

AKF Inc. v Titan Cycle Customs, LLC

2022 NY Slip Op 34344(U)

December 21, 2022

Supreme Court, New York County

Docket Number: Index No. 653917/2022

Judge: Erika M. Edwards

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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**

PRESENT: HON. ERIKA M. EDWARDS

PART 10M

Justice

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AKF INC., D/B/A FUNDKITE,

Petitioner,

- v -

TITAN CYCLE CUSTOMS, LLC, CHRISTOPHER WILLIAM DADING, and TITAN POWERSPORT HOLDINGS LLC,

Respondents.

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INDEX NO. 653917/2022

MOTION DATE 10/20/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 13, 16, 19 were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

Upon the foregoing documents, the court grants Petitioner AKF Inc., d/b/a Fundkite's ("Petitioner") motion by order to show cause filed under motion sequence 001 and relief requested in its Petition, without opposition, to the extent set forth herein. The court grants a preliminary injunction in aid of arbitration, pending the resolution of the arbitration between the parties and until further order of the court, the court restrains all funds in any accounts held by the Respondents Titan Cycle Customs, LLC's, Christopher William Dading's and Titan Powersport Holdings LLC's (collectively, "Respondents") at Comerica Bank up to the amount of \$60,215.43, which includes account ending in 7946 titled Titan Cycle Customs, LLC.

This matter involves Petitioner's attempt to collect on a Revenue Purchase Agreement ("RPA"), dated March 3, 2022, that Respondents allegedly defaulted on by failing to make the agreed upon weekly payments. Pursuant to the terms of the RPA, Petitioner provided Respondent Titan Cycle Customs, LLC with \$100,000.00 in funding, minus \$6,185.00 in service fees, for a total of \$93,815.00. Respondent Titan Cycle Customs, LLC agreed to pay back \$144,000.00 at 4% remittance percentage, with an initial estimated delivery amount of

\$3,600.00/week from its Comerica Bank account ending in 7946. The RPA was guaranteed by Respondents Christopher William Dading, as the owner of Titan Custom Cycles, LLC, and Titan Powersport Holdings LLC, as an affiliated business, which was also signed by Respondent Christopher William Dading.

Petitioner alleges in substance that after approximately five months, beginning on August 10, 2022, Respondent Titan Cycle Customs, LLC stopped making the required weekly payments and the bank notified Petitioner that there were insufficient funds in the designated account. Petitioner further alleges that Respondents are in default pursuant to the terms of the RPA, that Respondent Titan Cycle Customs, LLC appears to still be in business and generating revenue, and that it appears that revenue is intentionally being diverted out of the designated account without Petitioner's consent, all of which is a breach of the RPA. Petitioner also alleges that Respondents owe it \$48,172.35 under the RPA, plus a default fee of 25%, or \$12,043.08, for a total of \$60,215.43. Petitioner argues that Respondents are likely to remove all assets from the designated bank account and any arbitration award in Petitioner's favor would be rendered ineffectual because if Respondents dissipated the funds from the designated account, then there would be no funds available to satisfy any judgment rendered in favor of Petitioner.

Petitioner further alleges that it attempted to contact Respondents numerous times in an effort to resolve this matter and to discuss a modification of the terms of the RPA, but Respondents have failed to respond, nor have they made any additional payments. Petitioner alleges that the RPA grants any party the right to arbitrate disputes or claims arising from the RPA and they agreed on the forum.

Petitioner now moves by order to show cause, which includes the same relief requested in the Petition, for an order restraining Respondents' bank accounts at Comerica Bank up to

\$60,215.43, pursuant to CPLR 7502(c). The court declined to grant Petitioner's request for a temporary restraining order, but directed the parties to appear in court on November 17, 2022, at 10:00 a.m., for oral argument on Petitioner's request for a preliminary injunction to restrain Respondents' accounts pending the resolution of the arbitration proceedings. The court directed Petitioner to serve Respondents with the order to show cause, petition and supporting papers by October 27, 2022. The court also set a briefing schedule where answering papers were due by November 10, 2022, and reply papers, if any, by November 16, 2022. Petitioner timely served Respondents. The court adjourned the proceed to December 5, 2022.

On December 5, 2022, Respondents failed to appear in court and failed to answer or otherwise respond to Petitioner's order to show cause or Petition. The court found that Petitioner timely and properly served Respondents with the order to show cause, Petition, supporting documents, and court's order with notice of entry. The court found that Respondents had notice of the court appearances, but failed to appear or contact the court for an adjournment or opportunity to appear virtually. As such, the court entered a default on the record.

Here, the court determines that Petitioners demonstrated their entitlement to the relief requested in the order to show cause and Petition in that Petitioner demonstrated its need for the restraint on Respondents' bank accounts. Petitioner demonstrated that it is likely to succeed on the merits, that Respondents owe the amount claimed and that Petitioner will suffer irreparable injury if the preliminary injunction is not granted.

Since Respondents failed to appear, or otherwise answer or oppose the order to show cause or Petition, the court grants Petitioner's order to show cause and the relief requested in the Petition, without opposition, to the extent set forth below.

The court has considered any additional arguments raised by Petitioner which were not specifically discussed herein and the court denies any additional requests for relief not expressly granted herein.

As such, it appearing to this court that a cause of action exists in favor of Petitioner and against Respondents and that Petitioner is entitled to a preliminary injunction on the ground that Respondents threaten or are about to do, or are doing or procuring or suffering to be done, an act in violation of Petitioner's rights respecting the subject of the action and tending to render the judgment ineffectual, as set forth above, it is hereby

ORDERED that the court grants Petitioner AKF Inc., d/b/a Fundkite's motion by order to show cause filed under motion sequence 001 and relief requested in its Petition, without opposition, to the extent set forth herein; and it is further

ORDERED that the undertaking is fixed in the sum of \$1,000.00 conditioned that the Petitioner, if it is finally determined that it was not entitled to an injunction, will pay to the Respondents all damages and costs which may be sustained by reason of this injunction; and it is further

ORDERED that the court grants a preliminary injunction in aid of arbitration, pending the resolution of the arbitration between the parties and until further order of the court; the court restrains all funds in any accounts held by Respondents Titan Cycle Customs, LLC's, Christopher William Dading's and Titan Powersport Holdings LLC's at Comerica Bank up to the amount of \$60,215.43, which includes account ending in 7946 titled Titan Cycle Customs, LLC; and it is further

ORDERED that by granting the requested relief, the court disposes of Petitioner's petition and order to show cause filed under motion sequence 001.

This constitutes the decision and order of the court.

ERIKA M. EDWARDS, J.S.C.

12/21/2022
DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE