

Hill v Ameritax, Inc.

2012 NY Slip Op 32684(U)

October 17, 2012

Sup Ct, Queens County

Docket Number: 16959/12

Judge: Howard G. Lane

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MEMORANDUM

SUPREME COURT - QUEENS COUNTY
IA PART 6

JACQUELINE HILL, et al.,
Plaintiff,

BY: **LANE, J.**

DATED: October 17, 2012

-against-

INDEX NO.: 16959/12

AMERITAX, INC., et al.,
Defendants.

MOTION DATE:
September 18, 2012

MOTION CAL. NO.: 15

MOTION SEQUENCE NO.: 1

Those branches of plaintiffs' Order to Show Cause seeking an order restraining all accounts at JP Morgan Chase Bank belonging to Ameritax, Inc. ("Ameritax") and restraining all accounts at JP Morgan Chase Bank belonging to Joey Singh, which branches are in essence, a request for an Order of Attachment, are hereby granted to the following extent:

This action was commenced on or about August 16, 2012 seeking, inter alia, money damages in an amount no less than \$125,000.00 for conversion, fraud and breach of contract by defendants. Plaintiffs argue that they are entitled to "a freezing of Mr. Singh's and Ameritax's accounts as they cannot abscond with the funds" (¶ 41 Affidavit of Jacqueline Hill's in Support of Order to Show Cause).

Pursuant to CPLR 6201(3), an order of attachment can be granted "where the plaintiff has demanded and would be entitled, in whole or in part, or in the alternative, to a money judgment

against one or more defendants, when: . . .the defendant, with intent to defraud his creditors or frustrate the enforcement of a judgment that might be rendered in plaintiff's favor, has assigned, disposed of, encumbered or secreted property, or removed it from the state or is about to do any of these acts . . ."

"Our courts have repeatedly emphasized that attachment is a 'harsh' and 'extraordinary' remedy which must be construed 'strictly in favor of those against whom it may be employed.' Thus, attachment should not be lightly granted as it 'runs counter to the fundamental common-law concept that before depriving a party of his property, opportunity for hearing should be offered.'" (*Interpetrol Bermuda, Ltd. v. Trinidad and Tobago Oil Co. Ltd.*, 513 NYS2d 598 [Sup Ct, NY County 1987][internal citations omitted]).

"Under New York law, therefore, a party is entitled to an order of attachment pursuant to CPLR 6201(3) upon demonstrating that: (1) it has stated a claim for a money judgment; (2) it has a probability of success on the merits; (3) the defendant with intent to defraud his creditors or frustrate the enforcement of a judgment that might be rendered in plaintiff's favor, has assigned, disposed of, encumbered or secreted property, or removed it from the state or is about to do any of these acts; and (4) the amount demanded from the defendant is greater than the amount of all counterclaims known to the

party seeking attachment" (*JSC Foreign Economic Association Technostroyexport v. International Development and Trade Services, Inc.*, 396 F Supp2d 482 [SDNY 2004][internal quotation marks and internal citations omitted]).

Plaintiffs establish a prima facie case that the elements of CPLR 6201(3) have been met. In support of their motion for an order of attachment, the plaintiffs submit, inter alia, an affidavit of plaintiff, Jacqueline Hill and an attorney's affirmation. Said documents establish that: plaintiffs retained the services of defendant, Ameritax, at the request of defendant, Joey Singh, plaintiffs made and delivered to defendant, Joey Singh, checks payable to HSBC and other financial institutions, all checks were deposited into the same account at JP Morgan Chase, this account is not owned by HSBC, but rather it is Ameritax/defendant Joey Singh's accounts, plaintiffs contacted HSBC and were informed that no payments had been made, plaintiffs contacted defendant Joey Singh, who was affiliated with Ameritax and he stated that he deposited all of the checks into his escrow account.

Defendant Ameritax does not deny the essential claims of plaintiffs, but instead in opposition, defendant Ameritax submits an affidavit averring that: "[t]he activities alleged in the Complaint were not the actions or activities of Ameritax. To the extent that the description of these activities are true and accurate, they were not directed by Ameritax or sanctioned by

Ameritax. The individual alleged to be responsible has worked for our company as an independent contractor but in no way was he authorized to carry out the activities which have been alleged" (¶ 2 Affidavit of Jagjit S. Bhalla in Opposition to Order to Show Cause). Defendants, Joey Singh and Louis Cardenas did not appear or submit any opposition. The papers submitted by defendant fail to elucidate other than in vague, illusory and incoherent terms, any dispute to plaintiffs' claims of conversion of plaintiffs' funds. "Facts appearing in the movant's papers which the opposing party does not controvert, may be deemed to be admitted" (*Kuehne & Nagel, Inc. v. F.W. Baiden*, 36 NY2d 539, 544[1975]; *Schneider Fuel Oil, Inc. v. DeGennaro*, 238 AD2d 495, 496 [2d Dept 1997]; *Sports Channel Assocs. v. Sterling Mets, L.P.*, 25 AD3d 315 [1st Dept 2006]).

The court finds that the plaintiffs have made a prima facie case for an Order of Attachment which defendants have failed to rebut. Plaintiffs have shown a probability of success on the merits of the underlying action. No proof has been submitted in this case to dispute plaintiffs' claims that over \$125,000.00 of their funds were converted by Ameritax and Joey Singh. Plaintiffs have demonstrated that an Order of Attachment is warranted under CPLR 6201(3) by showing that defendants with intent to frustrate the enforcement of a judgment that might be rendered in plaintiffs' favor has or is about to dispose of the monies in JP Morgan Chase Bank accounts. Indeed, defendant

Ameritax concedes in its Affidavit in Opposition that notwithstanding its tacit acknowledgment that there are funds in its bank account that are or were owned by plaintiffs, Ameritax intends to continue to expend and dispose of these monies to fund its business operation. Each expenditure defendant Ameritax makes from the bank account is another dollar unavailable to plaintiffs in the enforcement of a money judgment that might be rendered in plaintiffs' favor. Defendants apparently have no counterclaims. As a prima facie case for an Order of Attachment has been made, this branch of the order to show cause is granted and an undertaking is to be provided in the amount of \$500 in compliance with CPLR 6212(b).

The remaining branches of the Order to Show Cause regarding the production of statements and accounting of funds are denied as plaintiffs have failed to establish a prima facie entitlement to such relief.

Accordingly, it is

ORDERED that plaintiffs' motion for an Order of Attachment is granted, it is further

ORDERED that the amount to be secured by this Order of Attachment, inclusive of probable interest, costs and Sheriff's fees and expenses, shall be \$125,000.00, and it is further

ORDERED, that plaintiffs' undertaking be fixed in the amount of \$500.00 of which the sum of \$500.00 is conditioned that plaintiffs shall pay to defendants all costs and damages,

including reasonable attorney's fees, which may be sustained by reason of the attachment if defendants recover judgment or if, upon challenge by defendants, it is finally decided that plaintiffs were not entitled to an attachment of the bank accounts at JP Morgan Chase Bank that defendants Ameritax and Joey Singh have an interest, and the balance conditioned that the plaintiffs pay to the Sheriff of the City of New York, all of his allowable fees; and it is further

ORDERED, that the Sheriff of the City of New York or the Sheriff of any county of the State of New York, levy within its jurisdiction, at any time before final judgment, any such property in possession or control of JP Morgan Chase Bank in which defendants, Ameritax and Joey Singh have an interest, including any bank account, as well as satisfy the amount specified in this order, to wit, the sum of \$125,000.00 and that said Sheriff proceed hereon in the manner and make said Sheriff's return within the time prescribed by law.

Settle an Order of Attachment consistent with this decision.

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Howard G. Lane, J.S.C.