

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
DLJ MORTGAGE CAPITAL, INC.,

Plaintiff/Petitioner,

THOMAS HOEY and XIOMARA HOEY

Third-Party Intervenors-Plaintiffs,

- against -

THOMAS KONTOGIANNIS, *et al.*,

Defendants/Respondents,

JEFFREY SIEGEL, RICHARD SIEGEL, JUNE SIEGEL,
Individually and as the Personal Representative of the Estate of
Seymour Siegel, *et al.*,

Respondents.
-----X

*By order of Justice Ramos, these
motion papers may not be taken
apart or otherwise tampered with*

Index No.: 104675/2010
Motion Seq. No. 73

**MEMORANDUM OF LAW IN SUPPORT OF ORDER TO SHOW CAUSE
BY PLAINTIFF DLJ MORTGAGE CAPITAL, INC. FOR AN ORDER
(I) DIRECTING IMMEDIATE ENTRY OF JUDGMENT JOINTLY AND
SEVERALLY AGAINST JEFFREY SIEGEL, RICHARD SIEGEL, MASSOUD &
PASHKOFF LLP, AHMED A. MASSOUD, ESQ. AND LISA PASHKOFF, ESQ.; OR
(II) ALTERNATIVELY, GRANTING CPLR § 5229 PRE-JUDGMENT RESTRAINT**

HAHN & HESSEN LLP
Attorneys for DLJ Mortgage Capital, Inc.
488 Madison Avenue
New York, New York 10022
(212) 478-7200

Plaintiff DLJ Mortgage Capital, Inc. (“DLJ”) submit this Memorandum of Law in support its motion, by Order to Show Cause, for entry of an Order:

- (i) directing the Clerk to immediately enter judgment in the amount of \$446,725.41, together with interest at the statutory rate of 9% from May 19, 2016, and costs and disbursements, jointly and severally against (a) Jeffrey Siegel, Richard Siegel, and Massoud & Pashkoff LLP, and (b) pursuant to New York Partnership Law § 26, Ahmed A. Massoud, Esq. and Lisa Pashkoff, Esq.;
- (ii) alternatively, restraining Jeffrey Siegel, Richard Siegel, Massoud & Pashkoff LLP, Ahmed A. Massoud, Esq. and Lisa Pashkoff, Esq. with the same effect as if a restraining notice had been served upon them after entry of judgment, pursuant to New York Civil Practice Law and Rules (“CPLR”) § 5229; and
- (iii) granting such other and further relief as this Court deems just and proper.

PERTINENT FACTUAL BACKGROUND

The facts pertinent to this motion are set forth in the accompanying Affirmation of John P. Amato, Esq., sworn to June 9, 2016 (“Amato Aff.”), and the Court is respectfully referred thereto. Capitalized terms not defined herein shall have the meanings ascribed in the Amato Affirmation.

ARGUMENT

I. The Court Should Direct Immediate Entry of Judgment

DLJ requests the Court to direct the Clerk to immediately enter judgment, jointly and severally, against Jeffrey Siegel, Richard Siegel, Massoud & Pashkoff LLP, Ahmed A. Massoud, Esq. and Lisa Pashkoff, Esq.

As detailed in the Amato Affirmation, DLJ understands that the Clerk’s office has a tremendous backlog of judgments awaiting review and to be entered, numbering in excess of 1,400 as of May 2, 2016, and is currently taking in excess of thirteen weeks to complete final entry of judgments presented by a party. (Amato Aff. ¶¶ 8-9.)

Special Referee Phyllis Sambuco's May 19, 2016 Decision directed the Clerk to enter judgment, and such Decision was even initially docketed on the Court's ECF system as a "Judgment." (Amato Aff. ¶ 10.) However, the Clerk later advised that judgment could not be entered upon the Special Referee's direction and thus directed DLJ's attorneys to submit a proposed judgment for review, processing, and entry by the Clerk. (Amato Aff. ¶ 10.)

Requiring DLJ to present a proposed judgment for review, processing, and ultimate entry by the Clerk will result in significant prejudice to DLJ. As detailed in the Amato Affirmation, the to-be judgment debtors have exhibited a pattern and routine of disrespect and abuse of the rule of law, and any delay in entry of judgment could provide the to-be judgment debtors time to improperly render themselves judgment proof. (Amato Aff. ¶¶ 11-12.) DLJ requires immediate entry of judgment so that it can ensure no prejudice from avoidable delays. (Amato Aff. ¶¶ 11-12.)

