

**Matter of Trustees of Pavers & Road Bldrs. Dist.
Council Welfare v Port Auth. of N.Y. & N.J.**

2023 NY Slip Op 33099(U)

September 7, 2023

Supreme Court, New York County

Docket Number: Index No. 153475/2023

Judge: John J. Kelley

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JOHN J. KELLEY **PART** **56M**

Justice

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In the Matter of

TRUSTEES OF PAVERS AND ROAD BUILDERS
DISTRICT COUNCIL WELFARE, PENSION, ANNUITY
FUNDS, and TRUSTEES OF LOCAL 1010
APPRENTICESHIP, SKILL IMPROVEMENT AND
TRAINING FUNDS

Petitioners,

- v -

THE PORT AUTHORITY OF NEW YORK & NEW JERSEY
and GENRUS CORP.,

Respondents.

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INDEX NO. 153475/2023

MOTION DATE 05/18/2023

MOTION SEQ. NO. 001

**DECISION, ORDER, and
JUDGMENT**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17

were read on this motion to/for TURNOVER PROCEEDING.

In this proceeding pursuant to CPLR 5227, the petitioners, Trustees of the Pavers and Road Builders District Council Welfare, Pension, Annuity Funds, and Trustees of Local 1010 Apprenticeship, Skill Improvement and Training Funds (together the Funds) seek an order directing the respondent Port Authority of New York & New Jersey (Port Authority) to turn over the sum of \$42,649 that the Port Authority owes to the respondent Genrus Corp. (Genrus), in partial satisfaction of a \$93,378.94 judgment that had been entered in the Supreme Court, Queens County, in favor of the Fund and against Genrus, on February 8, 2023. The Port Authority submitted responsive papers in which it did not expressly oppose the petition, but instead requested the court to “determine the rights, title and interest of the parties in and to the monies, funds and properties held by The Port Authority” and to declare that the Funds “have a superior right, title and interest in said monies, funds and properties” under CPLR article 52, and

that the rights of all other parties “are junior and subordinate thereto.” The petition is granted, the Port Authority shall turn over to the Funds the sum of \$42,649 that it owes to Genrus, and it is declared that the Funds have a right thereto that is superior to any other claimant, including Genrus, whose right thereto is junior and subordinate to that of the Funds.

Genrus, a contractor, is a member of a building trade association that entered into collective bargaining agreements (CBAs) with several trade unions, pursuant to which trade association members such Genrus agree to make contributions to those unions’ pension and welfare benefit funds with respect to each relevant project. In accordance with the relevant CBA, Genrus agreed to make certain contributions to the Funds. On April 17, 2020, the Funds commenced an action against Genrus in the United States District Court for the Eastern District of New York to recover Genrus’s delinquent benefit contributions (*see Trustees of Pavers & Rd. Bldrs. Dist. Council Welfare Fund, et al. v. Genrus Corp.*, 20 CV 1837 [EK] [RML] [the federal action]). On September 30, 2022, judgment was entered in favor of the Funds and against Genrus in the federal action. On September 23, 2021, the Funds commenced an action in the Supreme Court, Queens County, entitled *Trustees of Pavers and Rd. Bldrs. Dist. Council Welfare Fund et al. v Genrus Corp.*, under Index No. 721237/2021 (the State action), seeking, among other things, unpaid benefit contributions and interest thereon in connection with union members’ work on a project known as the 26th Ward Wastewater Treatment Plant. On or about October 31, 2022, the Funds and Genrus entered into a settlement agreement that resolved Genrus’s delinquent benefit contribution liabilities claimed in both the federal action, the judgment entered thereon, and the State action. Pursuant to the settlement agreement, Genrus was required to secure payment of the settlement agreement by providing the Funds with an affidavit of confession of judgment, which it provided.

Genrus defaulted on its obligations under the settlement agreement. On February 6, 2023, the Funds commenced a second action in the Supreme Court, Queens County, entitled

Trustees of Pavers & Road Bldrs. Dist. Council Welfare Fund, et al. v. Genrus Corp., under Index No. 702826/2023, seeking to enter a judgment against Genrus upon the affidavit of confession. On February 8, 2023, the Funds obtained a state-court judgment against Genrus in the amount of \$93,378.94. The Funds have not recovered any portion thereof.

Upon serving an information subpoena and restraining notice upon the Port Authority, the Funds learned that the Port Authority “has \$42,649.00 which remains to be paid to Genrus for work under [JFK-174.430 – JFK Redevelopment Program -Aqueduct Spine Road] . . .and [the Port Authority] continues to withhold payment in accordance with the Restraining Notice.”

CPLR 5227 provides, in relevant part, that:

“[u]pon a special proceeding commenced by the judgment creditor, against any person who it is shown is or will become indebted to the judgment debtor, the court may require such person to pay to the judgment creditor the debt upon maturity, or so much of it as is sufficient to satisfy the judgment, and to execute and deliver any document necessary to effect payment; or it may direct that a judgment be entered against such person in favor of the judgment creditor. Costs of the proceeding shall not be awarded against a person who did not dispute the indebtedness.”

Where, as here, a judgment creditor establishes that a respondent in a CPLR 5527 proceeding is in possession of money that the respondent otherwise owed to the judgment debtor, relief must be granted to the judgment creditor (*see Eastern Fed. Sav. & Loan Assn. v Sabatine*, 76 AD2d 899, 900 [2d Dept 1980]; *Matter of Preston Farms, Inc. v Nacri*, 42 AD2d 668, 670 [3d Dept 1973]). The Funds, upon serving a restraining notice and information subpoena upon the Port Authority, properly commenced this proceeding pursuant to CPLR 5227 to secure an order turning over, to it, all funds in the Port Authority’s possession that the Port Authority otherwise owed to Genrus, and properly served Genrus with the papers in this proceeding.

Accordingly, it is

ORDERED and ADJUDGED that the petition is granted, without opposition; and it is further,

ORDERED that, within 45 days of service upon it of a copy of this order, with notice of entry, the respondent Port Authority of New York and New Jersey is directed to deliver, to Virginia & Ambinder, LLP, as attorneys for the petitioners, Trustees of the Pavers and Road Builders District Council Welfare, Pension, Annuity Funds, and Trustees of Local 1010 Apprenticeship, Skill Improvement and Training Funds, the sum of \$42,649.00 by certified, bank, or treasurer’s check, payable to Virginia & Ambinder, LLP, for the benefit of the petitioners, Trustees of the Pavers and Road Builders District Council Welfare, Pension, Annuity Funds, and Trustees of Local 1010 Apprenticeship, Skill Improvement and Training Funds; and it is further,

ADJUDGED and DECLARED that the petitioners, Trustees of the Pavers and Road Builders District Council Welfare, Pension, Annuity Funds and Trustees of Local 1010 Apprenticeship, Skill Improvement and Training Funds, have a superior right, title and interest in the corpus of the \$42,649.00 described above, and that the rights of all other parties and claimants, including, but not limited to, Genrus Corp., are junior and subordinate thereto; and it is further

ORDERED that the petitioners shall serve a copy of this order upon Genrus Corp. both by regular and certified mail, return receipt requested, within 15 days of the entry of this order.

This constitutes the Decision, Order, and Judgment of the court.

JOHN J. KELLEY, J.S.C.

9/7/2023
DATE

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE