

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

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YELLOWSTONE CAPITAL, LLC,

Index No.:

Petitioner,

**VERIFIED PETITION**

-against-

SMCA, INC. D/B/A SETTLE MY CASH  
ADVANCE, THASSOS.COM, CORP. d/b/a  
THASSOS.COM, and GEORGE ALEXANDER,

Respondents.

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Petitioner, YELLOWSTONE CAPITAL, LLC, by and through its counsel, Stein Adler  
LLP, petitions the Court as follows:

1. Petitioner, YELLOWSTONE CAPITAL, LLC, judgment creditor of Respondents/Judgment-Debtors, THASSOS.COM, CORP. d/b/a THASSOS.COM, and GEORGE ALEXANDER, 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 SMCA, INC. D/B/A SETTLE MY CASH to 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, the \$12,000.00 transferred by THASSOS.COM, CORP. d/b/a THASSOS.COM, and GEORGE ALEXANDER to SMCA, INC. D/B/A SETTLE MY CASH ADVANCE so as to partially satisfy the judgment in favor of YELLOWSTONE CAPITAL, LLC.

2. Petitioner seeks to recover funds that were fraudulently transferred to SMCA, INC. D/B/A SETTLE MY CASH ADVANCE as part of a scheme to hinder, delay, and defraud Petitioner from recovering on its judgment. Due to the intentional nature of SMCA, INC. D/B/A SETTLE MY CASH ADVANCE's acts, the Court should award the Petitioner its reasonable attorneys' fees as permitted under New York Debtor and Creditor Law § 276-a.

3. This special proceeding arises from a judgment duly entered by the Supreme Court of the State of New York, County of Queens, on December 28, 2017, in the amount of \$21,129.76, plus post-judgment interest thereon at 16%, in favor of YELLOWSTONE CAPITAL, LLC, and against Respondents/Judgment-Debtors. A copy of the Judgment is attached hereto as **Exhibit A**.

#### **VENUE AND JURISDICTION**

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. CPLR 301 provides that there is no question that the Court may exercise personal jurisdiction over residents of New York. *Skyline Agency v. Ambrose Coppotelli*, 117 A.D.2d 135, 147 (2d Dept. 1986). SMCA, INC. D/B/A SETTLE MY CASH ADVANCE is a domestic corporation residing in the County of Nassau with its principal place of business at 70 East Sunrise Highway, Suite 500, Valley Stream, New York, 11581 and, as such, is a resident of New York subject to this Court's jurisdiction.

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 respondent SMCA, INC. D/B/A SETTLE MY CASH ADVANCE resides in Nassau County.

### THE PARTIES

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

9. The Respondents/Judgment-Debtors, THASSOS.COM, CORP. d/b/a THASSOS.COM and GEORGE ALEXANDER, are residents of Queens County, New York.

10. Respondent/Garnishee SMCA, INC. D/B/A SETTLE MY CASH ADVANCE is a corporation formed and existing under the laws of New York.

11. SMCA, INC. D/B/A SETTLE MY CASH ADVANCE is a company that fraudulently holds itself out as offering legal representation and judgment settlement services with regard to Yellowstone and various other entities. A copy of the Affidavit of George Alexander is attached hereto as **Exhibit B**. Despite what SMCA, INC. D/B/A SETTLE MY CASH ADVANCE claims, it is actually in the business of intentionally and maliciously halting, delaying, and stymying judgment enforcement efforts by judgment creditors while fleecing judgment debtors with fake judgment settlement services. **Exhibit B**.

### RELEVANT FACTS

12. On or about April 25, 2018, Petitioner served SMCA, INC. D/B/A SETTLE MY CASH ADVANCE with an information subpoena requesting the location of funds it has received that could be used to satisfy the judgment. A copy of the information subpoena with proof of service and receipt is attached hereto as **Exhibit C**. SMCA, INC. D/B/A SETTLE MY CASH ADVANCE has refused to respond to the information subpoena.

13. In response to an investigation by Yellowstone, the Respondents/Judgment-Debtors, revealed that they had transferred \$12,000.00 to SMCA, INC. D/B/A SETTLE MY CASH ADVANCE.

14. The facts of the transfer revealed a disturbing scheme by SMCA, INC. D/B/A SETTLE MY CASH ADVANCE to defraud Yellowstone. The facts of the fraudulent transfer scheme were set forth under oath by Respondent/Judgment-Debtor, George Alexander:

a.I, George Alexander, am a natural person over eighteen years of age and am competent to make this affidavit. I am the principal owner, officer, and director of Thassos.com, Corp. d/b/a Thassos.com. I make this affidavit based upon my personal knowledge of the facts herein.

b.My business, Thassos.com, Corp. d/b/a Thassos.com, and I are judgment debtors to Yellowstone Capital, LLC, in *Yellowstone Capital, LLC, v. Thassos.com, Corp. d/b/a Thassos.com and George Alexander*, Supreme Court, Queens County, Index Number 717908/2017. Yellowstone requested that judgment be entered against us on December 6, 2017. Judgment was duly entered against us by the Clerk, and in favor of Yellowstone, pursuant to CPLR 3218 in the amount of \$21,129.76 on December 28, 2017.

c.My business and I were solicited by SMCA, Inc. d/b/a Settle My Cash Advance ("SMCA") with legal representation and settlement services with regard to the Yellowstone judgment based upon SMCA's representation that they have a relationship with Yellowstone and would reduce my judgment by 25%-70%. SMCA represented to me that they knew my business and I were insolvent because we had insufficient money to satisfy our financial obligations.

d.SMCA told me to transfer all funds, as my business and I earned them, to SMCA to hold them for us so that Yellowstone could not collect on its judgment. The deal that SMCA represented to me was that SMCA would take the funds, hold them in trust, and use them to settle our obligations with Yellowstone for a small contingency fee.

e.On December 6, 2017, the day Yellowstone filed for the entry of final judgment against me, SMCA coached me to halt, hinder, and stymie all of Yellowstone's judgment enforcement efforts. They described how to make sure there would be no paper trail for Yellowstone to follow such that Yellowstone's judgment enforcement activity would be fruitless:

**From:** SMCA Negotiations [<mailto:negotiations@settlemycashadvance.com>]

**Sent:** Wednesday, December 06, 2017 1:38 PM

**To:** George Alexander <[george@thassos.com](mailto:george@thassos.com)>

**Cc:** Underwriting Department <[apply@settlemycashadvance.com](mailto:apply@settlemycashadvance.com)>

**Subject:** Re: FW: Thassos.com - NOTICE OF DEFAULT

George,

Thanks for the update. I need to check with you concerning the status of the a new credit card processor. Until that is set up and you are transitioned to it I can't proceed with your lenders because the first thing they will do is freeze the money with the processor. In our discussion yesterday you confirmed that it would be problematic for you if the revenue stream from your current credit card processor was interrupted. I also want to confirm that you have taken all of the money out of the bank account that the lenders have access to and put it in the new account. Don't wire out of the old account to the new account, use a certified check or some method that does not leave a trail for the lenders to follow and find the new account. Immediately let me know when the new credit card processor is completed. Thanks.

David

f. On December 7, 2017, the day after Yellowstone filed to enter final judgment against us, SMCA called me and instructed me to change my business' credit card processor and change all of my business' bank accounts so as to make sure Yellowstone's judgment enforcement efforts would not yield any results. SMCA sent me a confirmation e-mail confirming how to stymie all of Yellowstone's judgment enforcement efforts:

**From:** SMCA Negotiations [<mailto:negotiations@settlemycashadvance.com>]

**Sent:** Thursday, December 07, 2017 12:55 PM

**To:** George Alexander <[george@thassos.com](mailto:george@thassos.com)>

**Cc:** Underwriting Department <[apply@settlemycashadvance.com](mailto:apply@settlemycashadvance.com)>

**Subject:** Confirmation of discussion

George,

I am writing you to confirm the content of the discussion we just had. You have changed your credit card processor and you have taken all of your money out of the accounts the lenders are aware of. This is in light of the fact that Yellowstone has filed a COJ against your company and they will attempt to freeze any funds they can attach at this point. If anything I have stated above is not accurate, let me know so it can be addressed. Thanks.

David

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Settlement Negotiations

SMCA

70 East Sunrise Hwy  
Valley Stream, NY 11581  
Tel: 516.636.0567  
Fax: 516-706-0922  
www.settlemycashadvance.com

- g. Months have gone by and I have learned that SMCA has just been taking our money and never settled our judgment with Yellowstone. SMCA has collected \$12,000.00 from us, almost all of which was supposed to be used to pay Yellowstone, save for a small contingency fee for settling with Yellowstone.
- h. SMCA has done nothing but coach me on how to delay and hinder Yellowstone and has never settled the obligation with Yellowstone. I have come to learn that SMCA has no relationship with Yellowstone, is not a law firm, and is not qualified to settle legal judgments.
- i. SMCA has never provided us with any actual services and has refused to return the \$12,000.00 to us or use any part of the \$12,000.00 to pay Yellowstone. SMCA has not provided us with property, lawful services, and we did not owe SMCA any antecedent debt.
- j. The entire transaction was apparently a scheme by SMCA to defraud Yellowstone and stymie their judgment enforcement efforts. SMCA is currently threatening to further disrupt my business and permanently prevent my ability to ever satisfy the judgment with Yellowstone by placing us in collections for services SMCA never provided to us. SMCA is demanding money and not settling my obligation with Yellowstone. If SMCA carries out its threats, my business and I will be irreparably harmed by the destruction of my business.

15. Respondents/Judgment-Debtors did not receive any lawful or adequate consideration for their payment to SMCA, INC. D/B/A SETTLE MY CASH ADVANCE.

16. SMCA, INC. D/B/A SETTLE MY CASH ADVANCE refuses to account for or turnover the \$12,000.00 it received from Respondents/Judgment-Debtors.

17. SMCA, INC. D/B/A SETTLE MY CASH ADVANCE refuses to honor any subpoenas from Yellowstone's counsel.

18. As Respondent/Garnishee is a garnishee under Article 52 of the CPLR, Petitioner is entitled to an Order directing the turnover of sufficient funds to satisfy or partially satisfy the

judgment as may be held by the garnishee pursuant to CPLR 5225(b) and 5227. Upon information and belief, that is \$12,000.00.

19. As Respondent/Garnishee has interfered with and delayed Petitioner's judgment enforcement efforts, Petitioner is entitled to recover its attorneys' fees from this action.

20. 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 \$7,000.00, for the no less than 20 hours anticipated to be expended on this matter.

21. No Prior request for such relief has been made by the Petitioner.

### **ARGUMENT**

#### **I. THE RESPONDENTS/JUDGMENT-DEBTORS' TRANSFER OF MONEY TO RESPONDENT/GARNISHEE WAS A FRAUDULENT TRANSFER.**

22. The transfer of money from the Respondents/Judgment-Debtors to Respondent/Garnishee 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.

23. 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.

24. 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.

25. The transfer in this case was fraudulent because there was a lack of fair consideration for the transfer. 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 defraud Petitioner and stymie judgment enforcement efforts. 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.

26. Respondents/Judgment-Debtors admit they were insolvent or rendered unable to satisfy all or part of the judgment at the time of the transfer. Respondent/Garnishee’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.

27. 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 (1<sup>st</sup> Dept. 1945). Some 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 (1<sup>st</sup> Dept. 1999).

28. In the instant case, Respondents/Judgment-Debtors have attested to the fraudulent nature of the transfer of \$12,000.00 to Respondent/Garnishee. 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.

29. 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 direct the Respondents to turnover the \$12,000.00 received by Respondent/Garnishee and, as the Respondents intended to hinder, delay, and/or defraud Petitioner, the Court should award Petitioner its reasonable attorneys' fees from Respondent/Garnishee.

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

30. 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.

31. 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).

32. 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, escrow, or unearned advance of fees. 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 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.

33. 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.*

34. 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) Respondent/Garnishee has refused to turnover funds that could be used to satisfy or partially satisfy the judgment; 4) the Judgment remains unpaid and unsatisfied; and 5) Respondent/Garnishee is a proper garnishee under Article 52 of the CPLR.

35. Even jointly owned assets are vulnerable to levy by a judgment creditor pursuant to CPLR 5225. *Matter of Richichi*, 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).

36. For the foregoing reasons, the Court should issue an Order directing Respondent/Garnishee to turnover \$12,000.00 to Petitioner.

**III. THE COURT SHOULD ISSUE AN ORDER RESTRAINING  
RESPONDENT/GARNISHEE SMCA PURSUANT TO CPLR 5222.**

37. CPLR 5222 permits the entry of temporary restraints against garnishees from transferring, dissipating, and/or otherwise disposing of property that is the subject of judgment enforcement. Petitioner respectfully requests that the Court enter a temporary restraining order against Respondent/Garnishee SMCA from transferring, dissipating, and/or otherwise disposing of the \$12,000.00 it received from Respondents/Judgment-Debtors.

WHEREFORE, Petitioner petitions the Court for an Order holding that: 1) \$12,000.00 plus statutory 9% interest plus Petitioner's attorneys' fees and costs must be delivered to Petitioner by SMCA, INC. D/B/A SETTLE MY CASH ADVANCE within ten days of the entry of an Order; 2) Respondents must execute and deliver any document necessary to effect payment of the foregoing funds to Petitioner; 3) restraining Respondent/Garnishee SMCA from transferring, dissipating, and/or otherwise disposing of the \$12,000.00 it received from Respondents/Judgment-Debtors and 4) Petitioner is entitled to such other, further, and/or different relief as the Court deems just and proper.

Dated: Tarrytown, New York  
May 13, 2018

/s/ Christopher R. Murray  
Christopher R. Murray, Esq.  
Stein Adler LLP

*Attorneys for Petitioner*  
*Yellowstone Capital, LLC*  
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New York, New York, 10591  
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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  
May 13, 2018

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