SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

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HIGH SPEED CAPITAL LLC, Index No.:

Petitioner, **VERIFIED PETITION**

-against-

CORPORATE DEBT ADVISORS, LLC, TABLADA INVESTMENTS GROUP LLC, TABLADA, INC., and EDMUNDO TABLADA,

Respondents.

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Petitioner, HIGH SPEED CAPITAL LLC, by and through its counsel, Stein Adler Dabah & Zelkowitz LLP, petitions the Court as follows:

1. Petitioner, HIGH SPEED CAPITAL LLC ("HSC"), judgment creditor of Respondents/Judgment-Debtors, TABLADA INVESTMENTS GROUP LLC, TABLADA, INC., and EDMUNDO TABLADA (collectively referred to as "Respondents/Judgment-Debtors"), commences this special proceeding for an Order, pursuant to CPLR 5225(b) and 5227, and NY Dr & Cr §§ 273, 273-a, 276, and 276-a, directing Respondent/Garnishee CORPORATE DEBT ADVISORS, LLC ("CDA") to disgorge, turnover, deliver, and assign all right, title, and interest in any and all of the property of Respondents/Judgment-Debtors in their possession, custody, or control including, but not limited to, money fraudulently transferred by Respondents/Judgment-Debtors to CDA so as to satisfy or partially satisfy the judgments in favor of HSC.

2. Petitioner seeks to recover funds that were fraudulently transferred to CDA by the Respondents/Judgment-Debtors as part of a scheme to hinder, delay, and defraud Petitioner from recovering on its judgment. Due to the intentional nature of the Respondents' acts, the Court should award the HSC its reasonable attorneys' fees as permitted under New York Debtor and Creditor Law § 276-a.

3. This special proceeding arises from judgments duly entered by the Supreme Court of the State of New York, County of Erie. Judgment was entered in favor of HSC and against the Respondents/Judgment-Debtors on October 11, 2017, in the amount of $37,167.16 in Index Number 814390/2017. Judgment was entered in favor of HSC and against the Respondents/Judgment-Debtors on October 12, 2017, in the amount of $46,280.61 in Index Number 814420/2017. Copies of the Judgments are attached hereto as **Exhibit A**.

4. After a judgment is entered, the Supreme Court of the State of New York retains jurisdiction over the judgment debtor(s) for the purposes of enforcing the judgment. *Winkler v. Allvend Industries, Inc.*, 186 A.D.2d 734, 736 (2d Dept. 1992). This Court has jurisdiction over the Respondents/Judgment-Debtors for this judgment enforcement proceeding because the Respondents/Judgment-Debtors consented to the Court's jurisdiction when they confessed judgment in favor of the Petitioner, and the Court retained jurisdiction after judgment was entered. *Id.*

5. The Court has jurisdiction over CDA, a non-domiciliary of New York, because CDA has committed tortious acts that have damaged HSC in New York, and CDA regularly does and solicits business in and throughout the State of New York. CPLR 302(a)(2) and (3). CDA regularly solicits business in and throughout New York by monitoring NYSCEF records and soliciting New York judgment-debtors for their fraudulent transfer scheme. Moreover, CDA regularly solicits and does business with New York judgment-creditors and attorneys as part of their tactics in delaying New York judgment-creditors from successfully enforcing judgments. More than half of CDA's business conduct is directed into the State of New York at parties based in New York and focuses on New York judgments.

6. CPLR 5221(a)(4), which governs venue for the instant special proceeding, states:

> In any other case, if the judgment sought to be enforced was entered in any court of this state, a special proceeding authorized by this article shall be commenced, either in the supreme court or a county court, in a county in which the respondent resides or is regularly employed or has a place for the regular transaction of business in person or, if there is no such county, in any county in which he may be served or the county in which the judgment was entered.

CPLR 5221(a)(4).

7. Venue is proper because judgment was entered in the Supreme Court, Erie County.

8. Petitioner HIGH SPEED CAPITAL, LLC is domestic limited liability company that resides in New York County, New York.

9. The Respondents/Judgment-Debtors are residents of Florida that regularly do business in New York with New York businesses.

10. TIG is a Florida limited liability company with its principal place of business at 229 W. Indiantown Road., Jupiter, Florida, 33458.

