

Brown v Parfums Jacques Bogart S.A.

2007 NY Slip Op 33900(U)

November 26, 2007

Supreme Court, New York County

Docket Number: 0606329/1998

Judge: Shirley W. Kornreich

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

PRESENT: JUDGE SHIRLEY WERNER KORNREICH
Justice

PART 54

Ray Brown

INDEX NO. 606329/98

MOTION DATE 8/16/07

Parsons Jacques Brown, SA.

MOTION SEQ. NO. 004

MOTION CAL. NO. _____

The following papers, numbered 1 to 4 were read on this motion to/for contempt

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

PAPERS NUMBERED

1-2

Answering Affidavits — Exhibits _____

3-4

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM
DECISION AND ORDER.**

FILED

NOV 30 2007

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 11/26/07

[Signature]
HON. SHIRLEY WERNER KORNREICH

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF YORK
COUNTY OF NEW YORK

-----X
RAY BROWN and CLICK MODEL
MANAGEMENT, INC.,

Plaintiffs,

-against-

PARFUMS JACQUES BOGART S.A. a/k/a
JACQUES BOGART S.A., THE FRAGRANCE
GROUP, LTD., BALENCIAGA, INC., PARFUMS
TED LAPIDUS, INC., SELECT SALES, INC.,
BOGART FRAGRANCES, INC., HOUBIGANT,
INC., FRENCH FRAGRANCES, INC., and JOHN
DOES, 1-10,

Defendants.
-----X

KORNREICH, SHIRLEY WERNER, J.

**DECISION
and
ORDER**

Index No.: 606329/98

FILED
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Plaintiffs move to punish for contempt, the defendant-judgment debtor Parfums Jacques Bogart, S.A. a/k/a Jacques Bogart, S.A. ("JBSA"), Jacques Konckier ("Konckier") and Emile Ohayon ("Ohayon") for failure to comply with an October 12, 2006 subpoena duces tecum ("SDT") and a February 26, 2007 information subpoena ("IS") (collectively, "Subpoenas"). The Subpoenas were directed to the JBSA, a French corporation. Konckier is the President JBSA and Ohayon is JBSA's chief financial officer ("CFO"). JBSA cross-moves to quash the Subpoenas.

The Subpoenas were served by registered mail, return-receipt requested, and addressed to JBSA at its address in Paris, France. JBSA argues that the court lacks jurisdiction to enforce the Subpoenas, pursuant to Judiciary Law §2-b, which provides as follows: "[a] court of record has power... to issue a subpoena requiring the attendance of a person found in the state to testify in a cause pending in that court." In addition, they attack the SDT as overbroad.

Plaintiffs admit that a supplementary proceeding subpoena, pursuant to CPLR §5224(a)(1) or (2), such as the SDT at issue here, must be served in the same manner as a summons. CPLR §2303. However, plaintiffs argue that service of the SDT was proper under the Hague Convention. With respect to the IS, plaintiffs contend that service by registered mail, return receipt requested, was authorized by CPLR §5224(a)(3). They assert that a corporate officer may be held in contempt for the failure of the corporation to comply with a subpoena and that the court should authorize, prospectively, expedient service of the Subpoenas on JBSA's attorneys, or order it *nunc pro tunc*, pursuant to CPLR §308(5).

The First Department has held that where the judgment debtor has voluntarily demanded justice from the court's of New York State, including the appearance by an attorney, a court may order expedient service upon the judgment debtor's attorneys, pursuant to CPLR §308(5). *Coutts Bank (Switzerland) Ltd. v. Rachamim Anatian*, 275 AD2d 609 (1st Dept. 2000); *General Electric Co. v. Metals Resources Group Limited*, 293 AD2d 417 (1st Dept. 2002). In this case, the attorneys currently representing JBSA vigorously opposed the motion for summary judgment that resulted in the entry of a judgment against JBSA on June 19, 2006. The same attorneys are in the process of appealing the judgment on behalf of JBSA and successfully moved to enlarge the time to perfect that appeal. The attorneys also appeared before this court for JBSA at a compliance conference on September 28, 2006. Hence, the court will grant plaintiffs' motion for expedient service of the Subpoenas on JBSA's attorneys, but will not order it *nunc pro tunc*, due to the absence of controlling appellate authority.

