

**L.A. Century Textiles, Inc. v Kafash**

2010 NY Slip Op 30130(U)

January 12, 2010

Supreme Court, Nassau County

Docket Number: 021865-2009

Judge: Timothy S. Driscoll

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**SUPREME COURT-STATE OF NEW YORK  
SHORT FORM ORDER**

**Present:**

**HON. TIMOTHY S. DRISCOLL**  
**Justice Supreme Court**

-----X  
**L.A. CENTURY TEXTILES, INC. ,**

**TRIAL/IAS PART: 22  
NASSAU COUNTY**

**Plaintiff,**

**Index No: 021865-2009  
Motion Seq. No: 1  
Submission Date: 1/5/10**

**- against -**

**MOUSA KAFASH, PAYMAN KAFASH, aka  
PETER KAFASH, ABIHEY KAFASH,  
BAPAZ GARMENTS CORP., BEINONI OF NY INC.,  
MODEANI GROUP LIMITED, and DOES 1 through  
25, inclusive,**

**Defendants.**

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**The following papers have been read on this Order to Show Cause**

- Order to Show Cause, Affidavit of B. Bekhrad dated October 23, 2009,**
- Affirmation in Support and Exhibits.....X**
- Affidavit in Opposition and Exhibits.....X**
- Memorandum of Law in Opposition.....X**
- Reply Affidavit of B. Bekhrad dated December 22, 2009,**
- Reply Affirmation and Exhibits.....X**

This matter is before the Court for decision on the Order to Show Cause filed by Plaintiff on October 26, 2009 and submitted on January 5, 2010, seeking certain injunctive relief. For the reasons set forth below, the Court denies Plaintiff's Order to Show Cause and vacates the Temporary Restraining Order issued on October 26, 2009.

## BACKGROUND

### A. Relief Sought

Plaintiff L.A. Century Textiles, Inc. ("Plaintiff") seeks a Preliminary Injunction and Writ of Attachment barring, prohibiting and enjoining Defendants Mousa Kafash, Payman Kafash a/k/a Peter Kafash, Abihey Kafash, Bapaz Garments Corp., Beinoni of NY Inc. and Modeani Group Limited (collectively "Defendants"), and their respective agents, employees and representatives from transferring management, control and/or ownership management or control of the following properties: 1) 17 Hillside Avenue, Great Neck, New York 11021 ("Hillside Avenue Premises"), 2) 55 Redbrook Road, Great Neck, New York 11021 ("Redbrook Road Premises, 3) 8 Beverly Road, Great Neck, New York 11021 ("Beverly Road Premises") and 4) 88 Cutter Mill Road, Unit 118, Great Neck, New York 11021 ("Cutter Mill Road Premises"). Defendants oppose Plaintiff's application.

When the Court signed the Order to Show Cause on October 26, 2009, it granted Plaintiff's application for a temporary restraining order ("TRO"). The TRO, which was granted in the absence of any opposition by Defendants, provides as follows:

ORDERED, that pending the return date of the Order to Show Cause by the Court and the entry of an Order thereon, Defendants and their respective agents, employees, representatives, affiliates and all persons acting on behalf of or in concert with Defendants, directly or indirectly be temporarily enjoined and restrained from selling, conveying or otherwise transferring their interest, control or management of [the Hillside Avenue, Redbrook Road, Beverly Road and Cutter Mill Road Premises] or otherwise, unless at or before the transfer of management, conveyance or other transfers, Defendants deposit into escrow with Plaintiff's counsel...or deposit into Court, the sum of One Hundred Fifty Six Thousand Six Hundred Thirty Nine and 41/100 (\$156,639.41) U.S. Dollars, representing the amount of due... Plaintiff.

### B. The Parties' History

Plaintiff provides an Affidavit in Support of Behzad Bekhrad, a/k/a Danny Bekhrad ("Bekhrad") dated October 23, 2009 in which Bekhrad affirms as follows:

He is the Chief Operating Officer of Plaintiff L.A. Century Textiles, Inc., a wholesaler, importer and distributor of fabric in the United States that is located in California. As CEO of Plaintiff, Bekhard is familiar with Plaintiff's everyday operations, and is the custodian of Plaintiff's records.

In or about September 14, 2005, Plaintiff began a business relationship with Defendants<sup>1</sup> whereby Defendants would purchase goods from Plaintiff by submitting purchase orders. In connection with these transactions, Defendant Mousa Kafash (“Mousa”) executed a Credit Application that contained a Personal Guaranty. Plaintiff provides a copy of that Credit Application, which is dated September 14, 2005 (Ex. A to Complaint). The Credit Application lists the name of Mousa’s company as Defendant Bapaz Garments Corp. (“Bapaz”), located at 330 West 38<sup>th</sup> Street, Room 406, New York, New York 10018. Mousa’s address on the Credit Application is the Hillside Avenue Premises.