11. TABLADA, INC. is a Florida corporation with its principal place of business at 750 S. Old Dixie Highway, Bay 4, Jupiter, Florida, 33458, and its mailing address at 1080 Egret Cir. N., Jupiter, Florida, 33458.

12. EDMUNDO TABLADA is an individual resident of Florida with his residence at 1080 Egret Cir. N., Jupiter, Florida, 33458.

13. Respondent/Garnishee CDA is a corporation formed and existing under the laws of Florida with its principal place of business at 3333 South Congress Avenue, Suite 303, Delray Beach, Florida, 33445.

14. CDA is a company that fraudulently holds itself out as offering debt settlement services. However, it is actually in the business of intentionally halting, delaying, and stymying judgment enforcement efforts by judgment-creditors while fleecing judgment-debtors.

15. CDA does not have a Budget Planning license in New York or Florida.

16. CDA is not a law firm and cannot practice law.

17. The standard CDA initial targeted solicitation is a form that contains numerous materially false statements and defective legal opinions.

18. While CDA says they are not lawyers, they then represent that it is a "firm that specializes in advocating for business owners…." They go on to represent to the Judgment-Debtor that "All of our clients have full attorney representation" and "You will have an attorney representing you..." Their initial solicitation gave the impression that they and their affiliates are licensed to practice law, represent a party legally, or qualified to render legal opinions.

19. They issue a blanket legal opinion and "take the position that these loans are predatory, violate usury laws, and are defensible" based upon their assertion that they "work with lawyers" despite never having reviewed the case and having no knowledge of the file.

20. CDA falsely represents that its employees are "Certified Debt Consultants," which is not a certification or license recognized in New York or Florida, and which appears to be entirely made up.

21. In January 2018, CDA reached out to HSC, a collections company working on behalf of HSC, and HSC's legal counsel advising that CDA had been retained to settle HSC's judgment against the Respondents/Judgment-Debtors and manage the Respondents/Judgment-Debtors' payments.

22. CDA did not actually settle the Judgments but instead just repeatedly attempted to negotiate and renegotiate terms without ever settling.

23. As CDA dragged the process on, it collected substantial money from the Respondents/Judgment-Debtors and failed to remit payments to HSC.

24. On or about April 6, 2018, HSC served CDA with an information subpoena to identify the location of funds that could be used to satisfy the Judgments. Copies of the information subpoena with proof of service are attached hereto as **Exhibit B**.

25. CDA failed to serve responses to the information subpoena and has refused to disclose the exact dollar amount transferred from Respondents/Judgment-Debtors to CDA.

26. Upon information and belief, CDA has taken possession of the full judgment amount for each of the Judgments.

27. Transfers to CDA bear the standard badges of a fraudulent transfer.

28. A printout from CDA's website wherein it admits to the badges of a fraudulent transfer is attached hereto as **Exhibit C**.

29. CDA explicitly advertises that the Respondents/Judgment-Debtors transfer the money to an account where the Respondents/Judgment-Debtors retain control over the funds.

30. CDA explicitly advertises that it takes money from the Respondents/Judgment-Debtors into its possession thereby delaying and hindering judgment enforcement by creditors.

31. Respondents/Judgment-Debtors did not receive any lawful or adequate consideration for their transfers to CDA.

32. As the Respondents are garnishees under Article 52 of the CPLR, HSC is entitled to an Order directing the turnover of sufficient funds to satisfy or partially satisfy the Judgment pursuant to CPLR 5225(b) and 5227. Upon information and belief, that is the full judgment amount.

33. As Respondents have interfered, hindered, and delayed HSC's judgment enforcement efforts, HSC is entitled to recover its attorneys' fees from this action.

34. Petitioner shall submit its attorneys' fees statements in its reply so as to capture all attorneys' fees and costs but, upon information and belief, the amount shall be no less than $15,000.00.

35. No prior request for such relief has been made by the Petitioner.

I. THE TRANSFER OF MONEY FROM THE RESPONDENTS/JUDGMENT-DEBTORS TO CDA WAS A FRAUDULENT TRANSFER.

36. The transfer of money from the Respondents/Judgment-Debtors to Respondent/Garnishee CDA was fraudulent because it was intentionally made to hinder, delay, and/or defraud, was made without fair consideration, and because it rendered the Respondents/Judgment-Debtors insolvent and/or unable to satisfy all of part of the judgment.

