

Hearst Magazines v Greenstone/Fontana Corp.

2016 NY Slip Op 30367(U)

February 22, 2016

Supreme Court, New York County

Docket Number: 101809/2010

Judge: Saliann Scarpulla

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This opinion is uncorrected and not selected for official publication.

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2/24/16
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

HON. SALIANN SCARPULLA

PRESENT: _____
Justice

PART 39

HEARST MAGAZINES,

INDEX NO. 101809/10

-v-

MOTION DATE _____

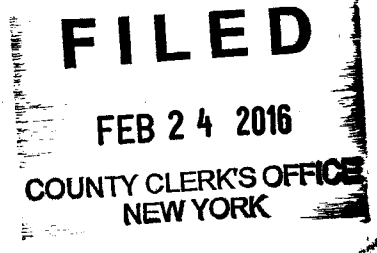
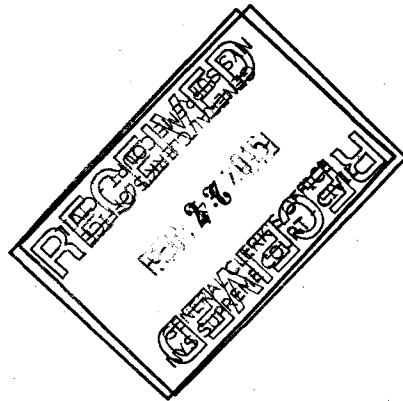
GREENSTONE / FONTANA CORP.,

MOTION SEQ. NO. 004

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits	_____	No(s). _____
Answering Affidavits — Exhibits	_____	No(s). _____
Replying Affidavits	_____	No(s). _____

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the accompanying memorandum decision.



MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 2/22/16

J.S.C.

HON. SALIANN SCARPULLA

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 19

-----X
HEARST MAGAZINES, a Division of Hearst
Communications, Inc.

Plaintiff,

Index No. 101809/2010

-against-

GREENSTONE/FONTANA CORP.,
RONALD M. GREENSTONE, and JEANNE
FONTANA,

Defendants.

-----X
For Plaintiff: Defendant Ronald Greenstone *pro se*
Law Offices of Bernard D'Orazio & Assoc. P.C.
100 Lafayette Street, Suite 601
New York, NY 10031

FILED

FEB 24 2016

COUNTY CLERK'S OFFICE
NEW YORK

HON. SALIANN SCARPULLA, J.:

Plaintiff/judgment creditor Hearst Magazines ("Hearst"), as assignee of non-party Lidestri Foods, Inc. ("Lidestri Foods"), moves pursuant to CPLR 5225 and 5226 for a post-judgment order compelling defendant/judgment debtor Ronald M. Greenstone to: a) make monthly installment payments to Hearst until the judgment against him is paid; and b) deliver to the Sheriff of New York County for sale certain artwork in Greenstone's possession, the proceeds of which would be applied toward payment of the judgment.

Hearst commenced this action to recover payment for an advertisement placed in Hearst's Good Housekeeping magazine. Lidestri Foods paid its agent, defendant advertising company Greenstone/Fontana Corp. for the advertisement, but Greenstone/Fontana failed to remit payment to Hearst. Prior to trial, Greenstone/Fontana

Corp. filed a petition for relief under the United States Bankruptcy Code. Hearst then proceeded to trial against the individual defendants.

At the conclusion of the nonjury trial, I found in favor of Hearst on its claims against Greenstone and Fontana for breach of fiduciary duty and conversion. On March 4, 2015, judgment was entered in favor of Hearst, and against Greenstone and Fontana, jointly and severally, in the total amount of \$88,353.81. Fontana has appealed the judgment, but Greenstone has not, and his time to do so has expired.

After taking post-judgment discovery from Greenstone, Hearst now moves for an order requiring Greenstone to turn over to Hearst certain Norman Rockwell paintings he has in his possession, long ago promised to his daughter. Further, noting that Greenstone has formed a new advertising company, Greenstone Marketing, LLC, Hearst also seeks an order requiring Greenstone to make installment payments to Hearst in the minimum amount of \$5,000 per month to pay down the judgment.

In support of its motion, Hearst submits Greenstone's deposition testimony, at which he admitted that he owns three Norman Rockwell paintings that he purchased twenty years ago. Greenstone testified that he purchased the paintings for under \$10,000, and that they have been promised to his daughter.

Hearst also submits a profit and loss statement supplied by Greenstone. This statement shows that, for the six months ended June 30, 2015, Greenstone Marketing, LLC had net profits of \$89,892.47. The profit and loss statement also shows that Greenstone charges certain expenses, such as his automobile, to Greenstone Marketing' LLC. Hearst asks that I recast those expenses as income to Greenstone. Further, at his

post-judgment deposition Greenstone testified that he receives a Social Security payment of \$2,400.00 per month. Based on the foregoing, Hearst asks that I impute income of \$240,000 per year to Greenstone, and that I require Greenstone to pay at least \$5,000 per month toward the judgment.

In opposition, Greenstone submits a sworn statement¹ in which he alleges that Greenstone Marketing, LLC's net income has been reduced and business expenses have increased in the past six months. Greenstone further states that, in January, 2016, he began to take a fixed salary of \$4,000 per month. Greenstone asks that in deciding this motion I also take into consideration that he has substantial health issues, for which he requires continuing care and physical therapy. Greenstone asks that I award a much more modest installment payment to Hearst.

Discussion

CPLR 5225(a) provides that

- (a) Property in the possession of judgment debtor. Upon motion of the judgment creditor, upon notice to the judgment debtor, where it is shown that the judgment debtor is in possession or custody of money or other personal property in which he has an interest, the court shall order that the judgment debtor pay the money, or so much of it as is sufficient to satisfy the judgment, to the judgment creditor and, if the amount to be so paid is insufficient to satisfy the judgment, to deliver any other personal property, or so much of it as is of sufficient value to satisfy the judgment, to a designated sheriff. Notice of the motion shall be served on the judgment

¹ Greenstone is representing himself on this post-trial motion. His submission to me is the form of a statement, initialed and notarized on every page. Although not in proper form, I accept it in accordance with my ability to disregard defects and mistakes that do not affect substantial rights of parties. *See* CPLR 2001.

debtor in the same manner as a summons or by registered or certified mail, return receipt requested.

At oral argument on this motion, I noted that although Greenstone has not taken an appeal of the judgment, Fontana has done so. In the event that the judgment is overturned on appeal against Fontana, Greenstone may have an opportunity to also have the judgment overturned against him, even though he has not directly appealed the judgment. For this reason, I denied Hearst's demand for a turnover order of the Norman Rockwell paintings. Those paintings are unique, and if they are sold and my judgment is later overturned, Greenstone may not have the opportunity to reacquire them. My denial of this part of Hearst's motion is without prejudice to renewal after the determination of Fontana's appeal.

CPLR 5226 provides that:

Upon motion of the judgment creditor, upon notice to the judgment debtor, where it is shown that the judgment debtor is receiving or will receive money from any source, or is attempting to impede the judgment creditor by rendering services without adequate compensation, the court shall order that the judgment debtor make specified installment payments to the judgment creditor. . . . In fixing the amount of the payments, the court shall take into consideration the reasonable requirements of the judgment debtor and his dependents, any payments required to be made by him or deducted from the money he would otherwise receive in satisfaction of other judgments and wage assignments, the amount due on the judgment, and the amount being or to be received, or, if the judgment debtor is attempting to impede the judgment creditor by rendering services without adequate compensation, the reasonable value of the services rendered.

To date, Greenstone has not paid any amount toward the judgment, and he is earning income that may properly be applied toward the judgment. The dispute between Hearst and Greenstone centers on how much income he is currently

receiving, and the amount that would be fair and equitable for him to pay to Hearst on a monthly basis.

Having reviewed the submissions of the parties and having considered “the reasonable requirements of the judgment debtor and his dependents, any payments required to be made by him or deducted from the money he would otherwise receive in satisfaction of other judgments and wage assignments, [and] the amount due on the judgment” I find that Greenstone should make installment payments of \$2,000 per month to pay down the judgment. In issuing this order, I am mindful of the fact that 1) the judgment amount is less than \$100,000; 2) Greenstone has substantial credit card debt; 3) Greenstone owes back taxes; and 4) the judgment is against both Greenstone and Fontana, thus, if my judgment is affirmed on appeal, Fontana may be required to contribute to payment of the judgment.

In accordance with the foregoing, it is

ORDERED that plaintiff Hearst Magazine’s motion for relief pursuant to CPLR 5225 and 5226 is granted in part and denied in part; and it is further

ORDERED that plaintiff Hearst Magazine’s demand that defendant Ronald Greenstone turnover certain Norman Rockwell paintings in his possession is denied without prejudice to renewal; and it is further

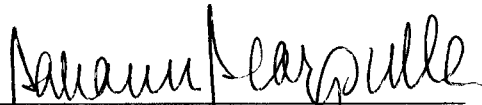
ORDERED that plaintiff Hearst Magazine's demand that defendant Ronald Greenstone make installment payments toward the judgment issued in this action is granted; and it is further

ORDERED that defendant Ronald Greenstone make payments to plaintiff Hearst Magazines of \$2,000 per month, beginning on April 1, 2016, toward satisfaction of the judgment.

This constitutes the decision and order of the Court.

Dated: New York, New York

ENTER


Saliann Scarpulla, J.S.C.

FILED
FEB 24 2016
COUNTY CLERK'S OFFICE
NEW YORK