure funds for later transfer to the judgment creditor through a sheriff's execution or turnover proceeding.” (*Cruz v TD Bank, N.A.*, 22 NY3d 61, 66 [2013]). A party seeking to enforce a judgment may seek to restrain or prohibit the transfer of a judgment debtor's property in the hands of a third party pursuant to CPLR 5222(b).

The core of Trinity's argument rests on the principle that restraining notices are equivalent to court-issued orders, acting as injunctions that forbid the transfer or interference with a judgment debtor's property (see *Aspen Indus. Inc. v Marine Midland Bank*, 52 NY2d 575, 579 [1981]; *Distress Holdings, LLC v Ehrler*, 113 AD3d 111, 116 [2d Dept 2013]; *Kurland v Agresti*, 2019 WL 2027598, at *2 [Sup. Ct. NY Cnty., May 8, 2019]). Such notices cover property “then in and thereafter coming into the possession or custody” of the garnishee. Post-judgment restraining notices in aid of satisfying a judgment are no different than court-issued

orders, with the same force and effect. (See CPLR § 5251; *Toarh v Keshar Intern. Trading Corp.*, 246 AD 2d 538, 538 [2d Dept 1998]) After the restraining notice is served on the third party that owes a debt to, or is in possession of property of, the judgment debtor, all such property which subsequently comes into possession or custody of that third party is subject to the restraining notice. Violation of a restraining notice can lead to liability for damages and civil contempt. (See, e.g., *Cruz*, 22 NY3d at 76 [“Whether issued by a court or an attorney acting as an officer of the court, a restraining notice is an injunction and ‘disobedience is punishable as a contempt of court.’”]; *Aspen*, 52 NY2d at 580 [“[V]iolation of the restraining notice by the party served is punishable by contempt ... and subjects the garnishee to personal liability in a separate plenary action or a special proceeding under CPLR article 52 brought by the aggrieved judgment creditor.”]; *Mazzuka v Bank of N. Am.*, 53 Misc.2d 1053 [N.Y.Civ.Ct.1967] [“[A] Bank may be held liable to a judgment-creditor for its negligence in complying with a Restraining Notice.”]; *Jackson v. TD Bank*, 2010 WL 3221569, at *2–3 [N.Y.Civ.Ct. Aug. 9, 2010] [bank may be held liable to creditor for negligent failure to restrain debtor's account]; see also *Salles v Chase Manhattan Bank*, 300 AD2d 226 [1st Dept 2002] [bank may be held liable to creditors' attorneys for fraudulent misrepresentations in connection with restraining notice, information subpoena, and levy])

Trinity relies significantly on *Kurland v Agresti*, which is highly instructive here. In *Kurland*, a judgment creditor served a restraining notice on a garnishee (Cast Iron Corp.) to prevent the transfer of property of the judgment debtor (Agresti). Cast Iron subsequently transferred funds to Agresti's attorney as part of a settlement. Cast Iron argued it was not bound by the restraining notice because it had a secured interest in the funds. (See *Kurland*, 2019 WL 2027598 at *4). The court in *Kurland* rejected this argument, finding Cast Iron in civil contempt. (*Id.*).

Crucially, *Kurland* held that a garnishee is not authorized to unilaterally determine that disputed funds are not subject to restraint, even if it believes it has a superior security interest (*id.* at *4). The proper remedy for an allegedly improper or overbroad restraining notice is to move to vacate or modify it, not to disregard it (see *CSX Transportation, Inc. v Island Rail Terminal, Inc.*, 879 F3d 462, 472 [2d Cir. 2018]; *Sykes v Bank of America*, 723 F3d 399, 406 [2d Cir. 2013] [“A garnishee has no discretion to ignore a restraining notice that is valid on its face ... even if it questions the legal foundation on which the notice is based.”]). A party against whom an injunction has been granted must comply with the terms of the injunction or

be liable for contempt for failure to do so, notwithstanding that the injunctive order is illegal. The remedy lies in judicial challenge to the injunction, not in a refusal to obey its command. (see *Rivera v Smith*, 63 NY2d 501, 516 [1984]; *Brummer v Wey*, 166 AD3d 475, 478 and n 3 [1st Dept 2018]; *Matter of Lindsey BB. v Ruth BB.*, 72 AD3d 1162, 1164 [3d Dept 2010]; *Zafran v Zafran*, 28 AD3d 753, 756 [2d Dept 2006]).

Furthermore, *Kurland* clarified that a security interest in cash can only be perfected by physical possession pursuant to section 9-312[b][3] of New York's Uniform Commercial Code (see *Kurland* at *4). A contractual right to be repaid does not allow for money received from a judgment debtor to be automatically transferred into a security interest that predates possession of the cash. CNB had no security interest in the wire and settlement payments it received prior to its obtaining actual possession of the funds. Its interest was purely contractual. The wire payments of \$170,000 and \$50,000 and the settlement payment of \$275,000 were all received by CNB after the Restraining Notices were served on January 31, 2023. Importantly, these funds did not come from accounts maintained by CNB. This means CNB did not have prior physical possession of these specific cash funds. Instead, they were transferred directly from the Judgment Debtors (or NBTV Channels) to CNB.

CNB's argument that these funds became CNB's property upon receipt, thus negating any interest of the Judgment Debtors, is unavailing and contrary to the established caselaw. It is well-settled that one may not circumvent the mandates of a restraining order by claiming that the judgment debtor has no interest in the money merely because he [or she] will not acquire actual physical possession of such money (see *Ray v Jama Prods., Inc.*, 74 AD2d 845, 845-846 [2d Dept 1980]). The fact that a judgment debtor will directly benefit from the payment of these funds is sufficient to require the party served with the restraining notice to comply with the provisions or be subject to the appropriate legal sanctions. (*id.*) Even where funds are not nominally held in the name of the judgment debtor, a restraining notice is violated if such funds are used for the benefit of the judgment debtor. (See *Bingham v Zolt*, 231 AD2d 479 [1st Dept 1996]; *ERA Mgmt., Inc. v Morrison Cohen Singer & Weinstein*, 199 AD2d 179 [1st Dept 1993]).

In this case, the Judgment Debtors clearly had an interest in the disputed funds immediately prior to their transfer to CNB, making the funds subject to the broad scope of the Restraining Notice which covers property

"thereafter coming into possession or custody" of CNB. CNB attempts to distinguish *Kurland* by saying it involved transfers to a judgment-debtor. However, the critical principle derived from *Kurland* is that a garnishee cannot unilaterally decide to ignore a valid restraining notice, especially when funds originate from the judgment debtor, regardless of whether the ultimate recipient is the judgment debtor, the garnishee itself, or another creditor.¹ CNB does not distinguish or contrast *Kurland* with this case in any meaningful way.

Regarding the claims for civil contempt (Count III), Trinity has presented clear and convincing evidence that a lawful order (the Restraining Notice) was in effect, CNB had notice of it, and CNB's actions in receiving and retaining the wire and settlement payments from the Judgment Debtors, which originated outside of CNB's control, defeated, impaired, impeded, and prejudiced Trinity's rights to satisfy its judgment. Willfulness is not an element of civil contempt (see *El-Dehdan v El-Dehdan*, 26 NY3d 19, 35 [2015]). It is well-established that a third party may be held liable to a judgment creditor for its failure to comply with a valid restraining notice even if the violation was not willful or intended to cause harm to the judgment debtor. As relevant here, "[r]efusal or willful neglect of any person to obey a subpoena or restraining notice ... shall be punishable as a contempt of court" (CPLR 5251). Sanctions include damages in the amount the person should have but failed to restrain (see *Matter of Bravado Intl. Group Merchandising Servs., Inc. v United States Tennis Assn. Inc.*, 179 AD3d 914, 916 [2d Dept 2020]; see also *Matter of Wimbledon Fin. Master Fund, Ltd. v Bergstein*, 173 AD3d 401, 402 [1st Dept 2019] [limiting award to attorneys' fees], *lv dismissed* 34 NY3d 1152 [2020]).

¹ *Kurland* also involved a settlement agreement between the judgment debtor and the garnishee who had received the restraining notice. The Court found that :

[M]erely because [Judgment Debtor] agreed to . . . repay [Garnishees] does not transmute [the settlement payment] into a fund in which [Garnishee] had a . . . "security interest" . . . When [Garnishee] first came into possession of that money, it had no security interest in it at all . . . [Garnishee's] interest in receiving any portion thereof was purely contractual. In other words, had [Judgment Debtors] refused to repay [Garnishee] in accordance with the settlement agreement, [Garnishee's] remedy would have been to seek enforcement of a contractual obligation, not the foreclosure of a security interest.

Kurland, 2019 WL 2027598 at *4.3

Therefore, as to the wire payments and the settlement payment, Trinity has met its burden for summary judgment as to liability on Counts I, II, and III.

II. CNB's Cross-Motion for Summary Judgment

CNB cross-moves for summary judgment, arguing it did not violate the restraining notice and is entitled to set off the Judgment Debtors' debts.

CNB's arguments regarding its statutory right of set-off under New York Debtor and Creditor Law § 151 are well-established for funds already held in a debtor's deposit accounts and are not challenged by Trinity in this action. As acknowledged by the New York Court of Appeals, this right is superior to intervening judgment creditors and may be exercised even after a restraining notice is served (*see Aspen*, 52 NY2d at 582). This includes the set-offs made on January 30, 2023 (which occurred before the Restraining Notice was served) and the set-off on March 1, 2023, from an existing NBTV Channels deposit account. Since Trinity is explicitly not challenging CNB's rights to set off against deposits held in its physical possession, these specific transactions do not form the basis for liability against CNB in this action. Trinity explicitly clarifies that it is not challenging CNB's rights to set off against deposits held in its physical possession before or after service of the Restraining Order. Therefore, the set-offs made on January 30, 2023 (before the notice) and March 1, 2023 (from existing deposit accounts after the notice), are not at issue in Trinity's motion.

However, CNB's arguments fail regarding the wire payments and settlement payment. CNB contends that these funds became its property upon receipt and that CPLR § 5222 does not apply because the Judgment Debtors no longer had an interest in them. CNB further argues that these payments did not come from a restrained CNB bank account. As discussed above, these arguments are unavailing. As established by *Kurland* and *Ray v. Jama Productions, Inc.*, the focus is on the judgment debtor's interest in the funds prior to the transfer, and such an interpretation (that the funds immediately become the garnishee's property, removing the debtor's interest) would allow for the circumvention of restraining notices.

The Restraining Notice explicitly covers property "then in and thereafter coming into the possession or custody" of the garnishee. The fact that these funds were wired to CNB directly from the Judgment Debtors (or NBTV Channels) and did not originate from CNB-maintained

accounts means they fall squarely under the "thereafter coming into possession" clause, making them subject to the notice. As stated above, CNB's claim that its status as a secured creditor or its belief that the funds were its property allowed it to disregard the restraining notice is directly contradicted by *Kurland*, which held that a party "was not authorized to determine unilaterally that the disputed funds . . . were not subject to restraint." (see *Kurland* at *4).

CNB's claim that no transfer occurred because it merely received funds also lacks merit. The Restraining Notice forbids CNB to "make or suffer any sale, assignment, or transfer of, or any interference with any property." By accepting funds directly from the Judgment Debtors and applying them to its own loans, CNB suffered a transfer of the Judgment Debtors' property (cash) in violation of the injunction. CNB's argument that it did not pay itself but only received funds does not negate the fact that funds belonging to the Judgment Debtors (and thus subject to the Restraining Notice) came into its possession after the notice, and CNB then applied them to its own benefit rather than preserving them for the enforcement of Trinity's judgment.

CNB's argument that a turnover order was a prerequisite for liability is also rejected, as inconsistent with caselaw allowing damages and contempt findings without such an order (see *MacArthur I, Inc. v Fields*, 188 AD3d 493, 496 [1st Dept 2020]; *Bravdo*, 179 AD3d at 916).

Therefore, CNB's cross-motion for summary judgment must be denied as it pertains to the wire payments and settlement payment received after the restraining notice was served.

CONCLUSION

Based on the foregoing, the Court finds that Trinity has established its entitlement to partial summary judgment as to liability for the wire payments and settlement payment, which City National Bank received after being served with the Restraining Notices. City National Bank violated the clear and unequivocal mandate of the Restraining Notices by accepting these funds, which originated directly from the Judgment Debtors or their closely related entity, NBTV Channels, LLC, and applying them to its own benefit, without seeking court modification or vacatur of the Restraining Notices. This conduct defeats, impairs, impedes, and prejudices Trinity's rights to satisfy its judgment.

The Court explicitly notes that Trinity's motion for summary judgment does not challenge CNB's rights of set-off concerning funds already in deposit accounts in its physical possession, either before or after service of the Restraining Notices.

Accordingly, it is hereby:

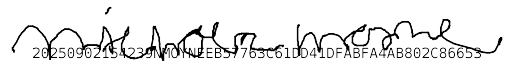
ORDERED that Plaintiff Trinity Centre LLC's motion for partial summary judgment as to liability on Counts I, II, and III of the Complaint is granted concerning the \$170,000 wire payment received on June 5, 2023, the \$50,000 wire payment received on July 6, 2023, and the \$275,000 settlement payment received on or about October 31, 2023; and it is further

ORDERED that Defendant City National Bank's cross-motion for summary judgment is denied as to the \$170,000 wire payment received on June 5, 2023, the \$50,000 wire payment received on July 6, 2023, and the \$275,000 settlement payment received on or about October 31, 2023; and it is further

ORDERED that the issue of damages, including compensatory damages, punitive damages, and reasonable attorneys' fees and costs, arising from CNB's liability for these specific payments, as well as the appropriate sanction for civil contempt, will be determined at a hearing or trial to be scheduled and held after the filing of the Note of Issue. The parties shall contact the part to schedule the hearing after the Note of Issue ahs been filed.

ORDERED that any relief sought by CNB in its cross-motion for summary judgment pertaining to the set-offs against existing deposit accounts on January 30, 2023, and March 1, 2023, is deemed unopposed by Trinity and thus granted.

This constitutes the Decision and Order of the Court.


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9/2/2025
DATE

NICHOLAS W. MOYNE, J.S.C.

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