

Pentagon Fed. Credit Union v Popovic

2024 NY Slip Op 34413(U)

December 12, 2024

Supreme Court, New York County

Docket Number: Index No. 653831/2021

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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PENTAGON FEDERAL CREDIT UNION, AS
SUCCESSOR BY MERGER TO PROGRESSIVE CREDIT
UNION,

Plaintiff,

- v -

SOPHIA POPOVIC, JACQUELINE POPOVIC, L.G. CAB
CORP., SJ FOURTEEN, INC.,NALA TAXI CORP., MYNA
TAXI, INC.,A G CAB CORP., LISA MELINDA CAB CORP.,
BL TRANSIT INC.,BEBO CAB CORP., JP TAXI, INC.

Defendant.

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INDEX NO. 653831/2021

MOTION DATE 10/23/2024,
11/14/2024,
11/14/2024

MOTION SEQ. NO. 002 003 003

**DECISION + ORDER ON
MOTION**

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 131, 132, 133, 134,
135, 136, 137, 138, 139, 140, 142, 143, 144, 150, 151, 152, 153, 154, 155, 156, 157, 158

were read on this motion to/for TURNOVER PROCEEDING.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 145, 146, 147, 148,
149, 159, 160, 161, 162

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

The following e-filed documents, listed by NYSCEF document number (Motion 003) 145, 146, 147, 148,
149, 159, 160, 161, 162

were read on this motion to/for MISCELLANEOUS.

Upon the foregoing documents and for the reasons set forth below, Pentagon Federal Credit Union (the **Judgment Creditor**)’s motion (Mtn. Seq. No. 02) for turnover proceeding is GRANTED, and Sophia Popovic (the **Judgment Debtor**)’s cross-motion for a protective order is also GRANTED to the extent set forth herein. Roman Khodosh’s motion (Mtn. Seq. No. 03) to prohibit the enforcement of the Judgment (NYSCEF Doc. No. 133) against Mr. Khodosh’s separate property is DENIED.

Reference is made to the Judgment, dated April 11, 2023, which was entered against, among others, the Judgment Debtor, and in favor of the Judgment Creditor, in the aggregate amount of \$9,126,959.54. To date, the Judgment Debtor has failed to pay the Judgment, and the entire balance remains currently due and outstanding.

In response to a Subpoena Duces Tecum (NYSCEF Doc. No. 136), issued on September 20, 2023, the Judgment Debtor adduced an Insurance Policy (NYSCEF Doc. No. 137) that identifies three categories of personal property owned by the Judgment Debtor which are insured for substantial amounts: (i) Fine Arts insured in the amount of \$236,201.00, (ii) Blanket Jewelry in the amount of \$115,763.00, and (iii) Jewelry in Vault in the amount of \$415,083.00. In addition, during her deposition (NYSCEF Doc. No. 138), the Judgment Debtor indicated ownership of, among other things, a Versace watch, chains, and earrings.

CPLR § 5225(a) provides in relevant part that:

Upon motion of the judgment creditor, upon notice to the judgment debtor, where it is shown that the judgment debtor is in possession of or custody of money or other personal property in which it has an interest, the court shall order that the judgment debtor pay the money or so much of it as it 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 motion for turnover proceeding must be granted pursuant to CPLR 5225(a) because the Judgment Debtor has clearly failed to satisfy the Judgment, and the Judgment Debtor is in possession or has custody of personal property in which she has an interest.

The Judgment Debtor argues that two of the rings identified in the Insurance Policy are exempt from satisfaction of the Judgment because they are her wedding rings from her marriages to Mr. Popovic and Mr. Khodosh (NYSCEF Doc. No. 144 at 5-6). She is partially correct.

Under CPLR § 5205(a)(6), a wedding ring is exempt from satisfaction of money judgments. A ring, “whether it was considered to be an Engagement or Betrothal Ring when given before the wedding ceremony, but which is used during the wedding ceremony when no other ring is received, becomes the wedding ring, and will also be exempt for purposes of CPLR Section 5205(a)(6)” (*In re Tiberia*, 227 BR 26, 28 [Bankr WDNY 1998]).

The ring from the Judgment Debtor’s marriage to Mr. Popovic does not qualify as a wedding ring under CPLR § 5205(a)(6). The Judgment Debtor indicates that the ring was not exchanged during the wedding ceremony, but rather, at a vow renewal ceremony approximately twenty years after the wedding (NYSCEF Doc. No. 143 ¶¶ 5-9). She is also no longer married to Mr. Popovic such that it is no longer her wedding ring. As such, the ring is not exempt from the Judgment.

However, inasmuch as the ring from the Judgment Debtor’s marriage to Mr. Khodosh was exchanged at their wedding ceremony and she is married to him, this ring is properly exempt from execution under CPLR § 5205(a)(6). It is simply irrelevant that the Judgment Debtor referred to the ring as an engagement ring rather than a wedding ring, as an engagement ring which is nonetheless “used during the wedding ceremony when no other ring is received, becomes the wedding ring” (*see In re Tiberia*, 227 BR at 28). Thus, the Judgment Debtor’s

motion for a protective order must be granted solely to the extent that the Judgment cannot be enforced as to the ring from her marriage to Mr. Khodosh.

In addition, all property acquired by either spouse during the marriage and before the execution of a separation agreement or the commencement of a matrimonial action regardless of the form in which title is held is marital property (*Pensmore Investment, LLC v Gruppo, Levey & Co.*, 137 AD3d 558 [2016]).

Section 236 [B](1)(d) of the Domestic Relations Law sets forth the following four categories of property that constitute separate property:

- (1) Property acquired before marriage or property acquired by bequest, devise or descent, or gift from a party other than the spouse;
- (2) Compensation for personal injuries;
- (3) Property acquired in exchange for or the increase in value of separate property, except to the extent that such appreciation is due in part to the contributions or efforts of the other spouse;
- (4) Property described as separate property by written agreement of the parties pursuant to subdivision three of this part.

As is well settled under New York law, the statute creates a presumption that all property unless clearly separate is deemed marital property, and the burden rests with the titled spouse to rebut that presumption (*Fields v Fields*, 15 NY3d 158, 162 [2010]). Separate property which is commingled with marital property loses its separate character and is treated as marital property (*McManus v McManus*, 298 AD2d 189 (2002)).

Mr. Khodosh argues that certain tangible personal assets in the Judgment Debtor's home are his separate property, including two crystal vases, a large grey bowl, a photograph titled Image of

the Face, stereo equipment and speakers, three watches, and a gold wedding band. In support of this proposition, Mr. Khodosh offers an affidavit (NYSCEF Doc. No. 160), in which he claims that the aforementioned items are his separate property – he offers no basis as to how or why such property is in fact separate and not marital property.

Indeed, Mr. Khodosh fails to identify at what point in time the items were acquired or whether the items were acquired with separate or marital funds. He offers no receipts or relevant information. In other words, Mr. Khodosh fails to meet his burden in establishing that this property is in fact separate and not marital property under the Domestic Relations Law categories. As such, based on the record before the Court, there is simply insufficient evidence to support Mr. Khodosh's motion, and it is denied.

The Court has considered the remaining arguments and finds them unavailing.

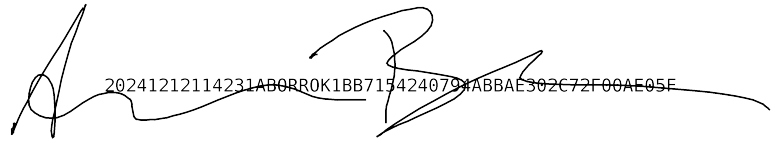
Accordingly, it is hereby

ORDERED that the Judgment Creditor's motion for turnover proceeding (Mtn. Seq. No. 002) is GRANTED, and the Judgment Debtor's cross-motion for a protective order is GRANTED to the extent set forth herein; and it is further

ORDERED that the Judgment Debtor is directed, upon receipt of a certified copy of this Decision and Order, to turn over and deliver to the Sheriff of New York County all art work, jewelry, and other personal property, including the assets identified in the Insurance Policy,

currently in the Judgment Debtor’s possession, custody, or control, to be sold in a Sheriff’s sale and shall execute and deliver any documents requested to effectuate such relief; and it is further

ORDERED that Mr. Khodosh’s motion (Mtn. Seq. No. 003) to stay enforcement is DENIED.


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12/12/2024
DATE

ANDREW BORROK, J.S.C.

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