

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

Ungaro v. Zampolli

2020 NY Slip Op 823 (App. Div. 2020) · No. 301822/18; 10943A; 10943 · Decided February 4, 2020

SUMMARY

The Appellate Division, First Department affirmed orders denying Paolo Zampolli’s exemption claims, directing financial institutions to release funds toward satisfaction of a money judgment, and awarding counsel fees to nonparty respondent Aronson Mayefsky & Sloan, LLP. The court held that Zampolli had not properly sought to vacate the underlying interim fee order or judgment and that the merits of those orders were not properly before the court. It also upheld the denial of the exemption claims under CPLR 5222-a(b)(4)(c).

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Friedman, J.P.; Renwick, J.; Manzanet-Daniels, J.; Singh, J.; González, J.
JURISDICTION	New York
DECIDED	February 4, 2020
DOCKET	301822/18; 10943A; 10943
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed Supreme Court, New York County orders granting nonparty Aronson Mayefsky & Sloan, LLP's motion to deny his exemption claims, directing financial institutions to release funds toward satisfaction of a money judgment, and awarding the nonparty its counsel fees.
STANDARD OF REVIEW	Appellate review of Supreme Court orders; issues not properly preserved or raised by appeal were not considered.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Paolo Zampolli v. Amanda Ungaro, Aronson Mayefsky & Sloan, LLP

TOPICS

civil procedure

appellate procedure

waiver

attorney fees

remedies

PRACTICE AREAS

Civil procedure

Judgment enforcement

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Attorney fees

QUESTIONS PRESENTED

1. Whether defendant could obtain review or vacatur of the underlying interim fee order and corresponding money judgment when he failed to cross-move for that relief and did not appeal from the order or judgment.
2. Whether defendant and plaintiff could vacate or modify a court order affecting the rights of a nonparty through their own agreement without court approval or signature.
3. Whether Supreme Court properly denied defendant's exemption claims under CPLR 5222-a(b)(4)(c).
4. Whether the award of counsel fees to the nonparty should be overturned or remanded for a hearing.

HOLDINGS

1. Defendant was not entitled to review or vacatur of the underlying interim fee order and corresponding money judgment because he failed to cross-move for that relief when the exemption motion was made and did not appeal from the order or judgment.
2. Defendant and plaintiff could not, by their own agreement, vacate or modify a court order affecting the rights of Aronson Mayefsky & Sloan, LLP, particularly where the agreement was not presented to or signed by the motion court.
3. Supreme Court properly denied defendant's exemption claims because his submissions were insufficient under CPLR 5222-a(b)(4)(c) to demonstrate that the funds were exempt.
4. The award of counsel fees to Aronson Mayefsky & Sloan, LLP was not overturned, and defendant was not entitled to a hearing because he advanced no supporting argument and the record did not show that he requested a hearing.

KEY QUOTATIONS

"He and plaintiff had no authority on their own to "vacate" or "modify" a court order that affected the rights of AMS, and their stipulated settlement agreement was not presented to or signed by the motion court." ([*1])

FACTUAL BACKGROUND

A court order awarded interim fees to Aronson Mayefsky & Sloan, LLP and resulted in a corresponding money judgment affecting defendant's funds. When the nonparty moved to deny defendant's exemption claims and obtain release of funds from financial institutions, defendant did not cross-move to vacate the underlying fee order or judgment. Defendant and plaintiff later entered into a stipulated settlement agreement, but it was neither presented to nor signed by the motion court.

PROCEDURAL HISTORY

Supreme Court, New York County, entered orders on December 3 and December 26, 2018. The orders granted the nonparty respondent's motion concerning defendant's exemption claims and enforcement of a money judgment and awarded counsel fees. The Appellate Division, First Department, unanimously affirmed without costs.

DISPOSITION

affirmed

OPINION

PER CURIAM.

Ungaro v Zampolli (2020 NY Slip Op 00823) Ungaro v Zampolli 2020 NY Slip Op 00823 Decided on February 4, 2020 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on February 4, 2020 Friedman, J.P., Renwick, Manzanet-Daniels, Singh, González, JJ. 301822/18 10943A 10943 [*1] Amanda Ungaro, Plaintiff, vPaolo Zampolli, Defendant-Appellant.

Aronson Mayefsky & Sloan, LLP, Nonparty Respondent. Sidoti Law Firm, LLC, New York (Thomas Sidoti of counsel), for appellant. Aronson Mayefsky & Sloan, LLP, New York (Daniel Mark Lipschutz of counsel), for respondent. Orders, Supreme Court, New York County (Michael L. Katz, J.), entered December 3, 2018, and December 26, 2018, which granted nonparty respondent Aronson Mayefsky & Sloan, LLP's (AMS) motion, inter alia, to deny defendant's exemption claims and to direct his financial institutions to release funds in partial satisfaction of a money judgment, and awarded AMS its counsel fees incurred in connection with the motion, unanimously affirmed, without costs.

Defendant's contention that the motion court should have vacated the underlying interim fee order and corresponding money judgment is without merit. Defendant failed to cross-move for such relief when AMS moved to deny his exemption claims (see CPLR 5015).

The closest defendant came to seeking that relief was his order to show cause in an effort to reargue the exemption motion, and both this Court and the motion court declined to allow him to proceed in that manner. Nor did defendant take the opportunity to appeal from the order or the judgment, the merits of which are therefore not properly before this Court.

In any event, defendant's argument is without merit. He and plaintiff had no authority on their own to "vacate" or "modify" a court order that affected the rights of AMS, and their stipulated settlement agreement was not presented to or signed by the motion court. Defendant advances no arguments in support of his contention that the award of attorneys' fees to AMS in connection with

the instant motion should be overturned or that he should have been granted a hearing to contest the award.

We note that there is no indication in the record that he requested such a hearing. The court correctly denied defendant's exemption claims on the ground that defendant's submissions were insufficient under CPLR 5222-a(b)(4)(c) to demonstrate that the funds were exempt.

We have considered defendant's remaining contentions and find them unavailing. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: FEBRUARY 4, 2020 CLERK