

Suwan

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. F. DANA WINSLOW,

Justice

**TRIAL/IAS, PART 3
NASSAU COUNTY**

**BRADCO SUPPLY CORP. A DIVISION OF
ABC SUPPLY CO. INC.,**

Petitioner/Judgment Creditor,

MOTION DATE: 3/22/12

- against -

BANK OF AMERICA, N.A.,

**MOTION SEQ. NO.: 001
INDEX NO.: 00242/12**

Respondent,

-and-

**PECONIC SHEETMETAL and STEVEN
THEBNER,**

Judgment Debtors.

The following papers read on this motion (numbered 1):

Notice of Petition..... 1

Pursuant to this Part's Rule, namely I(B), the Court automatically adjourns all motions that are submitted without opposition for one month, to determine whether or not there was either an administrative delay or excusable neglect. Such adjournment is made without prejudice to the moving party to have the merits of such an adjournment considered in the event that there is a subsequent submission.

Petitioner BRADCO SUPPLY CORP. A DIVISION OF ABC SUPPLY CO. INC. ("BRADCO"), based upon a Judgment dated September 23, 2011 in the total sum of \$74,156.37 against Judgment Debtors PECONIC SHEETMETAL LLC ("PECONIC") and STEVEN THEBNER ("THEBNER") (the "Judgment Debtors"), seeks an Order pursuant to CPLR §5225(b) directing the Respondent BANK OF AMERICA, N.A. ("B of A") to turn over certain monies in the possession of B of A in partial satisfaction of the Judgment.

Petitioner submits an "Information Subpoena, Restraining Notice and Questionnaire", dated October 6, 2011, together with the response of Gina French of B of A, sworn to on October 12, 2011, acknowledging that B of A holds the sum of \$33,045.47 (after 'any applicable exemption') in an account in Florida bearing the name of Judgment Debtor 'Steve Thebner'. B of A's Response indicates the address listed for 'Steve Thebner' to be 3 Lynda Ct., East Hampton, NY.

Petitioner has proffered the following proof of service of the Notice of Petition and accompanying Affirmation: (i) affidavit of service, sworn to on January 19, 2012, attesting to service on PECONIC on January 18, 2012 at 2:20 p.m. at 394 North Main Street, Southhampton, NY 11968 pursuant to **CPLR §311(a)** by service on 'Stacey Doe as General Counsel'; (ii) affidavit of service, sworn on February 2, 2012, attesting to service on Judgment Debtor THEBNER on January 18, 2012 at 2:20 p.m. at 3 Lynda Court, East Hampton, NY 11937 pursuant to **CPLR §308(1)**; and (iii) Affidavit of Service, sworn to on January 25, 2012, attesting to service on B of A by service on an individual referred to as Catherine M. Isgro, 'the bank officer' at 5701 Horatio Street, Utica, NY 13502.

The Court finds Petitioner's proof to be insufficient to grant the relief sought. Petitioner proffers the transcript from the Docket of Judgments rather than the Judgment itself. Of greater concern to the Court are the defects in proof of service. The same process server attests that she served the Notice of Petition and Affirmation on both PECONIC and THEBNER at different addresses in different towns on the same day and time. The Court notes that Petitioner has also failed to demonstrate compliance with **CPLR §5222(d)** (Notice to Judgment Debtor).

Based on the foregoing, it is

ORDERED, that the petition is **denied**. Petitioner shall serve a copy of this Order upon all Judgment Debtors, and Respondent, and shall provide the Court with proof of such service on any subsequent application.

Dated: *May 7*, 2012

J.S.C.

ENTERED

JUN 05 2012

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**