JNY Bedford Realty LLC v Costa BSD Props. LLC
2025 NY Slip Op 33296(U)
September 2, 2025
Supreme Court, Kings County
Docket Number: Index No. 529950/24
Judge: Inga M. O'Neale
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At an IAS Term, Part 7 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 2nd day of September, 2025.

P R E S E N T:

HON. INGA M. O'NEALE,
Justice.

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JNY BEDFORD REALTY LLC,

Petitioner,

- against -

Index No. 529950/24

COSTA BSD PROPERTIES LLC,

Respondent.

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The following e-filed papers read herein:	NYSCEF Doc Nos.
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations)	46-52, 54, 56
Opposing Memorandum of Law	58

Upon the foregoing papers in this Article 78 proceeding, petitioner JNY Bedford Realty LLC (JNY or petitioner) moves (in motion sequence [mot. seq.] three), by Order to Show Cause (OSC), for an order, pursuant to CPLR 2221: (1) granting it leave to reargue the court's March 20, 2025, decision and order, and (2) upon reargument, vacating the court's March 20, 2025 decision and order and granting the relief sought by JNY in its amended verified petition, including vacating the restraint on JNY's Chase Bank account ending in 3118 (NYSCEF Doc No. 56).

Background

JNY was the prior owner of a building located at 910 Bedford Avenue in Brooklyn (Block 1914, Lot 39);(Property). The City of New York (the City) assessed fines and penalties against JNY for various Environmental Control Board (ECB) and Department of Buildings (DOB) violations at the Property. Ultimately, judgments in the aggregate amount of $167,944.97, inclusive of interest calculated as of October 18, 2024, were entered against JNY in favor of the City. On or about October 26, 2024, after the entry of the judgments, the City restrained JNY's bank account at Chase Bank (ending in 3118) in order to enforce the judgments, prompting JNY to commence this Article 78 proceeding.

JNY's Amended Petition and OSC

On November 6, 2024, JNY commenced this proceeding, by OSC, with a petition verified by JNY's managing member/owner, Exra Unger (Unger), against the City and Costa BSD Properties LLC (Costa) (NYSCEF Doc No. 1). The original petition alleged that following the commencement of a foreclosure action brought by a non-party mortgagee, JNY sold the Property to Costa, crediting it $200,000.00 of the purchase price of the Property to account for the City's judgment, and that Costa agreed to assume responsibility for paying the City's judgment (*id.* at ¶¶ 6-7).

On November 22, 2024, JNY e-filed an amended petition (NYSCEF Doc No. 12). The amended petition alleges that JNY actually sold the Property to 910-912 Bedford LLC

(Bedford) during the foreclosure,[1] and Bedford was credited $200,000.00 for the City's judgment and agreed to assume responsibility to pay the City's judgment (*id.* at ¶¶ 8-9).

The amended petition alleges that "[o]n or about October 26, 2024, JNY received an email from its bank, Chase, stating that a total sum of $176,651.23 . . . was frozen in JNY's bank account, the last four digits of which are 3118, pursuant to an Execution with Notice to Garnishee or Respondent" and "JNY's Funds were frozen, effectively preventing any further transfer or disposition of those funds" (*id.* at ¶¶ 10 and 12).

The amended petition alleges that the Execution Notice listed the Property as JNY's "last known address"; "[a]ccording to CPLR 5222, the judgment debtor, such as JNY, should have been served with a copy of the Restraining Notice and the Notice to Judgment Debtor"; "JNY's correct address, as listed with the New York Secretary of State, is 4013 13th Avenue, Fl. 2, Brooklyn . . ." and "JNY was never served . . . with the Restraining Notice, nor with the Notice to Judgment Debtor . . . in contravention of CPLR 5222" (*id.* at ¶¶ 13, 17, 19 and 21). The amended petition also alleges that the City:

> "docketed an order in the Civil Court of the City of New York and in the offices of the County Clerks, imposing a penalty of $167,944.97 upon JNY, in contravention of Chapter 45-A, section 1049-a (d) (1) (g) of the New York City Charter, which substantially exceeds the $25,000 limit prescribed by the statute" (*id.* at ¶ 30).

[1] By a July 18, 2025 decision and order, the court (Sweeney, J.) granted that branch of JNY's motion seeking to discontinue this proceeding as against Costa (NYSCEF Doc No. 59).

JNY seeks emergency relief by OSC because "Petitioner is unable to pay wages and cover operational expenses in the ordinary course without access to said funds" (*id.* at ¶ 22).

The amended petition asserts two causes of action for an order: (1) vacating, discharging and canceling the restraint on JNY's funds in its Chase Bank account ending in 3118 (*id.* at ¶¶ 24-31), and (2) compelling Bedford to pay "all outstanding violations . . ." pursuant to the Rider in the parties' contract of sale, including the $176,651.23 penalty assessed by the ECB (*id.* at ¶¶ 33-40).

The City's Verified Answer

On February 13, 2025, the City e-filed its verified answer to the amended petition, denied the material allegations therein, yet admitted that "records from the New York Department of State list petitioner as . . . having an address of 199 Lee Ave., Suite 169 Brooklyn" and "JNY's address is currently listed with the New York Secretary of State, [a]s 4013 13th Avenue, Fl. 2, Brooklyn . . ." (NYSCEF Doc No. 14 at ¶¶ 4, 19 and 26).

The City's answer, in opposition to JNY's first cause of action, alleged that "[a]lthough typically a restraining notice must also be served on the judgment debtor (see CPLR § 5222 [d]), *the City is exempt from that requirement* when it is the judgment creditor so long as 'the restraining notice contains a legend at the top thereof, above the caption, in sixteen point bold type [stating that t]he judgment creditor is the state of New York, or any of its agencies or municipal corporations . . .'" (*id.* at ¶ 45, quoting CPLR 5222-a [i] [emphasis added]).

However, the City also asserted that on October 22, 2024, the New York City Marshall served Execution Notice Numbers E11892404 and E11892405 upon Chase Bank, and on November 1, 2024, the Execution Notices were served upon JNY at *both* the Property address and at JNY's current address, 4013 13th Avenue in Brooklyn (*id.* at ¶ 49). The City claims to have served the Execution Notices with proof of service and references Exhibit B (*see* NYSCEF Doc No. 16). Notably, the City's October 18, 2024, Execution Notices both contain a legend at the top of the first page stating that: "**THE JUDGMENT CREDITOR IS THE *STATE* OF NEW YORK, OR ANY OF ITS AGENCIES OR MUNICIPAL CORPORATIONS** . . ." (*id.* at 1 and 12 [emphasis added]).

The City asserted that "[t]he petition must be denied as the City's actions were not arbitrary or capricious and conform with the applicable law and rules"; "[t]he City properly served the execution notices and restraining notices on petitioner's bank"; "[t]he City is exempted from the requirement to serve restraining notices on judgment debtors, and therefore was not required to serve petitioner with a restraining notice" and the City nevertheless had the Marshall serve JNY at both the Property and its current address (NYSCEF Doc No. 14 at ¶ 52).

The City further argues that it did not violate City Charter Chapter 45-A § 1049- a (d) (l) (g)'s provision that judgments of up to $25,000.00 may be docketed (*id.* at ¶ 53). The City explains that the judgments only exceed $25,000.00 because they are "the aggregate of [several] individual judgments which were docketed and each individual judgment was less than $25,000.00" (*id.*).

JNY's Reply

JNY, in reply, asserted that the City violated Chapter 45-A, section 1049-a (d) (1) (g) of the New York City Charter, by filing a $167,944.97 judgment that substantially exceeded the $25,000.00 statutory limit (NYSCEF Doc No. 18 at ¶ 3). Without citing any case law, JNY contended that CPLR 5230 "requires that a separate execution be issued for each judgment, ensuring that enforcement actions remain within the legal limits set by the underlying judgments" and "to enforce multiple judgments, [the City] must issue separate executions for each, rather than consolidating them into a single execution . . ." (*id.* at ¶ 10).

JNY also argued that the "City's reading of CPLR § 5222 is wrong" because the City is not exempt under the statute from serving it with a restraining notice (*id.* at ¶ 11). JNY claimed that the City failed to submit any proof that it complied with CPLR 5222 (d), "which states that if no notice in the prescribed form has been given to the judgment debtor or obligor within the past year, a copy of the restraining notice and the required notice **must be mailed by first-class mail or personally delivered** to the debtor's residence within four days of serving the restraining notice" (*id.* at ¶ 23).

The Court's March 20, 2025 Decision and Order

By a March 20, 2025, decision and order, which was entered on April 1, 2025, this court denied JNY's amended petition, lifted the stay[2] and dismissed JNY's amended

[2] JNY's OSC had a temporary restraining order (TRO) preventing the City from removing funds from JNY's Chase Bank account (JNYSCEF Doc No. 56 at 2).

petition as against the City on the ground that "[t]he provisions of CPLR § 5222-a requiring service of a restraining notice do not apply in this action where the City of New York is the judgment creditor (*see* CPLR § 5222-a [i])" (NYSCEF Doc No. 41).

On April 2, 2025, JNY appealed from the March 20, 2025 decision and order (NYSCEF Doc No. 44).

JNY's Instant Reargument Motion

Meanwhile, on March 31, 2025, JNY moved, by OSC, for leave to reargue the court's March 20, 2025, decision and order,[3] and upon reargument, vacating the March 20, 2025 decision and order and granting the relief sought by JNY in its amended petition, including vacating the restraint on JNY's Chase Bank account (NYSCEF Doc No. 56).

JNY submits an attorney affirmation arguing that reargument is warranted because this court "overlooked several key arguments . . ." (NYSCEF Doc No. 35 at ¶ 17). Aside from its previously rejected claims that the City improperly served the Execution Notices (*id.* at ¶¶ 17 [C] and [D]), JNY argues that this court "entirely ignored Petitioner's primary argument regarding the $25,000 statutory limit under . . . the New York City Charter" and JNY's assertion that CPLR 5230 "requires separate executions for each judgment rather than consolidating them" (*id.* at ¶¶ 17 [A] and [B]).

[3] JNY's OSC erroneously references the court's "decision and order dated March 28, 2025," which does not exist, rather than the March 20, 2025 decision and order (*see* NYSCEF Doc No. 56). This ministerial error is corrected pursuant to CPLR 2001.

The City's Opposition

The City, in opposition, submits a memorandum of law arguing that "Petitioner incorrectly argues that the City did not provide proof of service of the Execution Notices" when "proof of service was annexed to the City's Verified Answer as Exhibit B" (NYSCEF Doc No. 58 at 4). The City also argues that "Petitioner did not raise any questions regarding procedural defects in the Execution Notices or service thereof in its Petition or accompanying affirmation, and it may not raise them now" (*id.*).

The City also asserts that JNY's claim that the City violated the City Charter because the judgment exceeds $25,000.00 fails because it "incorrectly argues that CPLR § 5230 requires separate execution notices for each judgment rather than consolidating them" (*id.*). The City explains that:

> "Petitioner is conflating the docketing of judgments with enforcement of judgments – as the City Charter states, once a judgment is entered, it 'may be enforced without court proceedings . . . provided . . . that no such *judgment* shall be entered which exceeds the sum of twenty-five thousand dollars' . . ." (*id.* at 5, quoting City Charter Chapter 45-A § 1049-a [d] [1] [g]).

The City notes that "Petitioner has not cited to any caselaw to support its contention that CPLR § 5230 requires separate execution notices for each judgment, because there are none" and "nothing in the text of CPLR § 5230 indicates that several judgments may not be executed together" (*id.*).

Discussion

"A motion for leave to reargue shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion" (CPLR 2221[d] [2]). "A motion for leave to reargue is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented" (*Mazinov v Rella*, 79 AD3d 979, 980 [2010] [internal quotation marks omitted]).

Here, this court's March 20, 2025, decision and order properly relied on CPLR 5222-a (i), which, by its plain and unambiguous terms, provides that CPLR § 5222-a, the statute that requires a judgment creditor to serve a judgment debtor with a restraining notice, "does not apply" where the City (a municipal corporation of the State of New York) is the judgment creditor:

> "[t]he provisions of this section ***do not apply*** when the ***state of New York, or any of its agencies or municipal corporations is the judgment creditor***, or if the debt enforced is for child support, spousal support, maintenance or alimony, provided that the restraining notice contains a legend at the top thereof, above the caption, in sixteen point bold type with the following language: "The judgment creditor is the state of New York, or any of its agencies or municipal corporations, AND/OR the debt enforced is for child support, spousal support, maintenance or alimony" (emphasis added).

Thus, contrary to JNY's contention, the City had no statutory obligation to serve the Execution Notices upon JNY. While the City asserts that it nonetheless properly served the

Execution Notices upon JNY, and JNY challenges the sufficiency of such service, those issues are irrelevant since the statute is clear that the City was exempt from doing so.

Furthermore, research has failed to disclose any authority for JNY's position that the City is violating the City Charter or CPLR 5230 by *enforcing* multiple smaller judgments that exceed $25,000 in the aggregate. As the City correctly notes, JNY is seemingly conflating the *entry* of judgments, which is governed by City Charter Chapter 45-A § 1049-a (d) (1) (g), with the *enforcement* of judgments, which is governed by CPLR 5230. "It is well settled that, where the language of a statute is clear, it should be construed according to its plain terms" (*Schoenefeld v State*, 25 NY3d 22, 26 [2015]), and CPLR 5320 does not provide that multiple smaller judgments against the same judgment debtor cannot be collectively enforced. Ultimately, JNY has failed to demonstrate that this court overlooked or misapprehended relevant facts or misapplied controlling principles of law.

Petitioner correctly points out that the March 31, 2025 short form order (NYSCEF Doc No. 42) inadvertently did not include respondent 910-912 BEDFORD LLC as a respondent. The Court also notes that by a July 18, 2025 decision and order, the Court (Sweeney, J.) granted that branch of JNY's motion seeking to discontinue this proceeding as against Costa (NYSCEF Doc No. 59). In light of the foregoing, the caption is hereby amended and shall hereinafter read as follows:

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JNY BEDFORD REALTY LLC

Petitioner,

- against - Index No. 529950/24

910-912 BEDFORD LLC,

Respondent.
----------X

Accordingly, it is

ORDERED that JNY's motion (mot. seq. three) is granted to the extent that JNY is granted leave to reargue and, upon reargument, this court adheres to its March 20, 2025 decision and order; and it is further

ORDERED that the portion of JNY's motion (mot. seq. three) seeking to correct the caption is granted.

This constitutes the decision and order of the court.

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J. S. C. Hon. Inga M. O'Neale
Justice, Supreme Court

KINGS COUNTY CLERK
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