

Wolmark v Azrak

2025 NY Slip Op 33939(U)

October 14, 2025

Supreme Court, New York County

Docket Number: Index No. 160712/2024

Judge: Arthur F. Engoron

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directing the sale of Azrak's non-homestead cooperative apartment unit, and appointing petitioner's representative as a receiver to effectuate that sale. NYSCEF Doc. No. 1. Petitioners are also seeking, pursuant to CPLR 8303(b), a discretionary allowance in the amount of 5% of the Judgment, including interest, plus costs and disbursements. Id.

Petitioners further allege that Azrak has refused voluntarily to pay any amount of the Judgment, and that petitioners have recovered only \$54,855.88 via levy and execution on Azrak's Pershing LLC brokerage account. Id. In a Decision and Order dated October 29, 2024, Pershing LLC was ordered to liquidate and turn over Azrak's subject brokerage account within 10 days of the entry thereof. Id. Accordingly, approximately \$342,855.53 of the principal amount remains outstanding, with interest accruing thereon at the statutory rate. Id.

In support of the petition, petitioners argue that they have a "perfected execution lien against [Azrak's] Co-op Shares by virtue of their careful compliance with governing law and procedure." NYSCEF Doc. No. 14. Petitioners cite CPLR 5225, which permits a judgment creditor to obtain a turnover order, by motion directing a party over whom the court has jurisdiction, to deliver property to be applied toward satisfaction of the judgment. Id.

On November 20, 2024, respondents moved by order to show cause to dismiss the petition. NYSCEF Doc. No. 17. On March 15, 2025, Azrak answered the petition with a general denial and six affirmative defenses. NYSCEF Doc. No. 31.

In support of the motion to dismiss, Azrak affirms, inter alia, that, pursuant to the protections of CPLR 5206, the proposed turnover and sale violate his homestead exemption. NYSCEF Doc. No. 32. Azrak affirms that he lived at the Brooklyn Residence for approximately 40 years, but that it is no longer his primary residence due to he and his wife allegedly being estranged. Id. Disputing petitioners' claim that he rents out the Manhattan Studio to an unknown third-party, Azrak asserts that he moved into the Manhattan Studio in September of 2024. Id. Azrak also acknowledges that he regularly visits the Brooklyn Residence and that his mail is still delivered there. Id.

In opposition to Azrak's motion, petitioners argue, inter alia, that: the Manhattan Studio is not his homestead; Azrak lacks documentary evidence to demonstrate that the Manhattan Studio is his homestead; and Azrak's claim "is false and flatly contradicted by the abundant evidence showing that it is not, in fact, his homestead." NYSCEF Doc. No. 35. Petitioners point to, inter alia, the following: (1) Azrak's personal bank statements list the Brooklyn Residence as his home address; (2) Azrak's tenant profile from the Co-op sets forth the Brooklyn Residence as his bill-to address; and (3) records obtained from the NYS Department of Motor Vehicles show that Azrak's driver's license sets forth the Brooklyn Residence as his home address. Id.

On May 30, 2025, this Court held oral argument, during which Azrak requested an evidentiary hearing to demonstrate that the Manhattan Studio is his primary residence. On September 15, 2025, the evidentiary hearing was held virtually. Petitioners examined Azrak and his attorney during the hearing, with a transcript of the hearing filed on NYSCEF as Doc. No. 59.

In petitioners' post-hearing brief, they note, inter alia, that during the hearing, "Azrak provided no tax returns, no utility bills, and no voter registration, phone records, or other bills for the Studio." NYSCEF Doc. No. 58. The Court notes that Azrak did discuss Con-Edison bills for the Manhattan Studio during his testimony, though copies of the Con-Edison bills were not submitted as documentary evidence.

In Azrak's post-hearing brief, Azrak argues, inter alia, that using documentary evidence to establish primary residence is not essential. (See 23 Jones Street Assocs. v Keebler-Beretta, 284 AD2d 109, 109 (1st Dept 2001) ("While documentary evidence can be significant in determining primary residence, it is not essential, and it does not necessarily preponderate over inconsistent testimonial evidence.")).

Discussion

CPLR Article 52

"CPLR article 52 governs the enforcement of money judgments and orders directing the payment of money." Koehler v Bank of Bermuda Ltd., 12 NY3d 533, 537 (2009). "Article 52 authorizes a judgment creditor to file a motion against a judgment debtor to compel turnover of assets[.]" CPLR 5225, the applicable provision here, supplies judgment creditors with a device known as a 'delivery order' or 'turnover order.'" Id. The "burden of proof in a turnover proceeding rests with the judgment creditor." CPLR 5225. "[W]here it is shown that the judgment debtor is entitled to the possession of such property ..., the court shall require such person to pay the money, or so much of it as is sufficient to satisfy the judgment, to the judgment creditor" (CPLR 5225[b]). Id.

The Homestead Exemption

CPLR 5206(a)(2) provides, in relevant part, for the exemption of homestead of property, not exceeding \$204,825 for the counties of New York City, in value above liens and encumbrances, owned and occupied as a principal residence, from application to the satisfaction of a money judgment. Pursuant to CPLR § 5206(c), "[t]he homestead ceases if the property ceases to be occupied as a residence by a person for whose benefit it may so continue, except where the suspension of occupation is for a period not exceeding one year, and occurs in consequence of injury to, or destruction of, the dwelling house upon the premises."

"The purpose of the homestead exemption is to protect a debtor-homeowner from losing the family home due to economic hardship." In re Issa, 501 BR 223, 226 (Bankr SDNY 2013). "In order to claim a homestead exemption under New York law, a debtor must show actual physical occupancy on a regular basis and an intent to reside permanently. The occupancy requirement has been interpreted to mean "occupied by the debtor on a more regular basis than any other residence. The intent to reside has been defined as a bona fide intent to reside there as one's principal residence—not in the future, but on the petition date." Id. (internal citations and quotation marks omitted). "We take primary residence to mean an ongoing, substantial, physical nexus with the controlled premises for actual living purposes—which can be demonstrated by objective, empirical evidence." Emay Props. Corp. v Norton, 136 Misc 2d 127, 128-29 (App Term 1987).

Here, petitioners-creditors have demonstrated that respondent-debtor is the owner of the Co-op Shares and, thereby, the proprietary lessee of apartment 7C in the Co-op. Further, petitioners have demonstrated that they are entitled to possession of the Co-op shares, in order for the debt Azrak owes petitioners, pursuant to the Judgement, to be partially satisfied.

Azrak's argument that the Manhattan Studio is exempt from a sale to satisfy his debt to petitioners under the homestead exemption falls short, as Azrak has failed to demonstrate that the Manhattan Studio has been his primary residence since September 2024 or that he had a bona fide intent to reside there on the petition date. Azrak testified that he spends four nights a week at the Manhattan Studio, though much of his other testimony contradicted this (NYSCEF Doc. No. 59), including referring to the Brooklyn Residence as "my home." Further, Azrak testified, inter alia, that: Azrak has his laundry and drycleaning done in Brooklyn, near the Brooklyn Residence; Azrak keeps the majority of his clothing at the Brooklyn Residence; his driver keeps Azrak's car in Brooklyn; and Azrak receives his mail at the Brooklyn residence (NYSCEF Doc. No. 59).

While Azrak correctly notes that documentary evidence is not essential in showing a residence is a primary one, as Azrak acknowledged in his post-hearing brief, documentary evidence is still significant. Nevertheless, Azrak submits only his own testimony and self-taken photographs of the Manhattan Studio as evidence that it is his primary residence (NYSCEF Exhibit Nos. 1-13 – 1-26). Petitioners pointed out, in their closing statements, inter alia, that "there's been no testimony offered from any other persons who have observed [Azrak] in the Manhattan studio at any time, let alone [his] living there." NYSCEF Doc. No. 59.

The evidence presented by Azrak is inconsistent at best. Rather, it exemplifies that the Manhattan Studio is not where he actually lives.

The Court has considered Azrak's other arguments and finds to them to be unavailing and/or non-dispositive.

Therefore, the Manhattan Studio is not protected under the homestead exemption. Accordingly, Azrak's motion to dismiss the petition must be denied, and the petition must be granted.

Conclusion

Thus, the motion of respondents, Ruben Azrak A/K/A Rueben Azrak A/K/A Reuben Azrak a/k/a Ruby Azrak a/k/a Robert Azrak, Finch Apartment Corporation, HSBC Mortgage Corporation (USA), John Doe and Jane Doe, to dismiss the petition is denied; the petition is granted, in favor of petitioners, Zevi Wolmark and David Blonder; and the Clerk is hereby directed to enter judgment accordingly and as follows: (1) respondent HSBC Mortgage Corporation (USA) is hereby ordered to deliver possession of the Co-op Shares, together with the proprietary lease appurtenant to Apartment 7C in Finch Apartment Corporation, to petitioners or to a designated sheriff, to be liquidated, sold, and applied in satisfaction of the Judgment, subject to Finch Apartment Corporation and HSBC's priority liens; and authorizing petitioners to take all necessary steps to enforce the Judgment, including sale of the Co-op Shares; (2) respondents are required to execute and deliver to petitioners all documents necessary to effectuate the turnover; (3) petitioners may appoint a designee, as a receiver with the authority to take all necessary

actions to sell judgment debtor Ruben Azrak's Co-op Shares and proprietary lease for Apartment 7C in Finch Apartment Corporation; and (4) the receiver or the designated sheriff may sell the Co-op Shares and proprietary lease, and the proceeds arising from such sale shall be paid over and applied toward satisfaction of the Judgment, subject to Finch Apartment Corporation and HSBC's priority liens.

Additionally, pursuant to CPLR 8303(b), petitioners are entitled to and are hereby granted a "discretionary allowance" in the amount of 5% of the Judgment, plus interest from July 11, 2024 (the date of entry of judgment).

Petitioners are also entitled to costs and disbursements.

HON. ARTHUR F. ENGORON

10/14/2025
DATE

ARTHUR F. ENGORON, J.S.C.

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APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input checked="" type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	<input type="checkbox"/> REFERENCE
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