

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ELIYAHU MIRLIS,

Plaintiff,

No. 3:16-cv-00678 (MPS)

v.

DANIEL GREER, ET AL.

Defendants.

MOTION FOR LEAVE TO TAKE DEPOSITION OF DEFENDANT DANIEL GREER

Pursuant to Fed. R. Civ. P. 30(a) and 69(a)(2), the plaintiff, Eliyahu Mirlis (“Plaintiff”), moves this Court for leave to take the deposition of defendant Daniel Greer (“Greer”) by oral examination, in order to investigate the assets of Greer and the Yeshiva of New Haven, Inc. (the “Yeshiva” and together with Greer, “Defendants”). In support of his Motion, Plaintiff states as follows:

I. Relevant Procedural Background

On June 6, 2017, following a jury verdict in Plaintiff’s favor, the Court entered a judgment (the “Judgment”) against Defendants in the above-captioned case in the amount of \$21,749,041.00. The Judgment remains unsatisfied in full. Greer was previously deposed in this matter on October 31, 2016. Plaintiff seeks to depose Greer in order to discover information about Defendants’ assets, including the amount, their location, and any transfers of assets so that Plaintiff may enforce the Judgment.

II. The Court Should Allow the Deposition of Greer Regarding His Assets So That Plaintiff Can Enforce the Judgment

The Court should grant Plaintiff leave to take the deposition of Plaintiff. The Federal Rules of Civil Procedure provide broad discovery to judgment creditors to investigate the assets of judgment debtors. Fed. R. Civ. P. 69(a)(2) provides:

If in the aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person – including the judgment debtor – as provided by these rules or by the procedure of the state where the court is located.

Discovery of a judgment debtor’s assets using the Federal Rules of Civil Procedure is “conducted routinely.” First City, Texas-Houston, N.A. v. Rafidain Bank, 281 F.3d 48, 54 (2d Cir. 2002). A judgment creditor is allowed “to question the judgment debtor about the nature and location of assets that might satisfy the judgment[.]” because he “is entitled to discover the identity and location of any of the judgment debtor’s assets, wherever located.” Id. (citations and quotation marks omitted). “[T]he judgment creditor must be given the freedom to make a broad inquiry to discover hidden or concealed assets of the judgment debtor.” Id. (citations and quotation marks omitted); see also EM Ltd. v. Republic of Argentina, 695 F.3d 201, 207 (2d Cir. 2012); 13-69 Moore's Federal Practice - Civil § 69.04 (2017) (“The purpose of discovery under Rule 69(a)(2) is to allow the judgment creditor to identify assets from which the judgment may be satisfied and consequently, the judgment creditor should be permitted to conduct a broad inquiry to uncover any hidden or concealed assets of the judgment debtor.”).¹

Fed. R. Civ. P. 30(a)(2) provides that a party must seek leave of the Court to take more than one deposition of a party. “Under Rule 30(a)(2)(B) of the Federal Rules of Civil Procedure, ‘[a] party must obtain leave of the court . . . [whenever] the person to be examined has already been deposed in the case.’” Exp.-Imp. Bank of the United States v. Asia Pulp & Paper Co., Ltd., 232 F.R.D. 103, 112 (S.D.N.Y. 2005).

¹ While Plaintiff has served post judgment interrogatories upon both defendants, he is entitled to use discovery procedures under both federal and state law. Universitas Educ., LLC v. Nova Group, Inc., 2013 U.S. Dist. LEXIS 94066 at *11 (S.D.N.Y. Jul. 2, 2013) (quoting Amaprop Ltd. V. Indiabulls Fin. Servs. Ltd., 2012 U.S. Dist. LEXIS 146166 at *11 (S.D.N.Y. Oct. 5, 2012) (“Rule 69(a)(2) allows a judgment creditor to utilize discovery devices available under both the Federal Rules of Civil Procedure and the laws of the forum state.”); 13-69 Moore's Federal Practice - Civil § 69.04 (2017) (“A judgment creditor may resort to the full range of discovery devices authorized in the Federal Rules of Civil Procedure, as well as any applicable state discovery procedure, but the separate requirements of the discovery rules must be satisfied.”).

"[T]he decision to grant or deny leave to re-depose a witness is guided by Rule 26(b)(2), which requires the party opposing the second deposition to demonstrate that: (1) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from another source that is more convenient, less burdensome, or less expensive; (2) the party seeking discovery has had ample opportunity to obtain the information sought; or (3) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues."

Enron Broadband Servs., L.P. v. Travelers Cas. & Sur. Co. of Am. (In re Enron Corp.), 349 B.R. 115, 128-29 (Bankr. S.D.N.Y. 2006) (quoting Moore's Federal Practice-Civil, § 30.05[1][c] (2006)).

Greer clearly would not be able to meet his burden to show that another deposition of him is not justified under the circumstances. First, the discovery sought here is not unreasonably cumulative and is not easily obtainable from another source. Clearly, the judgment debtor, Greer, is the best person to discuss his own assets and their location as well as the assets of the Yeshiva as Greer is its president and a member of its board of directors. Plaintiff is entitled to question Greer about Defendants' assets and their location under Fed. R. Civ. P. 69(a)(2). EM Ltd., 695 F.3d at 207 ("The scope of discovery under Rule 69(a)(2) is constrained principally in that it must be calculated to assist in collecting on a judgment.").

In addition, while Greer was deposed by Plaintiff's counsel in October 2016 prior to judgment and in preparation for trial, Plaintiff, as a judgment creditor, is now entitled to make broad and specific inquiries about Defendants' assets, including the amount and location of such assets and whether assets have been transferred. See First City, Texas-Houston, N.A., 281 F.3d at 54. Second, Plaintiff has not had ample opportunity to discover Defendants' assets since the Judgment was rendered in the amount of \$21,749,041.00 on June 6, 2017. This is the first request that Plaintiff has made to discover the post-judgment assets of Defendants by way of deposition. Last, any burden on Greer is clearly outweighed by Plaintiff's need to discover

Defendants' assets in order to satisfy the Judgment. The importance of allowing a judgment creditor to discover a judgment debtor's assets is underscored by the broad discovery procedures permitted by Fed. R. Civ. P. 69(a)(2).

III. Conclusion

WHEREFORE, based upon the foregoing, Plaintiff respectfully requests that the Court enter an order (1) granting Plaintiff leave to take the deposition of Greer pursuant to Fed. R. Civ. P. 30 in order to enquire about Defendants' assets, including but not limited to the amount, nature, location, and extent of such assets and whether any of Defendants' assets have been transferred, and (2) granting such other and further relief as justice requires.

Dated at Bridgeport, Connecticut, this 3rd day of August, 2017.

THE PLAINTIFF,
ELIYAHU MIRLIS

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CERTIFICATION OF SERVICE

The undersigned hereby certifies that on August 3, 2017, a copy of the foregoing Motion for Leave to Take Deposition of Defendant Daniel Greer was served upon all appearing parties with access to the CM/ECF System by operation of the Court's electronic notification system.

/s/ John L. Cesaroni _____

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