The judgment entered should also be jointly and severally against the individual partners of Massoud & Pashkoff LLP, *i.e.*, Ahmed A. Massoud, Esq. and Lisa Pashkoff, Esq. who were personally involved in all of the reprehensible conduct that resulted in the Court's January 21, 2014 sanction order.

New York Partnership Law § 26(c)(i) states in pertinent part that:

each partner, employee or agent of a partnership which is a registered limited liability partnership shall be personally and fully liable and accountable for any negligent or wrongful act or misconduct committed by him or her or by any person under his or her direct supervision and control while rendering professional services on behalf of such registered limited liability partnership

Massoud & Pashkoff LLP is a New York State registered limited liability partnership. (Amato Aff. ¶ 15.) Ahmed A. Massoud, Esq. and Lisa Pashkoff, Esq. (a) are each a partner, employee, and/or agent of Massoud & Pashkoff LLP; (b) have each

previously appeared before this Court in connection with this matter; and (c) have each participated in the wrongful and sanctionable conduct addressed by DLJ's prior motion for which attorneys' fees and expenses were awarded. (Amato Aff. ¶ 16.) Accordingly, entry of judgment against Ahmed A. Massoud and Lisa Pashkoff is appropriate pursuant to New York Partnership Law § 26(c)(i). *See, e.g., Sier v. Jacobs Persinger & Parker*, 236 A.D.2d 309, 309-10, 654 N.Y.S.2d 351, 352 (1st Dep't 1997) (recognizing law firm partners are jointly and severally liable for misconduct of the firm pursuant to Partnership Law § 26(c)(i)); *Scarborough v. Napoli, Kaiser & Bern, LLP*, 63 A.D.3d 1531, 1532, 880 N.Y.S.2d 800, 802 (4th Dep't 2009) (recognizing law firm associates can be held liable for colleagues' misconduct pursuant to Partnership Law § 26(c)(i)).

Given the foregoing, an Order should be entered directing the Clerk to immediately enter judgment in the amount of \$446,725.41, together with interest at the statutory rate of 9% from May 19, 2016, and costs and disbursements, jointly and severally against Jeffrey Siegel, Richard Siegel, Massoud & Pashkoff LLP, Ahmed A. Massoud, Esq. and Lisa Pashkoff, Esq.

II. Alternatively, The To-Be Judgment Debtors Should Be Immediately Restrained

CPLR § 5229 states in pertinent part:

In any court, before a judgment is entered, upon motion of the party in whose favor a verdict or decision has been rendered, the trial judge may order examination of the adverse party and order him restrained with the same effect as if a restraining notice had been served upon him after judgment.

Whether imposition of a CPLR § 5229 restraint is appropriate is within the trial court's discretion. *See id.*; *Gallegos v. Elite Model Mgmt. Corp.*, 1 Misc. 3d 200, 202, 768 N.Y.S.2d 134, 135 (Sup. Ct. N.Y. Cty. 2003).

As detailed in the Amato Affirmation, should this Court not immediately direct otherwise, there will be a lengthy delay in the entry of judgment which will significantly prejudice DLJ's ability to enforce and collect upon the amount due and owing from the to-be judgment debtors, *i.e.*, Jeffrey Siegel, Richard Siegel, Massoud & Pashkoff LLP, Ahmed A. Massoud, Esq. and Lisa Pashkoff, Esq. (Amato Aff. ¶¶ 8-9.)

For this reason, DLJ alternatively requests that this Court enter an Order immediately restraining the to-be judgment debtors. *See, e.g., id.* at 203, 136 (granting plaintiff's requested CPLR § 5229 pre-judgment restraint in light of defendants' history of misleading statements and evasive actions); *Kaminsky v. Kahn*, 46 Misc. 2d 131, 258 N.Y.S.2d 1000, (Sup. Ct. N.Y. Cty. 1965) (directing CPLR § 5229 restraint prior to entry of judgment upon showing that to-be judgment debtor may be judgment proof).

CONCLUSION

For the reasons set forth herein and in the accompanying Amato Affirmation, Plaintiff DLJ Mortgage Capital, Inc. respectfully requests that this Court grant the instant motion in its entirety, and grant such other and further relief as this Court deems just and proper.

Dated: New York, New York
June 9, 2016

HAHN & HESSEN LLP

Attorneys for DLJ Mortgage Capital, Inc.

By: 

John P. Amato
Robert J. Malatak
Annie P. Kubic

488 Madison Avenue
New York, New York 10022
(212) 478-7200