With respect to the information subpoenas, seeking written answers upon written

questions, served pursuant to CPLR §5224(a)(3),¹ there is a difference of opinion as to whether service by registered mail/return receipt requested is permissible where service is made outside of New York State. *Compare, Banco do Estado de Sao Paulo v. Mendes Junior International Co.*, New York Law Journal, 11/24/07, p. 29, col. 4 (Ramos, J.) (permitting information subpoena served by registered mail in Brazil) and *DeLeonardis v. Subway Sandwich Shops, Inc.*, New York Law Journal, 3/30/98, p. 28, col. 3 (Tompkins, J.) (quashing information subpoena served in Connecticut). As service upon JBSA's attorneys has express appellate support, it is not necessary to reach this issue.

The Hague Convention does not apply to service of process, which is the manner for service of a subpoena, but only to notices and legal documents. *Reynolds v. Koh*, 109 AD2d 97 (3d Dept. 1985).

Turning to the overbreadth issue, although the time period for the requested documents is long, the original judgment in this case was entered against The Fragrance Group, Ltd. ("TFG") in 1998. The judgment entered in this action against JBSA in 2006 was based upon spoliation of evidence. This court held that it was appropriate to pierce TFG's corporate veil to hold JBSA liable for the judgment because evidence of the relationship between the corporations had been destroyed. Hence, the period for records in the SDT, from January 1, 2003 to the present is not unreasonable. To the extent that records are sought "before and after" January 1, 2003, the time

¹ Section 5224(a)(3) provides that "[s]ervice of an information subpoena may be made by registered or certified mail, return receipt requested. Answers shall be made in writing under oath by the person upon whom served, if an individual, or by an officer, director, agent or employee having the information, if a corporation, partnership or sole proprietorship. Each question shall be answered separately and fully and each answer shall refer to the question to which it responds. Answers shall be returned together with the original of the questions within seven days after receipt."

period is excessive. Plaintiffs shall limit the time period for requested records to January 1, 2003 and onward.

The contempt motion is denied due to the deficiency in service of the Subpoenas.

Accordingly, it is

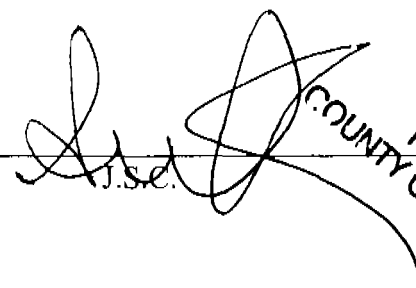
ORDERED that the motion to punish Parfums Jacques Bogart, S.A., a/k/a, Jacques Bogart, S.A., Jacques Konckier and Emile Ohayon for contempt is denied; and it is further

ORDERED that plaintiffs may serve judgment debtor Parfums Jacques Bogart, S.A. a/k/a Jacques Bogart, S.A. with supplementary proceeding devices, including, but not limited to, subpoenas ad testificandum, subpoenas duces tecum, information subpoenas, and restraining notices by leaving copies with the judgment debtor's attorneys, Rand Rosenzweig Radley & Gordon, LLP, 50 Main Street, White Plains, NY 10606, and by mailing copies of the same to the judgment debtor's Paris address, 76/78 Avenue des Champs Elysees, 75008, Paris, France; and it is further

ORDERED that the cross-motion to quash is granted without prejudice to plaintiffs' right to serve new subpoenas in accordance with this decision and order.

Dated: November 26, 2007

ENTER:


J.S.C.

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