

Club Matrix LLC v Beauvallon Corp.

2011 NY Slip Op 33798(U)

August 9, 2011

Supreme Court, New York County

Docket Number: 110771/2010E

Judge: Paul G. Feinman

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

PRESENT: HON. PAUL G. FEINMAN PART 12

J.S.C.

CLUB MATRIX, LLC

INDEX NO. 110771/2010 E

- v -

MOT. DATE 6/22/11

BEAVALLON CORPORATION, ET AL.

MOT. SEQ. NO. 001

MOT. CAL. NO.

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

PAPERS NUMBERED

- Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits
- Answering Affidavits — Exhibits
- Replying Affidavits

CROSS-MOTION: Yes No

Upon the foregoing papers, it is

ORDERED that MOTION IS DECIDED IN ACCORDANCE WITH THE ANNEXED DECISION AND ORDER.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

Dated: AUG 09 2011

Paul G. Feinman J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

PC DATE 9/7/11 CC Date _____

2:15 pm

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 12

-----X

CLUB MATRIX LLC,
Plaintiff,

Index No. 110771/2010E
Mot. Seq. No. 001

- against -

DECISION and ORDER

BEAUVALLON CORPORATION, LINCOLN
RETAIL VENTURES, LLC, J&J PROPERTY
INVESTMENTS, LLC and CRAIG NASSI,
Defendants.

-----X

Appearances:

For Plaintiff:

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By: Peter M. Agulnick, Esq.
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(212) 571-2266

**For Nonparty Movants BCN Development, LLC and
315 Park Avenue S, LLC and Defendant Craig Nassi**

Rosenberg Feldman Smith, LLP
By: Michael H. Smith, Esq.
551 Fifth Avenue
New York, NY 10176
(212) 682-3454

Papers considered in review of this motion:

Document Number

Order to Show Cause, Smith Affirmation and attached exhibits A-E	1
Agulnick Affirmation in opposition and attached exhibits A-D	2
Smith Reply Affirmation and attached exhibits A-C, Van Affidavit	3
Letter attaching Opinion of Colorado Court of Appeals	4 (E-Filing Doc. No. 27)

PAUL G. FEINMAN, J.:

Nonparties BCN Development, LLC and 315 Park Avenue S, LLC move pursuant to CPLR 5240 to vacate a Restraining Notice to Garnishee and Information Subpoena as applied to them. Plaintiff, Club Matrix LLC opposes.

The relevant restraining notice was issued by plaintiff in order to enforce a judgment entered against Beauvallon Corporation, Lincoln Retail Ventures, and Craig Nassi, a New York resident, by the District Court, City and County of Denver, Colorado, in an action titled, *Club Matrix, LLC d/b/a Matrix Fitness and Spa, and Lawrence Levy v Beauvallon Corporation, et. al.*

(case no. 05 CV 5974) (*see* Doc. 1, ex. A, Judgment). Since the instant motion was fully submitted, it appears that a portion of the underlying Colorado judgment has been reversed by the Colorado Court of Appeals (*see Club Matrix, LLC v Nassi*, No. 09CA2479, No. 05CV5974, J. Haglund [Colo App, July 21, 2011]). Specifically, the portion of the original Colorado judgment entered against defendants Beauvallon and Nassi for fraudulently inducing Club Matrix's assignor to enter into a commercial lease was reversed as not being supported by competent evidence, and therefore, was clearly erroneous. The court received notice of the Colorado appellate court's reversal by letter from Michael H. Smith, counsel for "the defendant/judgment debtor Craig Nassi," received August 5, 2011, which enclosed a copy of the relevant opinion. In light of the appellate court's reversal, Nassi claims there is no reason for this court to rule on the instant motion (sequence no. 001).

Although the portion of the original Colorado judgment based on Club Matrix's fraudulent inducement claim has apparently been reversed, the judgment was not reversed in its entirety. It appears that the portion of the original judgment in which the trial court awarded damages against Beauvallon based on Club Matrix's breach of a lease agreement was not challenged on appeal and thus not disturbed by the subsequent appellate decision.

The restraining notices at issue here concern property alleged to belong to judgment debtor Nassi, through his alias "BCN Development" (Doc. 2, Agulnick affirm. at ¶ 16). However, the surviving portion of the original Colorado judgment solely relates to claims against Beauvallon Corporation and Lincoln Retail Ventures, LLC, as the original judgment specifically noted that Nassi was not a party to the lease at issue. As such, Club Matrix has not established that Nassi is a judgment debtor and therefore has not demonstrated that a restraining notice under

CPLR 5222 concerning Nassi's property is appropriate at this time.

Accordingly, it is

ORDERED that the motion of nonparties BCN Development, LLC and 315 Park Avenue S, LLC is hereby granted and plaintiff Club Matrix LLC's Restraining Notice to Garnishee and Information Subpoena is vacated as to them; and it is further

ORDERED that the parties are directed to appear for a preliminary conference on September 7, 2011 at 2:15 p.m. in Part 12, 60 Centre Street, Room 212, New York, NY 10007; and it is further

ORDERED that inasmuch as this action was converted to electronic filing after the filing of this motion, the parties shall each upload their respective papers in support of and opposition to this motion into the New York State Court Electronic Filing System within 10 (ten) days of entry of this order to create a full electronic record, and the papers should be tagged as relating to motion sequence 001.

This constitutes the decision and order of the court.

Dated: August 9, 2011
New York, New York



J.S.C.