

**Service Fin. Corp v Quantified Purch. Resources,
Inc.**

2015 NY Slip Op 30484(U)

April 2, 2015

Sup Ct, New York County

Docket Number: 150873/12

Judge: Eileen A. Rakower

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

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SERVICE FINANCE CORP.,

Plaintiff,

- against -

QUANTIFIED PURCHASING RESOURCES, INC.,
CHRISTOPHER SWARTZ AND JAMES COOK,

Defendants.

-----X
HON. EILEEN A. RAKOWER, J.S.C.

Index No.
150873/12

**DECISION
and ORDER**

Mot. Seq.
#003

Plaintiff, Service Finance Corp. (“Plaintiff”), now moves for an Order, pursuant to CPLR § 602, consolidating the above captioned action (“Action 1”) for all purposes with the actions captioned *Service Finance Corp. v. Obee’s Franchise Systems, Inc., Christopher Swartz, Bruce Napolitano, Allan Richman, Richard Michaels, and James Cook, Index No. 150876/12* (“Action 2”) and *Service Finance Corp. v. Ultimate Franchise Systems, Inc., Christopher Swartz, Bruce Napolitano, Allan Richman, and James Cook, Index No. 150877/12* (“Action 3”); and, pursuant to CPLR § 5226, directing payment of installments as against individual defendant Christopher Swartz (“Swartz”) in an amount to be determined by the Court to satisfy the judgments previously entered against Swartz in Actions 1, 2, and 3.

No opposition is submitted.

CPLR § 602(a) gives the trial court discretion to consolidate actions involving common questions of law or fact. There is a preference for consolidation in the interest of judicial economy and ease of decision-making where there are common questions of law and fact, unless the party opposing the motion demonstrates that consolidation will prejudice a substantial right. (*Progressive Ins. Co. v. Vasquez*, 10 A.D. 3d 518, 782 NYS2d 21 [1st Dep’t 2004]).

CPLR § 5226 provides, in relevant part: “Upon motion of the judgment creditor, upon notice to the judgment debtor, where it is shown that the judgment

debtor is receiving or will receive money from any source . . . the court shall order that the judgment debtor make specified installment payments to the judgment creditor.” CPLR § 5226 further provides:

In fixing the amount of the payments, the court shall take into consideration the reasonable requirements of the judgment debtor and his dependents, any payments required to be made by him or deducted from the money he would otherwise receive in satisfaction of other judgments and wage assignments, the amount due on the judgment, and the amount being or to be received

(CPLR § 5226). The words “from any source” are broadly interpreted, and “[c]ontributions or gratuities received or to be received from relatives should be considered to constitute money from any source as used in CPLR § 5226.” (*Rabideau v. Oswald*, 78 A.D.2d 944, 945 [3d Dep’t 1980]). Under CPLR § 5226, the test is “what the judgment debtor can reasonably afford to pay, taking into consideration his needs, those of his dependents, and other inroads on his income from other obligations.” (*Kaufman v. Kaufman*, 289 N.Y.S.2d 23, 24 [1st Dep’t 1968]).

Here, Plaintiff adequately demonstrates that Swartz is a judgment debtor in Actions 1, 2, and 3, and that enforcement proceedings to enforce the judgments obtained against Swartz in Actions 1, 2, and 3 involve common issues of law and fact. Accordingly, consolidation is warranted in the interest of judicial economy. By failing to oppose, Swartz fails to show any prejudice resulting from consolidation.

In addition, Plaintiff presents testimony from the deposition of Swartz on August 26, 2014, in which Swartz states that he and his wife each receive regular incomes. Plaintiff submits a written “profit and loss” statement reflecting Swartz’s monthly expenses. Accordingly, a hearing is warranted to determine what amount Swartz, the judgment debtor, can reasonably afford to pay—taking into consideration his needs, those of his dependents, and other inroads on his income from other obligations—as specified installments to Plaintiff, the judgment creditor.

Wherefore, it is hereby,

ORDERED that Plaintiff’s motion to consolidate is granted and the above-captioned action (Action No. 1) is consolidated for all purposes with *Service Finance*

Corp. v. Obee's Franchise Systems, Inc., Christopher Swartz, Bruce Napolitano, Allan Richman, Richard Michaels, and James Cook, Index. No. 150876/12 (Action No. 2) and Service Finance Corp. v. Ultimate Franchise Systems, Inc., Christopher Swartz, Bruce Napolitano, Allan Richman, and James Cook, Index No. 150877/12 (Action 3), under the Index No. 150873/12 for Action No. 1, and the consolidated action shall bear the following caption:

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SERVICE FINANCE CORP.,

Plaintiff,

Index No.
150873/12

- against -

QUANTIFIED PURCHASING RESOURCES, INC.,
CHRISTOPHER SWARTZ, JAMES COOK,
OBEE'S FRANCHISE SYSTEMS, INC.,
BRUCE NAPOLITANO, ALLAN RICHMAN,
RICHARD MICHAELS, ULTIMATE FRANCHISE
SYSTEMS, INC., and GARY BAKER,

Defendants.

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And it is further,

ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that movant is directed to serve a copy of this order with notice of entry on the County Clerk (Room 141 B), who shall consolidate the papers in the actions hereby consolidated and shall mark his records to reflect the consolidation; and it is further

ORDERED that movant is directed to serve a copy of this order with notice of entry on the Clerk of the Trial Support Office (Room 158), who is hereby directed to mark the court's records to reflect the consolidation; and it is further

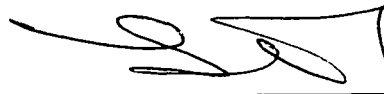
ORDERED that the issue of what amount, Swartz, the judgment debtor, can reasonably afford to pay—taking into consideration his needs, those of his dependents, and other inroads on his income from other obligations—as specified installments to Plaintiff, the judgment creditor, to satisfy the judgments previously entered against Swartz in Actions 1, 2, and 3 is referred to a Special Referee to hear and report with recommendations; and it is further

ORDERED that a copy of this order with notice of entry shall be served on the Clerk of the Reference Part (Room 119A) to arrange for a date for the reference to a Special Referee and the Clerk shall notify all parties, including defendants, of the date of the hearing.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

DATED: APRIL 2, 2015

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EILEEN A. RAKOWER, J.S.C.