

Salovaara v Eckert

Supreme Court of New York, New York County

May 31, 2019, Decided

151473/2019

Reporter

2019 N.Y. Misc. LEXIS 2901 *; 2019 NY Slip Op 31538(U) **

[**1] MIKAEL SALOVAARA, Petitioner, - against - ALFRED C. ECKERT III, HIGH YIELD ADVISORY, INC., ACE III, LLC, ACE3, LLC IMPROVING PUBLIC SCHOOLS EDUCATION, LLC, GSCP (NJ), INC., RUSS D. GERSON, Respondents. Index No. 151473/2019

Notice: THIS OPINION IS UNCORRECTED AND WILL NOT BE PUBLISHED IN THE PRINTED OFFICIAL REPORTS.

Core Terms

judgment creditor, judgment debtor, Settlement, Sheriff, shares, evidencing, membership, documents, personal property, stock certificate, directing, ownership, contends, deliver

Judges: [*1] HON. EILEEN A. RAKOWER, J.S.C.

Opinion by: EILEEN A. RAKOWER

Opinion

DECISION and ORDER

HON. EILEEN A. RAKOWER, J.S.C.

Petitioner Mikael Salovaara ("Petitioner"), as Judgment Creditor, commences this special proceeding for an Order pursuant to CPLR §§ 5225 and 5227, directing Respondent Alfred C. Eckert III ("Eckert") to turn over all of his right, title and interest in and to all shares or certificates of stock, membership interest, property interests and/or other documents evidencing Eckert's ownership interest in and to Respondents High Yield Advisory, Inc. ("HYA"), GSCP (NJ), Inc. ("GSCP (NJ)"), ACE III, LLC ("ACE III"), ACE3, LLC ("ACE3"), and Improving Public Schools Education, LLC ("IPSE") (collectively "Respondents").

In the event that there are no such certificates, Petitioner seeks an Order (1) directing Respondents and their respective officers, shareholders and/or members to forthwith deliver to Petitioner and/or the Sheriff of the City of New York an assignment, in recordable form, transferring and assigning all of Judgment Debtor's right, title and interest in and to all shares or certificates of stock, memberships interests, property interests and/or other documents evidencing Judgment Debtor's ownership interests [*2] in and to HYA, GSCP (NJ), ACE III, ACE3, and IPSE to Petitioner and/or the Sheriff of the City of New York, (2) directing Judgment Debtor to execute an assignment transferring all of Judgment Debtor's rights and interest in and to all debt owed to Judgment Debtor by Respondent Russ D. Gerson ("Gerson"), and all documents evidencing such debt, to Petitioner, or, in the alternative, directing Gerson to pay such debt to Petitioner upon maturity.

No opposition is submitted.

[**2] Relevant Background/Parties' Contentions

According to the Amended Verified Petition and exhibits thereto, Eckert filed a Chapter 11 bankruptcy proceeding in the United States Bankruptcy Court for

the District of New Jersey, Case No. 11-38852-DHS (the "Bankruptcy Action"). Petitioner asserts that he was a creditor of Eckert in connection with a prior litigation in the Superior Court of New Jersey, Morris County, Law Division, captioned *Mikael Salovaara v. Alfred C. Eckert III, et al.*, Docket No. MRS-L-2060-04. On November 4, 2011, Petitioner and Eckert entered into a Settlement Agreement (the "2011 Settlement Agreement") agreeing to resolve Petitioner's claims against Eckert in all pending actions, including the Bankruptcy [*3] Action.

Pursuant to the 2011 Settlement Agreement, Petitioner had a general unsecured claim against Eckert for \$9,074,000.00, and Petitioner agreed to accept "(a) payment of \$741,484.30 being held in escrow, payable upon entry of an Order approving the Settlement Agreement, and (b) payment in the amount of \$974,000, payable in equal quarterly installments of \$48,700 each, for a period of five (5) years (the "Installment Payments")." (Petitioner's Amended Verified Petition at 5). Additionally, the 2011 Settlement Agreement stated that if Eckert defaulted and failed to timely pay the Installment Payments to Petitioner, and failed to cure the default after notice, there would be an "immediate entry of judgment" against Eckert for \$1,800,000.00, minus the amount Eckert has already paid to Petitioner in Installment Payments. On November 16, 2011, the Hon. Donald H. Steckroth, U.S.B.J. entered an Order approving the 2011 Settlement Agreement.

On October 27, 2014, Petitioner commenced an action against Eckert in the Supreme Court of the State of New York, New York County, under Index No. 160632/2014 to enforce the terms of the 2011 Settlement Agreement. On April 10, 2015, Judgment was entered [*4] against Eckert in the amount of \$1,557,005.00 plus post-judgment interest of 9% pursuant to CPLR § 5004 (the "Judgment"). Petitioner asserts that he served information subpoenas and restraining orders on numerous occasions to enforce the Judgment. Petitioner contends that Eckert has created "numerous" companies to avoid the Judgment and to shield his assets.

Petitioner contends that after learning that Eckert had distributed certain life insurance policies to his family that were supposed to be maintained pursuant to the 2011 Settlement Agreement, Petitioner commenced an action against Eckert in the United States District Court for the District of New Jersey (the "Federal Action"). Petitioner and Eckert entered into a confidential settlement agreement resolving the claims in the Federal Action. Petitioner asserts that through

depositions connected with the Federal Action, he has become aware that Eckert has created companies to [*3] avoid the Judgment. Petitioner contends that HYA, ACE III, ACE3, and IPSE, are being utilized by Eckert to avoid the Judgment.

Petitioner asserts that according to Eckert's deposition testimony, Eckert has interests in HYA, ACE3, IPSE and GSCP (NJ). On January 4, 2017, [*5] November 13, 2017, and October 31, 2018, Petitioner deposed Eckert in connection with the Federal Action and the Judgment.

On January 4, 2017 and November 13, 2017, Eckert testified that he has interests in HYA, ACE3, and IPSE. Eckert testified that he owns 85% of the shares of HYA and he has stock certificates in his possession that evidence his shares. Eckert testified that he is the managing member of ACE3 and owns 90% of the membership interest. Eckert further testified that ACE3 is the managing member of IPSE, and through his ownership of ACE3, he owns between 88.75% and 90% of the membership interest of IPSE.

On October 31, 2018, Eckert testified that he owns a 51 % interest in GSCP (NJ) and is owed a debt by Gerson in excess of \$300,000.00. Petitioner contends that Eckert showed Petitioner a document that stated that Gerson owed Eckert \$334,250.00 as of June 30, 2018, plus interest at 5% per year.

On or about November 30, 2018 and January 3, 2019, Eckert was served with property executions by the New York City Sheriff, demanding Eckert to turn over all of his interests in GSCP (NJ), HYA, ACE III, ACE3, and IPSE, to either Petitioner or the New York City Sheriff. To date, Eckert [*6] has failed to turnover all of his interests in GSCP (NJ), HYA, ACE III, ACE3, and IPSE. Petitioner contends as of January 3, 2019, the Judgment remains unsatisfied and the outstanding amount due was \$1,548,663.83, plus interest at New York's statutory rate of 9% pursuant to CPLR § 5004.

Legal Standard

"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 NY3d 533, 537, 911 N.E.2d 825, 883 N.Y.S.2d 763 \(2009\)](#).

Pursuant to CPLR § 5225(a), in relevant part, "where it is shown that the judgment debtor is in possession . . . 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 . . . 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 **[**4]** designated sheriff." "Corporate shares are personal property subject to CPLR Article 52's enforcement procedures." [Kissin v. Good, 2008 N.Y. Misc. Lexis 7945, *5 \[Sup. Ct., New York County, 2008\]](#).

CPLR 5225 (b) provides, "[u]pon a special proceeding commenced by the judgment creditor, against a person in possession or custody of money or other personal property in which the judgment debtor has an interest **[*7]** . . . where it is shown that the judgment debtor is entitled to the possession of such property . . . the court shall require such person to 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... The court may permit any adverse claimant to intervene in the proceeding and may determine his rights in accordance with section 5239." (CPLR 5225 [b])

CPLR § 5227, entitled "Payment of debts owed to judgment debtor," provides:

Upon 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 . . .

Discussion

Pursuant to the valid Judgment and without any opposition from Respondents, Petitioner, **[*8]** as Judgment Creditor, is entitled to the relief sought.

Wherefore, it is hereby,

ORDERED that the Order to Show Cause is granted without opposition; and it is further

ORDERED that pursuant to CPLR §§ 5225 and 5227, Respondent Alfred C. Eckert III, shall turn over to Petitioner Mikael Salovaara and/or the Sheriff of the City

of New York, in thirty (30) days, all of his right, title and interest in and to all shares or certificates of stock, membership interest, property interests and/or other **[**5]** documents evidencing Eckert's ownership interest in and to Respondents High Yield Advisory, Inc., GSCP (NJ), Inc., ACE III, LLC, ACE3, LLC, and Improving Public Schools Education, LLC in full or partial satisfaction of Judgment of this Court entered on April 10, 2015, in the Supreme Court of the State of New York, New York County, *Mikael Salovaara v. Alfred C. Eckert III*, Index No. 160632/2014, in the amount of \$1,557,005.00 plus post-judgment interest of 9% pursuant to CPLR § 5004, leaving a current balance of \$1,548,663.83, plus interest at New York's statutory rate of 9% pursuant to CPLR § 5004; and it is further

ORDERED that if the aforementioned certificates are unavailable, Respondents Alfred C. Eckert III, High Yield Advisory, **[*9]** Inc., GSCP (NJ), Inc., ACE III, LLC, ACE3, LLC, and Improving Public Schools Education, LLC and their respective officers, shareholders and/or members to deliver to Petitioner Mikael Salovaara and/or the Sheriff of the City of New York an assignment, in recordable form, transferring and assigning all of Respondent Alfred C. Eckert III's right, title and interest in and to all shares or certificates of stock, memberships interests, property interests and/or other documents evidencing Respondent Alfred C. Eckert III's ownership interests in and Respondents High Yield Advisory, Inc., GSCP (NJ), Inc., ACE III, LLC, ACE3, LLC, and Improving Public Schools Education, LLC to Petitioner and/or the Sheriff of the City of New York; and it is further

ORDERED that Respondent Alfred C. Eckert III's is directed to execute an assignment transferring all of his rights and interest in and to all debt owed to Respondent Alfred C. Eckert III by Respondent Russ D. Gerson, and all documents evidencing such debt, to Petitioner Mikael Salovaara, or, in the alternative, directing Respondent Russ D. Gerson to pay such debt to Petitioner Mikael Salovaara upon maturity.

This constitutes the Decision and Order **[*10]** of the Court. All other relief requested is denied.

DATED: MAY 31, 2019

/s/ Eileen A. Rakower

EILEEN A. RAKOWER, J.S.C.