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Supreme Court, Appellate Division, Second Department, New York.

TRI-GLOBAL MANAGEMENT CORP., respondent,

v.

Charles RICHARDSON, et al., defendants;

J.P. Morgan Chase, nonparty-appellant.

Jan. 17, 2006.

Background: In suit to recover upon personal guaranty, the Supreme Court, Kings County, Douglass, J., held nonparty bank in contempt for disobedience of restraining notice. Bank appealed.

Holding: The Supreme Court, Appellate Division, held that bank was not in contempt of restraining notice.

Reversed.

West Headnotes

Execution 161 ↪ 417

161 Execution

161XIV Supplementary Proceedings

161k416 Disobedience to Order or Subpoena as Contempt

161k417 k. Acts or Omissions Constituting Contempt. Most Cited Cases

Bank's failure to freeze account was not in contempt of restraining notice, since account creditor sought to restrain was not included in restraining notice served upon bank as part of creditor's efforts to enforce judgment. McKinney's CPLR 5222(b).

****638** Simmon, Jannace & Stagg, LLP, Syosset, N.Y. (Debra L. Wabnik and Michelle E. Tarson of counsel), for appellant.

Susan von Ohlen, Great Neck, N.Y., for respondent.

HOWARD MILLER, J.P., THOMAS A. ADAMS,

DANIEL F. LUCIANO, and REINALDO E. RIVERA, JJ.

***601** In an action, inter alia, to recover upon a personal guaranty, nonparty, J.P. Morgan Chase, appeals from a judgment of the Supreme Court, Kings County (Douglass, J.), entered February 18, 2005, which, upon an order of the same court dated January 14, 2005, granting the plaintiff's motion to hold J.P. Morgan Chase in contempt for the disobedience of a restraining notice served upon J.P. Morgan Chase pursuant to CPLR 5222, is in favor of the plaintiff and against J.P. Morgan Chase in the principal sum of \$19,671.80.

ORDERED that the judgment is reversed, on the law, with costs, the order dated January 14, 2005, is vacated, and the motion is denied.

The Supreme Court erred in granting the plaintiff's motion to hold J.P. Morgan Chase (hereinafter Chase) in contempt for ****639** allegedly disobeying a restraining notice the plaintiff served upon Chase pursuant to CPLR 5222, as part of the plaintiff's ongoing efforts to enforce a judgment it obtained against the defendant Charles Richardson. The account the plaintiff sought to restrain was not included in a proper restraining notice issued pursuant to the requirements of CPLR 5222. Thus, Chase's failure to freeze the account could not be the basis for a finding of contempt against it (*see* CPLR 5222 [b]).

In light of the foregoing determination, we need not address Chase's remaining contentions.

N.Y.A.D. 2 Dept., 2006.

Tri-Global Management Corp. v. Richardson
25 A.D.3d 600, 807 N.Y.S.2d 638, 2006 N.Y. Slip Op. 00349

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