

SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. JOSEPH COVELLO

Justice

**ADAMA DEGOGA,**

Plaintiff,

-against-

**JP MORGAN CHASE BANK,  
SIGUI IMPORTS INC. and OUMAR SALL,**

Defendants.

**TRIAL/IAS, PART 24  
NASSAU COUNTY**

**Index No.: 008555/04**

**Motion Seq.No.: 001**

**Motion Date: 07/20/04**

The following paper read on this motion:

Notice of Motion / Order to Show Cause .....	1
Affirmation in Opposition .....	2
Reply Affirmation .....	3

Upon the foregoing papers, the motion by plaintiff, Adama Degoga, brought by Order to Show Cause for an Order pursuant to CPLR §5240, vacating the Notice of Levy dated June 17, 2004 and resulting restraining lien, is denied in its entirety.

This action arises out of defendant, JP Morgan Chase Bank's efforts to enforce a judgment it obtained against Sigui Imports Inc., and Oumar Sall in the action JPMorgan Chase Bank v. Sigui Imports and Oumar Sall, (Nassau County Index No., 6226/03) in the amount of \$78,884.40. In an effort to satisfy the judgment, the judgment creditor, JP Morgan Chase Bank served an Execution with Notice to Garnishee on judgment debtors, Sigui Imports Inc., and Oumar Sall, dated October 16, 2003. The City Marshall then served a Marshall's Notice of Levy and Sale dated June 17, 2004, setting forth that all assets on the premises (located at 2067 Adam Clayton Blvd., New York, N.Y. 10027) belonging to defendant, Sigui Imports Inc., would be sold on July 1, 2004 to satisfy the

judgment.

Plaintiff in this action, Adama Degoga, by this Show Cause Order, obtained a temporary stay preventing the enforcement of the Notice of Levy and the Judgment.

Mr. Degoga asserts that he is bona fide purchaser of the business and its assets based upon his purchase on August 29, 2003. He further asserts that he had no knowledge of the judgment against Sigui and Sall, which was entered on August 28, 2003 (one day prior to the purchase). It is noted from the documents presented that Mr. Degoga resides at the same address as that of the judgment debtor, Oumar Sall.

Mr. Degoga, in support of his contention that he is a bona fide purchaser of the business and the assets at the subject premises annexes a copy of a bill of sale from Oumar Sall dated August 23, 2003, which contains the following:

“FOR AND IN CONSIDERATION OF 17000 and 00/100 Dollars cash in hand, paid this day in full by Adama Degoga, we do hereby bargain and sell all of its furniture, equipment, inventory and supplies located at 2067 ACP Jr Blvd to Oumar Sall.

This conveyance is made without warranty and Purchaser accepts said personal property in its “as is” condition.

The said property we guarantee is our own and free of all claims and offsets of any and all kinds.”

The bill of sale is signed by Oumar Sall and notarized on August 29, 2003.

Plaintiff also annexes a copy of his Business Certificated dated November 21, 2002 in which it sets forth that he is operating a business designated as Sangha Imports at the same location. That certificate also lists Mr. Degoga’s address, which is the same address as that of judgment creditor Sall.

Defendant, JP Morgan Chase, opposes the motion and seeks to have the stay vacated and leave pursuant to CPLR §408 for disclosure and for costs and attorney's fees pursuant to Debtor's and Creditor's Law § 276-A.

Debtor's and Creditor's Law § 276 provides in pertinent part, that "Every conveyance and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud either present or future creditors, is fraudulent as to both present and future creditors." A creditor may have a fraudulent conveyance set aside against any person "except a purchaser for fair consideration without knowledge of the fraud at the time of the purchase." Debtor's and Creditor's Law § 278. When determining a fraudulent conveyance, the court will consider such factors as the following: "(1) a close relationship among the parties to the transaction; (2) a secret and hasty transfer not in the usual course of business; (3) inadequacy of consideration; (4) knowledge of the creditor's claim and the inability to pay it; (5) the use of dummies or fictitious parties; and (6) retention of control of property by the transferor after the conveyance." **MFS/Sun Life Trust-High Yield Series v. Van Dusen**, 910 F.Supp 913, 935 (S.D.N.Y., 1995). Furthermore, "[t]he burden of proof to establish actual fraud under Debtor and Creditor Law § 276 is upon the creditor who seeks to have the conveyance set aside." **Marine Midland v. Murkoff**, 120 AD2d 123, 126 (2<sup>nd</sup> Dept. 1986).

In the instant action, the conveyance holds many fraudulent characteristics. First, the two parties involved in the conveyance resided in the same residence. While it is possible that plaintiff, Degoga, had no knowledge of the existing judgment against Sall,

the closeness of their relationship casts doubt upon the legitimacy of the sale. In addition, the bill of sale is not only suspicious, but it is clearly defective. The purported bill of sale does not identify what furniture, equipment, inventory and supplies were being sold. This lack of detail coupled with the date of the conveyance (one day after the judgment against Sigui and Sall) points to a hasty transfer not in the usual course of business. Moreover, without further details of the transaction, it is impossible to determine the adequacy of the consideration. Lastly, the documentation presented by plaintiff, Degoga, indicates that Mr. Sall still retains legal control of the property and not Mr. Degoga as the purported "bill of sale" states that the property was conveyed to Oumar Sall.

Accordingly, there was no actual transfer of title of the assets at the subject premises to petitioner. Moreover, it appears that the attempted transfer (one day after the entry of judgment) was done to frustrate and delay the enforcement of the judgment against judgment debtors, Sigui Imports Inc., and Oumar Sall.

Therefore, it is hereby

**ORDERED**, that plaintiff, Adam Degoga's motion to vacate the Notice of Levy and Sale dated June 17, 2004, is denied in its entirety. It is further

**ORDERED**, that the temporary stay contained in the Order to Show Cause dated June 25, 2004 is vacated. It is further

**ORDERED**, that the petition is dismissed in its entirety and defendant, JP Morgan Bank the judgment creditor, is granted costs, disbursements and attorney's fees of this special proceeding against petitioner.

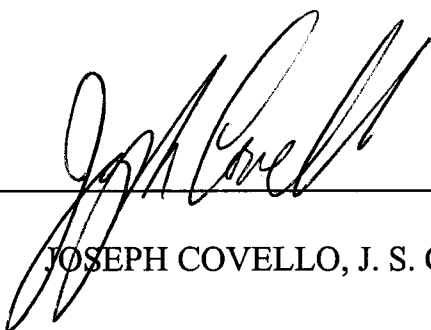
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This constitutes the decision and order of the Court.

This concludes this special proceeding.

Submit judgment with and affirmation of costs, disbursements and attorneys fees.

Dated: August 25, 2004



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JOSEPH COVELLO, J. S. C.

**ENTERED**

**AUG 30 2004**

**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**