

**542 Holding Corp. v Prince Fashions Inc.**

2007 NY Slip Op 31594(U)

June 8, 2007

Supreme Court, New York County

Docket Number: 0105673/2005

Judge: Barbara Kapnick

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

PRESENT: Kapnick Justice

PART 12

542 Holding Corp.,

INDEX NO. 105673/05

- v -

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 3

Prince Fashions Inc.,

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the decision dictated on the record on June 7, 2007 and the <sup>written</sup> order dated June 8, 2007.

**FILED**

JUN 13 2007

COUNTY CLERK'S OFFICE  
NEW YORK

Dated: 6/8/07

J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

**BARBARA R. KAPNICK**  
J.S.C.

JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : IA PART 12

-----X  
PRINCE FASHIONS INC.,

Plaintiff,

- against -

542 HOLDING CORP.,

Defendant.

DECISION/ORDER

Index No. 120149/02  
Motion Seq. No. 006

-----X  
542 HOLDING CORP.,

Plaintiff,

- against -

PRINCE FASHIONS INC., SILVERADO  
STAR, INC., FORAVI, INC. and  
FORAVI.COM, INC., ET AL.,

Defendants.

Index No. 105673/05  
Motion Seq. No. 003

**FILED**  
JUN 13 2007  
COUNTY CLERK'S OFFICE  
NEW YORK

-----X  
BARBARA R. KAPNICK, J.:

Upon the moving and reply papers of 542 Holding Corp (the "Coop") in each of the above-captioned actions for an order finding Prince Fashions, Inc. ("Prince") in violation of this Court's Orders dated September 4, 2003 and June 10, 2004 ("the Orders") and for other injunctive and remedial relief, and upon the answering papers submitted by Prince Fashions, Inc. in opposition to said motions, and upon the testimony of the witnesses and the exhibits received at the hearing held before the Court on July 13, August 8, September 28 and October 24, 2006 and January 5, 2007 and on all the prior papers and proceedings held herein, it is hereby

ORDERED that the motions by the Coop are granted in accordance with the decision dictated on the record on June 7, 2007 and it is further

ORDERED that Prince shall hereafter comply with each and every provision of the Orders, including the requirement to maintain keys at the Premises at all times and the requirement to give the Coop access upon oral or written request for purposes of inspection without delay and without any requirement of prior notice, all as specified in the September 2003 Order; and it is further

ORDERED that Prince shall remove forthwith all dangerous conditions remaining at the south store located at 542 Broadway, New York, New York (the "Premises") within the basement of the Premises including any airborne or spray paint, lacquer, coating, solvent or similar or noxious or toxic, flammable or explosive material; any fume, vapor, gas, aerosol, dust or powder capable of airborne release, dispersion or transmission, and/or any volatile, vapor producing, dusty or flammable, noxious or toxic materials (collectively "Prohibited Materials") and to cease immediately use or storage of such Prohibited Materials at the Premises; and it is further

ORDERED that Prince shall remove forthwith (i) the stairs installed by Prince between the first floor and the basement within the Premises; (ii) the internal room in the basement of the

Premises consisting of new partitions and a door; and (iii) any other alterations or installations made by Prince in violation of the NYC Building Code, the Multiple Dwelling Law or any other law, code or regulation; and it is further

ORDERED that Prince shall, at its own cost and expense, and not later than 60 days after service of this Order on Prince: (1) restore the basement of the Premises to its condition prior to the commencement by Prince of the unauthorized alterations, construction and/or installations to the Premises; and (2) bring the Premises into compliance with, and hereafter maintain the Premises in compliance with all laws, orders and regulations of all state, federal, municipal and local governments, departments, commissions and boards and any directions of a public officer pursuant to law, including but not limited to, the New York City Building Code, the New York Multiple Dwelling Law, OSHA, and all building, plumbing, electrical, fire and environmental safety codes, rules and regulations ("Applicable Laws"); and it is further

ORDERED that Prince shall make no structural or non-structural alterations to the Premises without the written consent of the Coop, and in the event any such alterations are permitted, Prince shall comply with all Applicable Laws with respect to all such alterations, including submission of approved plans and work

applications to the NYC Department of Buildings and the issuance of a work permit for any such alterations; and it is further

ORDERED that Prince limit its use of the basement area within the Premises to comply with the certificate of occupancy for the building, which limits such use to "storage" and shall not conduct, or permit to be conducted, any activity, or permit any condition to exist, at the Premises which violate any Applicable Law; and it is further

ORDERED that the Coop is awarded its costs, including reasonable attorneys' fees and expenses, in connection with these two motions (including the five hearing dates); and it is further

ORDERED that Prince shall pay the Coop its reasonable expenses for the repair of the damage done to the Coop's lobby and elevator by Prince's removal of material through the Coop lobby and elevator on May 15, 2006; and it is further

ORDERED that the issues of (i) the amount of the expenses for the repair of the damage done to the Coop's lobby and elevator, and (ii) the amount of costs, including reasonable attorneys' fees and expenses, incurred by the Coop in connection with these two motions, are referred to a Special Referee to hear and determine.

Upon service of a copy of this Order with notice of entry, the Special Referee Clerk shall place this matter on the Part 50R calendar for reference to a Special Referee.

This constitutes the decision and order of this Court.

Dated: June 8, 2007



BARBARA R. KAPNICK  
J.S.C.

**BARBARA R. KAPNICK**  
**J.S.C.**

**FILED**  
JUN 13 2007  
COUNTY CLERK'S OFFICE  
NEW YORK