

Hamilton Equity Group, LLC v Gemma Suits Ltd.

2025 NY Slip Op 34868(U)

December 15, 2025

Supreme Court, New York County

Docket Number: Index No. 156978/2023

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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INDEX NO. 156978/2023

HAMILTON EQUITY GROUP, LLC, AS ASSIGNEE OF
HSBC BANK USA, NATIONAL ASSOCIATION,
SUCCESSOR BY MERGER TO HSBC BANK USA F/K/A
MARINE MIDLAND BANK,

**MOTION DATE 09/19/2024,
09/30/2024**

MOTION SEQ. NO. 003 004

Plaintiff,

- v -

GEMMA SUITS LTD. A/K/A GEMMA SUITES LTD. D/B/A
MASKSUPPLY STORE, D/B/A CUSTOM TACTICAL
UNIFORMS, D/B/A TAILORED CLUB AND D/B/A
BOOKATAILOR OR BOOKATAILOR.COM, FEREDOUN
HAKIM, DALIA HAKIM

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 61, 66, 67, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 93, 101, 102, 103

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 62, 63, 64, 65, 68, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 94, 95, 96, 97, 98, 99, 100

were read on this motion to/for STAY.

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner Hamilton Equity Group, LLC is the assignee of a judgment originally entered in favor of HSBC Bank USA, National Association, successor by merger to HSBC Bank USA f/k/a Marine Midland Bank. On June 30, 2017, in Supreme Court, New York County, a judgment was entered against judgment debtors Fereidoun (“Fred”) Hakim and Dalia Hakim in the amount of \$12,012,998.55, arising from an action under Index No. 653770/2015.

The action commenced under Index No. 653770/2015 arose out of a commercial lending relationship between HSBC Bank USA, National Association and defendants Fereidoun Hakim and Dalia Hakim. In that action, HSBC Bank USA alleged that the Hakims defaulted on loan obligations and related guarantees, giving rise to substantial outstanding indebtedness. The claims included recovery of principal, interest, and other sums due under the governing loan documents. Following motion practice and proceedings in Supreme Court, New York County, judgment was entered on June 30, 2017 in favor of HSBC Bank USA and against Fereidoun Hakim and Dalia Hakim, jointly and severally, in the amount of \$12,012,998.55. That judgment has not been satisfied, has accrued post-judgment interest as a matter of law, and was subsequently assigned to Petitioner Hamilton Equity Group, LLC, which now seeks enforcement through the income execution at issue in this proceeding.

Petitioner alleges that the judgment debtors were employed by Respondent and, accordingly, issued an income execution dated March 3, 2022 pursuant to CPLR 5231 to the Nassau County Sheriff for enforcement against wages payable by Respondent to the judgment debtors for the judgment entered on June 30, 2017. A copy of the income execution reflects Fred Hakim as the intended wage garnishee.

In its Petition filed June 12, 2023, Petitioner alleges that Respondent failed to comply with the income execution and failed to remit required installments. It seeks either: (1) a judgment for the amount of accrued installments due under CPLR 5231, or, alternatively, (2) the full amount of the outstanding judgment if Respondent fails or refuses to supply income records.

Respondent did not appear or oppose the Petition, and on February 15, 2024 this Court issued a Decision and Order granting default judgment. Respondent later moved to vacate that

judgment pursuant to CPLR 5015(a)(1), asserting lack of notice and a purported belief that a companion case captioned *Hamilton Equity Group LLC v Leon Industries LLC d/b/a US Glove Supply*, Index No. 156979/2023 had also been dismissed.

After initial motion practice, the Court ordered a limited evidentiary hearing solely to determine whether Fred Hakim was employed by Respondent when the income execution was served and, if so, whether Respondent failed to withhold required installments. The hearing testimony and financial records established that Fred Hakim had been an employee of Respondent prior to March 2020, but did not conclusively establish his income, if any, beyond that date. Respondent now renews its application to vacate the judgment in its entirety.

At the hearings, Jacomo Hakim, founder and CEO of Respondent GEMMA SUITS LTD. a/k/a GEMMA SUITES LTD. d/b/a masksupply store, d/b/a Custom Tactical Uniforms d/b/a Tailored Club and d/b/a Bookatailor or Bookatailor.com (“Gemma Suits”) and son of Fred Hakim, testified that Fred worked for Gemma Suits as a paid employee until March 2020, when “everyone was laid off” due to COVID.

Jacomo Hakim claimed that all operations ceased and that Fred Hakim received no wages thereafter. The income execution, dated March 3, 2022, directs Gemma Suits to withhold 10% of Fred Hakim’s disposable earnings to satisfy the judgment. In response, Gemma Suits submitted an Information Subpoena Response dated April 2022, signed by employee Jamie Zabihi, stating that Fred was not employed at the time. Relying on that representation, Gemma Suits did not remit any installments.

However, Petitioner's cross-examination introduced corporate bank records and checks contradicting that testimony. (NYSCEF Doc Nos. 97-100). Multiple business checks drawn from

a Gemma Suits/Bookatailor account were signed by Fred Hakim between October 2020 and February 2021, payable to Porsche Financial Services. Jacomo conceded that Fred controlled the business account, negotiated the purchase, and continued signing checks months after his purported termination. Jacomo further admitted he didn't change Fred's access to the accounts because he previously handled the company finances.

In Motion Sequence 003, Respondent Gemma Suits seeks vacatur of the Court's February 15, 2024 Decision and Order pursuant to CPLR 5015(a)(1), asserting excusable default and a purported lack of notice. Alternatively, Respondent seeks a limitation of the amount owed by Fred Hakim pursuant to CPLR 5231.

In Motion Sequence 004, Respondent Gemma Suits seeks a stay of enforcement of the judgment pending the determination of the validity of the judgment which is the subject matter of Motion Sequence 003.

LEGAL STANDARD

Pursuant to CPLR 5015 (a)(1), a party may be relieved from a judgment if the court finds that default was excusable. "Although there is a strong public policy favoring the resolution of cases on the merits, a defendant moving to vacate a default must satisfy the two-pronged test of showing both (1) a reasonable excuse for the default; and (2) a meritorious defense to the action. . . [T]he court must first decide whether a reasonable excuse has been offered. This determination is sui generis and should be based on all relevant factors, among which are the length of the delay chargeable to the movant, whether the opposing party has been prejudiced, whether the default was willful, and the strong public policy favoring the resolution of cases on

the merits” (*SOS Capital v Recycling Paper Partners of PA, LLC*, 220 AD3d 25, 38, 196

NYS3d382 [1st Dept 2023] [internal quotations and citations omitted]).

CPLR 5231 provides for an income execution in furtherance of satisfying a judgment to a judgment creditor. Such is limited as follows:

“an income execution for installments therefrom of not more than ten percent thereof may be issued and delivered to the sheriff of the county in which the judgment debtor resides or, where the judgment debtor is a non-resident, the county in which he is employed; provided, however, that (i) no amount shall be withheld from the judgment debtor's earnings pursuant to an income execution for any week unless the disposable earnings of the judgment debtor for that week exceed the greater of thirty times the federal minimum hourly wage prescribed in the Fair Labor Standards Act of 1938 or thirty times the state minimum hourly wage prescribed in section six hundred fifty-two of the labor law as in effect at the time the earnings are payable; (ii) the amount withheld from the judgment debtor's earnings pursuant to an income execution for any week shall not exceed twenty-five percent of the disposable earnings of the judgment debtor for that week, or, the amount by which the disposable earnings of the judgment debtor for that week exceed the greater of thirty times the federal minimum hourly wage prescribed by the Fair Labor Standards Act of 1938 or thirty times the state minimum hourly wage prescribed in section six hundred fifty-two of the labor law as in effect at the time the earnings are payable, whichever is less; (iii) if the earnings of the judgment debtor are also subject to deductions for alimony, support or maintenance for family members or former spouses pursuant to section five thousand two hundred forty-one or section five thousand two hundred forty-two of this article, the amount withheld from the judgment debtor's earnings pursuant to this section shall not exceed the amount by which twenty-five percent of the disposable earnings of the judgment debtor for that week exceeds the amount deducted from the judgment debtor's earnings in accordance with section five thousand two hundred forty-one or section five thousand two hundred forty-two of this article; and (iv) no amount shall be imposed in judgments arising from a medical debt action brought by a hospital licensed under article twenty-eight of the public health law or a health care professional authorized under title eight of the education law. Nothing in this section shall be construed to modify, abrogate, impair, or affect any exemption from the satisfaction of a money judgment otherwise granted by law.” (CPLR 5231 (b)).

DISCUSSION

Respondent Fails to Establish a Reasonable Excuse Under CPLR 5015(a)(1)

Respondent asserts that it reasonably believed this case was dismissed based on the dismissal of the separate *Leon Industries* matter. That contention is unsupported. Respondent

was served with the Petition, was aware of the income execution, and received communications from Petitioner requesting compliance. Nothing prevented Respondent from appearing, monitoring the docket, or contacting the Court. A misunderstanding of separate litigation is not a cognizable excuse under CPLR 5015(a)(1). The delay was substantial, and Respondent offers no evidence that the default was anything other than the product of neglect.

As the First Department instructs, the Court must first determine whether a reasonable excuse exists before reaching the question of a meritorious defense. Having found no reasonable excuse, the motion must be denied without further inquiry.

Scope of Respondent's Liability Under CPLR 5231

Although Respondents claim that Fred Hakim was terminated in March 2020, the testimony and documentary evidence established that he continued to sign business checks on behalf of Gemma Suits/Bookatailor for months into 2021; that these checks were drawn on business accounts rather than personal funds; that he participated in business transactions, including a vehicle lease paid from company funds; and that, according to Jacomo Hakim, he retained access to the company's accounts and authority to issue checks because he had previously handled the company's finances. This conduct demonstrates ongoing access, authority, and benefit associated with employment.

Accordingly, the Court finds that Fred Hakim was an employee during the period of the income execution.

However, CPLR 5231 does not permit imposition of liability for the full amount of the underlying judgment against an employer. The statute authorizes enforcement only for accrued, unpaid income execution installments, computed against actual disposable earnings paid during

the period of execution and subject to statutory limitations, including wage thresholds, percentage caps, and offsets for support obligations.

Accordingly, any liability of Respondent shall be limited strictly to amounts provably owed under CPLR 5231, and no judgment may issue against Respondent for the entire underlying debt of the judgment debtors.

Referral for Computation of Accrued Installments

Having determined that Fred Hakim is subject to an income execution pursuant to CPLR 5231, a Referee shall be appointed to hear and report the amount owed pursuant to the statutory income execution.

Having resolved the underlying judgment, Respondents motion for a stay of enforcement pending such determination in Motion Sequence 004 is moot.

The court has considered the remaining arguments of the parties and finds such unavailing. Accordingly; it is hereby

ORDERED, that Respondent's motion to vacate the Court's February 15, 2024 Decision and Order pursuant to CPLR 5015(a)(1) is denied in its entirety; and it is further

ORDERED, that the Court finds that judgment debtor Fereidoun ("Fred") Hakim was an employee of Respondent Gemma Suits LTD. during the period in which the income execution dated March 3, 2022 was in effect, and is therefore subject to an income execution pursuant to CPLR 5231; and it is further

ORDERED, that any enforcement against Respondent under CPLR 5231 is limited solely to accrued, unpaid income execution installments, based on actual disposable earnings paid to

Fred Hakim during the execution period and calculated strictly in accordance with the statutory limitations of CPLR 5231; and it is further

ORDERED, that no judgment or enforcement may be taken against Respondent Gemma Suits LTD. for the full amount of the underlying judgment, and liability, if any, shall be limited to only those accrued sums provably owed pursuant to CPLR 5231; and it is further

ORDERED that a Judicial Hearing Officer (“JHO”) or Special Referee shall be designated to hear and report to this court on the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose:

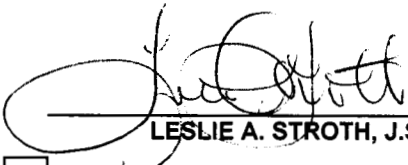
- (1) whether wages or disposable income were paid by Respondent to Fred Hakim during the applicable period;
 - (2) the amount of any such wages or income; and
 - (3) the computation of any accrued but unpaid installments under the income execution;
- and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court), shall assign this matter at the initial appearance to an available JHO/Special Referee to hear and report as specified above; and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts; and it is further

ORDERED that Respondent's application in Motion Sequence 004 seeking a stay of enforcement pending determination of Motion Sequence 003 is denied as moot.

12/15/2025
DATE


LESLIE A. STROTH, J.S.C.

CHECK ONE: CASE DISPOSED GRANTED DENIED NON-FINAL DISPOSITION GRANTED IN PART OTHER

APPLICATION: SETTLE ORDER SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE