

**COPY**

SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 10 - SUFFOLK COUNTY

**PRESENT:**

Hon. JOSEPH A. SANTORELLI  
Justice of the Supreme Court

MOTION DATE 10/24/14 & 11/14/14

SUBMIT DATE 11-25-14

Mot. Seq. # 02 - MD

X-Mot. Seq. # 03 - MD

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THOMAS MAMMOLITO,

Petitioner,

-against-

J.P. MORGAN CHASE BANK,

Respondent,

DAVID I. REICHMAN

Respondent/Judgment Debtor.

**WARREN S. DANK, ESQ., PC**  
*Attys. for Plaintiff*  
62 BELMONT CIRCLE  
SYOSSET, NY 11791

**J.P. MORGAN CHASE BANK**  
*Respondent*  
PO BOX 183164  
COLUMBUS, OH 43218

**DAVID I. REICHMAN**  
*Respondent/Judgment Debtor*  
255 W. 88<sup>TH</sup> ST, APT 12E  
NEW YORK, NY 10024

**THE NATHANSON LAW FIRM, LLP**  
*Attys. for Intervening-Petitioner Arthur Schwartz*  
81 HEMPSTEAD AVE  
LYNBROOK, NY 11563

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Upon the following papers numbered 1 to 42 read on this motion to vacate order and for sanctions; Notice of Motion/ Order to Show Cause and supporting papers 1 - 12; Notice of Cross Motion and supporting papers 13 - 21; Answering Affidavits and supporting papers 22 - 30 & 31 - 34; Replying Affidavits and supporting papers 35 - 42; ~~Other~~ ; ~~(and after hearing counsel in support and opposed to the motion)~~ it is,

The Intervening-Petitioner, Arthur Schwartz, moves for an order pursuant to CPLR 5239: (1) vacating this Court's Order dated October 10, 2014, and execution thereof; (2) voiding the levy directed therein; (3) directing the disposition of the property at issue in favor of Arthur Schwartz; and (4) seeking sanctions or punitive damages against the petitioner's attorney, Mr. Dank. Petitioner, Thomas Mammolito, cross moves for sanctions.

The petitioner, Thomas Mammolito, moved for an order and judgment pursuant to CPLR 5225 directing the turnover of certain funds held on account by J.P. Morgan Chase Bank in accounts bearing the name of David I. Reichman, hereinafter "Reichman", as judgment debtor bank account holder respondent. This Court, by order dated October 10, 2014, held

A judgment having been entered by the Suffolk County Clerk on August 12, 2014 in favor of petitioner, Thomas Mammolito,

against judgment debtor, David I. Reichman in the total sum of \$793,122.38, and that said judgment remains wholly unpaid, and it further appearing to the Court that said respondent, J.P. Morgan Chase Bank, has in its possession a certain bank account to the credit of judgment debtor with funds on deposit in an amount not sufficient to satisfy the aforesaid judgment, this application pursuant to CPLR 5225 (b) is granted, without opposition, and respondent, J.P. Morgan Chase Bank, shall deliver to petitioner from the account of the judgment debtor and respondent the sum of \$100,042.71, plus accumulated interest (*see* CPLR 5225).

Arthur Schwartz, hereinafter "Schwartz", petitions for the aforementioned order to be vacated and the levy on funds held in account ending 9390 be lifted. Schwartz alleges that the account in question is "specifically identified as a 'POA' (Power of Attorney) account as is reflected in the statements". He further alleges that this account was set up for mere convenience, the respondent, "Reichman, has not contributed in any way to the Funds in Chase Bank which bear our names" and that respondent's "access to the account is only as Power of Attorney". Schwartz indicates that he did not oppose the motion of petitioner because he did not receive notice of that motion. He further alleges that "the source of funds of every penny in all of these accounts is mine and mine alone and comes from my psychiatry practice or social security income and represents a large portion of my life savings." The petitioner, in opposition alleges that the account ending 9390 is specifically marked as a joint account not a POA account, and as such that is the only account that was subject to the levy.

Upon a review of the account statements submitted by Schwartz, in both his motion and supplemental affidavit in support of his motion, the Court notes that as far back as August 2008, the bank statements reflect a joint account ending 4501 between Schwartz and Reichman and a separate joint account ending 9390 between Schwartz and Reichman. The September 30, 2008 statement for account ending 4501 shows a balance transfer of \$100,764.36 to account ending 9390. A separate statement dated September 11, 2008 shows the opening of account 9390 as a joint account between Schwartz and Reichman with a beginning balance of \$0.00 and a transfer from the joint account ending 4501 to 9390 of \$100.04. The October 10, 2008 statement for account ending 9390 shows the transfer of \$100,764.36 from the joint account ending 4501. All account statements from both accounts from August 2008 until April 2009 show account ending 9390 as a joint account and do not show Reichman as being listed as POA on any other accounts for Schwartz. Starting with the May 2009 statement and continuing through the statement dated August 2014, all accounts with the exception of account ending 9390, are listed as POA accounts, while account ending 9390 continues to be listed as a joint account. At a conference held on January 15, 2015, counsel for Schwartz provided the Court with a copy of the documents entitled "Chase Durable Power of Attorney for Deposit Accounts" which was signed by Schwartz on May 4, 2009, eight months after the opening of account ending 9390 as a joint account.

“[T]he opening of a joint bank account creates a rebuttable presumption that each named tenant is possessed of the whole of the account so as to make the account vulnerable to levy of a money judgment by the judgment creditor of one of the joint tenants” (*Matter of JRP Old Riverhead, Ltd. v Hudson City Sav. Bank*, 106 AD3d 914, 965 NYS2d 176 [2d Dept 2013], citing *Matter of Signature Bank v HSBC Bank USA, N.A.*, 67 AD3d 917, 918, 889 NYS2d 242, quoting *Tayar v Tayar*, 208 AD2d 609, 610, 618 NYS2d 35; see Banking Law § 675[b]). Joint tenants are said to be seized *per my et per tout*, or by the half and the whole, and in the first instance an attachment against the whole is proper (*Denton v Grumbach*, 2 AD2d 420, 422, 157 NYS2d 91 [3d Dept 1956]). “The presumption created by Banking Law § 675 can be rebutted ‘by providing direct proof that no joint tenancy was intended or substantial circumstantial proof that the joint account had been opened for convenience only’” (*Matter of Signature Bank v HSBC Bank USA, N.A.*, *supra* at 67 AD3d 918, 889 NYS2d 242 [2d Dept 2009], quoting *Fragetti v Fragetti*, 262 AD2d 527, 692 NYS2d 442 [1999]). Schwartz has failed to rebut the presumption created by Banking Law § 675 by failing to provide any direct proof that no joint tenancy was intended or substantial circumstantial proof that the joint account had been opened for convenience only.

Therefore, it is hereby;

**ORDERED**, that the instant application seeking sanctions or punitive damages against the petitioner’s attorney, Mr. Dank, filed by the Intervening-Petitioner, is denied as moot, as that aspect of the motion has been withdrawn by counsel in his supplemental affirmation dated November 14, 2014; and it is further

**ORDERED**, that the motion by Schwartz seeking an order: (1) vacating this Court’s Order dated October 10, 2014, and execution thereof; (2) voiding the levy directed therein; and (3) directing the disposition of the property at issue in favor of Arthur Schwartz, is denied in all respects; and it is further

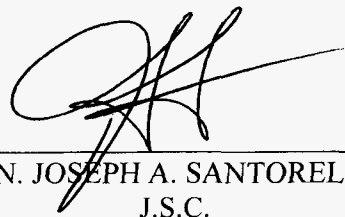
**ORDERED**, that the cross motion by petitioner for sanctions is denied in all respects; and it is further

**ORDERED**, that respondent, J.P. Morgan Chase Bank, shall deliver to petitioner from the account of the judgment debtor and respondent, jointly held with intervening-petitioner, Arthur Schwartz, the sum of \$100,042.71, plus accumulated interest (see CPLR 5225); and it if further.

**ORDERED**, that the petitioner is directed to serve a copy of this order upon the parties and upon the Calendar Clerk of this court within thirty (30) days of the date hereof.

The foregoing constitutes the Order of this Court.

Dated: January 20, 2015



HON. JOSEPH A. SANTORELLI  
J.S.C.

\_\_\_ FINAL DISPOSITION     X  NON-FINAL DISPOSITION