

Medallion Bank v TLG Hacking Corp.

2018 NY Slip Op 32397(U)

September 21, 2018

Supreme Court, New York County

Docket Number: 651619/2017

Judge: Andrea Masley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL PART 48
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MEDALLION BANK and MEDALLION FINANCIAL
CORP.,

Plaintiffs,

Index No. 651619/2017

-against-

TLG HACKING CORPORATION and SYMON GARBER,

Defendants.

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Masley, J.:

In motion sequence number 001, plaintiffs Medallion Bank and Medallion Financial Corp. (collectively, Medallion) move, pursuant to CPLR 5232, to extend the 90-day period to perfect the levies of Medallion's various executions of the judgment entered in favor of Medallion against defendants TLG Hacking Corporation (TLG) and Symon Garber.

On March 9, 2017, Medallion commenced this action by filing a Confession of Judgment signed by Garber in his individual capacity, as Guarantor, and in his representative capacity as president of TLG. On March 28, 2017, the Clerk entered a Judgment of Confession in favor of Medallion against Garber and TLG, jointly and severally, in the amount of \$1,738,206.01 (Judgment). On or about January 16, 2018, Medallion served a Property Execution Without Notice to Garnishee (Execution) on New York City Marshal Martin A. Beinstock regarding all of Garber's personal property and his interest in eleven specified companies

(Entities). On or about January 23, 2018, the Marshal served the Execution on Garber and each of the Entities. On February 7, 2018, Garber's counsel sent a letter to the Marshal explaining that Garber has no interest in the Entities or the other property that Medallion listed in the Execution. To date, Medallion asserts that Garber, TLG, and the Entities have failed to surrender any property or satisfy any portion of the Judgment.

On April 23, 2018, Medallion filed this motion, 90 days after the Execution was served, requesting that the court extend their time to perfect the levies of judgment for 180 days. Garber and TLG oppose on two grounds: (1) the 90-day period for perfecting the levies is expired and (2) the requested relief, if granted, would be harassment because Garber has no interest in the Entities capable of satisfying the Judgment.

First, Garber and TLG argue that the motion must be denied since a levy expires and becomes void after 90 days unless an order of extension has been obtained before that time. They rely on *New York State Commr. of Taxation and Fin. v Bank of New York*, 275 AD2d 287(1st Dept 2000) in support of their contention. However, *New York State Commr. of Taxation and Fin. v Bank of New York*, does not hold that the extension must actually be obtained before the 90-day expiration period. In fact, the Appellate Division, First Department, holds that a levy becomes void 90 days after service unless either (1) "a special proceeding


specified by the particular provision has been commenced" or (2) "an order of extension has been obtained" (*New York State Commr. of Taxation and Fin.*, 275 AD2d at 289). Thus, a levy is not void if a special proceeding is commenced prior to the 90-day expiration (*Medallion Bank v Papa of 5 Hacking Corp.*, 2018 NY Slip Op 31261[U] [Sup Ct, NY County 2018]).

Although Medallion moved pursuant to CPLR 5232 (a), instead of commencing a special proceeding pursuant to CPLR 5225 or 5227, all three of these statutes provide similar means to enforce money judgments, and it is reasonable to permit an extension where a motion for such relief was brought in a timely manner instead of a special proceeding (*id.*).

Defense counsel also argues that an extension will only harass Garber and the garnishees and not further Medallion's attempts at execution. Counsel relies on Garber's affidavit in which Garber affirms that he has "no interests in the entities or other property [Medallion] listed in [its] January 16, 2018 execution that were capable of being turned over" (NYSCEF Doc. No. 23). In response, Medallion submits a Residential Unit Deed executed by Garber and his wife transferring their ownership in real property located at 101 Warren Street, Unit 3210, New York, New York to a purchaser that appears to have an affiliation with Garber. This is enough to raise doubts about Garber's assertion that he has no interests in any property listed in the Execution.

Accordingly, it is ORDERED that plaintiffs Medallion Financial Corp. and Medallion Bank's motion is granted and the time for plaintiffs and/or the appropriate Marshal to perfect the levies is extended until one-hundred and eighty (180) days from entry of this order. Plaintiffs are directed to mail a copy of this order to the last known addresses of all appearing parties and garnishees, in addition to e-filing a copy of this order with notice of entry, which shall constitute service on the defendants.

Dated: September 21, 2018

ENTER: 
HON. ANDREA MASLEY
J.S.C.