

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: March 25, 2021

531335

JAMES W. GILLIAM II,
Appellant,

v

MEMORANDUM AND ORDER

DISCOVER BANK et al.,
Respondents.

Calendar Date: February 5, 2021

Before: Garry, P.J., Lynch, Aarons, Pritzker and Reynolds
Fitzgerald, JJ.

James W. Gilliam II, Warwick, appellant pro se.

Greenberg Traurig, LLP, New York City (Toby S. Soli of counsel) and Kirschenbaum & Phillips, PC, Wantagh (Michael L. Kohl of counsel), for respondents.

Aarons, J.

Appeal from an order of the Supreme Court (Meddaugh, J.), entered April 26, 2020 in Sullivan County, which granted defendants' motions to dismiss the complaint.

In a separate action by defendant Discover Bank against plaintiff's spouse, Discover Bank was awarded summary judgment on its claim for an account stated. Defendant Kirschenbaum & Phillips (hereinafter K&P) subsequently entered a money judgment against the spouse. K&P then issued a restraining notice to the bank where the spouse had an account. This account was held jointly with plaintiff. Plaintiff, pro se, commenced this

action alleging, among other things, that defendants fraudulently restrained the funds in the joint bank account and violated Judiciary Law § 487. In separate pre-answer motions, defendants moved to dismiss the complaint under CPLR 3211 (a) (1). Supreme Court granted the motions. Plaintiff appeals. We affirm.

The crux of plaintiff's complaint is that defendants failed to comply with CPLR 5222-a when restraining the joint bank account. K&P, as counsel to Discover Bank, is permitted to issue a restraining notice (see CPLR 5222 [a]). Issuing such notice requires that K&P provide the subject bank with "the restraining notice, a copy of the restraining notice, an exemption notice and two exemption claim forms" (CPLR 5222-a [b] [1]). The record discloses that compliance with CPLR 5222-a (b) (1) was met in that K&P sent to plaintiff's bank an information subpoena with restraining notice, an exemption notice and two blank exemption forms. Given that the documentary evidence utterly refuted plaintiff's claims, Supreme Court correctly granted defendants' motions (see Galway Co-Op.Com, LLC v Niagara Mohawk Power Corp., 171 AD3d 1283, 1284 [2019]).

To the extent that plaintiff argues that Supreme Court should have vacated the order granting Discover Bank's summary judgment motion or the subsequent judgment – both of which were issued in Discover Bank's action against the spouse – such claim is without merit. As the court correctly reasoned, it could not overrule a court of coordinate jurisdiction (see Matter of Dondi v Jones, 40 NY2d 8, 15 [1976]). We also note that an appeal has been taken from the order, and it is currently pending before the Second Department. Plaintiff's remaining contentions are either improperly raised for the first time on appeal or without merit.

Garry, P.J., Lynch, Pritzker and Reynolds Fitzgerald, JJ.,
concur.

ORDERED that the order is affirmed, without costs.

ENTER:

A handwritten signature in black ink, reading "Robert D. Mayberger". The signature is written in a cursive style with a large, prominent "R" and "M".

Robert D. Mayberger
Clerk of the Court