

<b>Mendez v Harvey-Lewis</b>
2022 NY Slip Op 33632(U)
October 20, 2022
Supreme Court, New York County
Docket Number: Index No. 652459/2022
Judge: Andrew S. Borrok
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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MILLICENT MENDEZ, MILLICENT MENDEZ, ASHANTI CUMMINGS,	<b>INDEX NO.</b> <u>652459/2022</u>
Plaintiff,	<b>MOTION DATE</b> <u>N/A, N/A</u>
- v -	<b>MOTION SEQ. NO.</b> <u>001 002</u>
EDGAR A HARVEY-LEWIS, NEW YORK LIFE INSURANCE COMPANY, BANK OF AMERICA, N.A., RAYAN WILSON	<b>DECISION + ORDER ON MOTION</b>
Defendant.	
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HON. ANDREW S. BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 22, 23, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 78, 79

were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

Upon the foregoing documents, and for reasons set forth on the record (10.20.2022), the Plaintiffs' motion (Mtn. Seq. No. 001) to enjoin (i) New York Life Insurance Company (**New York Life**) from paying to Edgar Harvey-Lewis any portion of the death benefit on the life insurance policy owned by Melonie Sterling, (ii) Bank of America, N.A. (**Bank of America**) from transferring to Mr. Harvey-Lewis any monies and/or assets in the savings account owned by Melonie Sterling, and (iii) Mr. Harvey-Lewis from using, transferring, disposing or expending

any funds, assets or proceeds received from Melonie Sterling's 401K Thrift Plan must be granted in its entirety.

The Plaintiffs' motion (Mtn. Seq. No. 002) (i) to attach the BMW Mr. Harvey-Lewis purchased with funds allegedly misappropriated from Melonie Sterling, (ii) to enjoin Mr. Harvey-Lewis from selling, encumbering, leasing, or using the BMW, and (iii) to enjoin New York Life from paying to Mr. Harvey-Lewis or Rayan Wilson any portion of the death benefit on the life insurance owned by Melonie Sterling on the life of her father Barrington Sterling must also be granted in its entirety.

The Plaintiffs are entitled to an injunction because they have demonstrated a likelihood of success on the merits, a danger of irreparable harm, and that the balance of the equities weighs in their favor (*Nobu Next Door, LLC v Fine Arts Housing, Inc.*, 4 NY3d 839, 840 [2005]). They are also entitled to an attachment on the BMW and all insurance proceeds because they have demonstrated (i) that they have a viable cause of action for fraud, (ii) a likelihood of success on the merits on the fraud claim, (iii) that Mr. Harvey-Lewis may encumber or dispose of property to frustrate enforcement of a judgment against him, (iv) that the amount demanded of Mr. Harvey-Lewis exceeds all counterclaims known to the Plaintiffs, and (v) that, absent the attachment, there is a risk that Mr. Harvey-Lewis will not be able to satisfy a judgment against him (*VisionChina Media Inc. v Shareholder Representative Servs., LLC*, 109 AD3d 49, 59-60 [1st Dept 2013]).

The Plaintiffs allege that Mr. Harvey-Lewis dubiously gained access Melonie Sterling's phone, which contained information and passwords of her various personal accounts. Mr. Harvey-Lewis testified that, after Melonie's death, he transferred more than \$100,000 from Melonie's Bank of America account to himself and does not recall how he spent it (NYSCEF tr. at 183:23-184:10 [NYSCEF Doc. No. 40]). On the same day he was served with this Court's so-ordered TRO (NYSCEF Doc. No. 11), Mr. Harvey-Lewis purchased a BMW X5 for approximately \$61,000.00 with funds from Melonie Sterling's bank account (NYSCEF Doc. No. 33, ¶¶ 9-14). Mr. Harvey-Lewis also testified that he (i) has a number of judgments entered against him, (ii) has not held a job since 2012, (iii) is a gambler, and (iv) has not filed tax returns in the last nine years.

On the record (10.20.22), the Court held that the evidence adduced by Mr. Harvey-Lewis himself unequivocally establishes that Melonie Sterling was not lucid at the time she allegedly transferred the funds to Mr. Harvey-Lewis (i.e., as discussed on the record, the telephone call recording/transcript leaves no doubt that she had no idea what their relationship was or who he was). Mr. Harvey-Lewis' affidavit also contains a number of clearly false assertions as to the nature and character of their relationship and what his role was in her care. And, for the avoidance of doubt, the deposition testimony indicating that the decedent confided in Mr. Harvey-Lewis only further underscores how vulnerable she was and how easy it was for him to prey on her. Thus, the Plaintiffs have demonstrated a likelihood of success on the merits of their fraud claims. They have also demonstrated irreparable harm because Mr. Harvey-Lewis has already demonstrated his propensity to spend substantial sums of money and have absolutely no recollection where the money was spent. Thus in the absence of an injunction, the property may

be dissipated such that recovery of a judgment is unlikely (*Ma v Lien*, 198 AD2d 186, 186 [1st Dept 1993]). Upon the record before the court (and without considering Mr. Harvey-Lewis' many demonstrably false assertions in his affidavit), the balance of the equities also weighs in the Plaintiffs' favor. The injunction preserves the status quo and prevents further dissipation of assets fraudulently obtained.

The Plaintiffs are also entitled to an attachment on the BMW and all of the insurance proceeds. As discussed above, the Plaintiffs have demonstrated a likelihood of success that Mr. Harvey-Lewis committed a fraud and that Mr. Harvey-Lewis has already disposed of certain monies and has amnesia as to what he did with such substantial sums. There is substantial risk that Mr. Harvey-Lewis will be unable to satisfy a potential judgment entered against him because he does not work and he has other judgments entered against him which remain unpaid. Mr. Harvey-Lewis has not asserted any counterclaims against the Plaintiffs. Therefore, an attachment is warranted.

The Plaintiffs shall be required to post a bond of \$1,000 in support of the foregoing within the next 30 days. To the extent that Bank of America wishes to deposit the funds and/or assets in Melonie Sterling's savings account with the Court, it may do so.

Accordingly, it is hereby ORDERED that the Plaintiffs' motions are granted; and it is further

ORDERED that New York Life is enjoined (i) from paying Mr. Harvey-Lewis any portion of the death benefit owing from Melonie Sterling's own life insurance policy and (ii) from paying Mr.

Harvey-Lewis or Rayan Wilson any portion of the death benefit on the life insurance policy owned by Melonie Sterling on the life of her father, Barrington Sterling; and it is further

ORDERED that Bank of America is enjoined from transferring to Mr. Harvey-Lewis any monies and/or assets in the savings account owned by Melonie Sterling; and it is further

ORDERED that Mr. Harvey-Lewis is enjoined from using, transferring, disposing, or expending any funds, assets or proceeds received from Melonie Sterling's 401K Thrift Plan; and it is further

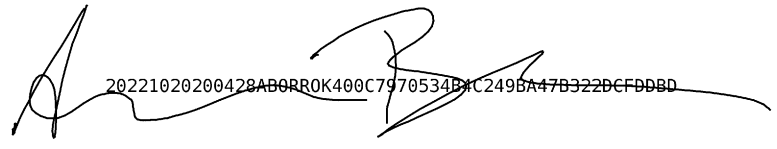
ORDERED that the Plaintiffs' motion for an order of attachment on the BMW and any and all insurance proceeds is granted; and it is further

ORDERED that the Plaintiffs' undertaking is fixed in the sum of \$1,000 which shall be posted within the next 30 days conditioned that the Plaintiffs shall pay to (i) the Defendant all costs and damages, including reasonable attorneys' fees, which may be sustained by reason of the attachment, and (ii) the Sheriff all allowable fees, if the defendant recovers judgment or if it is decided that the plaintiff is not entitled to an attachment of the property of the defendant; and it is further

ORDERED that the Sheriff of the City of New York, or the Sheriff of any County of the State of New York, shall levy within his jurisdiction, at any time before final judgment, upon the BMW and any insurance proceeds wherever located and upon such real and personal property in which the defendant has an interest and upon such debts owing to the defendant as will satisfy the

Sheriff's fees and expenses and that the Sheriff proceed herein in the manner and make his return within the time prescribed by law; and it is further

ORDERED that Bank of America may deposit the funds and/or assets from Melonie Sterling's savings account with the Clerk of the Court.

  
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10/20/2022  
DATE

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ANDREW S. BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE