

**Miami Perfume Junc. AP LLC v Miami Perfume  
Junc., Inc.**

2021 NY Slip Op 30510(U)

February 23, 2021

Supreme Court, New York County

Docket Number: 652096/2020

Judge: Arthur F. Engoron

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SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: PART IAS MOTION 37EFM

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 -X

MIAMI PERFUME JUNCTION AP LLC,

Plaintiff,

- v -

MIAMI PERFUME JUNCTION, INC., ANAND P.  
 CHOWDHURY,

Defendant.

INDEX NO. 652096/2020

11/13/2020,

11/30/2020,

12/23/2020

MOTION DATE

MOTION SEQ. NO. 001 002 003

**DECISION + ORDER ON  
 MOTION**

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 -X

HON. ARTHUR F. ENGORON:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18

were read on this motion to/for

DISCOVERY

The following e-filed documents, listed by NYSCEF document number (Motion 002) 19, 20, 21, 22, 23, 24, 28, 29, 30, 31, 32, 33, 34

were read on this motion to/for

JUDGMENT - DEFAULT

The following e-filed documents, listed by NYSCEF document number (Motion 003) 35, 36, 37, 38, 39, 43, 44, 45, 46

were read on this motion to/for

PARTIES - ADD/SUBSTITUTE/INTERVENE

Upon the foregoing documents and for the reasons set forth herein, [1] plaintiff's motion (Seq. No. 001) to direct non-party Beauty Brands Sur Americas SAS Inc. to produce documents requested in a subpoena that plaintiff served on September 23, 2020 and to award costs pursuant to the CPLR is granted; [2] plaintiff's motion (Seq. No. 002) for a default judgment as against defendant Miami Perfume Junction, Inc., only, is granted, and Leslie S. Osborne's (solely in his capacity as defendant Miami Perfume Junction, Inc.'s assignee) cross-motion to extend the time in which to respond to plaintiff's default judgment motion is denied; and [3] plaintiff's motion (Seq. No. 003) to substitute Ravneet Chowdhury, the spouse of defendant Anand P. Chowdhury, as defendant in the instant action and to amend the caption accordingly is granted.

Background

On March 15, 2019, plaintiff, Miami Perfume Junction AP LLC ("Miami LLC"), entered into a Supplier Credit Agreement ("the Sales Agreement") with defendant Miami Perfume Junction, Inc. ("Miami Inc."). Defendant Anand P. Chowdhury ("Anand Chowdhury") provided a validity

guaranty (“the First Guaranty”). On March 14, 2019, Anand Chowdhury entered into a Validity Guaranty and Performance Agreement (the “Second Guaranty,” together with the First Guaranty, “the Guarantees”). (NYSCEF Doc. 1.)

Between March 15 and December 12, 2019, Miami LLC sold goods to Miami Inc. (NYSCEF Doc. 1).

By correspondence dated May 6, 2020, Miami LLC notified Miami Inc. of the termination of the Sales Agreement and requested payment (by close of business on May 8, 2020) of the \$2,458,251.00 balance due as of April 8, 2020 under the Sales Agreement (NYSCEF Doc. 4).

According to Miami LLC, pursuant to the Sales Agreement and Guarantees, Miami Inc. and Anand Chowdhury are indebted to Miami LLC in the amount of \$2,715,013.06, plus fees due under the Sales Agreement, interest, costs, and attorney’s fees (NYSCEF Doc. 1, at 5).

On May 28, 2020, Miami LLC commenced the instant action, seeking a judgment (1) on the first cause of action, for breach of contract (Sales Agreement), as against Miami Inc., in the amount of \$2,715,013.06, plus fees due pursuant to the Sales Agreement, plus interest, costs, and attorney’s fees; (2) on the second cause of action, for breach of contract (Personal Guaranty), as against Anand Chowdhury, in an amount to be determined at trial but not less than \$2,715,013.06, plus fees due pursuant to the Sales Agreement, plus interest, costs and attorney’s fees; (3) on the third cause of action, for account stated, as against Miami Inc., in the amount of \$2,458,251.00, plus fees due pursuant to the Sales Agreement, plus interest, costs, and attorney’s fees. (NYSCEF Doc. 1.) Jurisdiction and venue in New York are proper pursuant to the Sales Agreement’s Paragraph 21 (NYSCEF Doc. 2, at 8).

On June 16, 2020, Miami Inc. filed a “petition for the assignment for the benefit of creditors,” which, apparently pursuant to Florida Statutes Chapter 727, commenced an “assignment for the benefit of creditors proceeding” (the “Assignment Proceeding”) to assignee Leslie S. Osborne (“Miami Inc.’s Assignee”) (NYSCEF Doc. 29).

#### Motion Seq. No. 001

On September 23, 2020, Miami LLC served a non-judicial subpoena duces tecum (“the Subpoena”) on non-party Beauty Brands Sur Americas SAS Inc. (“Beauty Brands”), which “sought information regarding the sale of goods by [Beauty Brands] to [Miami Inc.] that [Miami LLC] had facilitated pursuant to [the Sales Agreement], including copies of invoices, bills of lading and proofs of delivery.” On October 16, 2020, an additional copy of the Subpoena was provided to Beauty Brands, and Miami LLC demanded a response by October 20, 2020. Beauty Brands has apparently failed to move timely to quash the Subpoena or otherwise respond to and/or comply with it. (NYSCEF Doc. 1).

On October 23, 2020, Miami LLC moved, pursuant to CPLR 2308(b) and 3124, (1) to command Beauty Brands to produce documents in response to the Subpoena; and (2) to impose an award of costs as the CPLR provides (NYSCEF Doc. 11).

CPLR 2308(b)(1), disobedience of non-judicial subpoenas, states the following, in pertinent part: “Unless otherwise provided, if a person fails to comply with a subpoena which is not returnable in a court, the issuer or the person on whose behalf the subpoena was issued may move in the supreme court to compel compliance. If the court finds that the subpoena was authorized, it shall order compliance and may impose costs not exceeding fifty dollars...”

CPLR 3124, “Failure to disclose, motion to compel disclosure,” states the following: “If a person fails to respond to or comply with any request, notice, interrogatory, demand, question, or order under this article, except a notice to admit under section 3123, the party seeking disclosure may move to compel compliance or a response.”

To date, there is no written opposition to Motion Seq. No. 001 e-filed on the New York State Courts Electronic Filing system.

Miami LLC has demonstrated that it extended a good faith effort to resolve the instant matter.

Thus, this Court grants Miami LLC’s motion to command Beauty Brands to produce documents in response to the Subpoena and to impose an award of costs pursuant to the CPLR.

#### Motion Seq. No. 002

On August 6, 2020, Chowdhury passed away, and by Letter of Administration dated November 4, 2020, the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida declared Ravneet Chowdhury (“Ravneet Chowdhury”) the personal representative of Anand Chowdhury’s estate (“the Estate”) (NYSCEF Doc. 32, at 1).

On November 9, 2020, Miami LLC moved, pursuant to CPLR 3215, for a default judgment against Miami Inc., only, in the amount of \$2,458,251.00 (the balance due under the Sales Agreement as of April 8, 2020) (NYSCEF Doc. 19-20).

On November 23, 2020, Miami Inc.’s Assignee (solely in that capacity) cross-moved, pursuant to CPLR 2004, to extend the time in which to respond to Miami LLC’s instant default judgment motion by an additional ninety days (namely, through and including February 22, 2021 at the time of the instant cross-motion) (NYSCEF Doc. 28 and 29). According to Miami Inc.’s Assignee, a ninety-day extension would “allow both parties to conduct their respective investigations, and to allow for the issues between the parties to play out in the Assignment Proceeding” (NYSCEF Doc. 29, at 2-3). Additionally, Ravneet Chowdhury’s counsel asserts that “since [Miami LLC] filed the motion after the death of [Anand Chowdhury] and before it has effectuated a substitution, this Court is deprived of jurisdiction to conduct proceedings in this action and any order issued by it addressing the Motion would be a nullity and void” (NYSCEF Doc. 32, at 2). See CPLR 1015(a); Gaines v City of New York, 104 AD3d 610, 610 (2013).

Miami LLC claims that Miami Inc.’s Assignee has failed to establish (1) that there is any connection between the subject default judgment and the Assignee’s investigation and/or (2) that the entry of a default judgment against Miami Inc. would preclude the Assignee from continuing its subject investigation. According to Miami LLC, Florida Statutes (Section 727) do not stay actions filed prior to the assignment for the benefit of creditors. (NYSCEF Doc. 33.)

Additionally, Miami LLC asserts that neither Ravneet Chowdhury nor her counsel has signed the stipulation to substitute Ravneet Chowdhury as personal representative for the Estate that Miami LLC allegedly sent to Ravneet Chowdhury's counsel on November 25, 2020 (NYSCEF Doc. 34, at 1).

CPLR 2004, "Extensions of time generally," states the following: "Except where otherwise expressly prescribed by law, the court may extend the time fixed by any statute, rule or order for doing any act, upon such terms as may be just and upon good cause shown, whether the application for extension is made before or after the expiration of the time fixed."

CPLR 1015, "Substitution upon death," states the following:

(a) Generally. If a party dies and the claim for or against him is not thereby extinguished the court shall order substitution of the proper parties.

(b) Devolution of rights or liabilities on other parties. Upon the death of one or more of the plaintiffs or defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or against the surviving defendants, the action does not abate. The death shall be noted on the record and the action shall proceed.

Miami LLC has established that it is entitled to a default judgment against Miami Inc. by complying with CPLR 3215(f) by submitting the following: a copy of the subject summons and verified complaint; a copy of the subject affidavit of service and CPLR 3215(g)(3)(i) notice; and the October 23, 2020 affirmation of Jared H. Louzon, Miami LLC's attorney. This Court finds that the entry of a default judgment would not prejudice the subject investigation(s).

Thus, this Court grants Miami LLC's motion for a default judgment and denies defendant's cross-motion to extend the time in which to respond to that motion.

#### Motion Seq. No. 003

On December 2, 2020, Miami LLC moved, pursuant to CPLR 1021, to (1) substitute Ravneet Chowdhury, the spouse of Anand Chowdhury, as defendant in the instant action and appoint her as Temporary Administrator of the Estate, "solely for the purposes of this litigation"; and (2) amend the caption and the complaint to add Ravneet Chowdhury as administrator in the instant matter (NYSCEF Doc. 35-36). Miami LLC requests that the amended caption read as follows: Miami Perfume Junction AP LLC v Miami Perfume Junction Inc. and Ravneet Chowdhury, as Personal Representative for the Estate of Anand P. Chowdhury. Miami LLC asserts that Anand Chowdhury's passing does not "extinguish" Miami LLC's claim for breach of contract (Personal Guaranty) as against that defendant (NYSCEF Doc. 36, at 3-4).

In opposition, counsel for Ravneet Chowdhury, as the Estate's personal representative, asserts that (1) Miami LLC failed to submit a proposed amended or supplemental pleading; and (2) the current complaint fails to "contain particularized factual allegations of the transactions, occurrences, or series of transactions or occurrences that could result in a finding of liability as against the Estate" (NYSCEF Doc. 43).

CPLR 1021 states, in pertinent part, as follows:

A motion for substitution may be made by the successors or representatives of a party or by any party. If a person who should be substituted does not appear voluntarily he may be made a party defendant. If the event requiring substitution occurs before final judgment and substitution is not made within a reasonable time, the action may be dismissed as to the party for whom substitution should have been made, however, such dismissal shall not be on the merits unless the court shall so indicate. . . Whether or not it occurs before or after final judgment, if the event requiring substitution is the death of a party, and timely substitution has not been made, the court, before proceeding further, shall, on such notice as it may in its discretion direct, order the persons interested in the decedent's estate to show cause why the action or appeal should not be dismissed.

The subject Personal Guaranty that Anand Choudhury signed in 2019 states, in pertinent part, the following: "This Agreement shall be binding upon the undersigned, and the undersigned's personal representative, successors, and assigns and shall be enforceable against undersigned's estate (NYSCEF Doc. 39, at 2). Ravneet Choudhury now serves as the "personal representative" of the Estate. Further, Miami LLC has submitted a proposed supplemental summons and amended complaint (NYSCEF Doc. 45) as well as a redlined version that clearly indicates the proposed changes (NYSCEF Doc. 46). This Court finds that the complaint and the exhibits that Miami LLC submitted with its original pleadings sufficiently outline the factual allegations that may now result in a finding of liability as against the Estate.

Thus, this Court grants Miami LLC's motion (1) to substitute Ravneet Chowdhury, the spouse of Anand Chowdhury, as defendant in the instant action; (2) to appoint Ravneet Chowdhury as Temporary Administrator of the Estate, "solely for the purposes of this litigation"; and (3) to amend the caption and the complaint accordingly.

#### Conclusion

Thus, for the reasons stated herein:

Motion Seq. No. 001 by plaintiff, Miami Perfume Junction AP LLC ("Miami LLC"), is hereby granted to the following extent: (1) commanding non-party Beauty Brands Sur Americas SAS Inc. ("Beauty Brands"), to produce documents by March 10, 2021 in response to the Subpoena Duces Tecum that Miami LLC served on September 23, 2020; and (2) awarding \$50.00 in costs pursuant to CPLR 2308(b)(1). Accordingly, the Clerk is hereby directed to enter judgment in the amount of \$50.00 (for costs) in favor of Miami LLC and against Beauty Brands.

Motion Seq. No. 002 by Miami LLC is granted to the following extent: the Clerk is hereby directed to enter a default judgment against defendant Miami Perfume Junction, Inc. ("Miami Inc."), only, on Miami LLC's first cause of action, for breach of contract (Sales Agreement), as against Miami Inc., in the amount of \$2,715,013.06, plus interest from May 8, 2020 (the date of breach), plus costs (Miami LLC's notice of motion, unlike its complaint, did not request attorney's fees); this Court hereby denies and dismisses, without prejudice, Miami LLC's third

cause of action, for account stated, as against Miami Inc., solely as duplicative. The cross-motion by Leslie S. Osborne, solely in his or her capacity as Miami Inc.'s assignee, to extend the time in which to respond to that default judgment motion is hereby denied.

Motion Seq. No. 003 by Miami LLC is granted to the following extent: (1) substituting Ravneet Chowdhury, the spouse of defendant Anand P. Chowdhury, as defendant in the instant action and appointing her as Temporary Administrator of Anand P. Chowdhury's estate, "solely for the purposes of this litigation"; and (2) amending the caption and the complaint to add Ravneet Chowdhury as administrator in the instant matter. Accordingly, the Clerk is hereby directed to (1) amend the file to substitute Ravneet Chowdhury, the spouse of Anand P. Chowdhury, as defendant in the instant action; and (2) amend the caption to read as follows: Miami Perfume Junction AP LLC v Miami Perfume Junction Inc. and Ravneet Chowdhury, as Personal Representative for the Estate of Anand P. Chowdhury. Miami LLC's proposed supplemental summons and amended complaint e-filed as NYSCEF Doc. 45 is hereby deemed to be the current operative summons and complaint.

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2/23/2021

DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: