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Analysis
As of: Aug 26, 2009

Rochdale Holding Corp. v. Neuendorf

107508/04

SUPREME COURT OF NEW YORK, NEW YORK COUNTY

2005 N.Y. Misc. LEXIS 3253; 233 N.Y.L.J. 21

February 1, 2005

PRIOR HISTORY: Rochdale Holding Corp. v. Neuendorf, 2 Misc. 3d 133A, 784 N.Y.S.2d 924, 2004 N.Y. Misc. LEXIS 261 (2004)

OPINION BY: James

OPINION

The following papers, numbered 1 to 685_ were read on this show cause order to enforce judgment and cross motions to dismiss petition.

JUDGES: [*1] Justice James

PAPERS NUMBERED	
Notice of Motion/Order to Show Cause -	
Affidavits-Exhibits	1-300
Cross-Motions/	
Answering Affidavits--	
Exhibits	301-450/451-455
Replying Affidavits--	
Exhibits	500-685

By Show Cause Order dated May 18,2004, petitioner Rochdale Holding Corporation ("Rochdale") commenced this special proceeding seeking to enforce a Monetary Judgment dated August 12, 2002 (the "Judgment") in favor of Rochdale and against respondent Hans

Neuendorf ("Neuendorf"), entered by the Housing Part (Alpert, J.), New York City Civil Court.

The Show Cause Order directed Rochdale to serve the papers upon Neuendorf and respondent Arnet Worldwide Corp. ("Worldwide") by personal service, and

permitted service by Express Delivery upon respondent Artnet AG ("Artnet") in Potsdam, Germany, denying Rochdale's request to serve Neuendorf by serving the offices of the New York attorney who represents him in the Civil Court proceeding. That attorney has now appeared on behalf of Neuendorf in this proceeding.

Rochdale effectuated [*2] personal service on Worldwide, and express delivery on Artnet in Germany, but served Neuendorf by Overnight Delivery Service (Airborne Express) in Frankfurt, Germany. It is undisputed that Neuendorf signed for and accepted delivery of the papers.

Underlying this enforcement proceeding is a residential landlord tenant proceeding. The court gleans from the papers submitted that Neuendorf, an international art dealer, rented from Rochdale at \$ 15,000 per month a single family townhouse in midtown Manhattan. In 2001, Rochdale commenced a summary proceeding against Neuendorf for non-payment of rent and/or to recover possession of that property. Following the parties appearance on a motion on May 3, 2002, the Housing Part rendered a Decision and Judgment for Money Only dated June 7, 2002 in the amount of \$ 180,000. Neuendorf, his family and a household worker, vacated the property on or before June 7, 2002, returning to Germany and leaving the Judgment outstanding. On August 8, 2002, the Housing Part issued an amended Decision and Money Judgment that reduced the award to \$ 112,083.85, which Judgment was entered on August 12, 2002.

Thereafter, Rochdale issued an Income Execution that was [*3] delivered to the Marshall on September 5, 2002, who levied on the New York offices of Worldwide, whose principal offices are in New York City.

CPLR 5231(f) provides:

Withholding of installments. A person served with an income execution shall withhold from money then or thereafter due to the judgment debtor installments as provided therein and pay them over to the sheriff. If such person shall fail to so pay the sheriff, the judgment creditor may commence a proceeding against him for accrued installments. If the money due to the judgment debtor consists of salary or wages and his employment is terminated by resignation or dismissal at any time after service of the execution, the levy shall thereafter be ineffective, and the execution shall be returned, unless the

debtor is reinstated or re-employed within ninety days after such termination.

Worldwide failed to remit any monies and instead Artnet reported to the Marshall that "Mr. Neuendorf's employment with Artnet Worldwide Corp. terminated on June 28, 2002."

Meanwhile, by order of March 22, 2004, the Appellate Term, First Department, affirmed the May 3, 2002 Order of the Housing part, explicitly upholding the Civil Court's in personam [*4] jurisdiction over Neuendorf, finding that the non-payment precept was delivered to a person of suitable age and discretion (Neuendorf's housekeeper) at the townhouse upon commencement of the Civil Court proceeding.

Rochdale now seeks an order that compels respondents to make installment payments pursuant to CPLR 5226, which provides:

Upon motion of the judgment creditor, upon notice to the judgment debtor, where it is shown that the judgment debtor is receiving or will receive money from any source, or is attempting to impede the judgment creditor by rendering services without adequate compensation, the court shall order that the judgment debtor make specified installment payments to the judgment creditor. Notice of the motion shall be served on the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested. In fixing the amount of the payments, the court shall take into consideration the reasonable requirements of the judgment debtor and his dependents, any payments required to be made by him or deducted from the money he would otherwise receive in satisfaction of other judgments and wage assignments, the [*5] amount due on the judgment, and the amount being or to be received, or, if the judgment debtor is attempting to impede the judgment creditor by rendering services without adequate compensation, the reasonable value of the services rendered. (Emphasis supplied.)

Neuendorf and Artnet cross move to dismiss the petition for lack of personal jurisdiction. Worldwide Corp. cross moves to dismiss the petition claiming no relief lies for Rochdale because Neuendorf neither resided nor was employed in New York at the time the underlying income execution was delivered to the sheriff and because it neither exercises any dominion or control over Artnet nor makes any payments to or for the benefit

of Neuendorf.

Neuendorf argues that because he is a resident of Germany, Rochdale was required to serve the Order to Show Cause and Verified Petition in this proceeding upon him in conformity with the Hague Convention (a/k/a The Convention of the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters, 20 U.S.T. No. 6638). Rochdale counters that the Hague Convention is not applicable because the court has continuing jurisdiction over Neuendorf, citing the line of cases that [*6] stand for the proposition that jurisdiction that attaches in the proceeding in which the Judgment was rendered continues until the Judgment is satisfied. *Central National Bank v. Stevens*, 169 U.S. 432, 18 S. Ct. 403, 42 L. Ed. 807 (1898); *Erllich v. Erlich*, 306 A.D.2d 165, 762 N.Y.S.2d 62 (1st Dept. 2003). Rochdale also eruditely cites the Commentaries of Professor David Siegel, which state:

If the judgment debtor has left New York, assume permanently, will her leaving prevent a New York court from acquiring personam jurisdiction of her for an installment payment order, as where the motion papers are served on the judgment debtor outside New York? This boils down to the question of whether a New York court, having had personam jurisdiction of the judgment debtor in the action and having rendered an unassailable personam judgment against her, has "continuing jurisdiction" of the judgment debtor for enforcement purposes after the judgment is rendered. The better rule, it is submitted, is that the New York court's jurisdiction should be deemed to continue. The point has yet to be finally resolved at appellate level, however.

7B McKinney's Consolidated Laws of New York, D. Siegel, Practice Commentaries C5226: [*7] 5 (1997).

At the heart of this proceeding is the limitation on the New York City Civil Court's subject matter jurisdiction, which as to money actions and proceedings may not exceed \$ 25,000. New York City Civil Court Act § 202. The Civil Court had no jurisdiction to enforce the amount of the Judgment in excess of \$ 25,000. On its own motion, the New York City Civil Court would have been required to transfer any enforcement proceeding on an amount in excess of \$ 25,000 to the New York State Supreme Court. See *Kaminsky v. Connolly*, 73 Misc.2d 789, 342 N.Y.S.2d 394 (App. Term 1st Dept. 1972). The logic of *Kaminsky* dictates that had Rochdale commenced its enforcement proceeding in the New York

City Civil Court in the first instance ¹, it would have had the right to move to transfer that proceeding to the instant court. Under such circumstances, the Supreme Court would derive jurisdiction over respondent Neuendorf a fortiori from the jurisdiction that the New York City Civil Court exercised and which was affirmed on appeal. ² It follows that "the personal jurisdiction over the judgment debtor that is not exhausted by the rendition of the judgment, but [that] [*8] continues until the judgment be satisfied" (*Central Bank*, at 464) is not divested simply because rather than remove the underlying proceeding from the Civil Court, Rochdale chose to commence a new proceeding in the court of plenary jurisdiction.

1 CPLR 5221 grants jurisdiction of enforcement or "supplementary proceedings" to the New York City Civil Court. Therefore, up to \$ 25,000 and within New York County, under the New York City Civil Court Act § 1508, all of same CPLR Article remedies at its disposal in the proceeding at bar were available to Rochdale in the New York City Civil Court. See 29A McKinney's Consolidated Laws of New York, D. Siegel, Practice Commentaries CPLR § 1508 (1997).

2 This court notes that one local court judge has determined that the converse is not necessarily true, *Spinnell v. Sassower, P.C.*, 155 Misc. 2d 147, 589 N.Y.S.2d 230 (New York City Civil Court New York Co. 1992), while another has declined to follow such determination, *Idrobo v. Martin*, 2003 N.Y. Misc. LEXIS 1371, 2003 WL22517744 (New York District Court Nassau Co. 2003.)

[*9] With respect to the additional notice requirements to judgment debtors under Article 52, CPLR § 5226 does not permit service of the motion by the "usual intra-action method of mailing to the lawyer." 7B McKinney's Consolidated Laws of New York, D. Siegel, Practice Commentaries C5226:1 (1997). However, such notice is clearly not jurisdictional, since had Rochdale pursued the installment order in the New York City Civil Court, it would have had to provide notice of the enforcement proceedings to Neuendorf, even though the Civil Court retained personal jurisdiction over him. So too, with commencement of the proceeding at bar, this Court has the same in personam jurisdiction as the Civil Court, but nonetheless, was bound to enforce CPLR § 5226, which disallows intra-action service. When presented the Show Cause Order, this court

required Rochdale to provide notice in the same manner as a summons (i.e., personal).

Though rather curious is Rochdale's counsel choice of a private courier in contravention of both the CPLR § 5226, which even allows inexpensive United States Postal System service, and the directive in [*10] the Show Cause Order, the court finds such error in no manner constitutes the total disregard of notice procedures rejected by the court in *Kaplan v. Supak & Sons Manufacturing Company*, 46 Misc2d 574, 260 N.Y.S.2d 374 (New York City Civil Court NY Co. 1965). In that case, the judgment creditor made no attempt to comply with CPLR § 5226 notice requirements. Here, Rochdale's non-jurisdictional error met the statutory purpose, providing notice to Neuendorf, who admittedly was personally handed the papers. The court therefore disregards the error, finding the notice given to the judgment debtor to be sufficient under CPLR § 5226.

Artnet's 2003 Annual Report describes the relationship between Artnet and Worldwide, and in so doing, refers collectively to both as "the Company." Neuendorf is the Chief Executive Officer of Artnet, and until June 28, 2002, was the president and employee of Worldwide. He is currently a member of the two person board of directors of Worldwide. The principal holding of Artnet, which was incorporated under the laws of Germany in 1998, is Worldwide, its wholly owned subsidiary. Worldwide, a New York corporation, was founded [*11] in 1989, nine years before its parent. Artnet provides all of its products and services through Worldwide. Such business consists of the use of internet technology to run a fine artworks online Gallery Network, Auction Database and magazine that services the international art market, including galleries, artists, collectors, art dealers, and museums. The annual report states "The Company's business is primarily conducted in U.S. dollars. Moreover, the majority of the Company's operations are located in the U.S." Both corporate respondents operate under the trade name art.net.

Contrary to Artnet's argument, the relationship disclosed in the Annual Report is more than a mere accounting convention. Indeed, the relationship between the entities is indistinguishable from that described in other New York cases that held certain domestic corporations to be a "mere department" of their foreign parents for the purposes of service of process. Public

Administrator of the County of New York v. Royal Bank of Canada, 19 NY2d 127, 224 N.E.2d 877, 278 N.Y.S.2d 378 (1967); *Taca International Airlines, S.A. v. Rolls-Royce of England, Ltd.*, 15 NY2d 97, 204 N.E.2d 329, 256 N.Y.S.2d 129 (1965). See also *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 108 S. Ct. 2104, 100 L. Ed. 2d 722 (1988). [*12] Therefore, the Hague Convention does not apply here and service upon Worldwide was sufficient to confer jurisdiction of this court over Artnet.

The wages paid by Artnet AG to respondent Neuendorf, which amounted to 300,000 Euros in 2003, are subject to the income execution. In addition, the living expenses incurred by respondent Neuendorf which he incurs on his trips to New York City, which are advanced or reimbursed by Worldwide constitute earnings. See *Le Voff v. Gompers Blau*, 278 AD 878, 104 N.Y.S.2d 326 (3d Dept. 1951.) Thus, such payments are subject to an installment order on the income execution. CPLR § 5226 provides that such installment order be based upon accrued installments. Furthermore, petitioner's motion is granted on the merits and the court dismisses Worldwide's motion to the extent that it moves under CPLR 404 to dismiss based upon an "objection in point of law" and seeks additional time to file an Answer. *Matter of Dodge's Estate*, 25 N.Y.2d 273, 250 N.E.2d 849, 303 N.Y.S.2d 847 (1969.)

Rochdale concedes that the 1,456,185 shares of Artnet stock once owned by Neuendorf are currently owned by Gallerie Neuendorf AG. Rochdale has neither moved to [*13] pierce the corporate veil or to set aside Neuendorf's transfer of such securities. As they belong to a non-party to this proceeding, such shares are not subject to levy by the sheriff.

Nor has Rochdale convinced this court that the premiums for the insurance policy on Neuendorf's life, which are being paid by Worldwide, constitute property in which the judgment debtor has an interest. There is no evidence in the record that Neuendorf has any alienable interest in the policy, since Worldwide has the right to recoup the premium payments from Neuendorf's spouse, the policy beneficiary, upon his death.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that petitioner Rochdale Holding Corporation's motion for an installment order is GRANTED and respondent

Neuendorf shall make installment payments to the judgment creditor, petitioner Rochdale Holdings Corporation by remitting ten percent of compensation he receives from any source, and respondent Arnet AG shall make installment payments to the judgment creditor, petitioner Rochdale Holdings Corporation by remitting ten percent of any and all money that the judgment debtor, respondent Hans Neuendorf received as of September 5, 2002, and on [*14] an ongoing basis any and all money that respondent Neuendorf is receiving or will receive from respondent Arnet AG, and respondent Arnet Worldwide Corporation shall make installment payments to the judgment creditor, petitioner Rochdale Holdings Corporation by remitting ten percent of any and all money that the judgment debtor, respondent Neuendorf received as of September 5, 2002, and on an ongoing basis any and all money that respondent Neuendorf is receiving or will receive from respondent Arnet Worldwide Corporation, each and in the aggregate until satisfaction of the Judgment, entered on August 12,

2002 is made; and it is further,

ORDERED, ADJUDGED and DECREED that petitioner Rochdale Holding Corporation's motion for a sheriff levy upon certain stock certificates, stock options and life insurance policy is DENIED, and it is further,

ORDERED, ADJUDGED and DECREED that the cross-motions to dismiss of respondent Neuendorf and respondent Arnet AG and respondent Arnet Worldwide Corporation are DENIED, and it is further,

ORDERED, ADJUDGED and DECREED that petitioner shall serve upon respondent Hans Neuendorf, respondent Arnet AG and respondent Arnet Worldwide Corporation a copy [*15] of this Order with notice of entry thereof.

This is the decision and order of the court.