

Colfin Bulls Funding B, LLC v Ampton Invs., Inc.
2018 NY Slip Op 33046(U)
November 26, 2018
Supreme Court, New York County
Docket Number:
Judge: Kathryn E. Freed
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. KATHRYN E. FREED PART **IAS MOTION 2**

Justice

X

INDEX NO.

151885/2015

COLFIN BULLS FUNDING B, LLC,

Plaintiff,

MOTION SEQ. NO.

004

- v -

AMPTON INVESTMENTS, INC., LAURENCE N. STRENGER, A CORPORATION, LAURENCE N. STRENGER, P.C., and LAURENCE STRENGER,

DECISION, ORDER AND JUDGMENT

Defendants.

X

The following e-filed documents, listed by NYSCEF document number (Motion 004) 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 213

were read on this motion to/for

TURNOVER PROCEEDING

Upon the foregoing documents, it is ordered that the application is decided as follows.

In this turnover proceeding, plaintiff judgment creditor Colfin Bulls Funding B, LLC (“Colfin”) moves, pursuant to CPLR 5225(a), for a turnover order directing defendant judgment debtor Laurence N. Strenger (“Strenger”) to turn over (i) the fine art, antique furniture, objects made of silver, vertu, and porcelain, European ceramics and glass all described in detail in a June 13, 2017 report by Christie’s Appraisals, Inc. (“Christie’s) (collectively “the valuables”); and (ii) the stock certificates comprising 100% of the voting stock of County Holding, Inc. (“County”).

In the event such certificates are missing or unavailable, Colfin seeks an order that Strenger execute and deliver to Colfin replacement stock certificates, a lost stock affidavit, or any other instrument necessary to effectuate delivery of the County stock. Colfin further requests that, pursuant to CPLR Article 63, this Court issue temporary restraints (i) directing the sheriff to

seize and store the valuables, and (ii) directing Strenger to cease and desist from transferring, selling, removing, destroying or otherwise disposing of any other fine art, antique furniture and decorative objects, silver and objects of vertu, and porcelain, European ceramics and glass in his possession, custody or control pending this Court's determination of this motion. Nonparty Gary Weiss a/k/a Gary Hilton Weiss ("Weiss") opposes the motion. After oral argument, and after a review of the parties' papers and the relevant statutes and case law, the motion is decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND:¹

On June 19, 2015, Colfin obtained a judgment ("the Colfin judgment") against defendants Strenger, Ampton Investments, Inc. ("Ampton"), Lawrence N. Strenger, P. C. ("Strenger PC"), and Lawrence N. Strenger, a Corporation ("Strenger Corp."), in the amount of \$2,548,807.79. Docs. 21, 30. The Colfin judgment arose from an Illinois default judgment domesticated in New York. Doc. 10. To date, Colfin has been unable to collect on its judgment, although it has learned that Strenger's Manhattan apartment ("the apartment") is filled with valuable works of art which, if sold, could yield proceeds that could be used towards satisfying the same. Additionally, Colfin has learned that Strenger owns shares of County stock which could be sold and used for the same purpose. On February 16, 2016, Colfin served Strenger with a restraining notice advising that he was not to sell, transfer or assign any property which could be used to collect the judgment. Docs. 37-38.

On July 27, 2016, nonparty Weiss obtained a judgment ("the Weiss judgment") in the amount of \$146,951.78 against Strenger in an action styled *Gary Weiss a/k/a Gary Hilton Weiss*

¹ Since defendants do not oppose the motion, and Weiss does not challenge the facts set forth by Colfin, the facts set forth below are, in principal part, those set forth by Colfin in support of the instant motion.

v Ampton Investments, Inc., County Holding, Inc. a/k/a County Holding Corp., and Laurence N. Strenger, Individually, Supreme Court, New York County Index Number 650408/15 (“the Weiss action”). Doc. 140; NYSCEF Docs. 25 and 30 filed under Index Number 650408/15.

Weiss thereafter noticed a sale of Strenger’s property pursuant to a Marshal’s Notice of Levy and Sale dated June 20, 2017. Doc. 149. The same day, this Court (Schoenfeld, J.) signed the instant order to show cause seeking the relief set forth above. Doc. 136. A so-ordered stipulation executed at the time the order to show cause was filed directed, *inter alia*, that “no property will be removed from Strenger’s apartment pending [the] hearing and determination of the [order to show cause].” Doc. 136. Additionally, after reviewing, *inter alia*, the order to show cause in the captioned action, the sale was stayed by interim order of this Court in the Weiss action entered August 10, 2017. NYSCEF Doc. No. 66 filed under Ind. No. 650408/15.

Strenger’s Interest in the Valuables and the County Stock

Strenger maintains that he transferred the valuables to County as early as the 1990’s. However, he has also conceded, in sworn statements and elsewhere, that he has an interest in the same. Specifically, in 2006 Strenger pledged some of the valuables as collateral for a loan from Colfin’s predecessors in interest (“the lender”) and the valuables were identified as part of an exhibit to a UCC Financing Statement (“the collateral”) (Doc. 104). In a 2010 Commercial Security Agreement, Strenger represented, on behalf of Ampton, that that entity held “good and marketable title to the [c]ollateral, free and clear of all liens, and encumbrances except for the lien of this [a]greement.” Doc. 121. In a 2011 Payment and Security Agreement, Strenger, on behalf of his entities, including County, pledged his interest in the very same collateral pledged to Colfin. Doc. 122. Additionally, a July, 2010 appraisal of many of the valuables by Sotheby’s

reflected that it was providing the insurance value of the "Property of Laurence Strenger". Doc. 105. In a May 2, 2013 affidavit filed in the matter *1680 Property Trust v. Ampton Investments, Inc.*, Supreme Court, New York County Index No. 111600/2011, Strenger stated, under oath, that his primary assets included his "collection of fine art and antiques." Doc. 123.

In a November 3, 2016 letter to Colfin's attorney written in connection with the captioned action, William Pinzler, Esq., counsel for Strenger, represented that "Strenger still controls more than 1,400 pieces of art and artifacts. While none of these pieces by itself is sufficient to pay off the note (or even come close), all of the pieces together when sold properly should yield much more than the amount of the note plus interest." Doc. 113. Pinzler suggested in that letter that Colfin adjourn the resumption of Strenger's deposition in this case so that a proposal could be made to sell the valuables, with the proceeds being applied towards Strenger's debt to Colfin. Doc. 113. In response, Colfin postponed the deposition and began the arduous task of appraising the valuables. In addition to claiming that that he transferred the valuables to County, Strenger maintained that he transferred 100% of his ownership in County to a trust set up on his behalf on the Isle of Jersey (the "trust"). However, what Strenger claims are County's three most recent tax returns, for the years 2008, 2009 and 2010, confirm that he owns 100% of that entity. Doc. 124. Contrary to Strenger's contention, a single-page document he produced, dated December 11, 2011 and entitled "deed of trust", establishes neither the creation of the trust nor the transfer of his ownership in County to the trust. Doc. 128.

Strenger's knowledge about the trust was scant. When questioned about the trust at his deposition, he purported not to know the identity of any beneficiary or trustee of the trust or the name of the trust. Doc. 100, at 74, 77, 79. After testifying that he never received any money from the trust (Doc. 100, at 79), he also admitted that the trustees were free to do with the money

“whatever they wanted”, which sometimes included loaning him money. Doc. 100 at 114-117.

Curiously, in 2013, two years after Strenger purportedly transferred the valuables, collateral and County stock to the trust, County renewed its California corporate filing with “no changes” from its February 2006 filing, in which it represented that Strenger was County’s sole officer and director. Doc. 125. Thus, even assuming that Strenger transferred the County stock, it is evident that he retained control and/or an interest in the same as of that time.

Finding of Contempt

Counsel for Colfin correctly notes that, in an attempt to avoid being held in contempt for his failure to respond to Colfin’s Information Subpoenas and to appear for his deposition, Strenger claimed that he was never served with three different sets of legal papers, by three different process servers, from three different law firms. NYSCEF Doc. Nos. 34-39, 43-44. These included the papers from which the default judgment entered against Strenger in Illinois arose, as well as the Colfin judgment. Strenger also claimed that he was never served with Colfin’s motion for summary judgment in lieu of complaint, which led to the entry of the Colfin judgment. He further maintained that he was not served with Colfin’s Information Subpoena and Subpoena Duces Tecum. By order entered June 8, 2016 (“the contempt order”), this Court, (Kern, J.) rejected these proffered excuses and granted Colfin’s motion finding Strenger in contempt. Doc. 72. In opposing Strenger’s cross motion to vacate the judgment, Colfin provided details about other legal proceedings in which Strenger defaulted and presented similarly unfounded arguments regarding service of papers, as well his attempts to avoid the enforcement of judgments in those proceedings. Docs. 45-68. Thus, Colfin has demonstrated that Strenger has engaged in a pattern of evasive conduct in an attempt to avoid his creditors.

Strenger's Failure to Comply with the Contempt Order

After Justice Kern declined to sign Strenger's proposed order to show cause seeking to stay enforcement of the order of contempt against him (Doc. 76), Strenger appeared for a deposition on July 28, 2016. However, Strenger claimed that his medical condition prevented him from being deposed for more than two hours. Docs. 78, 84. Additionally, he refused to answer questions about the location of collateral and the identity of anyone providing him with money used to support his lifestyle. Doc. 100. His testimony regarding the transfer of assets to County and the ownership of County was deficient, evasive, and contradicted by other testimony and documents. Although he testified that County was owned by unnamed trustees of an Isle of Jersey trust, he refused to respond to Colfin's demand for proof regarding the trust and any transfers to it by him. Eight months after Colfin's demand for such proof, Pinzler produced the one page 2011 deed of trust mentioned above. After it became apparent to Colfin that Strenger would not appear for a further deposition, Colfin sought a warrant of commitment due to Strenger's failure to purge himself of contempt by providing the discovery mandated by the contempt order. A warrant of commitment was issued on October 26, 2016. Doc. 101.

Strenger's Continued Attempts to Evade Enforcement of the Colfin Judgment

As noted above, Pinzler wrote to Colfin's attorney on November 3, 2016 to discuss adjourning Strenger's deposition and allowing the latter time to come up with a plan for selling the valuables. Doc. 113. Colfin's attorney considered this proposal and, by so-ordered stipulation dated December 14, 2016, this Court ordered Strenger to purge his contempt by providing Colfin, *inter alia*, with the following on or before December 20, 2016: his three most recent state and federal personal tax returns; the three most recent state and federal tax returns for

Ampton, Strenger Corp., Strenger P.C., and County; an inventory of the whereabouts of each item on the lists of property he owned; an appraisal prepared by Sotheby's in July, 2010 ("the Sotheby's Appraisal"); and a list of those individuals to whom Strenger owed money. Doc. 106. Strenger was also directed to appear for the continuation of his deposition on or before January 10, 2017. Doc. 106. The Court noted that the warrant for Strenger's arrest would be stayed so long as he was in compliance with the order. Doc. 106.

On or about December 20, 2016, Strenger supplied Colfin with his personal, his companies', and County's 2008, 2009, and 2010 state and federal tax returns; an annotated version of the Sotheby's Appraisal ("the annotated Sotheby's appraisal"); a copy of his apartment lease; his credit card statement; and a list of those individuals to whom he claimed he was indebted. Doc. 109. Strenger supplemented the responses on January 24, January 27, February 6, February 8, and February 9, 2017. Doc. 109. However, he continued to withhold information about the trust, which, he claimed, held the assets he had transferred to County, as well as 100% of the County stock. Doc. 109. The tax returns contradicted Strenger's deposition testimony that County was owned by the trust and had nothing to do with Strenger personally. All three of County's unsigned, undated federal tax returns revealed that Strenger held 100% of County Holdings' voting stock at least as of 2010, when the last return was filed. Doc. 109. Although Colfin made a written request on January 4, 2017 for further information about the alleged transfer of County to the trust, it was not until March 3, 2017 that Strenger's attorney finally provided the single page 2011 deed of trust, which does not address the issue of County's ownership. Doc. 109.

The December 20, 2016 production also included the annotated Sotheby's list, which

purports to show what items from that appraisal were still in Strenger's possession, and for those that were not, when they were sold, auctioned or transferred, to whom, and for how much. Doc. 109. The Sotheby's appraisal identifies the items in the appraisal as the "Property of Laurence Strenger" and, by his own admission, Strenger estimated that more than 400 pieces remained in his New York Apartment, consisting of 30 porcelains, about 380 prints and drawings, more than twenty tea caddies and about 20 pieces of antique furniture. Doc. 109. Strenger's supplemental responses also reflect that Strenger conveyed several pieces to Donald Smith & Co. several years ago in order to satisfy a \$300,000 personal debt. Strenger's transfer of the pieces in such fashion would have been inconsistent with his claim that he did not own any of the items. Doc. 109. Strenger's annotations also show that at least one transfer was made in 2016, possibly after service of Colfin's restraining notice in February, 2016. Docs. 37-38, 109.

Strenger's Violation of the Restraining Notice

In March of 2017, the parties agreed to allow an appraiser chosen by Colfin to examine the antique furniture, art, and other pieces in Strenger's apartment and advise Colfin as to the likely auction value of those items. Doc. 109. Colfin hired Anne Igelbrink of Christie's, Inc., a decorative arts specialist and Head of European Furniture of Christie's East, to perform this task. Doc. 109. Igelbrink's first visit to Strenger's apartment occurred on March 24, 2017. Doc. 109. During the inspection, which was also attended by Pinzler and two of Colfin's attorneys, Igelbrink examined and photographed items in the apartment in an attempt to match them with items on the list of Strenger's property or the Sotheby's appraisal. Doc. 109. At no time did Pinzler advise Igelbrink that any of the items in the apartment did not belong to Strenger or could not be used to satisfy the Colfin judgment. Doc. 109. Given the amount and variety of the

items in the apartment, Igelbrink requested a second inspection, during which she could be accompanied by colleagues with other expertise, to further examine the valuables. Doc. 109.

The second inspection occurred on May 5, 2017, during which time Igelbrink took additional photographs. On May 12, 2017, Colfin discovered from two photographs that Strenger appeared to have defied the restraining notice. Specifically, the first photograph, taken at the initial inspection on March 24, 2017 showed five antique vases on top of an antique secretary. Doc. 109. The photograph taken during the second visit shows the vases seen during the first visit replaced by three smaller, different vases. Doc. 109. Colfin inquired as to the whereabouts of the five original vases. After initially denying that any items had been removed, Pinzler then maintained that the five pieces in the original photograph never belonged to Strenger. Pinzler represented that an English dealer asked Strenger to hold them so that a potential buyer could see them without having to rent gallery or storage space. After the potential buyer viewed the pieces, they were returned to the London gallery. The pieces were in the apartment for about a year. Doc. 109. Although Colfin demanded that Strenger provide proof that the items returned to London actually belonged to the English dealer, Strenger did not comply. Doc. 109. Colfin's attorney asked Igelbrink to focus on the items with the greatest potential auction value. Doc. 109. A report issued by Igelbrink on June 13, 2017 ("the Christie's report") reflects that there are 37 items which it believes would be the best candidates for sale at an auction. Doc. 131.

On or about June 20, 2017, Colfin moved, by order to show cause, seeking a turnover order and, pending the determination of this motion, requested a TRO directing the New York City Sheriff to seize and store the turnover items and ordering Strenger to cease and desist from disposing of any other valuables. Doc. 135. As noted above, a so-ordered stipulation signed

simultaneously with the order to show cause prevented Strenger from removing the valuables from his apartment. Doc. 136. Although Colfin asserts that it should be entitled to a turnover of all of Strenger's valuables, it further states that, because of the sheer number of these items and the need to provide the sheriff with a list of specific items to be seized, it seeks seizure of the items listed in the Christie's Report as well as the shares of County stock, without waiving its claims as to the other valuables. Colfin also asserts that a receiver should be appointed to sell the valuables.

Strenger does not oppose the motion. Nonparty Weiss opposes the motion asserting that, because he levied on his judgment before Colfin levied on its judgment, he is entitled to priority in collecting from Strenger and thus Colfin is not entitled to a turnover order.²

LEGAL CONSIDERATIONS

Turnover of Strenger's Valuables

"Article 52 authorizes a judgment creditor to file a motion against a judgment debtor to compel turnover of assets . . ." *Koehler v. Bank of Bermuda Ltd.*, 12 N.Y.3d 533, 537 (2009). CPLR 5225(a) provides that:

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.

² Colfin maintains the Weiss judgment is invalid and, in the Weiss action, moved to vacate the default judgment which resulted in the Weiss judgment. The motion was denied by order dated November 26, 2018. See Mot. Seq. 002 to Index Number 650408/15.

“CPLR 5225(a) . . . contemplate[s] an order, directed at a defendant who is amenable to the personal jurisdiction of the court, requiring him to pay money or deliver property.” *Koehler*, 12 NY3d at 541. Therefore, this Court may order the turnover of any “money or other personal property in which [the judgment debtor] has an interest.”

It is undisputed that Strenger is in possession of valuable antiques, works of art, and other valuables which could be sold and that the proceeds of such sales could be used towards paying off the Colfin judgment. According to Strenger’s responses to the Information Subpoena, as well as his deposition testimony, he has no other assets which could be sold for this purpose. Therefore, Colfin is entitled to an order turning over to it the contents of Strenger’s apartment so that monies can be raised towards satisfying the judgment.

Given Pinzler’s representation that the valuables in Strenger’s apartment could be sold and used towards satisfying the Colfin judgment, Colfin adjourned Strenger’s continued deposition, hired an appraiser, and visited the apartment twice to inspect the items therein. Given Colfin’s reliance on the representations by Pinzler, Strenger cannot in good faith now assert that he does not own the valuables. Further, Strenger’s own statements, as well as other documentation, reflect that he owns them. What proof does exist reflects that the valuables and collateral belong to Strenger. Indeed, in 2013, Strenger filed a sworn affidavit in another matter pending in this Court in which he listed among his primary assets his “collection of fine art and antiques.” Doc. 123.

The same is true for the County stock. Strenger initially stated that County’s assets were transferred to the trust in the late 1990s. Doc. 100, at 80-81. However, Pinzler represented in a letter dated January 5, 2017 that the transfer occurred in 2002. Doc. 127. Even if this Court were

to disregard this contradiction, Strenger has not produced any proof that the transfer ever occurred.

As Colfin asserts, further proof of Strenger's ownership of these items can be gleaned from his admission that he conveyed several items to Donald Smith & Co. in satisfaction of his \$300,000 debt "several years ago" Docs. 117-119. In addition, the 2010 Sotheby's Appraisal refers to the items being evaluated as the "Property of Laurence Strenger." Doc. 114. The foregoing is consistent with Pinzler's representation that Strenger "controls" this property. Doc. 113. In view of this evidence, as well as Strenger's protracted acts of attempting to evade paying the judgment, this Court finds untenable Strenger's contention that he has no interest in this property. *See Gliklad v. Chernoi*, 129 A.D.3d 604 (1st Dep't 2015), *appeal denied*, 26 N.Y.3d 918 (2016).

In *Gliklad*, a judgment debtor opposed a petition seeking to have him turn over his interest in a limited liability company, asserting that he had never been the beneficial owner of the company or its assets. In affirming the IAS court's granting of the petition, the First Department reasoned that the debtor's deposition testimony, as well as pleadings in other actions, reflected that his account of events was "highly dubious," "feigned issues of fact," and that "no hearing was necessary on this issue." 129 AD3d at 606. The First Department also cited the debtor's "questionable behavior." Id. The same is true here. It is evident to this court that Strenger has attempted to spin a web of falsehoods in order to evade the Colfin judgment. Therefore, Colfin is entitled to an order directing Strenger to turn over his valuables so that they can be sold in order to satisfy, at least in part, the Colfin judgment. As Colfin's attorney asserts, since such an order will "merely effectuate the proposal by Strenger's counsel that the parties should put together an inventory of property to be sold to satisfy the [j]udgment, and the parties'

agreement that Christie's would examine and appraise such property, Strenger does not have any valid basis to object" to the issuance of such an order. Doc. 133, at 14.

Turnover of County Stock

This Court also orders that Strenger must turn over his shares of stock in County, since such corporate shares constitute personal property subject to the enforcement procedures set forth in Article 52. *See, Ninth Ave. Realty, LLC v. Guenancia*, 2013 NY Slip Op 33675(U) (Sup Ct New York County 2013); *Kissin v Lawrence Good, M.D.*, 2008 NY Slip Op 31154(U) (Sup Ct New York County 2008).³ Although Strenger maintains that he has no interest in County, this contention is disingenuous at best. Some eight months after Colfin's attorney demanded documentation regarding the trust, including Strenger's alleged transfer to the trust of his 100% ownership interest in County, Pinzler provided the single page deed of trust, dated December 1, 2011, which does not bear upon any of the foregoing issues. Doc. 124. This disclosure was made soon after 2010, the year of County's last available tax return, which return reflects that Strenger owned 100% of County. Docs. 124, 128. Thus, this Court finds that Strenger must turn over the stock certificates for County as well.

Pursuant to CPLR 5225(a), the stock certificates must be turned over even if they are not located in New York at this time. Since Strenger is, at the very least, an officer of County (Doc. 100, at 61, 73), and possibly sole officer of County (Docs. 124, 125), he is required to take whatever actions are necessary, including, *inter alia*, issuing new stock certificates or executing an affidavit attesting to the fact that the certificates were lost, in order to have the shares of stock

³ These cases belie Weiss' contention that Colfin cannot obtain a turnover of the County shares because it, unlike him, did not obtain a judgment against County.

brought to New York so that they can be turned over. *See Gryphon Dom. VI, LLC v APP Intl. Fin. Co.*, 41 AD3d 25, 31 (1st Dept 2007).

Appointment of Receiver

Article 52 of the CPLR contains a variety of enforcement devices (see Siegel, NY Prac § 492 [5th ed]), one of which is the appointment of a receiver "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." (CPLR 5228[a]). A receiver may be appointed upon a showing that "a special reason appears to justify one." (Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C5228:1, at 324). In deciding whether the appointment of a receiver is justified, courts consider "(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." (*Hotel 71 'Mezz Lender LLC v Falor*, 14 NY3d 303, 317 [2010], quoting *U.S. v Zitron*, 1990 US Dist LEXIS 1049, *2, 1990 WL 13278, *1 [SD NY 1990]). A receivership is "especially appropriate when the property interest involved is intangible, lacks a ready market, and presents nothing that a sheriff can work with at an auction, such as the interest of . . . a professional corporation of which [the debtor] is a member." (Siegel, NY Prac § 512 [5th ed]).

Kerison & Willoughby Capital, Ltd. v Royale Etenia, LLC, 2016 NY Slip Op 30947[U], *5-6 (Sup Ct, NY County 2016).

Weighing the factors above, this Court finds that the unusual circumstances of this case warrant the appointment of a receiver to sell the valuables and County stock and then hold the proceeds of the sale in escrow until they can be distributed to the creditors in a fair and reasonable manner. Although a sheriff's sale is an alternative remedy available to Colfin, the sale of the valuables herein is likely to be more successful, i.e., generate higher sales prices, if a receiver becomes involved to ensure that a qualified auction house, such as Christie's, sells the items for the maximum price so that more of the Colfin judgment can be satisfied. Additionally,

since it is unclear whether the County shares are marketable, “turning the property over to the sheriff would not be helpful in trying to satisfy the judgment.” *Hotel 71 Mezz Lender LLC*, 14 NY3d at 318.⁴

The priority of the judgments is another important factor in considering whether a receiver should be appointed herein. As noted above, Weiss claims that Colfin’s turnover petition should be denied because he levied on his judgment, whereas Colfin merely served a restraining notice. It is well settled that “[t]he order of priority among judgments is to be determined strictly in accordance with the chronological service of execution levies and the filing of orders for turnover or receiverships.” *New York v Panzirer*, 23 AD2d 158, 160 (1st Dept 1965). A judgment creditor who, like Colfin, serves only a restraining notice, is “required to take further steps in enforcing his judgment, such as the execution or levy upon the judgment debtor’s property, in order to prevent the intervening rights of third parties from taking precedence over his claim against the judgment debtor.” *Aspen Industries, Inc. v Marine Midland Bank*, 52 NY2d 575, 580 (1981). While it appears as if Weiss’ judgment, on which there was a levy, has priority over the Colfin judgment, Weiss merely opposed Colfin’s turnover petition, asserting that it had a right to do so as a nonparty because its interests were at stake, but did not formally move to intervene in this action. Although this Court thus cannot determine the issue of priority in deciding the instant motion, it determines, in its discretion, that the fairest result under the circumstances would be to have a receiver sell the valuables and County stock and deposit the proceeds of such sales into an escrow account pending determination of the priority of the

⁴ Although Colfin seeks the appointment of a receiver only in connection with the sale of the valuables, this Court, in its discretion, finds that the receiver should also be appointed in connection with the sale of the County stock in order to maximize its value.

judgments. Following the determination of priority, the receiver can distribute the funds accordingly.

In asserting that this Court can determine the issue of priority in connection with the instant motion, Weiss relies on *In re Roden*, 106 NYS2d 345 (Sup Ct New York County 1951). However, that case is distinguishable. In *Roden*, this Court held that a nonparty had the right to move to quash a subpoena because he was directly affected by the service of the subpoena on him. Importantly, however, this Court further stated that “[a]ny party affected by the process of the court or its mandate may apply to the court for its modification, vacatur, quashing or other relief he feels he is entitled to receive.” 106 NYS2d at 347-348. Here, however, Weiss made no application, either by motion, cross motion, or order to show cause, addressing the priority of its judgment but merely opposed Colfin’s motion. Since Weiss did not affirmatively seek a determination regarding priority, such relief cannot be granted herein. Cf. *Kassover v Prism Ventures Partners, LLC*, 2017 NY Slip Op 31933(U) (Sup Ct New York County 2017) (plaintiffs and nonparty stipulated to allow said nonparty to intervene for the sole purpose of determining priority rights to the property in dispute).

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

ADJUDGED that the petition is granted, and it is further

ORDERED that, within 20 days of entry of this decision, order, and judgment, a copy of the same is to be served by plaintiff, with notice of entry, on all parties to this action, as well as on all parties in the related action entitled *Gary Weiss a/k/a Gary Hilton Weiss v Ampton Investments, Inc., County Holding, Inc. a/k/a County Holding Corp., and Laurence N. Strenger, Individually*, Supreme Court, New York County Index Number 650408/15; and it is further

ORDERED that Hon. Ariel E. Belen, located at JAMS, 620 Eighth Avenue, 34th Floor, New York, New York 10018, telephone number (212) 751-2700, email address ABELEN@JAMSADR.COM be appointed as receiver herein for the purpose of performing any act designed to satisfy the judgment in favor of plaintiff Colfin Bulls Funding B, LLC; and it is further

ORDERED and ADJUDGED that defendant Laurence N. Strenger is directed, within 20 days of receipt of a copy of this order and judgment with notice of entry, to turn over to the receiver all of the items in the Christie's report dated June 13, 2017 (Doc. 131) so that the receiver may provide the said items to Christie's so that Christie's may auction the items and provide the receiver with the proceeds of the sale; and it is further

ORDERED and ADJUDGED that defendant Laurence N. Strenger is directed, within 20 days of receipt of a copy of this order and judgment with notice of entry, to turn over to the receiver all stock shares and/or certificates he holds in County Holding, Inc. a/k/a County Holding Corp. so that the receiver can sell the shares, or collect Strenger's future distributions, dividends, and/or profits from the company; and it is further

ORDERED AND ADJUDGED that if the aforementioned certificates of County stock are missing or unavailable, Strenger is to execute and deliver to the receiver replacement stock certificates, a lost stock affidavit, and/or any other instrument necessary to effectuate delivery of the County stock to the receiver; and it is further

ORDERED that all money collected by the receiver for the sale of the items by Christie's, as well as any money raised as a result of the sale of the County shares by the receiver, will be deposited by the receiver into an escrow account, where it will remain pending a determination of the priority of the judgments obtained against Strenger by Colfin and Weiss; and it is further

ORDERED that upon obtaining an order determining the priority of the judgments obtained by Colfin and Weiss against Strenger, the receiver will distribute the proceeds of the sale of the items in the Christie's report and the proceeds of the sale of the shares of County stock to Colfin and Weiss according to the priority determined by this Court; and it is further

ORDERED that all stays are lifted to the limited extent of allowing Strenger to turn over to Colfin all of the items in the Christie's report dated June 13, 2017 (Doc. 131) and all stock shares and/or certificates he holds in County Holding, Inc. a/k/a County Holding Corp. so that the receiver can sell the shares, or collect Strenger's future distributions, dividends, and/or profits from the company; and it is further

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

11/26/2018

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

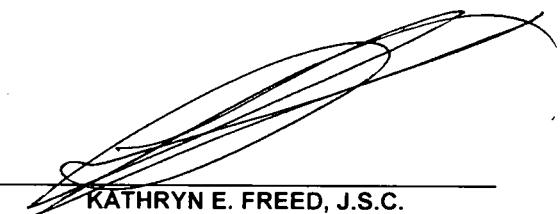
GRANTED IN PART

OTHER

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE


KATHRYN E. FREED, J.S.C.