37. Article 10 of the Debtor and Creditor Law states that there are multiple independent grounds for which a conveyance shall be deemed fraudulent. Pursuant to Section 273 of the New York Debtor and Creditor Law, "[e]very conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made or the obligation is incurred without a fair consideration." NY CLS Dr & Cr § 273. Additionally, a conveyance is fraudulent where it is made without fair consideration and the defendant/judgment-debtor is unable to satisfy the judgment. NY CLS Dr & Cr § 273-a.

38. Separately, "[e]very conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud either present or future creditors, is fraudulent as to both present and future creditors." NY CLS Dr & Cr § 276. Where a transfer was made with an intent to hinder, delay, or defraud the judgment creditor, the Court should award the judgment creditor its reasonable attorneys' fees arising from the action or

special proceeding for fraudulent transfer against the judgment debtor(s) and garnishee(s). NY CLS Dr & Cr § 276-a.

39. The transfer in this case was fraudulent because there was a lack of fair consideration. Fair consideration is governed by Section 272 of the New York Debtor and Creditor Law, which states that:

> Fair consideration is given for property, or obligation.
> a. When in exchange for such property, or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or an antecedent debt is satisfied, or
> b. When such property, or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared with the value of the property, or obligation obtained.

NY CLS Dr & Cr § 272. In the instant case, Respondent/Garnishee provided no consideration or insufficient consideration because they provided no lawful services or products in exchange for the transferred money. The entire transaction was a sham to transfer funds out of Petitioner's reach and to defraud Petitioner and stymie its judgment enforcement efforts until it gave up. There was no property, lawful obligation or equivalent conveyed, and no antecedent debt satisfied. As there was a lack of fair consideration from Respondent/Garnishee, the transfer was fraudulent. NY CLS Dr & Cr § 272.

40. CDA's refusal to answer information subpoenas about the Respondents/Judgment-Debtors' finances is indicative of their bad faith and knowledge that the Respondents/Judgment-Debtors were insolvent and/or unable to satisfy all or part of the judgment by Respondent/Garnishee's involvement. As such, the transfer was fraudulent. NY CLS Dr & Cr §§ 273, 273-a.

41. In the instant case, the Respondents transferred money with the actual intent to hinder, delay, and/or defraud Petitioner. Because actual intent is difficult to prove, it may be

proven with circumstantial evidence or "badges" of fraudulent intent. *Altman v. Finkel*, 268 A.D. 666, 669 (1st Dept. 1945). Badges of fraudulent intent include the inadequacy of consideration, the transferor's knowledge of the creditor's claim and inability to pay it, any retention of control of the transferred property after the alleged transfer, and whether the transfer was in the ordinary course of the transferor's business. *Wall Street Assocs. v. Brodsky*, 257 A.D.2d 526, 529 (1st Dept. 1999).

42. In the instant case, CDA explicitly admits that funds are transferred to it and held in accounts where the Respondents/Judgment-Debtors retain control. Moreover, CDA refused to identify the location of the transferred funds by failing to respond to the information subpoena. Additionally, as CDA contacted HSC's counsel regarding the judgments in this case and made claims about the Respondents/Judgment-Debtors' insolvency or inability to satisfy the judgment, there can be no dispute about their knowledge of HSC's judgment.

43. As the transfer was made with actual intent to hinder, delay, and/or defraud Petitioner and was made without fair consideration, the transfer was fraudulent. NY CLS Dr & Cr § 276. The Court should award Petitioner its reasonable attorneys' fees in bringing this special proceeding to set aside the fraudulent transfer. NY CLS Dr & Cr § 276-a.

44. Each of the foregoing reasons is sufficient to demonstrate that the transfer of money from Respondents/Judgment-Debtors to Respondent/Garnishee should be set aside as fraudulent and that the Court should issue an Order granting the Petition in its entirety.

II. THE COURT SHOULD ORDER RESPONDENT/GARNISHEE TO TURNOVER THE FUNDS TRANSFERRED TO IT BY THE RESPONDENTS/JUDGMENT-DEBTORS.

45. To the extent that Respondent Garnishee may argue that it merely holds funds for the Respondents/Judgment-Debtors in trust or escrow, they are still obligated to turnover all such funds to Petitioner.

46. CPLR 5225(b) and 5227 authorize the Court to direct the turnover of money to a judgment creditor where the money is held by or on behalf of the judgment debtors. A turnover order under CPLR 5225(b) does not require any showing of fraud, but merely requires that the judgment creditor demonstrate its superior right to the funds by virtue of its unsatisfied judgment. CPLR 5225(b) provides that:

> (b) Property Not in the Possession of Judgment Debtor. Upon a special proceeding commenced by the judgment creditor, against a person in possession or custody of money or other personal property in which the judgment debtor has an interest, or against a person who is a transferee of money or other personal property from the judgment debtor, where it is shown that the judgment debtor is entitled to the possession of such property or that the judgment creditor's rights to the property are superior to those of the transferee, the court shall require such person to pay the money, or so much of it as is sufficient to satisfy the judgment, to the judgment creditor and, if the amount to be so paid is insufficient to satisfy the judgment, to deliver any other personal property, or so much of it as is of sufficient value to satisfy the judgment, to a designated sheriff. Costs of the proceeding shall not be awarded against a person who did not dispute the judgment debtor's interest or right to possession.

CPLR 5225(b).

47. Rather than lose on a fraudulent transfer action and risk owing attorneys' fees and costs, many third-party garnishees argue that they merely have funds for the judgment debtor in their possession or custody as part of a trust or escrow. In doing so, they typically argue that they do not dispute the judgment creditor's right to such funds, but claim that such funds are held in an account that they placed outside the Court's jurisdiction. By not contesting the judgment creditor's

superior claim to the funds, the garnishees attempt to rely upon the safe harbor in 5225(b) against owing fees and costs resulting from an actual intent to hinder, delay, or defraud the judgment creditor's judgment enforcement.

48. With regard to the argument that out of state funds might somehow be exempt from enforcement, the Court of Appeals definitively put to rest this argument a few years ago in *Koehler v. Bank of Bermuda, Ltd. Koehler v. Bank of Bermuda, Ltd.*, 12 N.Y. 3d 763 (2009). The Court of Appeals held that the power of a New York Court to issue a judgment ordering the turnover of out-of-state assets is not limited to judgment debtors, but applies equally to garnishees. *Koehler v. Bank of Bermuda, Ltd.*, 12 N.Y. 3d 763 (2009) "[T]he explicit rationale was that the court could order the defendant judgment debtor to turn over property because it has personal jurisdiction over the defendant…" *Id.* The Court went on to explain that issuing a turnover order to a garnishee of funds or personal property that are outside the state is an exercise of the Court's *in personam* jurisdiction over the garnishee, who is subject to the Court's jurisdiction. *Id.*

49. Even assuming *arguendo* that Respondent/Garnishee could demonstrate that transferred funds in their possession or custody are held in trust, escrow, or an as of yet unearned advance, the Court should issue an Order directing Respondent/Garnishee to turnover all funds received from the Respondents/Judgment-Debtors because: 1) judgment was duly entered against the Respondents/Judgment-Debtors prior to the transfer; 2) Respondent/Garnishee received the funds from Respondents/Judgment-Debtors without adequate consideration 3) Respondents have refused to turnover funds that could be used to satisfy or partially satisfy the judgment; 4) the Judgment remains unpaid and unsatisfied; and 5) Respondents are proper garnishees under Article 52 of the CPLR.

50. Even jointly owned assets are vulnerable to levy by a judgment creditor pursuant to CPLR 5225. *Matter of Richich*i, 38 A.D.3d 558 (2d Dept. 2007); *Matter of Signature Bank v HSBC Bank USA, N.A.*, 67 A.D.3d 917 (2d Dept. 2009).

51. For the foregoing reasons, the Court should issue an Order granting the Petition in its entirety.

III. THE TRANSFER FROM THE RESPONDENTS/JUDGMENT-DEBTORS TO CDA WAS VOID *AB INITIO.*

52. The transfer of any money from Respondents/Judgment-Debtors to CDA was void *ab initio* because Respondent CDA lacks the requisite licensure to legally provide debt negotiation, settlement, and payment services.

