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Your client holds a judgment against a married man who lives with his wife in a home that sustained fire damage. The husband and wife filed a claim against their insurance company for the damaged contents of their home. After the insurance company agreed to pay \$179,000, the husband withdrew his claim. The insurance company then paid the full amount to the wife. You commence a turnover proceeding alleging that the debtor fraudulently transferred his interest in the insurance proceeds to his wife, without consideration. You request a hearing on which contents of the home belonged to the judgment debtor at the time of the fire, in order to determine the debtor's share of the insurance proceeds. Will the court grant you a hearing?

The answer is *yes*.

In *Grinshpun v. Borokhovich*, 158141/2016, NYLJ 1202778035570, at *1 (Sup. Ct. N.Y. Co., January 11, 2017), the petitioners commenced a turnover proceeding, pursuant to CPLR 5225 and 5227, to recover home insurance proceeds collected after a fire damaged the residence of judgment debtor Gennady Borokhovich in Hewlett Harbor, New York. The insurance proceeds were paid to Elena Borokhovich, the wife of the judgment debtor.

The petitioners moved for a hearing to determine which contents of the home belonged to the judgment debtor. The respondents cross-moved to dismiss the proceeding.

The Court granted a hearing, relying on *Pensmore Investments, LLC v. Gruppo, Levey, & Co.*, 137 A.D.3d 558, 559-60 (First Dep't 2016), which held that a wife was entitled to a hearing to determine whether the property involved in a turnover proceeding brought by her husband's creditor was her sole separate property or marital property. Although *Pensmore* did not involve a judgment creditor seeking a hearing to determine the ownership of property, the Court noted that the decision was based on ensuring proper determination of ownership of property. Thus, it did not matter whether the hearing was requested by a creditor, debtor, or non-debtor.

The Court observed that Gennady lived in the house and clearly owned at least some of the its contents, yet discontinued his portion of the claim without consideration less than one month before entering a settlement agreement with the insurance company. While these facts did not conclusively demonstrate fraud, said the Court, they point to "badges of fraud," including a close relationship between the parties to the transaction, inadequacy of consideration, and knowledge of the creditors claim, citing *Piccarreto v. Mura*, 51 Misc.3d 1230(A)(Sup. Ct. N.Y. Co. 2016).

Finally, the Court ruled that although the petitioners will bear the burden of proving Gennady's ownership rights, the petitioners will be entitled to broad discovery because the evidence is largely in respondents' possession, citing *Petrocelli v. Petrocelli Elec. Co.*, 121 A.D.3d 596 (1st Dep't 2014).

The lesson? As an asset protection plan, your client can transfer not only real property to his or her spouse, but also transfer title to valuable personal property (furniture, cars, etc.) to an LLC or other insured entity owned by the spouse.