

<b>Zanani v Oriska Corp.</b>
2021 NY Slip Op 31382(U)
April 19, 2021
Supreme Court, New York County
Docket Number: 650494/2018
Judge: Laurence L. Love
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LAURENCE L. LOVE PART IAS MOTION 63M

Justice

-----X

DORON ZANANI

Plaintiff,

- v -

ORISKA CORPORATION,

Defendant.

-----X

INDEX NO. 650494/2018
MOTION DATE 4/12/2021
MOTION SEQ. NO. 007

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 007) 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

were read on this motion to/for POST JUDGMENT OTHER

Upon the foregoing documents, the motion is decided as follows:

Plaintiff moves seeking an Order pursuant to CPLR 5240 determining that the restrained funds in the bank accounts of Defendant Oriska Corporation d/b/a Oriska Insurance Company at M&T Bank Corporation are not exempt under CPLR 5222-a and therefore are subject to execution; for an order directing M&T Bank Corporation to release the restrained funds to NYC Marshal Stephen W. Biegel.

On October 15, 2019, the New York County Clerk's Office entered judgment in favor of Plaintiff and against Oriska in the amount of \$93,149.26 (the "Judgment"). A copy of the Judgment was filed with notice of entry on October 16, 2019. Oriska did not appeal from the Judgment. On February 9, 2021, the Appellate Division First Department granted Zanani's motion to dismiss Oriska's appeal from a prior interlocutory order (Exhibit B). On March 30, 2021, the Appellate Division, First Department denied Oriska's motion to vacate the dismissal of its appeal or, in the alternative, for the record to reflect an exception due to an inconsistency with the Court's prior

order. On March 16, 2021, plaintiff sent a Restraining Notice and Information Subpoena pursuant to CPLR 5222(b) to M&T Bank Corporation. On March 23, 2021, M&T responded to same, indicating that it had frozen \$186,298.52 in Oriska's bank accounts. In an exemption claim, dated March 29, 2021, defendant asserted that the funds are exempt from collection on the grounds that these are dedicated bank accounts dedicated for the deposit of payments made by employers for the payment of medical care and reimbursement of wages for their employees, and thus are exempt under CPLR 5222-a and CPLR 5205, resulting in the instant motion, which was served upon M&T Bank Corporation and defendant on April 2, 2021.

There is no legal basis for a corporate entity such as Oriska to claim an exemption pursuant to CPLR 5222-a. That statute explicitly states that it only applies to restraining notices "affecting a natural person's account at a banking institution..." As such, plaintiff has established that the funds are not exempt from collection.

In opposition, defendant submits the affidavit of Michele Casaletta, an employee of defendant who argues that the funds contained in the Bank Account ending in 2886 at M & T Bank are the proceeds of a Paycheck Protection Program ("PPP") loan in the amount of \$308,447.00 issued under the second round Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") and that "relying on the guidance given by New York State Attorney General, Leticia James, issued April 21, 2020, stimulus payments authorized by the CARES Act are exempt from garnishment under New York law." The Court notes that defendant failed to attach a copy of said guidance to its opposition papers, but that plaintiff has included a copy of same in its Reply papers.

Said guidance provides as follows:

Under New York law, certain types of property are exempt from execution, levy, attachment, garnishment, and other legal process by a judgment creditor seeking to satisfy a monetary judgment, including public benefits such as public assistance, social

security, and veterans' and retirement benefits. The New York Court of Appeals has held that exemption statutes "are to be construed liberally in favor of debtors" because exemptions "serve the important purpose of protect[ing] the debtor's essential needs." The statutes exempting public benefits was not intended to be an exhaustive list of types of income exempt from garnishment; instead, it compiled the types of payments already deemed exempt by other statute and granted additional protections to debtors with those types of income.

CARES Act payments are similarly aimed at the debtors' essential needs, and therefore should not be subject to garnishment and similar legal process. Banking institutions are advised that they should treat CARES Act payments as subject to the same protections as statutorily exempt payments. *Citing* C.P.L.R. §§ 5222(h), 5222-a

The Court further notes that the Guidance specifically provides "Notwithstanding the emergency and life-sustaining purposes of these payments, the CARES Act does not explicitly designate the payments as exempt from garnishment, as other government payments are." *Citing* 31 C.F.R. § 212.2(b) (identifying federal benefits exempt from garnishment).

As discussed *supra*, the protections of CPLR §§ 5222(h), 5222-a apply only to natural persons and as such are not applicable to the instant defendant. The Court further notes that The CARES act authorizes the Treasury Secretary to issue guidance or a rule regarding whether the funds are exempt or not and has not done so.

As such, it is hereby

ORDERED that the restrained funds in the bank accounts of Defendant Oriska Corporation d/b/a Oriska Insurance Company at M&T Bank Corporation are not exempt under CPLR 5222-a and therefore are subject to execution; and it is further

ADJUDGED that the petition is granted, and it is further

ORDERED and ADJUDGED that the M&T Bank Corporation is directed, upon receipt of a certified copy of this order and judgment, to turn over to the plaintiff, Doron Zanani and/or NYC Marshal Stephen W. Biegel, funds in the account of Oriska Corporation d/b/a Oriska Insurance

Company, judgment debtor, held in said Bank, up to a maximum amount of \$93,149.26, plus interest at 9% per annum from October 15, 2019; and it is further

ADJUDGED that upon such turn-over of funds, the M&T Bank Corporation shall be discharged of all liability with respect to said funds to the extent of payment made as herein provided.

4/19/2021  
DATE

  
LAURENCE L. LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE