

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

SONY MUSIC ENTERTAINMENT,

Judgment Creditor / Petitioner,

-against-

VINCENT HERBERT and STREAMLINE
RECORDS LLC f/s/o VINCENT HERBERT,

Judgment Debtors / Respondents.

Index No.:

I.A.S. Part:

VERIFIED PETITION

Sony Music Entertainment (“Sony Music”), by and through its attorneys, Olshan Frome Wolosky LLP, as and for its Verified Petition pursuant to N.Y. Civil Practice Law and Rules (“CPLR”) Article 52, alleges as follows:

SUMMARY OF APPLICATION

1. This is a special proceeding under the Civil Practice Law and Rules seeking to enforce a multimillion dollar judgment by way of turnover of property of judgment debtors Vincent Herbert (“Herbert”) and Streamline Records, LLC (“Streamline”) to the judgment creditor. This property is held both by (a) the judgment debtors in terms of cash and equity interests and (b) in monies and rights to future income held by one of the entities controlled by the judgment debtor. As set forth herein, application of the CPLR’s provisions concerning turnover is warranted in this case where the property in question belongs to the judgment debtor and the judgment remains unpaid.

THE PARTIES

1. Petitioner Sony Music Entertainment is a global recorded music company.

2. Respondent Vincent Herbert is a record producer and reality television star. Upon information and belief, Herbert is the sole member and manager of Respondent Streamline Records LLC.

3. Respondent Streamline Records LLC is a limited liability corporation, with its principal place of business located at One Penn Plaza, 4th Floor, New York, NY 10119.

JURISDICTION AND VENUE

4. This Court has proper subject matter jurisdiction under CPLR Articles 4 and 52.

5. Herbert is subject to personal jurisdiction in the State of New York because he regularly transacts business in New York and transacted business in New York in connection with the facts giving rise to this litigation.

6. Streamline is subject to personal jurisdiction in the State of New York because its principal place of business is located in New York, and because it regularly transacts business in New York and transacted business in New York in connection with the facts giving rise to this litigation.

7. Venue is proper pursuant to CPLR § 503 and § 509.

FACTUAL BACKGROUND

The Underlying Action

8. Sony Music commenced an action on or around November 4, 2016 against Herbert and Streamline in the Supreme Court of New York, County of New York, styled *Sony Music Entertainment v. Vincent Herbert and Streamline Records LLC f/s/o Vincent Herbert*, Index No. 655821/2016 (the “Underlying Action”). In the Underlying Action, this Court entered a default judgment on September 26, 2017, in favor of Sony Music against Herbert and Streamline in the principal amount of \$3,738,515.93. Attached hereto as Exhibit A is a true and correct copy of the Judgment.

9. Herbert is a music producer. Sony Music entered into an agreement with Herbert and Streamline to discover new artists and propose them to Sony Music, which would evaluate whether to enter into recording agreements with them. The basis for the Judgment was that Sony Music had advanced Herbert over \$3 million against future profits, which was never recouped. Specifically, Herbert is contractually obligated to direct royalty payments to Sony Music so that Sony Music can recoup the advances paid to Herbert. In 2015, Herbert breached his contract with Sony Music and, in violation thereof, re-directed payments to himself or to entities controlled by him even though the advance had not recouped.

10. No portion of the Judgment has been satisfied and the Judgment continues to accrue interest. Defendant Herbert instead has evaded enforcement through a series of shell transactions using an ever expanding list of closely held corporate entities as a means to fund and thrive upon a lavish lifestyle at the expense of his creditors, including Sony Music.

11. For example, until approximately August 2018, Vincent was known to live in a home in a gated community in Calabasas, California. Upon information and belief, this home was owned by an entity directly or indirectly controlled by Herbert called Glory Place LLC FKA Heavenly Place LLC. While living at this home, Herbert undertook extraordinary steps to undermine Sony Music's efforts to serve documents in order to domesticate the Judgment in California. Sony Music had to turn to the California courts to allow for substitute service. Upon information and belief, when the Calabasas home was sold in 2018 for \$9.8 million, the proceeds went primarily to pay down certain of Herbert's direct and indirect creditors, but not to pay down the Judgment.

12. In December 2018, Herbert signed a residential lease at 1 W Century Drive, Los Angeles California, for \$37,000 a month. On his lease application, he listed as his employer a

new entity called “Trenscend,” of which he refers to himself as “Founder and CEO.” According to his lease application, his income is \$2.5 million annually.

Herbert Directs Funds Due to Him to GloJoe

13. GloJoe Music Inc, a New York corporation (“GloJoe”) is another shell entity of Herbert’s. According to the New York Secretary of State, Herbert is the Chief Executive Officer of third party GloJoe. A true and correct copy of the New York State Department of State’s Division of Corporations Entity Information regarding GloJoe Music Inc. is attached hereto as Exhibit B. Upon information and belief, Herbert is GloJoe’s sole shareholder.

14. In response to subpoenas served on Sony/ATV Music Publishing (“ATV”), a music publishing company that is a Sony Group company, Sony Music has learned that, since the date of the Judgment, Herbert had caused ATV to arrange for payments to him in excess of \$472,000 through using GloJoe as an alter ego, including \$400,000 in April, 2019. While it appears that the underlying agreement is with GloJoe, in fact, ATV’s relevant contract, signed by Herbert, is with GloJoe and “any and all” of its “Affiliates,” which, by its terms includes, without limitation, any “Person the operation of which is owned or controlled directly or indirectly by you and any Person which is owned or controlled by the same Person which owns or controls you.”¹ ATV’s obligation is thus to Herbert as judgment debtor and Sony Music has the right to attach such funds. Sony Music has also learned that ATV is holding another \$18,254,24 that Herbert has directed to be paid to GloJoe for his own benefit.

ARGUMENT

Turnover is Warranted under CPLR 5225(b)

15. The CPLR § 5225(b) provides in pertinent part:

¹ “Person,” in turn, is defined as “any individual, corporation, partnership, association or other organized group of persons or legal successors or representatives of the foregoing.”

- (a) Property in the possession of judgment debtor. 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. 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.

- (b) Property not in the possession of judgment debtor. Upon 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, or against a person who is a transferee of money or other personal property from the judgment debtor, where it is shown that the judgment debtor is entitled to the possession of such property or that the judgment creditor's rights to the property are superior to those of the transferee, 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.

16. CPLR § 5225 permits a judgment creditor to obtain a turnover order by motion directing a party over whom the Court has jurisdiction, to deliver monies to the judgment creditor or to deliver property to the County Sheriff, or to bring its own property into New York and deliver it to the Sheriff. *See Gryphon Domestic VI, LLC v. APP Int'l Fin. Co. B.V.*, 41 A.D.3d 25, 32 (1st Dept 2007) (ordering turnover of personal property, including stock certificates and bank accounts to satisfy judgment).

17. Where CPLR § 5225(a) applies to property held by the judgment debtor, CPLR § 5225(b) applies to property held by third persons. Judgment creditors are entitled to turnover of property where the court has personal jurisdiction over the defendant. *See Starbare II Partners, L.P. v. Sloan*, 216 A.D.2d 238, 239 (1st Dep't 1995); *Valley Psychological, P.C. v.*

Gov't Employees Ins. Co., 105 A.D. 3d 1110, 1111 (3d Dep't 2013) (plaintiff entitled to turnover order where *prima facie* showing that judgment is not paid in full). Further, this Court may direct holders of the judgment debtor's property wherever it is located, not just the property located in New York. *See Starbare*, 216 A.D.2d at 239.

Turnover is Warranted under CPLR 5225(b)

18. CPLR § 5227 provides in pertinent part:

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.

19. With respect to money or property in the hands of third parties, “CPLR 5227 and 5225(b) are essentially interchangeable.” *Citibank (S. Dakota), N.A. v. Island Fed. Credit Union*, 190 Misc. 2d 694, 695 (2d Dep't 2001); *see generally Hallsville Capital, S.A. v. Dobrish*, 87 A.D.3d 933 (1st Dep't 2011) (affirming turnover order against property held in escrow account under CPLR § 5227).

20. Moreover, enforcement is *mandatory*. Though the statute states that a court “may” require payment (as opposed to “shall”), “[t]he word “may” indicates that the court *may* require payment to the judgment creditor or it *may* enter judgment against the garnishee—but the court *must* do one or the other if the indebtedness is established.” *Weinstein Korn Miller NEW YORK CIV. PRAC. § 5227.13 (citing 5 N.Y. Adv. Comm. Rep. A-571 (Advance Draft 1961) (emphasis in original).*

21. A turnover order against GloJoe is mandatory with respect to all funds paid and to be paid by ATV and any other entity. GloJoe continues to claim rights to funds held by ATV that in turn, will upstream to Herbert.

CLAIM FOR RELIEF

WHEREFORE, Petitioner respectfully requests and order and judgment be entered pursuant to N.Y. CPLR §§5225(b) and 5227 directing:

1. Herbert and Streamline to turn over monies in their possession to Sony Music sufficient to satisfy the Judgment, including but not limited to monies received from GloJoe or indirectly from ATV;
2. Herbert and Streamline to turn over their shares and stock certificates in GloJoe and equity interests and stock certificates in any other entity to the sheriff;
3. GloJoe to turn over all monies now or in the future to be received on behalf of Judgment Debtor Herbert to Sony Music until the Judgment is satisfied; and
4. Any other further relief as this Court deems to be necessary and just.

No prior other request for the relief requested has been submitted.

Dated: New York, New York
September 10, 2019

OLSHAN FROME WOLOSKY LLP

By: /s/ Jonathan T. Koevary
Jonathan T. Koevary
Attorneys for Sony Music Entertainment
1325 Avenue of the Americas
New York, New York 10019
(212) 451-2300

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Wade Leak, being duly sworn deposes and says:

I am a Senior Vice President and Deputy General Counsel at Sony Music Entertainment and am authorized to make this verification on its behalf.

I have read the foregoing *Verified Petition* and declare under penalty of perjury that the content is true and correct to the best of my knowledge.

Wade Leak
WADE LEAK

Sworn to before me this
10th day of September, 2019

Eugene E. Koenig
Notary Public

EUGENE E. KOENIG
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01K06111586
QUALIFIED IN NEW YORK COUNTY
MY COMMISSION EXPIRES JUN 14, 2020