SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 12

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JASON SCHEAR, EDUARD STANCIU, BAREKET DRORI, STELLA KIM, DANA BEIERLE, MICHAEL MARTINEZ, and ODIN REDD, on behalf of themselves and other similarly situated,

Petitioners,

-against-

CITIGROUP INC.,

Respondent,

-and-

MASAHIRO ORIGUCHI and GUCHIMEN NY LLC,

Intervenor-Respondents.

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Index No. 159986/15

Motion seq. nos. 001, 002

**DECISION AND ORDER**

BARBARA JAFFE, JSC:

| **For petitioners:** | **For intervenor-respondents:** | **For Citigroup:** |
|---|---|---|
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Petitioners bring this proceeding pursuant to CPLR 5225(b) to enforce a restraining notice and for an order directing the turnover of proceeds from an account maintained by respondent Citigroup Inc. Relying on Citigroup's responses to an information subpoena, petitioners allege that the account contains assets belonging to the judgment debtor, intervenor-respondent Masahiro Origuchi, and argue that they are therefore entitled to satisfy their judgment against Origuchi with it. (NYSCEF 1, 7). On or about March 3, 2016, Citigroup interposed an answer, wherein it denied, as pertinent here, that the "account is also in the name of or owned by

. . . Origuchi." (Motion seq. no. 001; NYSCEF 36).

Before interposing an answer, intervenor-respondents Masahiro Origuchi and GuchiMen NY LLC move pursuant to CPLR 3211(a)(7), 3013, and 404(a) for an order dismissing the petition, and pursuant to CPLR 5240 for an order vacating a restraining notice issued in 2015. Petitioners oppose the motion and cross-move pursuant to CPLR 408 for an order permitting discovery. Intervenor-respondents oppose. (Motion seq. no. 002).

## I. PERTINENT FACTS

On or about January 24, 2012, petitioners commenced an action in the Southern District of New York against intervenor-respondent Origuchi, among others, alleging various violations under the Fair Labor Standards Act and Labor Law (FLSA action). (NYSCEF 25). On October 10, 2012, GuchiMen NY and nonparty GuchiMen & Company Ltd. were formed in New York, the latter as the former's sole member. Origuchi is president of both entities. (NYSCEF 17-18, 39, 41).

On February 20, 2015, petitioners obtained a judgment in the FLSA action for $800,000 against Origuchi, among others. (NYSCEF 2, 25). On August 12, 2015, petitioners served an information subpoena and restraining notice on Citigroup requesting the identification of accounts held by Origuchi, account applications, and/or pertinent account statements, and to the extent that accounts existed, a restraint on them. In reply, by letter dated September 8, 2015, Citigroup identified brokerage account C17067965, opened on October 25, 2012, furnished the application for it, and imposed the requested restraint. (NYSCEF 4-5). The account application reflects that (1) GuchiMen NY is the account owner, (2) Origuchi is an "additional" account owner, and (3) on the signature page, Origuchi signed it as "Account Owner," leaving blank two

other subscription lines for "Additional Account Owner[s]." (NYSCEF 32, 39). On or about September 29, 2015, this turnover proceeding commenced.

## II. INTERVENOR-RESPONDENTS' MOTION TO DISMISS

### A. Contentions

In support of their motion to dismiss, intervenor-respondents contend that the restraining notice is invalid and unenforceable because when it was served, neither Citigroup nor GuchiMen NY owed a debt to Origuchi, and they maintain that the petition is based on vague and conclusory allegations, and that petitioners fail to establish that Origuchi maintained an interest in the account. Rather, they allege that GuchiMen NY is the sole owner of the account, and that Origuchi is its "operating manager" who owns no interest in the account, in GuchiMen & Co., or in any other entity which owns and/or controls GuchiMen NY. They also assert that GuchiMen NY is an asset management company and that the bank account solely contains investor assets. (NYSCEF 19).

By affidavit dated December 22, 2015, Origuchi alleges that his sister Mari Owada owns both GuchiMen entities, that he opened the account in the name of GuchiMen NY "for the express and sole purpose of carrying on [its] business," and that he was advised by a Citigroup employee that his designation on the application as an additional owner was for "internal" purposes only. (NYSCEF 16).

In opposition to the motion to dismiss, petitioners characterize the account in issue as a joint account, by which it presumes, in accordance with Banking Law § 675, that Origuchi owns the whole account, and argue that the presumption is not rebutted by Origuchi's bare, self-serving affidavit. They thus claim that they satisfy the requirement set forth in CPLR 5225 that Origuchi

has an interest in the account. (NYSCEF 23).

Petitioners argue that there are numerous indicia of Origuchi's ownership of the account: his personal information is listed under fields for both himself and GuchiMen NY, he signed in his individual capacity only, GuchiMen NY assets were used to purchase his home, and the account is linked to a checking account to which he and his wife have access. They also assert that Origuchi's present contention that GuchiMen NY manages assets is belied by his representation on the application that GuchiMen NY has neither investment knowledge nor experience, and observe that intervenor-respondents offer no supporting evidence for their contention that the account contains only nonparty investors' funds. For all of these reasons, petitioners assert that the claim that Origuchi's name appears on the account solely for "internal" purposes is not only false, but is based on inadmissible hearsay. (*Id.*).

In reply, intervenor-respondents argue that Banking Law § 675 is inapplicable, as a joint tenancy may only be created among natural persons. In a new affidavit, dated March 3, 2016, Origuchi alleges that he acquired property on behalf of GuchiMen NY, as "authorized by its controlling member, Mari Owada." (NYSCEF 37-38).

By affidavit dated February 22, 2016, Owada alleges that the "assets that currently reside in the [account] . . . belong to Guchimen NY," and that she is "the source of those assets and intended for them to be placed in the [a]ccount to be managed and invested by Mr. Origuchi on [her] behalf through Guchimen NY." She also claims to have leased to Origuchi the property purchased by GuchiMen NY "for his personal and professional use." (NYSCEF 41).

B. Governing law

1. Pertinent procedural law

A party may move at any time for an order dismissing a cause of action asserted against it on the ground that the pleading fails to state a cause of action. (CPLR 3211[a][7]). In deciding the motion, the court must liberally construe the pleadings, accept the alleged facts as true, and accord the non-moving party the benefit of every possible favorable inference. (*Nonnon v City of New York*, 9 NY3d 825, 827 [2007]; *Leon v Martinez*, 84 NY2d 83, 87 [1994]). Pursuant to CPLR 3013, pleadings must be "sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transaction, intended to be proved and the material elements of each cause of action or defense." (*High Definition MRI, PC v Travelers Cos., Inc.*, 137 AD3d 602, 602 [1st Dept 2016]).

A party to a special proceeding may move to dismiss based on "an objection in point of law," but where questions of fact are presented, dismissal is inappropriate. (CPLR 404[a]; *eg*, *Matter of People ex rel. Spitzer v APOCA/Standard Parking, Inc.*, 11 AD3d 995, 996 [4th Dept 2004]; *Matter of Prudential Blake Realty Inc. v Schenectady Indus. Dev. Agency Inc.*, 255 AD2d 622, 624 [3d Dept 1998]). A motion pursuant to CPLR 404 must be denied where the petitioner "states any facts upon which he is prima facie entitled to relief." (*Matter of County of Niagara v Bania*, 6 AD3d 1223, 1224 [4th Dept 2004]). If denied, the court has discretion to grant the movant leave to serve an answer (CPLR 404).

2. Pertinent substantive law

After a judgment is entered, a judgment creditor may pursue payment to satisfy the judgment from a third-party garnishee "in possession or custody of money or other personal

property in which the judgment debtor has an interest." (CPLR 5225[b]; *see Matter of Anderson Kill, P.C. v Anderson Kill, PC*, 134 AD3d 552, 553 [1st Dept 2015]). The judgment creditor bears the burden of showing that (1) the judgment debtor has an interest in the property of the third-party garnishee, and (2) either the judgment debtor is entitled to the property or the judgment creditor's rights are superior to those of the possessing party. (*Matter of Sirotkin v Jordan, LLC*, 141 AD3d 670, 670 [2d Dept 2016]; *see also Lang v State*, 258 AD2d 165, 170 [1st Dept 1999]).

A bank deposit in the name of both the depositor and another person, and payable to either, "shall become the property of such persons as joint tenants." (Banking Law § 675[a]; *see generally Matter of Juedel*, 280 NY 37, 40 [1939]). Thus, the opening of a joint account creates a rebuttable presumption "that each named tenant is possessed of the whole of the account so as to make the account vulnerable to levy of money judgment" pursuant to CPLR 5225. (*Matter of JRP Old Riverhead, Ltd. v Hudson City Sav. Bank*, 106 AD3d 914, 914 [2d Dept 2013]; *Matter of Signature Bank v HSBC Bank USA, N.A.*, 67 AD3d 917, 918 [2d Dept 2009]). However, because a joint tenancy is generally defined as "an estate held by two or more persons jointly, with equal rights to share in its enjoyment during their lives," joint tenancies are generally and typically confined to natural persons. (*Is. Fed. Credit Union v Smith*, 60 AD3d 730, 732 [2d Dept 2009]).

C. Analysis

As the account in issue is jointly owned by Origuchi and a corporate entity, it may not be presumed that Origuchi "is possessed of the whole of the account." (*See Is. Fed. Credit Union, supra*). Moreover, Origuchi's denial that he owns any of the assets in the account and Owada's

assertion that she owns the account, suffice to show, in the first instance, that Origuchi has no interest in the Citigroup account and that he is not entitled to its assets. Origuchi's explanation of why his name appears on the account is based on inadmissible hearsay.

However, as petitioners demonstrate that factual issues exist as to whether Origuchi has an interest in the account, as evidenced by Citigroup's characterization of it, by the documentation reflecting Origuchi's designation as an additional owner, and by the other indicia of ownership identified by petitioners, intervenor-respondents fail to demonstrate, as a matter of law, that Origuchi has no interest in the account and that he is not entitled the assets. (*See Rozales v Pegalis & Wachsman, P.C.*, 127 AD2d 577, 578 [2d Dept 1987] [petitioners' allegation that law firm presently possessed funds belonging to judgment debtor sufficiently "me(t) pleading requirements of CPLR 5225(b)"]; *see also Matter of Prudential Blake Realty Inc.*, 255 AD2d at 624 [fact issues precluded dismissal of petition]).

Petitioners' pleadings, in which they identify the underlying judgment, the account, and Origuchi's interest in it, along with their supporting papers, sufficiently apprise intervenor-respondents of the nature of the action (*see Lev v Lader*, 115 AD2d 522, 523 [2d Dept 1985] [order to show cause and supporting papers, while not brought in form of petition, nonetheless sufficient to give notice of "transactions petitioner intends to prove" in CPLR 5225 and 5227 proceeding]), and are thus sufficiently specific.

III. PETITIONERS' CROSS MOTION FOR DISCOVERY

Petitioners seek limited, expedited document discovery to enable them to challenge the facts raised in Origuchi's affidavit in advance of a hearing. (NYSCEF 23). In response, intervenor-respondents contend that given the summary nature of this proceeding, petitioners

have not demonstrated special circumstances warranting discovery, and as petitioners' joint tenancy theory fails as a matter of law, they should not be rewarded with an order permitting discovery. (NYSCEF 37).

With limited exceptions not applicable here, there is no right to discovery in a special proceeding. Pursuant to CPLR 408, however, the court has discretion to permit disclosure, but it "must balance the needs of the party seeking discovery against such opposing interests as expediency and confidentiality." (*Matter of Bramble v New York City Dept. of Educ.*, 125 AD3d 856, 857 [2d Dept 2015]; *Matter of Zulu v Egan*, 1 AD3d 649, 649 [3d Dept 2003]). Here, given the factual issues (*supra* II.C.), and as neither expediency nor confidentiality are implicated, petitioners are entitled to limited discovery to prepare for the hearing or trial. (*See Margolis v New York City Tr. Auth.*, 157 AD2d 238, 242-243 [1st Dept 1990] [given existence of triable issues, "petitioner (was) entitled to . . . information in order adequately to prepare for trial"]).

## IV. PETITIONERS' APPLICATION

Given plaintiffs' entitlement to limited discovery, I need not address the petition.

## V. CONCLUSION

Accordingly, it is hereby

ORDERED, that the petition is held in abeyance pending the completion of discovery; it is further

ORDERED, that intervenor-respondents are directed to serve an answer within five days after service of this order with notice of entry, and that either party may re-notice the matter pursuant to CPLR 404(a); it is further

ORDERED, that the restraining notice dated August 12, 2015 remain in effect pending

resolution of the petition; it is further

ORDERED, that intervenor-respondents' motion for an order dismissing the petition and vacating the August 12, 2015 restraining notice is denied; and it is further

ORDERED, that petitioners' cross motion for an order permitting discovery is granted to the extent that petitioners' notice of discovery and inspection dated February 12, 2016 annexed to petitioners' papers (NYSCEF 33) is deemed served on intervenor-respondents, and intervenor-respondents shall have 20 days to respond thereto except to the extent certain responsive documents were included in intervenor-respondents' moving papers.

ENTER:

Barbara Jaffe, JSC

HON. BARBARA JAFFE

DATED: August 24, 2016 (filed October 27, 2017)
New York, New York