

Kassover v Prism Ventures Partners, LLC
2017 NY Slip Op 31933(U)
September 1, 2017
Supreme Court, New York County
Docket Number: 602434/2005
Judge: Saliann Scarpulla
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. SALIANN SCARPULLA

Justice

PART 39

-----X
RUTH KASSOVER AS CO-EXECUTOR OF THE ESTATE OF
NATHAN KASSOVER, PHILIP KASSOVER,

Plaintiff,

INDEX NO. 602434/2005

MOTION DATE 4/6/2017

MOTION SEQ. NO. 012

- v -

PRISM VENTURES PARTNERS,LLC, PVP-GCC HOLDINGCO
II, LLC, THE GARDEN CITY COMPANY, INC., RICHARD
SABELLA, ROSALIE ERICKSON IN HER INDIVIDUAL
CAPACITY AND AS PERSONAL REPRESENTATIVE OF THE
ESTATE OF MAX KASSOVER, RICHARD BAIME, LULU
KASSOVER, HARIETTE K. BAIME,LLC, MORTON
KASSOVER, HARRIETTE K. BAIME AND MORTON
KASSOVER AS THE EXECUTORS OF THE ESTATE OF
SAMUEL KASSOVER, SLOBODIEN FAMILY PARTNERSHIP,
LP, R. PEYTON GIBSON

Defendant.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number 325, 326, 327, 328, 329, 330,
331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350,
351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370,
371, 374, 375

were read on this application to/for PREL INJUNCTION/TEMP REST ORDR

Upon the foregoing documents, it is

HON. SALIANN SCARPULLA:

Ruth Kassover, as co-executor of the Estate of Nathan Kassover (“Nathan”), and Philip Kassover (collectively, “Plaintiffs”)¹, move, in motion sequence no. 12, by order to show cause, for an order requiring PVP-GCC HOLDINGCO II, LLC, The Garden City Company, Inc. (“Garden City”), and their successor by merger, GCC Realty Company, LLC (collectively, “GCC”) to pay money and turn over property pursuant to CPLR § 5225 (a) and (c) (the “Second Turnover Motion”).

The facts of this case have been explained in numerous prior decisions of both this Court and the Appellate Division and therefore will only be summarized here as necessary for the present motion.²

Garden City was a real estate company that was owned and operated by Kassover family members. In 2002, there was a merger of Garden City as part of a Bankruptcy Court supervised liquidation of shareholder Lawrence Kassover’s (deceased) assets. PVP-GCC HOLDINGCO II, LLC acquired Garden City pursuant to a July 16, 2002 merger agreement (the “Merger Agreement”) and Richard J. Sabella (“Sabella”) was the principal owner of PVP. Plaintiffs surrendered their shares in the merger but commenced this lawsuit alleging that they only received a fraction of the consideration to which they were entitled.

¹ Plaintiff Ruth Kassover is now deceased and Plaintiff Philip Kassover appears as executor of the estates of Nathan Kassover and Ruth Kassover as well as in his individual capacity.

² See, e.g., *Kassover v. Prism Venture Partners, LLC*, 2007 WL 4562621 (Jan. 19, 2007) *aff’d* 53 A.D.3d 444 (1st Dept. 2008); *Kassover v. PVP-GCC Holding Co. II, LLC* (Order dated July 2, 2008), *mod.* 73 A.D.3d 626 (1st Dept. 2010), *lv. to app. dismiss.*, 15 N.Y.3d 820 (2010); *Kassover v. Prism Venture Partners, LLC* (Order dated Sept. 23, 2013).

In a decision on defendants' motion to dismiss, dated January 19, 2007 (the "2007 Order"), this Court (Judge Freedman) held that "the complaint adequately pleads that defendants' failure to pay full consideration for plaintiffs' shares violated the Merger Agreement, resulting in a de facto violation of section 501(c)" of the New York BCL. The aforementioned language was again cited by Judge Freedman in a later decision, dated July 2, 2008 (the "2008 Decision"), granting partial summary judgment to Plaintiffs on their claim for the consideration that GCC refused to pay them in connection with the Merger Agreement. The 2008 Decision directed "entry of a judgment against defendants PVP-GCC Holdingco II, LLC and R. Peyton Gibson as Disbursing Agent for the balance of the Per Share Merger Consideration."

Two months following the 2008 Decision, on September 15, 2008, GCC filed for bankruptcy in the Southern District of Florida (the "First Bankruptcy") and the automatic stay precluded Plaintiffs from entering or enforcing the judgment.

The bankruptcy court, on June 9, 2009, granted relief from the automatic stay to Plaintiffs in order for them to liquidate their claims against GCC in this action including the entry of a judgment. Next, a judgment was entered by this court on September 30, 2009 and filed by the County Clerk, New York County on October 27, 2009, against GCC in the amount of \$294,527.48 in favor of Philip Kassover and \$1,428,270.82 in favor of Ruth Kassover, as co-executor of the Estate of Nathan Kassover. These judgment amounts were subsequently modified by the First Department on July 8, 2010 to \$293,606 in favor of Philip Kassover and \$1,475,171 in favor of Ruth Kassover, as co-executor of Nathan's Estate (the "Judgment").

On September 23, 2011, the First Bankruptcy was dismissed and the automatic stay was lifted. Plaintiffs filed a motion, pursuant to CPLR § 5225, for an order directing GCC to pay money and turn over certain property (the "First Turnover Motion"). Prior to any response from GCC, and only 12 days after the First Bankruptcy's dismissal, Warren Malone, an alleged GCC creditor, filed an involuntary Chapter 7 bankruptcy petition against GCC in the Southern district of Florida (the "Second Bankruptcy"). This matter was again stayed during the Second Bankruptcy.

Following the filing of the Second Bankruptcy, Sabella and the other managers of GCC elected to dissociate themselves as managers of GCC by filing the necessary documentation with the State of Florida. The Bankruptcy Trustee became responsible for managing GCC.

The parties to the action before me entered into a stipulation agreeing that Plaintiffs' First Turnover Motion could be renewed after the conclusion of the Second Bankruptcy. On October 19, 2011, this Court (Judge Kapnick) so-ordered the stipulation and denied Plaintiffs' First Turnover Motion with leave to renew once the automatic bankruptcy stay was lifted.

On July 14, 2016, the Second Bankruptcy was dismissed upon Plaintiffs' motion. The current motion ensued. Due to the two successive bankruptcy filings, GCC has not paid any portion of the outstanding judgment which, Plaintiffs allege, amounted to \$2,462,339 (representing \$1,465,171 in principal and \$987,168 in interest) as of March 31, 2017.

According to Plaintiffs, GCC, through numerous entities, owns or leases properties to drug stores. GCC directly or indirectly holds a one hundred percent ownership interest in these entities which it identified in reports submitted during the First and Second Bankruptcies (the “Entities”).³ The Entities remained in GCC’s control following the First Bankruptcy’s dismissal. During the Second Bankruptcy, GCC’s interests in the Entities were transferred to the bankruptcy estate. On August 8, 2015, the bankruptcy trustee moved to abandon the Entities, noting in its motion that GCC retained a 100% ownership interest in the entities.

As per the affidavit of Michael Moccia, a Florida attorney for Sabella and non-party Allerand 675 Company, LLC (“Allerand”), on the same date (in August 2015) that the bankruptcy trustee moved to abandon the Entities, every GCC member assigned all of their ownership interests in GCC to Infinity Residential Leasing Company, LLC (“Infinity”). Thereafter, in September 2016, Infinity filed a plan of dissolution. Under Florida law, because Infinity’s assets were unclaimed after six months from the date that its articles of dissolution were filed, its assets escheated to the state of Florida.⁴ Moccia

³ The entities are as follows: SCP 2001A-CSF-18 LLC; GCC-RA Berea, LLC; SCP 2001A-CSF-31 LLC; GCC-RA Cane Run, LLC; SCP 2001A-CSF-51 LLC; GCC-RA Hodgenville, LLC; SCP 2001A-CSF-61 LLC; C-RA Orangevale, LLC; SCP 2001A-CSF-72 LLC; GCC-RA Lebanon, LLC; SCP 2001A-CSF-75 LLC; GCC-RA Paradise, LLC; SCP 2001A-CSF-76 LLC; GCC-RA Washington D.C., LLC; SCP 2002E-35 LLC; GCC-RA Holdingco LTD; SCP 2002E-36 LLC; TPMA Lot 18, LLC; SCP 2002E-48 LLC; GCC SPE, LLC; SCP 2007-C27-550 LLC; Cadillac Exchange, LLC; SCP 2007-C27-520 LLC; Garfield Enterprises, LLC; GCC-RA Bardstown, LLC; Three Rivers Development, LLC; and SCP 2002E-13 LLC.

⁴ Infinity’s “sole material asset was an interest in GCC Realty Company, LLC, a Delaware limited liability company.”

states that “[d]espite the escheatment, GCC remains a separate company... [and] can still be sued for process” upon notice to the State of Florida.

Plaintiffs now seek an order directing GCC to pay money and turn over property, in satisfaction of the Judgment. Specifically, pursuant to CPLR § 5225, Plaintiffs seek an order: 1) directing GCC to: a) pay Plaintiffs the cash it owns including rents or other lease payments paid or due to be paid to GCC or the Entities up to the amount of the Judgment plus post-judgment interest; b) turnover to the Sheriff of the City of New York (the “Sheriff”) “GCC’s membership and/or stock certificates and/or any other original documents evidencing its ownership interests” for sale at auction in satisfaction of the Judgment amount; c) turnover to the Sheriff any/all other personal property and assets in which GCC has any interest for sale at auction; d) execute and deliver any documentation necessary to evidence GCC’s ownership interests in the Entities; e) deliver additional documents required to effectuate the Sheriffs’ sale of the ownership interests; and 2) directing the Sheriff to: a) sell the ownership interests and assets at auction as soon as practicable; b) distribute the sale proceeds to pay the Judgment amount to Plaintiffs with any excess proceeds to GCC; and 3) granting Plaintiffs leave to serve GCC with a second restraining notice.

GCC has not submitted any opposition to Plaintiffs’ order to show cause.

However, non-party Allerand⁵ filed papers in opposition to the relief sought by Plaintiffs and were heard at the hearing before me.

⁵ Notably, Sabella, a former GCC member and former defendant in this action, is a member of Allerand and filed an affidavit in opposition to Plaintiffs’ Order to Show

According to Allerand's papers, Sabella funded loans to "GCC as debtor in possession in order to fund the administrative expenses of GCC incurred in the [First] [B]ankruptcy (the 'DIP Loan'), which was evidenced by a promissory note." The DIP Loan was eventually transferred and assigned to Allerand (the "DIP Note"). During the course of the Second Bankruptcy, Allerand bought the claims of GCC's creditors (the "Assigned Claims"). Allerand states that after the trustee abandoned GCC's LLC interests, Allerand and Sabella moved the bankruptcy court to lift the automatic stay to allow them to "pursue their non-bankruptcy creditor remedies against the abandoned LLC Interests to collect on the DIP Note and the Assigned Claims."

After their motion was granted, Allerand and Sabella filed a complaint in Florida state court against GCC for payment on the DIP Note and Assigned Claims and thereafter a default judgment of \$1,500,445.48 was entered (the "Allerand Judgment"). Following the Allerand Judgment, Allerand filed, on February 8, 2016, a Judgment Lien Certificate with the Florida Secretary of State (the "Allerand Judgment Lien"). Next, Allerand's motion in Florida state court to foreclose on three of the Entities – SCP 2007-C27-550 LLC, SCP 2007-C27-520 LLC, and SCP 2002E-48 LLC (the "Select Entities") – was granted. Allerand now owns the Select Entities as it purchased them at the auction for \$100,100. According to its papers, Allerand is seeking to sell the Select Entities but has not done so "until this Court issues a ruling confirming, in accordance with the Florida

Cause. Plaintiffs appealed the dismissal of the last claim against Sabella and the 1st Dept. has scheduled argument for the September 2017 term.

court's foreclosure order, that the Select Entities are property of Allerand 675 and thus are not subject to be applied in satisfaction of Kassover's Judgment."

In the papers submitted in this action, Allerand now argues that it has judgment creditor rights to GCC's property that are senior to Plaintiffs' rights because of the Allerand Judgment Lien.

On June 2, 2017, Plaintiffs and Allerand entered into a stipulation agreeing that Allerand is an intervenor in this action "for the sole purpose of having the Parties' respective judgment creditor rights, including the priority thereof in and to the Subject Property, adjudicated by this Court, subject to the applicable principles of choice of law and full faith and credit."⁶

Discussion

For property in a judgment debtor's possession, CPLR § 5225 (a) provides that:

Upon motion of the judgment creditor, upon notice to the judgment debtor, where it is shown that the judgment debtor is in possession or custody 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 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.

CPLR § 5225 (c) allows a court to order persons "to execute and deliver" documents required to effectuate either payment or delivery.

In addition, CPLR § 5201 (b) states that the right to obtain a debtor's personal property encompasses any property "which could be assigned or transferred, whether it

⁶ I so-ordered the stipulation between the parties on June 9, 2017.

consists of a present or future right or interest.” And, New York Consolidated Laws, Limited Liability Company Law § 601, states that “[a] membership interest in the limited liability company is personal property.”

1. Turnover Order and its Applicability to Out-of-State Property

To obtain a turnover order, a petitioner must establish the existence of personal jurisdiction over the respondent. *Koehler v. Bank of Bermuda Ltd.*, 12 N.Y.3d 533, 540 (2009). Here, the Court plainly has personal jurisdiction over GCC as the defendant.⁷

Plaintiffs have identified GCC personal property to which they seek turnover. Specifically, Plaintiffs allege that they are entitled to cash owned by GCC, including rents or other lease payments paid or due to be paid to GCC or the Entities as well as “all other personal property and assets in which GCC has any interest for sale at auction.”

Although Plaintiffs do not contend that the GCC property or interests it seeks are “necessarily” located outside of New York, they argue that for CPLR § 5225 purposes, the location of GCC’s property does not prevent the court from issuing a turnover order. In opposition, Allerand asserts that the Entities, GCC’s “principal assets,” are located in Florida.

The Court of Appeals has held that “CPLR Article 52 contains no express territorial limitation.” *Koehler*, 12 N.Y.3d at 539. Turnover orders can “direct[] a defendant, over whom the New York court has jurisdiction, to bring its own property into New York.” *Gryphon Domestic VI, LLC v. APP Int’l Fin. Co., B.V.*, 41 A.D.3d 25, 31

⁷ At the time that Plaintiffs filed their complaint, personal jurisdiction was pursuant to CPLR § 302.

(1st Dept. 2007). Thus, a New York court may order a defendant to turn over property to a judgment creditor even if the property is located out of state. *Koehler*, 12 N.Y.3d at 540; *see also Gryphon*, 41 A.D.3d at 31; *Starbare II Partners, L.P. v. Sloan*, 216 A.D.2d 238, 239 (1st Dept. 1995) (holding that “[s]ince the IAS Court had personal jurisdiction over defendant and judgment debtor... it was entitled under CPLR 5225 (a) to order him to turn over to the Sheriff of the City of New York property located outside of the State”).

Plaintiffs have demonstrated that the Entities are LLC interests wholly owned by GCC through GCC’s filings in other actions, including, in the First Bankruptcy, a report entitled, “Periodic Report Regarding Value, Operations and Profitability of Entities in which the Estate of GCC Realty Company, LLC Holds a Substantial or Controlling Interest.” I find that, pursuant to CPLR § 5225, this personal property of GCC, regardless of its location, is subject to turnover. *See, e.g., Gliklad v. Chernoi*, 129 A.D.3d 604, (1st Dept. 2015) (finding that judgment creditor was entitled to turnover from judgment debtor of the latter’s interest in an LLC as well as the LLC’s assets and debts). Accordingly, Plaintiffs are entitled to the turnover of GCC’s personal property and funds as requested in the motion.

2. New York or Florida Law

Under New York law, where a case presents a potential choice of law issue, the court must first determine if there is an actual conflict between the law of the two jurisdictions. *Karaha Bodas Co., LLC v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara (“Pertamina”)*, 313 F.3d 70, 85 (2nd Cir. 2002). “In property disputes, if a conflict is identified, New York choice of law rules require the application of an

‘interests analysis,’ in which ‘the law of the jurisdiction having the greatest interest in the litigation [is] applied and ... the facts or contacts which obtain significance in defining State interests are those which relate to the purpose of the particular law in conflict.’” *Id.* (citation omitted); *see also Istim, Inc. v. Chemical Bank*, 78 N.Y.2d 342, 348 (1991). In contract disputes, New York utilizes the “grouping of contacts” approach to resolving choice of law questions. *Zurich Ins. v. Shearson Lehman Hutton, Inc.*, 84 N.Y.2d 309, 317 (1994). This approach applies the law of the state that has “‘the most significant relationship to the transaction and the parties.’” *Id.* (citation omitted).

This action emanated from GCC’s failure to pay Plaintiffs the full owed them under the Merger Agreement. When the action was commenced, Plaintiff Philip Kassover was a New York resident, the defendants either resided or conducted business in New York, and the acquired Garden City company was a New York corporation. Additionally, the Merger Agreement contains numerous provisions noting that the parties’ actions were to be in accordance with the New York BCL. And, “section 15.10 Governing Law” of the Merger Agreement states that “[t]his Agreement shall be governed, construed and enforced in accordance with the laws of the State of New York without regard to principles of conflicts of law.” Thus, New York has a more significant relationship to the transaction and the parties than does Florida, as well as a greater interest in the property sought through Plaintiffs’ Second Turnover Motion. As a result, New York law should apply.

Further, under Florida law, a parties’ agreement “to be bound by the substantive laws of another jurisdiction is presumptively valid,” thus Florida courts “will enforce a

choice-of-law provision unless applying the chosen forum's law would contravene a strong public policy of [Florida]." *Southeast Floating Docks, Inc. v. Auto-Owners Ins. Co.*, 82 So.3d 73, 80 (Fla. 2012); *see also Gilman + Ciocia, Inc. v. Wetherald*, 885 So.2d 900 (Fla. 4th DCA 2004); *Mazzoni Farms, Inc. v. E.I. DuPont D Nemours Co.*, 761 So.2d 306, 311 (Fla. 2000). Given the parties' agreement that the "governing law" of the Merger Agreement is New York, Florida law also favors the applicability of New York law here.

3. Lien Priority

Plaintiffs argue that the Judgment establishes their priority to GCC's personal property over other creditors, including intervenor Allerand. Allerand counters that: 1) Plaintiffs' Judgment is subordinate to the Allerand Judgment Lien because it is prior in time; 2) the Allerand Judgment is entitled to full faith and credit under the U.S. Constitution.

In New York, for personal property, the mere docketing of a judgment does not create a lien, rather a lien upon personal property arises when an execution is issued to the proper officer. *Meyerhardt v. Heinzelman*, 71 N.Y.S.2d 692, 692-693 (N.Y. Sup. Ct. 1947), *aff'd* 272 A.D. 800 (1st Dept. 1947). Before a creditor may obtain priority in personal property, under CPLR § 5202 and § 5234, delivery of execution to the Sheriff is required. *State Tax Commission v. Shor*, 43 N.Y.2d 151, 157 (1977).

"Neither the commencement of an Article 52 proceeding, the service of an information subpoena on the garnishee, nor the service of a restraining order will afford priority." *County Natl. Bank v. Inter-County Famers Coop. Ass'n*, 65 Misc.2d 446, 449

(N.Y. Sup. 1970); *see also* *Kitson & Kitson v. City of Yonkers*, 10 A.D.3d 21, 25 (2d Dept. 2004) ("service of a restraining notice pursuant to CPLR 5222 gives no priority over other creditors."). Instead, "[t]he order of priority among judgments is to be determined strictly in accordance with the chronological service of execution levies and the filing of orders for turnover or receiverships." *City of N.Y. v. Panzirer*, 23 A.D.2d 158, 160 (1st Dept. 1965); *see also* *Aspen Industries, Inc. v. Marine Midland Bank*, 52 N.Y.2d 575 (1981) (finding that a judgment creditor who serves a restraining notice is "required to take further steps in enforcing his judgment, such as an execution or levy upon the judgment debtor's property, in order to prevent the intervening rights of third parties from taking precedence over his claim against the judgment debtor.).

Here, the judgment in Plaintiffs' favor was rendered in 2008. The First Bankruptcy prevented Plaintiffs from either entering or enforcing the judgment. After getting relief from the automatic bankruptcy stay, Plaintiffs' judgment was entered on September 30, 2009 and the amounts in the Judgment were modified by the First Department on July 8, 2010. Once the First Bankruptcy was dismissed, on September 23, 2011, Plaintiffs filed the First Turnover Motion and obtained a restraining notice. Plaintiffs' enforcement efforts were stymied again by the Second Bankruptcy (which was filed a mere 12 days post-dismissal of the First Bankruptcy). The parties then entered into a stipulation, so-ordered by Judge Kapnick on October 19, 2011, agreeing that Plaintiffs' First Turnover Motion could be renewed after the Second Bankruptcy's conclusion.

During the pendency of the Second Bankruptcy, Allerand and Sabella were granted relief from the automatic bankruptcy stay, filed their complaint against GCC for payment on the DIP Note, received judgment on their motion and obtained the Allerand Judgment Lien (by filing, on February 8, 2016, a Judgment Lien Certificate with the Florida Secretary of State).

The Second Bankruptcy was finally dismissed, upon Plaintiffs' motion, on July 14, 2016. Plaintiffs' Second Turnover Motion was filed on April 6, 2017.

First, Plaintiffs' 2011 restraining order does not confer priority. *See Kitson*, 10 A.D.3d at 25. Moreover, the transfer of GCC's assets did not violate the 2011 restraining order. Although at least one New York State Supreme Court has held that a bankruptcy stay does not affect a restraining notice,⁸ another Supreme Court found that a "bankruptcy filing trigger[s] an automatic stay that render[s] the restraining notices ineffective during the bankruptcy stay." *Doubet, LLC v. Trustees of Columbia University in City of New York*, 2011 WL 2636259, at *8 (N.Y. Sup. Jul. 6, 2011). The *Doubet* case relied upon *In re Syrria Adomah*, 340 B.R. 453 (Bankr.S.D.N.Y.2006), *aff'd*, 368 B.R. 134 (S.D.N.Y.2007), in which the court stated that "[u]pon the filing of the petition, the restraining notice became void and of no effect." *Id.* at 458. I find the reasoning of the *Doubet* court persuasive, and hold that plaintiffs' 2011 restraining notice did not remain in effect during GCC's bankruptcy.

⁸ *See Medi-Physics Inc. v. Community Hospital of Rockland County*, 105 Misc.2d 574, 575 (Rockland County Ct 1980).

Second, to date, there has not been an execution issued to the Sheriff in this case. Consequently, at this time, Plaintiffs' Judgment is not entitled to priority.⁹ *See, e.g. Shor*, 43 N.Y.2d at 157. Indeed, the many steps taken by Plaintiffs, regardless of how "diligent, on an absolute or comparative basis, do not suffice to qualify for priority." *Panzirer*, 23 A.D.2d at 162.

Allerand has not sought enforcement/domestication of the Allerand Judgment in New York, but cites the Full Faith and Credit Clause to support its assertion that the Allerand Judgment has priority over the Plaintiffs' Judgment. Under the Full Faith and Credit Clause, New York courts must "afford the judgment of a sister State the same credit, validity, and effect that it would have in the State that rendered it." *Morin Boats v. Acierno*, 150 A.D.3d 844, 844 (2d Dept. 2017); *see also* U.S. Constitution, article IV, § 1. However, absent domestication of the Allerand Judgment by intervenor Allerand, I decline to find that the Allerand Judgment Lien has priority in this action.¹⁰

Therefore, I grant Plaintiffs' request for the turnover of GCC's personal property and funds.

For the foregoing reasons, it is hereby

⁹ I am not unsympathetic to Plaintiffs' contention that Sabella, who was an individual defendant, principal of PVP and current member of Allerand, appears to have outmaneuvered Plaintiffs by stripping GCC of cash and then becoming a creditor of GCC's remaining assets.

¹⁰ If Allerand seeks enforcement of the out-of-state Allerand Judgment, because it was obtained on default, "this court's inquiry is limited to ascertaining whether the courts of [Florida] possessed personal jurisdiction over defendant[]" *Glass Contrs. v. Target Supply and Display*, 587 N.Y.S.2d 471, 472 (App. Term, 2d & 11th Jud. Dists. 1992); *See also Fiore v. Oakwood Plaza Shopping Ctr.*, 78 N.Y.2d 572, 577 (1991).

ORDERED and ADJUDGED, that plaintiffs' motion is granted to the extent of:

(1) directing defendant GCC, to turnover, forthwith, to the New York County Sheriff for auction GCC's 100% membership interest in any of the following entities – SCP 2001A-CSF-18 LLC; GCC-RA Berea, LLC; SCP 2001A-CSF-31 LLC; GCC-RA Cane Run, LLC; SCP 2001A-CSF-51 LLC; GCC-RA Hodgenville, LLC; SCP 2001A-CSF-61 LLC; C-RA Orangevale, LLC; SCP 2001A-CSF-72 LLC; GCC-RA Lebanon, LLC; SCP 2001A-CSF-75 LLC; GCC-RA Paradise, LLC; SCP 2001A-CSF-76 LLC; GCC-RA Washington D.C., LLC; SCP 2002E-35 LLC; GCC-RA Holdingco LTD; SCP 2002E-36 LLC; TPMA Lot 18, LLC; SCP 2002E-48 LLC; GCC SPE, LLC; SCP 2007-C27-550 LLC; Cadillac Exchange, LLC; SCP 2007-C27-520 LLC; Garfield Enterprises, LLC; GCC-RA Bardstown, LLC; Three Rivers Development, LLC; and SCP 2002E-13 LLC – that are presently owned by GCC, along with any documents required to effectuate the Sheriff's sale of the ownership interests, and apply the proceeds of the sale to the satisfaction of the July 2008 judgment obtained by plaintiffs against GCC (with the amounts as modified by the First Department on July 8, 2010); and

(2) directing defendant GCC, to turnover, forthwith, to the New York County Sheriff for auction any/all other personal property and assets in which GCC has any interest and apply the proceeds of the sale to the satisfaction of the July 2008 judgment obtained by plaintiffs against GCC (with the amounts as modified by the First Department on July 8, 2010); and

(3) directing defendant GCC, to turnover, forthwith, to the New York County Sheriff for payment to Plaintiffs any cash GCC owns including rents or other lease

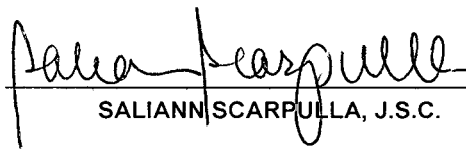
payments paid or due to be paid to GCC or its Entities up to the amount of the Judgment plus post-judgment interest; and it is further

ORDERED that the temporary restraining order issued by this court on April 5, 2017, enjoining GCC and all of its officers, directors, managers, employees, members, representatives, affiliates, parents, subsidiaries, successors, assigns, agents, executors, administrators and those acting in concert with and on their behalf from taking any action concerning GCC's Cash or Entities is hereby vacated; and it is further

ORDERED that intervenor Allerand's request to dismiss Plaintiffs' turnover petition and declare that Allerand's Judgment Lien has priority is denied in its entirety.

9/11/2017

DATE


SALIANN SCARPULLA, J.S.C.

CHECK ONE:

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CASE DISPOSED

GRANTED

SETTLE ORDER

DO NOT POST

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DENIED

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NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☒

OTHER

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REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: