

Couture Brand Holdings, LLC v Falchi

2009 NY Slip Op 30742(U)

April 1, 2009

Supreme Court, New York County

Docket Number: 603237/07

Judge: Walter B. Tolub

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

PRESENT: WALTER B. TOLUE

PART 15

Index Number : 603237/2007
COUTRE BRAND HOLDINGS LLC
vs.
FALCHI, CARLOS
SEQUENCE NUMBER : 002
COMPEL

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

his 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 ACCOMPANYING MEMORANDUM DECISION

FILED
APR 03 2009
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 4/1/09

WALTER B. TOLUE 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 NEW YORK
COUNTY OF NEW YORK: IAS PART 15

-----x
COUTURE BRAND HOLDINGS, LLC

Plaintiff,

-against-

CARLOS FALCHI

Defendant.

-----x

WALTER B. TOLUB, J.:

Index No. 603237/07
Mtn Seq. 002

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NEW YORK

This is Plaintiff's motion for an order pursuant to CPLR §5226 compelling Defendant to make specified installment payments to Plaintiff. Defendant opposes the motion and seeks a stay pending a "needs" hearing.

Facts

Defendant is a world renowned handbag and accessories designer. A few years ago¹ Defendant entered into an agreement with Designer's Consortium² (Couture Brand or Plaintiff) whereby Defendant would manufacture products and Plaintiff would sell, ship, bill and collect receivables. Plaintiff would advance Defendant money, would be reimbursed and earn a fee on net sales.

Defendant claims that in late 2005 he was notified that his agreement with Plaintiff was sold to Eight and One LLC.

¹Neither party submits the date of the agreement between Defendant and Designer's Consortium.

²Designer's Consortium is now known as Couture Brand Holdings, LLC, the Plaintiff in this action.

Defendant claims that he was told that unless he signed a document which provided that \$1.3 million was owed to Plaintiff Defendant's payroll would no longer be paid. The document also provided that Defendant had 60 days to request an accounting and verify or object to money owed. Defendant signed the document.

When the Defendant did not demand an accounting and did not pay the \$1.3 million, Plaintiff commenced arbitration. The arbitration award provided that \$625,000 was owed to Plaintiff and that the method of payment and interest should follow the agreement between the parties.

On March 21, 2008 a Judgment was entered in favor of the Plaintiff in the amount of \$755,804.79 (Judgment). As a result of the Judgment, an income execution was issued against Design and Development Lab, LLC (DDL)³ for \$400 per month.

Plaintiff now moves for an installment payment order of \$10,000 per month to satisfy the balance on the Judgment. Plaintiff argues that Defendant lives at 238 West 11th Street, New York, New York with his wife. Plaintiff points to Defendant's deposition where it was established that Defendant and his wife have a \$2,300,000 mortgage outstanding with monthly payments of \$5,000 and monthly maintenance payments of \$2,700. Plaintiff contends that, although not presently clear, Defendant

³Defendant claims that he and his wife own DDL and that he receives \$48,000 per year from the DDL. Defendant also claims that DDL is his only source of income. Defendant also claims that his wife earns \$68,000 annually.

is attempting to impede the collection of the Judgment. Plaintiff argues that if Defendant is only receiving \$48,000 for his work, then he is working without adequate compensation and that Plaintiff should be able to collect \$10,000 a month to fulfill the Judgment.

Defendant argues that he cannot afford to pay Plaintiff \$10,000 a month and does not earn regular income to make such installment payments. Defendant argues that the court should hold a "needs" hearing in order to fix the amount, if any, to be paid under an installment order.

Discussion

Pursuant to CPLR §5226, the imposition of an installment order is proper if it is found that a judgment debtor is either: (1) receiving money from any source; or (2) impeding the judgment creditor by working without adequate compensation (CPLR §5226).

"It is often easy for a judgment debtor to make it appear that he is not being paid for his services, or more likely, that he is being paid at a low rate" (*McKinney's Consolidated Laws of New York, Practice Commentaries* by David Siegal, C5226:3; Frooks v. Clurman, 76 NYS2d 187 (Sup. Ct., Kings County, 1942)). It is up to the judgment creditor to establish that services are being rendered, what the value of the services is and to supply an evidentiary basis from which the court can draw needed inferences (*McKinney's Consolidated Laws of New York, Practice Commentaries*

by David Siegal, C5226:3).

Another function of the installment payment order is to reach a judgment debtor whose standard of living is high and regular enough to establish that he is getting income from somewhere, but the judgment creditor is unable to establish where (Id.) "This is the invisible means of support situation. The creditor must again muster proof as to the debtor's activity, so as to convince the court of this high living - or at least living high enough to offer a creditor some modest participation."

(Id.; Kosov v. Greenberg, NY Law Journal, September 20, 1963, c. 12, col. 6 [Sup. Ct., Nassau County). Even when it is not possible to determine what the debtor's services are worth, a showing that the debtor is getting enough money from some source to be enjoying the standard of living equivalent of a person earning a higher sum, "should suffice to enable the court to require the debtor make periodic payments out of the assumed sum" (McKinney's Consolidated Laws of New York, Practice Commentaries by David Siegal, C5226:3).

Both Defendant and his wife work for DDL, a company that only manufactures Defendant's designer bags. Defendant claims that he earns \$48,000 a year, with at least three of his employees earning more. Defendant and his wife's combined gross salary is \$116,000. After deducting taxes, it is unfeasible for Defendant to cover his admitted basic expenses of \$9,000 per

month. Plaintiff has shown and Defendant has testified that Defendant's profession and his standard of living do not match with his \$48,000 annual salary or even the combined salary of \$116,000.

Given the facts and circumstances of this case, Plaintiff's motion for an installment payment order is granted at the rate to be determined at a "needs" hearing.

Accordingly, it is

ORDERED that the issue of Defendant's "needs" is referred to a Special Referee to hear and report with recommendations, except that, in the event of and upon the filing of a stipulation of the parties, as permitted by CPLR 4317, the Special Referee, or another person designated by the parties to serve as referee, shall determine the aforesaid issue; and it is further

ORDERED that this motion is held in abeyance pending receipt of the report and recommendations of the Special Referee and a motion pursuant to CPLR 4403 or receipt of the determination of the Special Referee or the designated referee; and it is further

ORDERED that a copy with notice of entry shall be served on the Clerk of the Judicial Support Office (Room 311) within 10

business days to arrange a date for the reference to a Special referee.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 4/1/09



HON. WALTER B. TOLUB, J.S.C.

FILED
APR 03 2009
COUNTY CLERK'S OFFICE
NEW YORK