UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ELIYAHU MIRLIS, Plaintiff, v. DANIEL GREER, et al. Defendants	No. 3:16-cv-00678 (MPS)

RULING ON MOTION FOR EXECUTION

Plaintiff Eliyahu Mirlis brought this lawsuit against his former high school principal, Rabbi Daniel Greer, along with his former high school, Yeshiva of New Haven, Inc. ("Yeshiva"). Mirlis claimed that he was repeatedly sexually assaulted as a student at Yeshiva by Greer, and that the school failed to respond appropriately. On May 18, 2017, after a five-day trial, a jury agreed, awarding Mirlis $15,000,000 in damages. The jury also concluded that punitive damages were warranted. (*Id.*) As a result, the Court issued a judgment awarding Mirlis the $15,000,000 in compensatory damages, along with $5,000,000 in common law punitive damages, and offer-of-compromise interest in the amount of $1,749,041.10. (ECF No. 163.) Before me now is Mirlis' "motion for order directing clerk to issue writs of execution" ("Motion for Writs of Execution"). (ECF No. 186.) For the reasons set forth below, I grant this motion.

I. Background

After the Court entered judgment in his favor on June 6, 2017 (ECF No. 163), Mirlis filed two applications for writs of execution against defendants Greer and Yeshiva on July 10, 2017. (*See* ECF No. 174 ("Application For and Writ of Execution – Daniel Greer"); ECF No. 176 ("Application For and Writ of Execution – Yeshiva of New Haven, Inc.")).) One month later,

Mirlis filed his Motion for Writs of Execution. (ECF No. 186.) In their response, the defendants requested that the "Court . . . enter a Payment Order permitting Greer to pay a reasonable monthly installment in lieu of [Mirlis] serving executions" and that "[a]ny executions should be stayed absent further order from the Court so long as [d]efendants abide by the Payment Order. . . ." (ECF No. 191 at 3.)

The Court held a hearing on the motion, along with other outstanding matters, on December 8, 2017. (*See* ECF No. 247.) At that hearing, defense counsel represented that although Mirlis was entitled to execute his judgment, the Court should forbear issuing an execution to allow the parties to work out the details of the defendants' payment. (*See* ECF No. 300 at 97 (defense counsel argued that the Court should hold off on issuing the execution because "[the defendants [are] going to turn over [various properties named in the execution] to [Mirlis] anyway" and because "[the parties] would have to come back to court [to litigate exemptions]").) I reserved judgment on the matter to allow the parties to come to a resolution on this matter without further involvement from the Court. (*Id.* at 97-98.) When the parties failed to reach a compromise within the next three months (*see* ECF No. 294 (status report from parties on March 19, 2018 noting that the parties had failed to reach an agreement on the motion for execution)), I ordered the parties to file position papers concerning the issuance of executions. (ECF No. 295.)

II. Discussion

Federal Rule of Civil Procedure 62(a) provides that "[e]xcept as stated in this rule, no execution may issue on a judgment, nor may proceedings be taken to enforce it, until 14 days have passed after its entry." After the expiration of this period, a prevailing party may seek enforcement of the judgment unless the losing party obtains a stay under other authority. *See*

Peacock v. Thomas, 516 U.S. 349, 359 n. 7 (1996) ("Rule 62(a) . . . protects judgment creditors by permitting execution on a judgment at any time more than 10[1] days after the judgment is entered."); *Columbia Pictures Television, Inc. v. Krypton Broad. of Birmingham, Inc.*, 259 F.3d 1186, 1197 (9th Cir. 2001) (noting that "a prevailing plaintiff is entitled to execute upon a judgment" after the expiration of the automatic stay provided for in Rule 62(a)). A losing party may extend this stay by appealing the judgment and posting a supersedeas bond. *See* Fed. R. Civ. P. 62(d) ("If an appeal is taken, the appellant may obtain a stay by supersedeas bond . . . ."). Since the defendants have not represented in their filings that they have posted a supersedeas bond or that Mirlis' judgment against them otherwise falls within one of the exemptions under Rule 62, Mirlis is entitled to execute his judgment against them.

Perhaps recognizing the legal hurdle to a claim for staying the judgment entirely, the defendants point instead to Connecticut law granting courts the discretion to order the payment of a judgment in installment payments. (*See* ECF No. 296 at 3 (citing Conn. Gen. Stat. § 52-356d ("When a judgment is rendered against a natural person, the judgment creditor or judgment debtor may move the court for an order for installment payments in accordance with a money judgment.")).) The defendants are correct to look to Connecticut state law, as "[t]he procedure on execution . . . must accord with the procedure of the state where the court is located" unless a federal statute applies. Fed. R. Civ. P. 69(a)(1); *see also Robbins v. Viking Recovery Servs. LLC*, No. 09-CV-1030A, 2010 WL 3222493, at *2 (W.D.N.Y. Aug. 10, 2010) (noting that court's disposition on plaintiff's writ of execution hinged on "whether plaintiff . . . submitted a proposed writ that complies with [state law]").

[1] The period of the automatic stay was amended from ten to fourteen days in 2009. *See* Fed. R. Civ. P. 62 Advisory Committee Notes to 2009 Amendment.

Conn. Gen. Stat. § 52-356d ("§ 52-356d"), however, does not provide for the majority of the relief the defendants seek. As an initial matter, § 52-356d applies only to judgments against "natural persons" and thus cannot apply to Mirlis' application for a writ of execution against the Yeshiva. Second, even if the defendants received the installment payment plan they request, it would not prevent Mirlis from filing executions against their property, because this case is not one of the limited types for which a stay is provided in the statute. *See* Conn. Gen. Stat. § 52-356d(b) ("In the case of a *consumer judgment*, the court may provide that compliance with the installment payment order . . . shall stay any property execution or foreclosure pursuant to that judgment . . . ." (emphasis added)); Conn. Gen. Stat. § 52-350a(3) ("'Consumer judgment' means a money judgment of less than five thousand dollars against a natural person resulting from any consumer debt or obligation."). Hence, the most the defendants could ask for under § 52-356(a) would be for Greer to be able to pay a portion of the defendants' judgment under an installment payment plan, and even that would not prevent Mirlis from seizing his property to pay the judgment.

Even this relief, however, is unwarranted given the flawed nature of the defendants' proposed payment plan. In determining whether an installment payment plan is warranted under § 52-356d(a), a court looks to two criteria: "the 'judgment debtor's financial circumstances' and 'installment payments reasonably calculated to facilitate payment of the judgment.'" *Bergen v. Belfonti*, 47 Conn. Supp. 291, 295 (Super. Ct. 2000) (quoting § 52-356d(a)). The defendants submit a proposed installment payment plan of "twenty-five percent (25%) of Greer's weekly disposable earnings plus the monthly amount of rental income received from [Greer's Newport property]," which the defendants identify as approximately $195.00 per month. (ECF No. 296 at 3.) These weekly payments, the defendants argue, should serve in lieu of permitting Mirlis to

execute on the defendants' bank accounts. (*Id.*) The defendants' proposal is wholly inadequate. It fails to detail the amount of "Greer's weekly disposable earnings." When this is coupled with the meager income defendants aver will be derived from Greer's Newport property, it creates serious doubt that such an installment payment plan would "facilitate payment of the judgment." I therefore reject the defendants' proposed installment payment plan.

The defendants also "propose that the appropriate course of action with respect to the Yeshiva's property and Greer's residence in New Haven, Connecticut is to permit Defendants to substitute a cash bond as security for the [j]udgment in exchange for a discharge of the [j]udgment [l]ien against both properties pursuant to Conn. Gen. Stat. § 52-380e." (ECF No. 296 at 4 (citing Conn. Gen. Stat. § 52-380e ("When a lien is placed on any real or personal property pursuant to section 52-355a or 52-380a, the judgment debtor may apply to the court to discharge the lien on substitution of a bond with surety . . . . (numeration omitted)).) They note that they have filed motions to this end in various foreclosure actions initiated by the plaintiff in state court. (*Id.*) While the defendants may seek such relief in response to Mirlis' foreclosure actions, this issue has no bearing on whether Mirlis may execute his judgment.

I therefore conclude that Mirlis is entitled to the writs of execution he seeks.

III. Conclusion

For the foregoing reasons, Mirlis' Motion for Writs of Execution (ECF No. 186) is hereby GRANTED. The clerk is directed to issue writs of execution pursuant to Mirlis' pending applications. (ECF Nos. 174, 176.)

IT IS SO ORDERED.

/s/

Michael P. Shea, U.S.D.J.

Dated: Hartford, Connecticut

June 4, 2018.