

Schwarz v Boom Batta, Inc.

2014 NY Slip Op 32050(U)

July 28, 2014

Sup Ct, New York County

Docket Number: 100524/08

Judge: Geoffrey D. Wright

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

JUDGE GEOFFREY D. WRIGHT

PRESENT: _____
Justice

PART 47

JS

Bruce Schwarz

INDEX NO. 100524/08

MOTION DATE _____

MOTION SEQ. NO. 10

Bam Batta, Inc., Do the Hustle, LLC et al

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

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 for partial summary judgment is granted as per attached order and judgment.

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

FILED
JUL 28 2014
COUNTY CLERK'S OFFICE
NEW YORK

RECEIVED
JUL 28 2014
GENERAL CLERK'S OFFICE
NYS SUPREME COURT - CIVIL

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**GEOFFREY D. WRIGHT
AJSC**

Dated: 7/25/14

_____, J.S.C.

- 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

At the Supreme Court of the State of New York,
held in the County of New York, 80 Centre Street,
New York, New York, on the ~~4th~~ day of July,
2014. *25th*

PRESENT: HON. GEOFFREY D.S. WRIGHT, J.S.C.

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

-----X
BRUCE SCHWARZ,

Index No.: 100524/08

Plaintiff,

- against -

ORDER and JUDGMENT

BOOM BATTÀ, INC., DO THE HUSTLE, LLC, ROBERT
WATMAN, TIM OUELLETTE, and JOHN DOE #1-10,
being fictitious persons or entities.

Defendants.
-----X

FILED

JUL 28 2014

COUNTY CLERK'S OFFICE
NEW YORK

Plaintiff, BRUCE SCHWARZ, by his attorneys Warren S. Gottlieb, Esq. and Douglas T. Tabachnik, Esq., having moved this Court for: (a) an Order pursuant to CPLR 3212 granting partial summary judgment in favor of Plaintiff as to the first cause of action of Plaintiff's Complaint as to Defendant Robert Watman only; (b) upon such entry of judgment or Order granting partial summary judgment, an Order restraining the transfer, in an amount that will satisfy the amount of the judgment ordered and/or entered, by Defendant Watman or any party in possession of (i) any property of any character contained in each, any and all of Defendant Watman's non-exempt accounts at AllianceBernstein L.P. and/or any subsidiary or affiliate

thereof including, but not limited to Defendant Watman's Account No. 888-11875 (including but not limited to related sub-accounts 037-18401, 037-80997, 039-55827) at Sanford C. Bernstein & Co., LLC (ii) any property of any character contained in each, any and all of Defendant Watman's non-exempt accounts at JP Morgan Chase & Co. and/or any subsidiary or affiliate thereof and (iii) ~~the membership interest of Defendant Watman in TCC 39th LLC, a New York limited liability company,~~ (c) an Order amending the case caption to correct the inadvertent misspelling of Plaintiff's name; and, (d) such other and further relief as the Court deems just and proper, and,

UPON, the Notice of Motion for Summary Judgment on First Cause of Action of Plaintiff's Complaint as to Defendant Robert Watman Only and Related Relief ("MSJ") dated September 19, 2013, the supporting Affirmation of Warren S. Gottlieb and Douglas T. Tabachnik, Esqs., in Support thereof dated September 18, 2013, together with the Exhibits annexed thereto, the Memorandum of Law in Support, dated September 19, 2013, the Statement of Undisputed Facts Pursuant to Rule 19-a, dated September 19, 2013, Defendant Watman's opposition to the MSJ, comprised of Defendant Watman's Affidavit in Opposition, submission as of 5:00PM EST on November 15, 2013, and Defendant Watman's Rule 19-a Counterstatement of Material Disputed Facts, submission as of 5:00PM EST on November 15, 2013, Plaintiff's Reply papers, including Plaintiff's letter to the Court, dated November 19, 2013, the joint Affirmation in Reply of Warren S. Gottlieb and Douglas T. Tabachnik, Esqs., and (sic) Further Support of Plaintiff's MSJ dated November 18, 2013 and annexed exhibits, and the Reply Memorandum of Law in Further Support of the MSJ, dated November 18, 2013, the November 6, 2013 Order issued by Hon. Jeffrey K. Oing, J.S.C., the transcript of the record before the Court on November 6, 2013 before the Hon. Jeffrey K. Oing, J.S.C, the Order issued

JEFFREY D. WRIGHT
AJSC

by Hon. Jeffrey K. Oing, J.S.C on November 21, 2013, the transcript of the record before the Court on November 21, 2013 before the Hon. Jeffrey K. Oing, J.S.C., the report of the Hon. Ira Gammerman, J.H.O., as contained in the transcript of the proceedings held on January 7, 2014 and the related transcript thereof, filed on January 17, 2014 (collectively "JHO Report"), Plaintiff's motion, dated January 27, 2014, to confirm the JHO Report and supporting papers, Defendants Watman and Ouellette's Notice of cross-motion, dated February 12, 2014, the Undated Affirmation of Glenn Wolther, annexed thereto, and supporting papers submitted therewith, the Affirmation of Warren S. Gottlieb and Douglas T. Tabachnik, counsel for the Plaintiff, dated February 19, 2014, in opposition to Defendants' cross-motion, in reply to Defendants' Opposition and in further support of the motion to confirm JHO Report, the March 31, 2014 Decision and Order the Hon. Jeffrey K. Oing and all other MSJ motion papers in the record, all pleadings and proceedings heretofore had herein, and due deliberation having had thereon, it is,

ORDERED, that Plaintiff's Notice of Motion for Summary Judgment on First Cause of Action of Plaintiff's Complaint as to Defendant Robert Watman Only and Related Relief dated September 19, 2013 is granted; it is further,

ORDERED, that Plaintiff is hereby awarded judgment against Defendant Robert Watman in the amount total amount of \$2,020,964.29, representing \$1,008,815.00 plus interest from June 4, 2003 through the date of entry of this Judgment, together with post judgment interest and costs (cumulatively the "Judgment"); it is further,

ORDERED, that Plaintiff shall have execution on the Judgment; it is further,

ORDERED, that Defendant Watman or any party in possession of (i) any property of any character contained in each, any and all of Defendant Watman's non-exempt accounts at

AllianceBernstein L.P. and/or any subsidiary or affiliate thereof, including but not limited to Defendant Watman's Account No. 888-11875 (including but not limited to related sub-accounts 037-18401, 037-80997, 039-55827) at Sanford C. Bernstein & Co., LLC (ii) any property of any character contained in each, any and all of Defendant Watman's non-exempt accounts at JP Morgan Chase & Co. and/or any subsidiary or affiliate thereof and (iii) ~~the membership interest of Defendant Watman in TCC 39th LLC, a New York limited liability company, shall be~~

shall be
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restrained from transferring or otherwise encumbering such property in an amount of the Judgment has been fully satisfied; it is further,

ORDERED, that the complaint is hereby severed as to Defendant Tim Ouellette as to all counts of the Complaint and as to Defendant Robert Watman as to counts two through, and including, six of the Complaint; and it is further,

ORDERED that a copy of this Order and Judgment shall be served on Defendant Robert Watman's counsel and Defendant Tim Ouellette's counsel, Glenn A. Wolther, Esq., 305 Broadway, Suite 1102, New York, New York 10007, within ~~5~~ ~~10~~ ~~15~~ days of the date hereof

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FILED
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ENTER
[Signature]

SO ORDERED
[Signature]
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HON. GEOFFREY D.S. WRIGHT, J.S.C.