

**Cadlerock Joint Venture, L.P. v Saje Enters. LLC**

2013 NY Slip Op 30660(U)

March 29, 2013

Supreme Court, New York County

Docket Number: 116457/2007

Judge: Louis B. York

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SCANNED ON 4/4/2013

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

**LOUIS B. YORK  
J.S.C.**

PRESENT: \_\_\_\_\_  
Justice

PART 2

Index Number : 116457/2007  
CADLEROCK JOINT VENTURE, L.P.  
vs.  
SAJE ENTERPRISES LLC  
SEQUENCE NUMBER : 005  
MONEY JUDGMENT

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_

Replying Affidavits \_\_\_\_\_ | No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is

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

MOTION IS DECIDED IN ACCORDANCE  
WITH ACCOMPANYING MEMORANDUM DECISION

**FILED**

APR 04 2013

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 3/29/13

Luy, J.S.C.  
**LOUIS B. YORK**

1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 2

-----X  
CADLEROCK JOINT VENTURE, L.P.,

*Plaintiff,*

Index No. 116457/2007

- against -

DECISION AND ORDER

SAJE ENTERPRISES LLC and BEREY  
WEISS,

**FILED**

*Defendants.*

**APR 04 2013**

-----X  
**LOUIS B. YORK, J.:**

NEW YORK  
COUNTY CLERK'S OFFICE

In this action, plaintiff seeks an order, under CPLR § 5226, directing co-defendant Berey Weiss ("Weiss") to pay off the judgment against him in monthly installments of \$8,666.66. The Court denies this motion for several reasons. Plaintiff has not explained how it arrived at this amount. Even if it were correct that Weiss' salary is \$102,000 annually, that would equal \$8,500.00 per month. It is unclear why the monthly installments should exceed this amount.

In addition, plaintiff has not met its evidentiary burden. To the extent that plaintiff tries to support its request, plaintiff relies entirely on the facts that (1) there is a judgment against defendants for \$101,582.27 plus interest at the statutory rate from April 3, 2008, along with costs and disbursements of \$585.00 and (2) at deposition, Weiss testified as to his salary and expenses. It provides adequate proof of the existence of the judgment. However, plaintiff annexes an

unnotarized excerpt from Weiss' testimony, and based on the excerpt it appears that plaintiff has misconstrued the testimony in several respects. For the sole purpose of explaining its own statement, the Court quotes the unnotarized incomplete portion of the transcript below.

First, as to Weiss' salary, plaintiff's affirmation in support includes the following deposition excerpt:

Q: How are you compensated by Preferred Homecare?

A: Weekly check.

Q: Is it the same every week?

A: Yes.

Q: How much is that?

A: Two thousand dollars?

Q: Exactly?

A: Yes

However, plaintiff fails to include testimony which also appear in the deposition, immediately after the above excerpt:

Q: Is that the net or the gross?

A: That's the gross.

Q: And when you receive your check, when you get it every week, how much do you get when you actually get something less.

A: The taxes come off. I'm not sure exactly.

Weiss' answers thus indicate that he received \$2000 a week gross pay, and that taxes and deductions reduced this amount. Thus, \$102,000 would not be his net salary but his gross salary.

The net therefore should be less than \$102,000. Plaintiff has not submitted any evidence substantiating its position that Weiss' net annual salary is \$102,000, only that this is his gross salary.

Also, in its affirmation in support plaintiff states that Weiss' wife pays all household expenses from her own salary and Weiss does not pay anything toward these expenses.

However, the testimony suggests otherwise:

Q: Okay. When you said that your wife handles the financials, what do you mean?

A: She pays the bills.

Q: She pays all the bills for the household?

A: Yes.

Q: Where did she get the money from to pay the bills?

A: **She works and what I work I give her to pay.** (emphasis supplied).

Though the answer is not worded well, Weiss indicated that in addition to the money co-defendant's wife receives from her own paycheck, Weiss gives his wife additional money from his income or savings to help her pay the bills. The amount of Weiss' monthly contribution is unclear and (perhaps because, due to the poor wording of the answer, plaintiff did not realize its import) plaintiff does not pursue this line of questioning further. Thus, to the extent plaintiff derives the sum of \$8666.66 from Weiss' testimony, its calculations are inaccurate.

There are additional points of confusion as well. In his opposition Weiss submits several check/ payment summary statements which show that he received only \$1600 per month in gross salary and a net pay of \$1,245.08. Plaintiff correctly notes that this contradicts Weiss'

[\* 5]

testimony. The deposition took place on May 12, 2011 and the paycheck information is all from 2012. It is not clear whether or why Weiss' salary changed during the intervening period. Weiss also claims that his monthly debts are substantial – he presents a typed list of alleged expenses only a few of which he substantiates; and he states, also without evidentiary support, that his wife's net weekly salary is \$535.00. Plaintiff rejects all of Weiss' contentions, even those supported by evidence, and adheres to its incorrect understand of Weiss' admittedly confusing testimony – that is, it continues to assert that Weiss did not contribute to the monthly expenses – and to its request that Weiss pay \$8,666.66 per month.

The Court also notes that, as plaintiff points out, Weiss does not provide his annual tax returns or state whether he receives bonuses and/or dividends at work. The Court further notes that Weiss does not state whether he gives some, most or all of his salary to his wife for their monthly bills; does not indicate whether he has other valuable assets; and does not provide other useful information that would increase or decrease Weiss' capacity to make a specific payment. On the other hand, plaintiff has not provided any evidence that it asked about dividends and bonuses or other assets and sought the income tax returns, and it has not provided any other evidence regarding these issues.<sup>1</sup>

Therefore, there are numerous unresolved issues, and a great deal of conflicting statements, concerning the amount that Weiss should pay under CPLR § 5226. Any computations which is based on the motion papers and annexed exhibits would be largely speculative. Under these circumstances, the Court concludes that the appropriate amount due under an installment payment order cannot be determined. It is accordingly

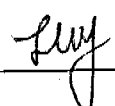
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<sup>1</sup>Plaintiff also states that it subpoenaed Preferred Home Care (PHC), at which Weiss is founding president and CEO, and from which Weiss and his wife draw their salaries, and that PHC has not responded. However, plaintiff does not provide evidentiary support and – more importantly – has not served PHC, a nonparty not before the Court, with its motion and reply. Therefore, the Court is without jurisdiction to consider this information.

ORDERED that the motion is denied.

Dated: 3/29/13

ENTER:

  
\_\_\_\_\_  
Louis B. York, J.S

**LOUIS B. YORK**  
**J.S.C.**

**FILED**

APR 04 2013

NEW YORK  
COUNTY CLERK'S OFFICE