

Matter of LCF Group, Inc. v Fifth Third Bank, N.A.

2024 NY Slip Op 32304(U)

July 8, 2024

Supreme Court, New York County

Docket Number: Index No. 158604/2023

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
THE LCF GROUP, INC.,

Petitioner,

- v -

FIFTH THIRD BANK, N.A.,

Respondent.

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INDEX NO. 158604/2023

MOTION DATE 09/11/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12

were read on this motion to/for TURNOVER PROCEEDING.

In this proceeding pursuant to CPLR 5225, the petitioner, The LCF Group, Inc. (LCF), seeks an order directing the respondent Fifth Third Bank, N.A. (the bank), to turn over the sum of \$9,083.77, plus statutory post-judgment interest on that sum from May 26, 2023, from an account or accounts that the bank maintains for or on behalf of judgment debtors ESF Janitorial, LLC, doing business as ESF Janitorial (ESF), and Sandy Cross to satisfy a judgment that had been entered in the Supreme Court, Nassau County, on May 26, 2023, in favor of LCF and against those judgment debtors, jointly and severally. No opposition has been submitted to the petition. The petition is granted, and the bank is directed to turn over, to the petitioner, all sums up to the amount of \$9,083.77, plus statutory post-judgment interest on that sum from May 26, 2023, that it currently holds on account for ESF or Sandy Cross, less any amount that it currently holds that is statutorily exempt from execution and turnover.

On May 26, 2023, in a Supreme Court action entitled *The LCF Group, Inc. v ESF Janitorial, LLC, doing business as ESF Janitorial, and Sandy Cross*, LCF secured a money judgment against ESF and Cross, jointly and severally, in the total sum of \$9,083.77, inclusive

of costs, disbursements, and prejudgment contractual interest (*see The LCF Group, Inc. v ESF Janitorial, LLC*, Sup Ct, Nassau County, Index No. 617980/2022, May 26, 2023). LCF established that no portion of that judgment has been satisfied. In or about June, 2023, LCF caused the bank to be served with a levy, information subpoena, and final demand pursuant to CPLR 5232(a), directing that it pay over to the LCF the sum of \$9,083.77 from any and all of the accounts that ESF and Cross maintained with the bank. LCF commenced this proceeding on August 30, 2023. On September 6, 2023, LCF served the bank with the notice of petition and petition herein by delivery thereof to an agent authorized by appointment to accept service of process. On August 31, 2023, LCF served ESF and Cross with those papers to their last known addresses by certified mail, return receipt requested. Neither the bank nor the debtors have answered or moved with respect to the petition, or otherwise appeared in the proceeding.

“CPLR 5225(b) provides for an expedited special proceeding by which a judgment creditor can recover ‘money or other personal property’ belonging to a judgment debtor ‘against a person in possession or custody of money or other personal property in which the judgment debtor has an interest’ in order to satisfy a judgment” (*Matter of New York Community Bank v Bank of Am., N.A.* 169 AD3d 35, 37-38 [1st Dept 2019], quoting *Matter of Signature Bank v HSBC Bank USA, N.A.*, 67 AD3d 917, 918 [2d Dept 2009]). That provision thus is the appropriate provision under which to pursue a turnover proceeding against a bank that holds a judgment debtor’s assets on deposit (*see Matter of First Am. Tit. Ins. Co. v Kenderian*, 157 AD3d 891, 891-892 [1st Dept 2018]; *see also Plymouth Venture Partners, II, L.P. v GTR Source, LLC*, 37 NY3d 591, 613-614 [2021] [Wilson, J., dissenting]; Richard C. Reilly, Practice Commentaries, McKinney’s Cons Laws of NY, CPLR C5225:1; *see generally Koehler v Bank of Bermuda Ltd.*, 12 NY3d 533, 540-541 [2009]).

More specifically, CPLR 5225(b) provides for a turnover of assets, as sought by the petitioner here, “[u]pon a special proceeding commenced by the judgment creditor” against an entity such as the bank, which is “in possession of custody” of the judgment debtor’s assets. A

special proceeding is commenced by the filing of a petition (see CPLR 304[a]). Pursuant to CPLR 403(a), “[a] notice of petition” in a special proceeding “shall be served on any adverse party at least eight days before the time at which the petition is noticed to be heard,” although a petitioner may demand that a respondent serve an answer to the petition 7 days before the return date of the petition where the petitioner serves the notice of petition 12 days before the return date. CPLR 403(c) provides that “[a] notice of petition shall be served in the same manner as a summons in an action.” CPLR 5225(b) provides that “[n]otice of the [turnover] proceeding shall also be served upon the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested.”

LCF properly served the bank with the levy and demand, it properly commenced this proceeding against the bank pursuant to CPLR 5225 to secure an order turning over all non-exempt funds in the subject bank accounts, it properly named and served the bank, and it properly served the judgment debtors with all of the papers in this proceeding.

Accordingly, it is,

ORDERED that the petition is granted, without opposition, and the respondent Fifth Third Bank, N.A., is directed to turn over, to the petitioner, all sums up to the amount of \$9,083.77, plus simple statutory post-judgment interest at 9% per annum on that sum from May 26, 2023, that it currently holds on account for ESF Janitorial, LLC, doing business as ESF Janitorial, and/or Sandy Cross, less any amount that it currently holds on their account that is statutorily exempt from execution and turnover; and it is further,

ORDERED that, within 15 days of the entry of this order, the petitioner shall serve a copy of this order with notice of entry upon Fifth Third Bank, N.A., ESF Janitorial, LLC, doing business as ESF Janitorial, and Sandy Cross, both by regular mail and by certified mail, return receipt requested; and it is further,

ORDERED that the respondent Fifth Third Bank, N.A., is directed, within 45 days of service upon it of a copy of this order, with notice of entry, to deliver, to Adam J. Feldman, Esq.,

3000 Marcus Avenue, 2W15, Lake Success, New York 11042, as attorney for the petitioner, the sum of \$9,083.77, plus statutory post-judgment interest on that sum from May 26, 2023, that it currently holds on account for ESF and/or Sandy Cross, less any amount that it currently holds that is statutorily exempt from execution and turnover, including account numbers XXXX5143, XXXX8331, and XXXX0197, by certified, bank, or treasurer’s check, payable jointly to Adam J. Feldman and The LCF Group, Inc.

This constitutes the Decision and Order of the court.

7/8/2024
DATE



JOHN J. KELLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: