

<b>Bienstock v Rockland County Sheriff's Dept.</b>
2018 NY Slip Op 32985(U)
November 26, 2018
Supreme Court, New York County
Docket Number: 153467/2018
Judge: William Franc Perry
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. W. FRANC PERRY

PART

IAS MOTION 23EFM

*Justice*

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INDEX NO. 153467/2018

GREGG BIENSTOCK, as Marshal in and for the City of New York

MOTION DATE 09/20/2018

Petitioner,

MOTION SEQ. NO. 001

- v -

ROCKLAND COUNTY SHERIFF'S DEPARTMENT, SAMUEL  
MALIK, DISCOVER BANK, RAY BUILDERS, INC., YOEL  
WAGSCHAL

**DECISION AND ORDER**

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 13, 16, 17, 18, 19, 20, 27, 28, 29, 30, 31, 32

were read on this motion to/for

JUDGMENT - DECLARATORY

**BACKGROUND**

On or about August 22, 2003, Discover Bank entered a judgment against debtor Malik in the Supreme Court, Orange County, in the amount of \$11,945.4. (NYSCEF Doc. No. 2). On or about March 22, 2017, a second judgment in the amount of \$136,049.00, was obtained and entered against debtor/respondent Malik. The second judgment was entered in Supreme Court, Rockland County by Yoel Wagschal, by confession pursuant to CPLR § 3218, after the first service of an income execution on the resident judgment debtor. (NYSCEF Doc. No. 6). According to the allegations set forth in the Petition, the second judgment was forwarded by Wagschal directly to the Rockland County Sheriff for collection. (NYSCEF Doc. No. 1, ¶17).

In this special proceeding, petitioner seeks a declaration that respondent Rockland County Sheriff's Department, as a "local enforcement officer," lacks the authority and jurisdiction to issue and execute upon income executions outside the confines of Rockland County and, specifically, within the boundaries of New York City. Here, the Rockland County

Sheriff issued and is now enforcing an income execution against debtor/respondent Malik relative to the second judgment in the amount of \$136,049.00. After Malik defaulted, the income execution was then delivered via certified mail to respondent Ray Builders, Inc., debtor Malik's employer, at its corporate offices in New York County.

In its verified answer and in opposition to the instant motion, respondent Rockland County Sheriff's Department, raises several objections seeking dismissal of the Petition (NYSCEF Doc. Nos. 21-24). Specifically, respondent contends, *inter alia*, that notwithstanding the allegations in the Petition, a literal reading of the recent amendments to CPLR 5231(e), demonstrate that the Petition seeking a declaratory judgment lacks merit because the "second service" of the income execution at issue here was done in accordance with statute. Accordingly, respondent argues that the Petition should be dismissed in its entirety, as a plain reading of the statute demonstrates that there is no justiciable controversy.

Petitioner avers that the rules of statutory construction favor an interpretation of the amended CPLR 5231 which confirms that the Rockland County Sheriff's Department lacks jurisdiction to enforce the income execution on the second judgment, delivered to the debtor's employer via certified mail. Petitioner contends that the 2015 amendments only effected the locations where judgments and income executions could be executed upon and did not expand the authority and jurisdiction of a local enforcement officer, like respondent here, to make a second service outside of its jurisdiction or home county. For the reasons that follow, the Petition is dismissed in its entirety.

#### **STANDARD OF REVIEW/ANALYSIS**

Effective December 11, 2015, the statutory provisions governing income execution pursuant to CPLR 5231 were amended to clarify and "modernize" the process. The issue here

requires application of the provision effecting “second service” on the judgment debtor’s employer. The 2015 amendments clarified the process to permit the enforcement officer now serving the defaulted income execution upon the resident judgment debtor’s employer, after the debtor was served and has defaulted, to be made by certified mail, *at any office or place of business of the person or entity*. (CPLR 5231(e) emphasis added). The amendment expands the ability of the local enforcement officer to effect “second service” at any of the offices of the debtor’s employer notwithstanding where the debtor is employed.

Respondent contends that the amendment permits the sheriff located in the judgment-debtor’s county of residence to serve both the first and second stages of the income execution, in accordance with the statute. Respondent argues that a comma added to CPLR 5231(e) after the word “summons,” supports its interpretation of the 2015 amendment and its “second service” in this case. Respondent highlights the distinction that service of the execution pursuant to CPLR 308 must be in a county where the income payor has an office or place of business, but service via certified mail is not so restricted to such county. As respondent points out, a sheriff can also serve notice or real property execution sale upon all interested parties without geographical restriction. See, CPLR 5236(c); see also, CPLR §5231(h).

Based upon a review of the record here, specifically, the documents related to the Rockland County Sheriff’s Department’s “second service” on the judgment debtor’s employer (NYSCEF Doc. No. 24), and application of the amended CPLR 5231(e), the Sheriff’s Department complied with statute in serving the income execution on Ray’s Builders, Inc., by certified mail, in a county in which the person or entity from whom the judgment debtor is receiving or will receive money has an office or place of business. Based on the factual record presented, respondent Sheriff’s Department has not exceeded its jurisdiction; CPLR §5231

authorizes the Sheriff's Department to serve income executions by certified mail return receipt requested to any of the employer's locations in New York State, when the debtor who resides in the Sheriff's county has defaulted on the payments being made to satisfy the debt.

The comments to the newly amended section are instructive; "The stated purpose of the legislation was to "clarify and modernize the process of income execution service and levy upon default or failure to serve judgment debtor. The sponsor's memorandum explains that, "[t]his legislation would not circumvent one of the central goals of CPLR 5231, which is to afford the judgment debtor the option to pay the installments due pursuant to the income execution without his or her employer being made aware of the debt. Rather, these amendments would ensure that once this option has not been exercised by the judgment debtor, there is a clean and efficient path for second service of an income execution on the person or entity who owes money to the judgment debtor.'" 11 New York Civil Practice: CPLR P 5231.20 (2018).

Here, service of the second stage income execution by certified mail return receipt requested was performed by the Rockland County Sheriff's Department in accordance with plain language of CPLR §5231(e). Petitioner's arguments that the second service on the debtor's employer, constitutes an unauthorized expansion of a local enforcement officer's jurisdictional authority is without merit. As noted, the statutory language is clear and confirms that the second service at issue here, was effected pursuant to the plain statutory language.

Petitioner's citation to documents that were drafted after the effective date of amendments to CPLR 5231, are no substitute for the statutory language that is always the starting point for the court's analysis. NYSCEF Doc. Nos. H, I and J. "It is fundamental that a court, in interpreting a statute, should attempt to effectuate the intent of the Legislature", and the clearest indicator of legislative intent is the statutory text, the starting point in any case of

interpretation must always be the language itself, giving effect to the plain meaning thereof. (*Majewski v Broadalbin-Perth Cent. School Dist.*, 91 NY2d 577, 583, 696 NE2d 978, 673 NYS2d 966 [1998]). Inasmuch as "[t]he text of a statute is the clearest indicator of such legislative intent," where the disputed language is "unambiguous," we are bound "to give effect to its plain meaning" (*Matter of Avella v City of New York*, 29 NY3d 425, 434, 58 NYS3d 236, 80 NE3d 982 [2017]). Moreover, "[w]here [, as here,] the legislative language is clear, [we have] no occasion [to] examin[e] . . . extrinsic evidence to discover legislative intent" (McKinney's Cons Laws of NY, Book 1, Statutes § 120, Comment at 242).

Since the court has determined that the Rockland County Sheriff's second service of the income execution on the debtor's employer by certified mail is consistent with the text of CPLR 5231(e), there is no basis for the allegations set forth in the Petition and no need to address respondent's additional objections and defenses to the Petition. As such, the Petition is dismissed as there is no justiciable controversy giving rise to the allegations therein. The court has considered petitioner's remaining arguments in support of the declaratory judgment action and concludes that they lack merit. Accordingly, it is,

ADJUDGED that the application is denied and the petition is dismissed, without costs and disbursements.

Any requested relief not expressly addressed by the Court has nonetheless been considered and is hereby denied and this constitutes the decision and order of the Court.

11/26/2018  
DATE

CHECK ONE:

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CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

☒ DENIED
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NON-FINAL DISPOSITION


GRANTED IN PART

SUBMIT ORDER

☐ OTHER☐ REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

  
W. FRANC PERRY, J.S.C.