

MLF3 NWJ LLC v Signature Group Invs. LLC

2017 NY Slip Op 31892(U)

September 5, 2017

Supreme Court, New York County

Docket Number: 152140/2016

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED
Justice

PART 2

-----X

MLF3 NWJ LLC,
Plaintiff,

INDEX NO. 152140/2016

MOTION DATE _____

- v -

MOTION SEQ. NO. 001

SIGNATURE GROUP INVESTMENTS LLC, SIGNATURE
COMMUNITY MANAGEMENT LLC, SIGNATURE COMMUNITY
INVESTMENT GROUP LLC, NICKOLAS JEKOGIAN
Defendant.

DECISION ORDER AND
JUDGMENT

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The following e-filed documents, listed by NYSCEF document number 2, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67

were read on this application to/for Enforce Judgment

Upon the foregoing documents, it is
Ordered that the petition is **granted in part**.

This is a special proceeding by petitioner MLF3 NWJ LLC to enforce a judgment entered in this court in the amount of \$1,569,013.87 against respondent, Nickolas W. Jekogian III (Jekogian). Respondent opposes the petition. After oral argument, and after a review of the parties' papers and the relevant statutes and case law, the petition is **granted in part**.

Background

Petitioner is the assignee of a judgment creditor who entered a judgment (“the New York Judgment”) against Jekogian in this Court in September, 2014. Such judgment originated from a judgment entered against Jekogian in the State of Virginia. The original judgment was obtained after the underlying defendant, Drexel Property Group, LLC, defaulted on a promissory note regarding real property located in Virginia, which note was personally guaranteed by Jekogian.

In March 2016, petitioner commenced the instant special proceeding to enforce the New York Judgment. The respondents are Jekogian and three companies in which he allegedly has a controlling ownership interest: Signature Group Investments, LLC, Signature Community Management, LLC and Signature Community Investment Group, LLC (collectively “the Companies”).

The petition seeks the turnover of any funds held by any of the Companies on Jekogian’s behalf, as well as payment to petitioner of any debts owed by any of the Companies to Jekogian. The petition further seeks to charge Jekogian’s membership interest in any or all of the Companies with payment of the New York Judgment. The petition also seeks the appointment of a receiver to administer and collect any distributions made to Jekogian by the Companies, and the granting of quarterly inspections of the books and records of the Companies.

The parties sharply dispute whether Jekogian has a controlling ownership interest in any of the Companies. However, it is undisputed that he has at least a 1% ownership interest in each of the Companies.

Analysis

CPLR 5225 (b), 5227

Petitioner seeks an order, pursuant to CPLR 5225 (b), directing the Companies to turn over to petitioner any funds held on behalf of Jekogian in full or partial satisfaction of the New York Judgment. CPLR 5225 (b) provides, in relevant part, that

Upon a special proceeding commenced by the judgment creditor, against a person in possession or custody of money or other personal property in which the judgment debtor has an interest, or against a person who is a transferee of money or other personal property from the judgment debtor, where it is shown that the judgment debtor is entitled to the possession of such property or that the judgment creditor's rights to the property are superior to those of the transferee, the court shall require such person to 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...

Since petitioner has failed to identify any specific property or money being held by the Companies on behalf of Jekogian, this branch of the petition is denied.

Petitioner further seeks an order, pursuant to CPLR 5227, directing the Companies to pay to the petitioner any debt owed to Jekogian in full or partial satisfaction of the New York Judgment and to execute and deliver any document necessary to effectuate such payment to petitioners' counsel.

CPLR 5227 provides that, in certain cases, “[u]pon a special proceeding commenced by the judgment creditor, against any person who it is shown is or will become indebted to the judgment debtor, the court may require such person to pay to the judgment creditor the debt upon maturity, or so much of it as is sufficient to satisfy the judgment....”

Here, the petition fails to identify the existence of any specific debts owed by any of the Companies to Jekogian. Therefore, this portion of the petition is denied.

Limited Liability Company Law § 607

Petitioner also moves, pursuant to New York's Limited Liability Company Law § 607, for an order charging the membership interests of Jekogian in the respondent Companies with payment of the Judgment. This section provides that:

(a) On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the membership interest of the member with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the membership interest. This chapter does not deprive any member of the benefit of any exemption laws applicable to his or her membership interest.

(b) No creditor of a member shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited liability company.

“A plain reading of Sections 603(a) and 607 of the Limited Liability Company Law makes it clear that, at best, a creditor...may only obtain an interest in a member's share of the profits and losses of a limited liability company, not the membership interest itself.” *Born to Build, LLC v Saleh*, 43 Misc 3d 1213(A) 2014 NY Slip Op. 50594(U), *4 (Sup Ct Nassau County, 2014).

Here, the parties dispute how much of an ownership interest Jekogian has in the Companies. Jekogian has conceded that he has a 1% ownership interest in each of the Companies. Petitioner has submitted some evidence indicating that Jekogian's ownership interest in one or more of the Companies may be greater, but petitioner has not adequately demonstrated exactly what such membership interest in any of the Companies is, beyond the 1% not in dispute.

Given that Jekogian is indisputably at least a 1% member of each of the Companies, petitioner is entitled to an order, pursuant to LLC § 607, charging Jekogian's membership interests with payment of the New York Judgment from any profits or other distributions made to Jekogian pursuant to such membership interests. Therefore, this portion of the petition is granted.

CPLR 5228

Finally, petitioner moves, pursuant to CPLR 5228, for an Order directing the appointment of a receiver by the court to administer and collect any distributions to Jekogian and granting the quarterly inspection of the books and records of the Companies.

CPLR 5228 (a) provides that

Upon motion of a judgment creditor, ... the court may appoint a receiver who may be authorized to administer, collect, improve, lease, repair or sell any real or personal property in which the judgment debtor has an interest or to do any other acts designed to satisfy the judgment.

Whether to appoint a receiver is within the court's discretion and should only be granted where "a special reason appears to justify one." *Hotel 71 Mezz Lender LLC v Falor*, 14 NY3d 303, 317 (2010), internal quotation marks and citation omitted.

"In deciding whether the appointment of receiver is justified, courts have considered the '(1) alternative remedies available to the creditor...; (2) the degree to which receivership will increase the likelihood of satisfaction...; and (3) the risk of fraud or insolvency if a receiver is not appointed.'" *Id.* at 317, citation omitted.

Here, petitioner has not demonstrated that appointment of a receiver is appropriate. As set forth above, the petition fails to demonstrate the existence of funds currently held on Jekogian's

behalf by the Companies, or the existence of any debts owed to him by the Companies. Thus, a receiver is not required in the context of such items.

Although petitioner has demonstrated its entitlement to a charging order directing the Companies to turn over any distributions that may become payable to Jekogian, it has not demonstrated that such charging order is insufficient to enforce petitioner's rights to such payments, such as would require the appointment of a receiver.

Therefore, in light of the foregoing, it is hereby:

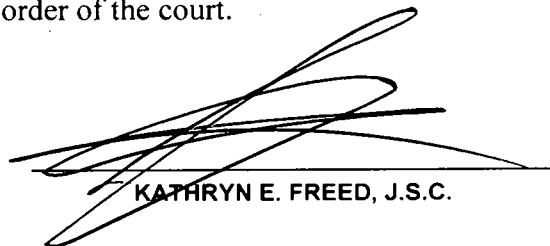
ADJUDGED that petitioner MLF3 NWJ LLC's petition is granted to the extent that petitioner shall be entitled, as an assignee, to respondent Nickolas W. Jekogian, III's membership interest in any profits or distributions made by respondents Signature Group Investments, LLC, Signature Community Management, LLC and Signature Community Investment Group, LLC; and it is further

ADJUDGED that the petition is otherwise denied; and it is further

ORDERED that this constitutes the decision and order of the court.

9/5/2017
DATE

**KATHRYN E. FREED
J.S.C.**



KATHRYN E. FREED, J.S.C.

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

- CASE DISPOSED
- GRANTED
- SETTLE ORDER
- DO NOT POST

DENIED

- NON-FINAL DISPOSITION
- GRANTED IN PART
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT

OTHER

REFERENCE