

NY Tower Capital LLC v Foster
2026 NY Slip Op 31185(U)
March 23, 2026
Supreme Court, Kings County
Docket Number: Index No. 522994/2024
Judge: Anne J. Swern
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At an IAS Term, Part 75 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 23rd day of March 2026.

PRESENT: HON. ANNE J. SWERN, J.S.C.

-----X

NY TOWER CAPITAL LLC, ISAOA/ATIMA,

Plaintiff,

- against -

SYLVIA FOSTER,

Defendant.

-----X

NY TOWER CAPITAL LLC, ISAOA/ATIMA,

Petitioner,

- against -

MUNICIPAL CREDIT UNION,

Respondent,

-----X

JOINT DECISION & ORDER

Index No.: 522994/2024

Motion Seq.: 001

Return Date: 1/29/2026

(Action No. 1)

Index No.: 528298/2024

Motion Seq.: 001

Return Date: 1/29/2026

(Action No. 2)

Recitation of the following papers as required by CPLR § 2219 (a):

Papers Numbered in Action No. 1:

NYSCEF Doc No. in Action No. 1:

Notice of Motion and Supporting Documents 13-18

Affirmation in Opposition and Supporting Documents..... 43-45

Papers Numbered in Action No. 2:

NYSCEF Doc No. in Action No. 2:

Order to Show Cause and Supporting Documents 1-11, 14

Affirmation in Opposition and Supporting Documents..... 16-26

Upon the foregoing papers, the joint order of the Court in Actions Nos. 1 and 2 is as follows:

On August 26, 2024, a Judgment by Confession in the amount of approximately \$1.3 million (the judgment) was entered in favor of NY Tower Capital LLC, ISAOA/ATIMA (Tower), and against Sylvia Foster (Foster), as plaintiff and defendant, respectively, in Action

No. 1 (NYSCEF Doc No. 8 in Action No. 1).¹ At the time, Foster maintained three personal accounts with Municipal Credit Union (MCU), defendant in Action No. 2: (1) a savings account with the last four digits of 6919; (2) a checking account with the last four digits of 1918; and (3) a vacation club account also with the last four digits of 6919 (the latter being a subaccount of Foster's savings account) (collectively, Foster's accounts).

In September 2024, Tower served a subpoena with restraining notice on MCU (NYSCEF Doc No. 3 in Action No. 2). To unfreeze her accounts, Foster (in response) served MCU with an Exemption Claim Form, dated September 27, 2024, asserting that her accounts (without differentiation) contained "[s]ocial security" and "[p]ayments from pensions and retirement accounts" (NYSCEF Doc No. 18 in Action No. 1). On October 9, 2024, MCU notified Tower's counsel by email that "[t]he funds [in Foster's accounts] ha[ve] been released due to [Foster's] exemption claim form," and that "[t]here [are] currently no funds on hold" (NYSCEF Doc No. 9 in Action No. 2).

Currently, two motions are before the Court, one in Action No. 1 and the other in Action No. 2, both by Tower, seeking enforcement of the judgment as against Foster's accounts with MCU.

In Action No. 1, Tower (by notice of motion, dated October 4, 2024), seeks an order, "pursuant to CPLR § 5222-a, rejecting the exemption claim form purportedly served by . . . Foster[,] and requiring . . . [MCU] to continue to hold the funds in [Foster's] account[s] and [to] comply with any execution levied pursuant to the judgment" (NYSCEF Doc No. 13 in Action No. 1).

¹ Foster's subsequent attempt to invalidate the judgment failed when, in a separate plenary action which she and her LLC commenced against Tower under index No. 528745/2024, Justice Francois Rivera of this court, in a decision and order, dated January 26, 2026, upheld its validity (*see 1669 Union St LLC and Sylvia Foster v NY Tower Capital LLC*, 2026 NY Slip Op 30099[U] [Sup Ct, Kings County 2026]).

In Action No. 2, Tower moves, by order to show cause, dated October 18, 2024 (Boddie, J.), “pursuant to CPLR §§ 5225 (b) [and] 5227 directing MCU to turn over to . . . Tower the sums held in the account(s) of . . . Foster . . . up to the amount . . . remaining due[,] pursuant to the judgment” (NYSCEF Doc No. 14 in Action No. 2).

Both motions are *denied without prejudice*. Tower failed to demonstrate compliance with CPLR § 5222-a in order to overcome Foster’s contention that some or all of the funds in her MCU accounts were exempt. As explained by MCU in its opposition to Tower’s order to show cause in Action No. 2 (and which is equally applicable as an opposition to Tower’s motion in Action No. 1), the requirements of CPLR § 5222-a were *not* complied with because Tower:

“[1] has not submitted an affirmation or affidavit showing a factual basis upon which there is a reasonable belief that [Foster’s] account[s] contained non-exempt funds and the amount of such non-exempt funds in violation of CPLR [§] 5222-a (5) (d);

[2] did not timely serve MCU with a procedurally proper motion prior to the statutory date upon which [MCU] could release the funds. . . ; [and]

[3] did not [timely] obtain a TRO or court order with respect to its objection to . . . Foster’s exemption claim . . . , as required by CPLR [§] 5222-a (5) (d).”²

The parties’ remaining contentions have been considered and found to be either without merit or academic in light of the Court’s determination.

Accordingly, it is hereby

ORDERED that in Action No. 1, Tower’s motion in Seq. No. 1 *denied without prejudice*; and it is further

ORDERED that in Action No. 2, Tower’s order to show cause in Seq. No. 1 is likewise *denied without prejudice*; and it is further

² MCU’s Counsel’s Affirmation in Opposition, dated December 5, 2024, ¶ 2 (NYSCEF Doc No. 16 in Action No. 2).

ORDERED that Tower's counsel is directed to electronically serve a copy of this joint order with notice of entry on the other parties' respective counsel, and, to ensure that Foster (as judgment debtor) receives notice, also by first-class mail, return receipt requested, on Sylvia Foster at 95 Linden Boulevard, Apt 28-B, Brooklyn, New York 1226-3333; and to electronically file an affidavit of service thereof with the Kings County Clerk in both Actions No. 1 and 2.

This constitutes the joint order of the Court to be electronically filed with notice of entry in both Actions Nos. 1 and 2.

E N T E R:



Hon. Anne J. Swern, J.S.C.

Dated: 3/23/2026