53. The debt settlement and payment services that CDA may argue that it provided to the Respondents/Judgment-Debtors can never been considered fair consideration because CDA violated the criminal laws of New York and Florida and, as such, CDA's argument would ask this Court to hold that criminal activity can be fair consideration.

54. Under New York GBL 455(1), the Budget Planning statute regulates any agreement between a debtor and another person or entity, whereby the debtor pays the person or entity to supervise, coordinate or distribute payment to creditors in accordance with a plan or arrangement. GBL 455(1).[1] Any person or entity involved in budget planning is required to have a New York Budget Planning license and only not for profit organizations may qualify for a Budget Planning license. GBL 455(1) and (4). There is a narrow exemption for lawyers working at law firms that may engage in these types of services as part of their law practice. GBL 455(2), (3), and (5). Budget Planning by any person or entity without a license is prohibited. GBL 456. Any person or

[1] GBL 455 is a law of general applicability to relationships with debtors and is not limited to consumer transactions. GBL 455 consistently uses the term "Debtor" rather than "Consumer Debtor," terms that are defined by Article 9, Section 102 of the New York Uniform Commercial Code.

entity engaged in Budget Planning without a license is guilty of a misdemeanor. GBL 457. So-called "debt negotiation" and "debt settlement" companies that negotiate settlements between debtors and creditors on behalf of the debtors and which may coordinate or supervise payment by the debtors to the creditors in exchange for fees from the debtor are engaged in Budget Planning. *Pavlov v Debt Resolvers USA, Inc.*, 28 Misc. 3d 1061, 1073 (Richmond Cty. Civil Ct. 2010). Budget Planning agreements with unlicensed entities are void for illegality and cannot be upheld by the Court. *Id.* at 1076.

55. Similarly, Under Fla. Stat. § 559.10, Florida's Budget Planning statutes regulates any agreement between a debtor and another person or entity whereby the debtor pays the person or entity to negotiate a plan, and manage and distribute payments to creditors in accordance with the plan. Fla. Stat. § 559.10. With few exceptions, Budget Planning is impermissible in Florida except that attorneys that may engage in this activity as part of their licensed practice of law. Fla. Stat. §§ 559.11; 559.12. The violation of Florida's Budget Planning statute is punishable as a misdemeanor. Fla. Stat. §§ 559.13.

56. CDA does not have a Budget Planning license, is not licensed to practice law, and openly engages in the business of unlicensed Budget Planning and rendering of unlicensed legal advice.

57. Regardless of whether its relationship with the Respondents/Judgment-Debtors would be governed by New York law or Florida law, CDA's unlicensed Budget Planning business is illegal.

58. As any consideration furnished by CDA was illegal, it cannot have been fair consideration and, as such, the transfer from Respondents/Judgment-Debtors to CDA should be set aside as a fraudulent transfer.

WHEREFORE, Petitioner petitions the Court for an Order holding that: 1) The $83,447.77 fraudulently transferred by TABLADA INVESTMENTS GROUP LLC ("TIG"), TABLADA, INC. and EDMUNDO TABLADA to CORPORATE DEBT ADVISORS, LLC ("CDA"), plus statutory 9% interest, plus HSC's attorneys' fees and costs must be delivered to HSC by CDA within ten days of the entry of an Order; 2) Alternatively, if CDA has failed to preserve the $83,447.77 in fraudulently transferred funds from TIG, TABLADA, INC. and EDMUNDO TABLADA, then judgment be entered in favor of HSC and against CDA in the amount of $83,447.77, plus statutory 9% interest, and HSC's attorneys' fees; 3) Respondents must execute and deliver any document necessary to effect payment of the foregoing funds to Petitioner; and 4) HSC is entitled to such other, further, and/or different relief as the Court deems just and proper

Dated: Tarrytown, New York
July 10, 2018

/s/ Christopher R. Murray
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ATTORNEY VERIFICATION

I, Christopher R. Murray, Esq., an attorney duly licensed to practice law in the state of New York, affirm that I have read the foregoing Verified Petition, and the know the contents thereof, and the same is true to the best of my knowledge, except as to the matters therein stated to be alleged upon information and belief and, as to those matters, I believe them to be true.

Dated: Tarrytown, New York
July 10, 2018

/s/ Christopher R. Murray
Christopher R. Murray, Esq.