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SUPREME COURT, STATE OF NEW YORK  
COUNTY OF NEW YORK

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Application of

Index No.

AMUSING DIVERSIONS, INC.,

Date Purchased

Petitioner

For a Judgment Pursuant to CPLR  
5225 and 5227 Directing Payment  
to the Petitioner-Judgment Creditor  
of Debts Owed to the Judgment  
Debtor Earl Simmons a/k/a DMX

**ATTORNEY'S  
AFFIRMATION IN  
EVIDENTIARY  
SUPPORT OF  
JUDGMENT  
CREDITOR'S  
PROCEEDING**

-against-

UNIVERSAL ATTRACTIONS, INC.,

Respondent  
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DANIEL A. EIGERMAN, an attorney admitted in the Courts of the State,

affirms the following to be true under the penalties of perjury pursuant to

CPLR 2106:

1. I maintain an office for the practice of law at 260 Madison Avenue,  
New York, New York, and I am not a party to the proceeding.

2. By this affirmation I place before the Court my own personal knowledge of procedural facts and events in which I participated, together with admissible documentary evidence. I attest to the source of each document under the penalties of perjury.

NATURE OF THE PROCEEDING

3. This is a turnover proceeding brought by a judgment creditor that has been pursuing an irresponsible and unscrupulous judgment debtor for seven years. The judgment debtor is a hip hop or rap performer, composer, and film actor capable of making \$ 20,000 and more in a single evening. The judgment creditor brings the proceeding against his current booking agent — or one of his current booking agents. According to deposition testimony and documents the respondent produced, the respondent booking agent is holding at least \$ 57,000 of the judgment debtor's money. The petitioner-judgment creditor asks for judgment pursuant to CPLR 5225(b) directing the booking agent to turn this money over to the judgment creditor and pursuant to CPLR 5227 to turn over any monies the respondent owes, will owe, or may owe to the judgment debtor now or in the future.

THE PARTIES

**judgment creditor**

4. My client, petitioner and judgment creditor Amusing Diversions, Inc., is a New York corporation with a principal place of business at 3 Edwards Place, Ellenville, New York. A copy of its entity information, which I printed from the Division of Corporations web site is attached as Exhibit A.

**respondent obligor of the judgment debtor**

5. Respondent garnishee Universal Attractions, Inc. is a New York corporation with a place of business in New York County at 15 West 36<sup>th</sup> Street, New York, New York. A copy of its entity information, which I printed from the Division of Corporations web site is Exhibit B.

**the judgment debtor**

6. The judgment debtor Earl Simmons a/k/a DMX is a widely promoted and recognized figure in rap music. He performs before audiences, composes songs and motion picture sound tracks, appears in films, and sells recordings by the hundreds of thousands. A copy of a *Wikipedia* article about him, which I printed from the Internet on October 22, 2012, is attached as Exhibit C.

7. Judgment debtor DMX will be afforded notice of this proceeding pursuant to CPLR 5225(b) and 5227 by certified mail, return receipt

requested to his last known address at 424 Ruby Ridge Trail, Lyman, South Carolina 29365. Such service will be made immediately on purchase of the index number, and proof of the service will be filed at Court.

8. No other party is to be noticed of a turnover proceeding, *Northeast Heating Cooling Refrigeration Co. v. Potter*, 40 Misc.3d 1242 (A), 2013 WL 5260568 at \*1 (Sup. Ct. Albany Co. Sep.16, 2013); *Ruvolo v. L.I.R.R.*, 45 Misc.2d 136, 145, 256 N.Y.S.2d 279, 289 (Sup. Ct. Qns. Co. 1965), but other claimants, alerted by the judgment debtor or otherwise, can seek to intervene. *Northeast Heating, supra*; CPLR 5225b); CPLR 5227 (McKinney 2014).

#### BACKGROUND

9. I represented the petitioner, Amusing Diversions, Inc., through the three lawsuits in which it won the judgments against DMX that it is still struggling to enforce. I participated in the entry of each of the three judgments, reviewing and correcting them with the respective Clerks. Exhibits D, E, and F are the said judgments as I photocopied them in the file rooms of Supreme Court, New York County and Westchester County.

10. This Court entered petitioner's first judgment on August 2, 2007 in *Amusing Diversions, Inc. v. Dogwear, Inc., Earl Simmons a/k/a DMX et al.*, index number 108606/2004 in favor of Amusing Diversions, Inc., and against DMX. Exh. D.

11. In a telephone conversation in August 2007 DMX's brother-in-law Charles Draughn told me that the \$ 281,565 then due was "pocket change"

to DMX. Notwithstanding his wealth as reflected in this comment and Exhibit C hereto, DMX's resistance to enforcement is implacable.

12. The banks DMX identified as references in negotiation of the underlying contract had no accounts in his name. The corporations he named were not at their addresses or held no assets or had no commerce with him. I delivered one execution after another to the New York County sheriff and received them back unsatisfied. A selection of the returned executions is attached as Exhibit G.

13. Eventually an internet item led me to a real estate broker and the broker, to an investment property that judgment debtor DMX had, with actual fraudulent intent, as opposed to fraud implied by law, deeded to an alter ego limited liability company. This Court's judgment in *Amusing Diversions, Inc. v. Earl Simmons and ET Properties 2, LLC*, 113729/2007, besides voiding the fraudulent transfer, awarded Amusing Diversions, Inc., \$7,115.69. Exh. E.

14. Sheriff's auction of that property yielded approximately \$ 108,000 toward the principal judgment, Exh. D, on which the amount now due is \$ 200,590 with interest from August 14, 2008.

15. We brought similar action in Westchester County. There, well before contact with my client, DMX had manipulated title to his large Mount Kisco property to baffle plaintiffs and elude creditors. Supreme Court, Westchester County, voided layers of fraudulent transfers and, additionally, awarded petitioner \$ 5,580. Exhibit F. This encumbrances on this opulent property, however, exceeded \$ 1,500,000, and no one bid on it.

16. In 2009 DMX filed a bogus chapter 13 bankruptcy case. I got it dismissed, and when he followed in 2010 with a chapter 11 case, I got that dismissed.

17. Judgment debtor DMX's third and most recent bankruptcy case was dismissed on November 8, 2013.

THE FUNDS IN RESPONDENT'S POSSESSION

18. On May 7, 2014 I served one of the two owners of respondent Attractions, Mr. Jeff Allen — see Exh. B — by hand delivery with a restraining notice and a subpoena duces tecum. These are attached, respectively, as Exhibits H and I.

19. "A judgment creditor may restrain the assets of a judgment debtor wherever those assets may be," *JSC Foreign Economic Ass'n v. International Development & Trade Services, Inc.*, 295 F. Supp. 2d 366, 390 (applying New York law), and the restraining notice served May 7, 2014, Exh. H hereto, will continue to keep the funds in which judgment debtor has an interest from transfer by respondent Universal Attractions until May 2015. CPLR 5222 (McKinney 2014). In particular the respondent has acknowledged, by counsel's e-mail to me, that it will not pay out to the judgment debtor's manager/agent.

20. Respondent appeared for its deposition on June 3, 2014 by Mr. Allen, its half-owner and president. Exh. B; deposition transcript at page 4, line 10 [hereinafter "Exh. J 4:10"].

21. Respondent is a booking agent and can book an entertainer into virtually any mode or medium of entertainment. Exh. J 7:12-15.

22. Respondent took judgment debtor DMX on as a client in January 2014. It has booked him only into live concerts so far. Exh. J 8:9-16.

23. Pursuant to the subpoena duces tecum, Exh. I, Mr. Allen, on the respondent's behalf, produced at the deposition several written contracts, which I collect as a combined Exhibit K.

24. On their face the contracts are between promoters of live performances and the judgment debtor's manager/agent, Copeland and Miller Associates, LLC., a Connecticut limited liability company with a place of business in Bridgeport. Respondent Universal Attractions, Inc. is not a party, although the contracts are on its forms. Exh. K.

25. The money that respondent receives at booking comes from the artist. Exh. J 19:16-19.

26. Respondent Universal Attractions, Inc. has never paid money to judgment debtor DMX, but when it pays out money to Copeland and Miller it is paying money to a person that represents DMX. Exh. J 22:25-23:8.

27. Respondent has not paid out money to the debtor's manager/agent Copeland & Miller since May 7, 2014. Exh. J 23: 9-12.

28. The written contracts, Exh. K, indicate about \$ 57,000 being held by the respondent in connection with DMX's scheduled performances.

29. Respondent additionally testified to forthcoming DMX concerts that it had booked and for which it had been, or would be, given about \$ 18,000 each to pay over to DMX representative. The testimony refers to performances additional to those reflected on the written contracts comprising Exhibit K.

30. The witness, Mr. Allen, further testified that there might be DMX bookings he personally did not know of.

THE JUDGMENT CREDITOR'S  
RIGHT TO A TURNOVER

31. New York statute entitles a judgment creditor like Amusing Diversions, Inc., to bring a special proceeding, like this one, against a person “in possession or custody of money . . . in which the judgment debtor has an interest” and declares that “the court shall require such person to pay the money . . . to the judgment creditor.” CPLR 5225(b)(McKinney 2014).

32. Petitioner-judgment creditor Amusing Diversions, Inc., asks this Court to grant a judgment requiring respondent Universal Attractions, Inc., to pay over the money it is holding in which judgment debtor DMX has an interest to petitioner Amusing Diversions, Inc.

33. That the judgment debtor has an interest in that money is clear on the contract documents and deposition testimony summarized above.

34. In particular, the fact that the money would be paid to the Connecticut LLC Copeland and Miller, which respondent repeatedly designates the judgment debtor’s representative, and that the money is applied in various ways for DMX’s benefit, make plain that the money respondent is holding is money in which judgment debtor DMX has an interest.

35. Thus, respondent’s testimony as to the ways in which the money is applied on the judgment debtor’s behalf, Exh. J 36:7-25, fits exactly the



Appellate Division's conclusion, in a restraining notice case, that the judgment debtor had an interest in the subject funds.

[I]t is clear that although the performer was not to receive the money directly, it was to be used to satisfy his debts and expenses. Thus, he derived the benefits thereof.

\* \* \*

The fact that a judgment debtor will directly benefit from the payment of this sum is sufficient to require the respondent to obey the restraint.

*Ray v. Jama Productions, Inc.*, 74 A.D.2d 845, 845-46 (2d Dep't 1980). Of course, a restraining notice is effective, as here, to hold money pending turnover under CPLR 5225(b) or CPLR 5227. The defining criteria for the restraint and the turnover are co-extensive.

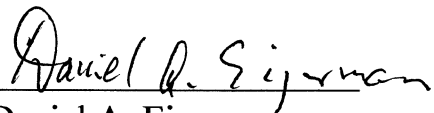
36. Similarly, respondent testified that the money it holds comes from the artist, Exh. J 19:19, and normally is held for and paid to "the entertainer." Exh. J 36:8-12.

37. Again, respondent testified that the money was to be paid out to persons representing judgment debtor DMX. Exh. J 20-23.

38. And respondent itself views as indifferent whether it sends the promoter's money to judgment debtor DMX or his manager/agent. Exh. J 41:9-12.

WHEREFORE it is earnestly asked that the Court grant judgment directing respondent Universal Attractions pay over to the petitioner and judgment creditor Amusing Diversions, Inc., all monies the respondent owes or will owe to the judgment debtor Earl Simmons a/k/a DMX as the same become due, to execute and deliver any documents necessary to effect such transfer, and to assure petitioner at reasonable intervals a statement of its monetary obligations to DMX, and further awarding the petitioner judgment creditor the costs and disbursements of the proceeding together with such other and different relief as the Court deems just.

Affirmed: New York, New York  
June 18, 2014

  
Daniel A. Eigerman