Bekhrad affirms that, during the last year, Defendants have placed various orders with Plaintiff for fabric. Plaintiff provides copies of the invoices corresponding to the orders that Defendants placed with Plaintiff (“Invoices”) (Ex. B to Complaint). The Invoices reflect the quantity of goods sold, the price for those goods and the location to which the fabric was to be delivered. Bekhrad affirms that Plaintiff delivered the requested goods to Defendants, who acknowledged receipt of those goods. To date, Defendants have not paid Plaintiff for the goods that Defendants purchased.

Bekhrad affirms that he has requested payment from Defendants, who provided Plaintiff with checks but then stopped payment on those checks. Defendant Payam Kafash a/k/a Peter Kafash (“Payam”) advised Bekhrad that he stopped payment on a check because he did not have sufficient funds in his account to cover that check. Payam assured Bekhrad that he would pay Plaintiff for the goods.

Bekhrad avers that he believes that Defendants are insolvent and will soon be out of business. He affirms that Defendants owe Plaintiff the sum of \$141,639.41 and provides a summary of goods for which Defendants have not paid Plaintiff (Ex. B to Complaint). Bekhrad also affirms that Plaintiff has incurred counsel fees of approximately \$10,000, and other costs of approximately \$5,000, in pursuing this litigation.

In his Affirmation in Support, Plaintiff’s counsel affirms that a title search in the Office

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<sup>1</sup> Bekhrad affirms that he is “ignorant of the true names and capacities of Defendants Does 1 through 25, inclusive, and will seek leave to amend this Complaint to set forth their true names and capacities when ascertained.” Aff. in Supp. at ¶ 4.

of the Nassau County Clerk revealed that Defendants Mousa, Payman and Abihey Kafash (“Abihey”) own the Premises, and provides copies of the corresponding deeds (Ex. D to Complaint). In the Complaint, Plaintiff alleges that the transfers and conveyances of these Premises were made without fair consideration, at a time when Defendants were made aware of the underlying lawsuit with intent to hinder, defraud and/or delay payment to Plaintiff. Plaintiff seeks to set those conveyances aside (Complaint at ¶ 49).

The deeds that Plaintiff provides reflect that:

- 1) on June 26, 2003, Rocco Bevilacqua transferred the Beverly Road Premises to Mousa for consideration of \$10,
- 2) on July 23, 1999, Payman transferred the Cutter Mill Road Premises to Payman and Mousa as tenants in common, for consideration of \$10,
- 3) on May 8, 2002, Sharona Hassid transferred the Redbrook Road Premises to Mousa for consideration of \$10,
- 4) on July 18, 2003, Payman transferred property located on Elm Place in Great Neck to Payman and Mousa for no consideration, and
- 5) on June 15, 2000, Lori Perry transferred property located at 16 Franklin Place in Great Neck to Mousa for consideration of \$10.

Bekhrad submits that a Writ of Attachment is necessary “because the imminent transfer of the premises and funds to a foreign bank in Israel and Iran will render Plaintiff’s prospective judgment worthless and be a waste of judicial resources” (Aff. in Support at ¶ 17). Bekhrad provides no details explaining the basis for his belief that Defendants will transfer the Premises or funds to Israel and Iran.

Plaintiff’s counsel affirms that “Plaintiff has now been advised” that Defendants intend to transfer the Hillside Avenue, Redbrook Road, Beverly Road and Cutter Mill Road Premises, to defraud Plaintiff (Aff. in Support at ¶ 7), but provides no information regarding the source of that information, and no details regarding those alleged transfers. Bekhrad’s Affidavit in Support also provides no details regarding those purported transfers. Plaintiff’s counsel asserts, further, that if these transfers occur, Plaintiff’s prospective judgment will be worthless because the monies owed to Plaintiff will be transferred to a foreign entity. Plaintiff’s counsel provides no

information regarding the basis for this assertion.

Bekhrad also expresses his belief that Defendants “will continue to make insider transfers without any consideration, all to the detriment of Plaintiff, causing irreparable harm” (Aff. in Support at ¶ 18). Plaintiff, however, provides no information regarding the third parties who transferred different Premises to the Defendants to support his assertion that these transactions were fraudulent.

Defendants provide an Affidavit of Support of Payman dated December 2, 2009. Payman affirms as follows:

Payman is an officer of Defendants Bapaz, Beinoni of NY Inc. (“Beinoni”) and Modeani Group Limited (“Modeani”) (collectively “Corporate Defendants”). Payman is the son of Mousa and brother of Abihey.

Payman submits that Plaintiff cannot demonstrate a likelihood of success on the merits. Payman provides documentary evidence that, he submits, establishes that 1) Plaintiff sometimes delivered less fabric to Defendants than agreed-to; and 2) Plaintiff sometimes delivered damaged goods. Payman affirms that he previously brought these issues to the attention of Plaintiff, and provides copies of electronic mail communications between Plaintiff and Payman dated November 17, 2008. Those communications reflect a dispute regarding several Invoices, and Bekhrad’s statement that the “total charge back is about \$7,078.12” and that he wants Payman to split that amount with him (Aff. in Opp. at Ex. 2).

Payman affirms that Defendants stopped payment on certain checks because of the dispute regarding the short shipments and delivery of damaged goods, not because Defendants had insufficient funds to cover those checks. Payman provides copies of invoices bearing his handwritten notes regarding the short shipments and delivery of damaged goods (Aff. in Opp. at Ex. 4). Payman also affirms that, contrary to Plaintiff’s allegation, Defendants did make payment on check numbers 6829 and 6841.

Payman also submits that Plaintiff cannot establish irreparable injury without injunctive relief because Plaintiff has provided no proof in support of his assertion that Defendants intend to transfer funds overseas.

In his Reply Affidavit, Bekhrad provides copies of filings in other lawsuits involving the

Defendants which, Bekhrad submits, demonstrate Defendants' bad faith. Those other lawsuits are as follows:

In the first action, which was litigated in the United States District Court for the Eastern District of Pennsylvania, the plaintiff obtained a judgment dated August 9, 2005 against Modeani and a company called Multinational Impex, Inc. based on defendants' failure to pay for textile products that it purchased from Defendants.

In the second action, which is pending in the United States District Court for the Northern District of California, the plaintiff filed a complaint on September 16, 2009 against Mousa d/b/a Bapaz, alleging that defendants failed to pay for goods that plaintiff provided to them. In that complaint, plaintiff alleged that Mousa contacted plaintiff's employees and intentionally misrepresented to them that plaintiff's president had agreed to extend him certain credit terms. The plaintiff alleges that, in reliance on this misrepresentation, plaintiff's employees shipped goods to defendant without requiring an advance payment.

In the third action, pending in the Supreme Court of New York County, plaintiff alleges, *inter alia*, that defendants Beinoni, Bapaz, Payman and Mousa submitted fraudulent claims for loss payment pursuant to certain insurance policies.

In the fourth action, also pending in the Supreme Court of New York County, plaintiff alleges that the defendants, which include Bapaz and Payman, repeatedly breached their obligations under a Factoring and Security Agreement that it entered into with plaintiff. Bekhrad affirms that the parties have consented to a preliminary injunction in this matter.

### C. The Parties' Positions

Plaintiff submits that it has established its right to injunctive relief. First, Plaintiff submits that it has demonstrated its likelihood of success on the merits by establishing that 1) Plaintiff delivered to Defendants the fabric they ordered; and 2) Defendants have not paid Plaintiff for that fabric. Plaintiff also contends that it has a good faith belief that Defendants are unable to pay Plaintiff the money they owe.

Plaintiff submits that it has also demonstrated that it will be irreparably harmed if the Court does not grant injunctive relief. Plaintiff argues that, without a court order, Defendants will transfer their assets to a foreign country, making it difficult if not impossible for Plaintiff to

satisfy its debt. Plaintiff also argues that the transfers of some of the Premises between related individuals demonstrates Defendants' intent to avoid creditors.

Finally, Plaintiff argues that a balancing of the equities weighs in favor of Plaintiff because 1) Defendants will transfer property, that could be used to satisfy its debt to Plaintiff, to Israel or Iran; 2) Plaintiff will suffer grave harm if those assets become unreachable, while any potential harm to Defendants would be minimal; and 3) the relief that Plaintiff seeks is narrow, in that Plaintiff is seeking an order directing that the money owed be placed in escrow while this case is litigated.

Defendants oppose Plaintiff's application, submitting that 1) Plaintiff has provided no proof in support of its assertion that Defendants intend to transfer property in a fraudulent manner; and 2) Plaintiff has not demonstrated a likelihood of success on the merits, in light of the e-mails provided by Defendants, which support Defendants' contention that they stopped payment on certain checks due to a dispute regarding the shipment of goods, and not because they had insufficient funds to cover those checks.

#### RULING OF THE COURT

##### A. Standards for Preliminary Injunction

A preliminary injunction is a drastic remedy and will only be granted if the movant establishes a clear right to it under the law and upon the relevant facts set forth in the moving papers. *William M. Blake Agency, Inc. v. Leon*, 283 A.D.2d 423, 424 (2d Dept. 2001); *Peterson v. Corbin*, 275 A.D.2d 35, 36 (2d Dept. 2000). Injunctive relief will lie where a movant demonstrates a likelihood of success on the merits, a danger of irreparable harm unless the injunction is granted and a balance of the equities in his or her favor. *Aetna Ins. Co. v. Capasso*, 75 N.Y.2d 860 (1990); *W.T. Grant Co. v. Srogi*, 52 N.Y.2d 496, 517 (1981); *Merscorp, Inc. v. Romaine*, 295 A.D.2d 431 (2d Dept. 2002); *Neos v. Lacey*, 291 A.D.2d 434 (2d Dept. 2002). The decision whether to grant a preliminary injunction rests in the sound discretion of the Supreme Court. *Doe v. Axelrod*, 73 N.Y.2d 748, 750 (1988); *Automated Waste Disposal, Inc. v. Mid-Hudson Waste, Inc.*, 50 A.D.3d 1073 (2d Dept. 2008); *City of Long Beach v. Sterling American Capital, LLC*, 40 A.D.3d 902, 903 (2d Dept. 2007); *Ruiz v. Meloney*, 26 A.D.3d 485 (2d Dept. 2006).

A plaintiff has not suffered irreparable harm warranting injunctive relief where its alleged injuries are compensable by money damages. See *White Bay Enterprises v. Newsday*, 258 A.D.2d 520 (2d Dept. 1999) (lower court's order granting preliminary injunction reversed where record demonstrated that alleged injuries compensable by money damages); *Schrager v. Klein*, 267 A.D.2d 296 (2d Dept. 1999) (lower court's order granting preliminary injunction reversed where record failed to demonstrate likelihood of success on merits or that injuries were not compensable by money damages).

#### B. Attachment

CPLR § 6201(3) provides that an order of attachment may be granted in any action, except a matrimonial action, where the plaintiff has demanded and would be entitled, in whole or in part, or in the alternative, to a money judgment against one or more defendants, when:

the defendant, with intent to defraud his creditors or frustrate the enforcement of a judgment that might be rendered in plaintiff's favor, has assigned, disposed of, encumbered or secreted property, or removed it from the state or is about to do any of these acts[.]

To obtain an order of attachment under CPLR § 6201(3), the plaintiff must demonstrate that the defendant has or is about to conceal his or her property in one or more of several enumerated ways, and has acted or will act with the intent to defraud his or her creditors, or to frustrate the enforcement of a judgment in favor of the plaintiff. The moving papers must contain evidentiary facts, as opposed to conclusions, proving the fraud. *Mineola Ford Sales v. Rapp*, 242 A.D.2d 371 (2d Dept. 1997).

#### C. Application of these Principles to this Case

With respect to Plaintiff's application for a preliminary injunction, the Court concludes that, even assuming *arguendo* that Plaintiff has demonstrated a likelihood of success on the merits and a balancing of the equities in its favor, Plaintiff has not demonstrated that it will suffer irreparable harm if the Court does not grant injunctive relief. Specifically, Plaintiff has provided insufficient proof in support of its allegation that Defendants intend to transfer property overseas, or in some other manner, with the intent to defraud Plaintiff, a potential creditor. Accordingly, the Court denies Plaintiff's application for a preliminary injunction, and vacates the temporary

restraining order issued on October 26, 2009.

The Court also denies Plaintiff's application for an order of attachment, in light of the fact that Plaintiff has failed to demonstrate that Defendants have or are about to conceal their property in one or more of several enumerated ways, and have acted or will act with the intent to defraud their creditors, or to frustrate the enforcement of a judgment in favor of the Plaintiff.

The Court is mindful that the Defendants have been sued in numerous unrelated actions, in which other plaintiffs have made allegations that the Defendants engaged in unscrupulous business practices. There is, however, an insufficient record before the Court to warrant the injunctive relief, or order of attachment, that Defendants seek. Accordingly, the Court denies Plaintiff's application in its entirety, and vacates the temporary restraining order that the Court issued on October 26, 2009.

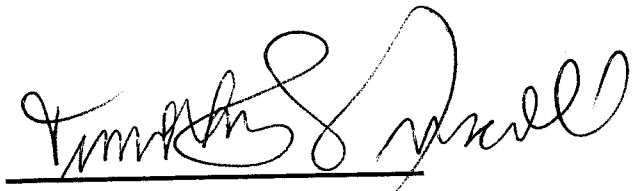
All matters not decided herein are hereby denied.

This constitutes the decision and order of the Court.

The Court reminds counsel of their required appearance before the Court on January 29, 2010 at 9:30 a.m.

ENTER

DATED: Mineola, NY  
January 12, 2010



HON. TIMOTHY S. DRISCOLL

J.S.C.

**ENTERED**  
JAN 15 2010  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE