

Matter of New York State Commr. of Taxation & Fin. v TD Bank NA
2025 NY Slip Op 35563(U)
January 16, 2025
Supreme Court, Nassau County
Docket Number: Index No. 616572/2024
Judge: Sarika Kapoor
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**SUPREME COURT: STATE OF NEW YORK
COUNTY OF NASSAU**

PRESENT: HON. SARIKA KAPOOR
ACTING JUSTICE OF THE SUPREME COURT

-----X
IN THE MATTER OF THE APPLICATION OF THE NEW
YORK STATE COMMISSIONER OF TAXATION AND
FINANCE,

TRIAL/IAS PART 32
Index No.: 616572/2024

Judgment Creditor-Petitioner,

DECISION AND ORDER

- against -

Motion Seq. No.: 001
Motion Submission Date:
11/01/2024

TD BANK NA,

Garnishee-Respondent,

- and -

RITU CHOUDARY INDIVIDUALLY AND AS A
RESPONSIBLE PERSON OF SHANA FOREVER
INCORPORATED,

Judgment Debtor,

- and -

TAJINDER SINGH,

Joint Tenant-Respondent.
-----X

NYSCEF docs. 1-8 were read and considered in deciding this motion.

Relief Requested

Petitioner, The New York State Commissioner of Taxation and Finance ("petitioner"), moves for an Order and Judgment pursuant to CPLR 5225(b) and 5227, directing the garnishee-respondent, TD Bank NA ("TD Bank"), to turn over to the petitioner the sum of \$5,086.02, with interest, plus additional penalties as provided by law, from accounts being held in the name of, or for the benefit of Ritu Choudary Individually and as a Responsible Person of Shana Forever Incorporated, the judgment debtor herein. The petition is unopposed.

Background

On November 24, 2017, the petitioner filed a warrant against Ritu Choudary Individually and as a Responsible Person of Shana Forever Incorporated in the amount of \$2,931.46 plus interest at 14.50% per annum (on \$1,023.84) in the office of the Clerk of the County of Queens (the “warrant”). The warrant has the status of a judgment under New York State Tax Law articles 28 and 29. On December 13, 2017, the warrant was served upon Ritu Choudary, as required by CPLR 5222(d) On July 15, 2024, the warrant was transcribed in the office of the Clerk of the County of Nassau. The warrant remains unsatisfied.

Motion Seq. 001

Petitioner moves for an order pursuant to CPLR 5225(b) and 5227 directing the garnishee respondent, TD Bank, to turn over all monies held by the judgment debtor. Counsel for petitioner submits that the total judgment amount, together with interest from April 11, 2024, remains due and unpaid. Counsel for petitioner adds that on April 15, 2024, a restraining notice was duly served upon TD Bank, at its address at 1256 Central Avenue, Albany, New York, 12205, as the garnishee of an account maintained in the name of Ritu Choudary. The restraining notice stated that the sum of \$5,793.06 inclusive of interest and/or penalty as provided by law is due and owing as of April 11, 2024.

Counsel for petitioner adds that, in response to an Information Subpoena with Restraining Notice served on behalf of the petitioner, TD Bank informed petitioner’s counsel that it is holding the sum of \$5,086.02 in a joint account maintained by said judgment debtor in the name of Ritu Choudary (doc. 1) and Tajinder Singh. Singh is a joint tenant of that account. Petitioner submits that Singh has been served herewith pursuant to CPLR 308(4).

Based on the foregoing, petitioner requests an order directing the garnishee respondent, TD Bank, to turn over to petitioner the sum of \$5,086.02, plus interest and additional penalties as provided by law, in its possession and belonging to the judgment debtor.

Discussion

“CPLR article 52 sets forth procedures for the enforcement of money judgments in New York” (*Matter of Sirotkin v Jordan, LLC*, 141 AD3d 670, 671 [2d Dept 2016]). “CPLR 5225(b) provides for an expedited special proceeding by a judgment creditor to recover money or other personal property belonging to a judgment debtor against a person in possession or custody of money or other personal property in which the judgment debtor has an interest in order to satisfy a judgment” (*Matter of Signature Bank v HSBC Bank USA, N.A.*, 67 AD3d 917, 918 [2d Dept 2009] [internal citation and quotation marks omitted]; *Matter of Sirotkin v Jordan*, 141 AD3d at 671). “In support of a [proceeding] commenced pursuant to CPLR 5225(b), a judgment creditor must make an evidentiary showing establishing that ‘the judgment debtor has an interest in the property held by the third party, and then must demonstrate either that the judgment debtor is entitled to possess the property or that the judgment creditor has a right to the property superior to that of the party who possesses it’” (*Matter of Sirotkin v Jordan*, 141 AD3d at 671, quoting *Matter of Miraglia v Essex Ins. Co.*, 96 AD3d 945, 945 [2d Dept 2012]).

Where a person other than the judgment debtor has an actual, current interest in the fund or property sought to be garnished, a special proceeding against the garnishee must include that other person as a necessary party (*see Swezey v Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 87 AD3d 119 [1st Dept 2011]; *Citibank (S.D.) v Island Fed. Credit Union*, 190 Misc 2d 694 [App. Term, 2d Dept 2001]). Where a judgment creditor tries to collect against a joint account, only one of whose tenants is a judgment debtor, due process requires that none of the funds in the joint account be disbursed without advising both the judgment debtor and the other tenant of the account (*see Lane v Johnson*, 283 NY244 [1940]; *Mendel v. Chervanyou*, 147 Misc 2d 1056 [Civ Ct, Kings County 1990]; *Matter of Long Is. Jewish Med. Ctr. v Sovereign Bank*, 15 Misc 3d 1041 [Sup Ct, Queens County 2007]). A failure of the petitioner judgment creditor to join the other tenant in the judgment debtor's joint bank accounts as a necessary party requires that the special proceeding to require the turnover of all funds in the joint bank accounts be dismissed since any decision on the merits would necessarily involve a determination of the rights of both joint tenants in the accounts (*New York State Commr. of Taxation & Fin. v TD Bank, N.A.*, 55 Misc 3d 395, 400 [Sup Ct, Albany County 2016] *citing Bergdorf Goodman, Inc. v Marine Midland Bank*, 97 Misc 2d 311 [Civ Ct, New York County 1978]).

Here, the petitioner has made the requisite evidentiary showing that the judgment debtor has an interest in the funds currently in the custody of TD Bank, and that, as a result of the judgment, the petitioner has an interest therein superior to that of the judgment debtor (*see Matter of Sirotkin v Jordan*, 141 AD3d at 671). Further, as both the judgment debtor and that the joint tenant respondent were properly served with the turnover application (docs. 6, 8), their default is deemed an admission and/or concession that the bank account proceeds belong to them. A default in answering under New York Law establishes for liability purposes the allegations of the pleading (complaint or petition) (*see McClelland v Climax Hosiery Mills*, 252 NY 347 [1930]). The purpose of CPLR 5225 is to resolve in a plenary proceeding the respective rights and interests of parties to their respective interests in bank accounts (*see Matter of Ruvolo v Long Is. R.R.Co.*, 45 Misc 2d 136 [Sup Ct, Queens County 1965]).

Thus, in the end, petitioner's application herein for a turnover order, pursuant to CPLR 5225 is **GRANTED in its entirety**.

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CONCLUSION

Accordingly, it is hereby,

ORDERED, that the garnishee-respondent, TD Bank NA, is directed to turn over to petitioner the sum of \$5,086.02, plus interest and additional penalties as provided by law, in the possession of respondent and belonging to the judgment debtor.

Any relief requested not specifically addressed herein is **DENIED**.

This constitutes the Decision and Order of this Court.

Submit Judgment on Notice.

Dated: Mineola, New York
January 16, 2025

ENTER:



HON. SARIKA KAPOOR, A.J.S.C.

ENTERED

Jan 24 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE