

Actors' Equity Assn. v Paradise Sq. Prod. Servs. Inc.

2023 NY Slip Op 33975(U)

November 9, 2023

Supreme Court, New York County

Docket Number: Index No. 156769-2022

Judge: Lynn R. Kotler

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

PRESENT: HON. LYNN R. KOTLER, J.S.C.

PART 8

Actors' Equity Association

INDEX NO. 156769-2022

- v -

MOT. DATE

Paradise Square Production Services Inc.

MOT. SEQ. NO. 001

The following papers were read on this motion to/for _____
 Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits ECFS DOC No(s). _____
 Notice of Cross-Motion/Answering Affidavits — Exhibits ECFS DOC No(s). _____
 Replying Affidavits ECFS DOC No(s). _____

Previously, plaintiff Actors' Equity Association (sometimes "Equity") obtained a money judgment by confession against the defendant Paradise Square Production Services Inc. (sometimes "Paradise Square") which was filed by the County Clerk on August 11, 2022. The judgment is for the total sum of \$191,838.84. Thereafter, defendant filed an order to show cause seeking to vacate the judgment "as Plaintiff has been fully paid", lifting all restraints filed or submitted against defendant and staying any further enforcement of the judgment.

Although the parties attempted to resolve the motion out-of-court, they were unable to do so. Oral argument on the motion was held on January 24, 2023. For the reasons that follow, the motion is denied.

The motion is supported by the affidavit of Jeffrey Chrzczon, General Manager of the defendant. Chrzczon claims that his first notice of this judgment in this case was a restraining notice placed on defendant's operating account for \$191,838.84. Chrzczon further claims that plaintiff wrongfully sought "191,838.84 for 'liquidated damages' contained in a Settlement Agreement entered between the parties on May 24, 2022. Defendant chose not to submit a copy of the underlying Settlement Agreement to the court, by plaintiff did submit same in opposition to the motion.

The Settlement Agreement was reached in the context of an arbitration between the parties pursuant to a collective bargaining agreement regarding defendant's non-payment of dues deductions to Equity and benefit fund contributions and salary deferrals to the Equity-League Pension, Health, and 401(k) Trust Funds (the "Funds"). The Arbitrator, Howard Edelman, noted in a Consent Award that the terms of the Settlement Agreement were adopted as his final and binding Award in the matter before him.

Dated: 11/9/23



HON. LYNN R. KOTLER, 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**

The Settlement Agreement provides in pertinent part as follows:

2. Paradise Square has agreed to remit, and Equity has agreed to accept, \$224,900.43 (the "Settlement Amount") in settlement of the amounts due as summarized in ¶1 of the Agreement, with \$187,907.18 in liquidated damages waived, provided there is no Uncured Default, as that term is defined in ¶¶11-12 of the Agreement. Of the Settlement Amount, \$36,993.25 is owed to Equity to remit dues deductions and \$187,907.18 is owed to the Funds to remit benefit fund contributions and salary deferrals.

3. Payment of the Settlement Amount shall be remitted as follows:

(a) On May 31, 2022, Paradise Square shall remit \$18,496.62 to Equity and \$94,331.15 to the Funds, which includes \$377.56 in interest for the 401(k) deferrals.

(b) On June 3, 2022, Paradise Square shall remit \$18,496.63 to Equity and \$93,953.59 to the Funds.

Any additional 045 credit earned by Paradise Square after April 30, 2022, will be applied to offset future contribution obligations pursuant to the CBA. The parties retain the right to mutually correct any amounts different than those stated above.

...

7. To provide additional security to Equity, Paradise Square agrees to enter into a confession of judgment against it, in the amount of \$412,807.61, which amount totals the Settlement Amount, plus liquidated damages. Entry of the confession of judgment, less any payments made to offset the Settlement Amount, shall be made only in the event of an Uncured Default, as that term is defined in ¶¶11-12 of this Agreement. Ongoing contributions for 2022 shall not be included in or part of the confession of judgment detailed herein.

...

11. Paradise Square agrees that: ... (e) Paradise Square's failure to remain current in remitting dues deductions to Equity and benefit fund contributions and salary deferrals to the Funds, shall constitute a Default under this Agreement.

12. An Uncured Default as referenced herein shall mean full cure of Default, to include payment of all amounts due through the cure date, including, but not limited to, amounts that became due after the Notice of Default was sent to Paradise Square. ...

13. Notices or correspondence of any kind to Paradise Square required under this Agreement shall be sent to the following address by first class mail and email:

Andrew Farber, Esq.
Farber Law LLC

As plaintiff's counsel explains, defendant failed to remit dues and benefits on June 14, 2022. Plaintiff then sent defendant a notice of default dated June 14, 2022 that stated as follows:

Dear Mr. Farber:

... This letter constitutes written notice that Paradise Square is in default under the Agreement because it has failed to remain current in remitting payments to Equity and the Funds. Paradise Square must cure the default in full no later than June 24, 2022. As detailed below, absent a complete cure of the default, including payment of all amounts due through the cure date, Equity will enforce its rights under the Agreement and any other applicable laws.

... Paradise Square has failed to remit dues deductions to Equity from the week ending May 22, 2022, to the week ending June 5, 2022. The latest of these deductions were due to Equity as of June 10, 2022. Paradise Square is thus in default under the Agreement.

Paradise Square has also failed to remain current in remitting benefit contributions and salary deferrals to the Funds. Paradise Square is thus in default under the Agreement for this additional reason as well.

There is no dispute that defendant made no additional payments after plaintiff sent the notice of default dated June 14, 2022. Defendant has not submitted an affidavit from Mr. Farber denying receipt of the notice of default. Instead, Chrzczon claims that defendant “firmly believes that there is no money owing [plaintiff] as it believes that the 045 Credit would have fulfilled any obligation [plaintiff] claims due.” Chrzczon further claims, and has provided proof, that defendant made payment of the first and second installments due under the Settlement Agreement and thus claims that defendant “was never in default of the payment schedule and actually made all payments either on time or earlier than required to do so.”

Chrzczon then claims that “[i]ndeed, not until [plaintiff] provides the analysis of the 045 Credit, and only after it has been reviewed and approved by defendant, can there be any money due and owing from defendant. Then, and only then, does the notice and cure period set forth in paragraph 11 apply.”

Defendant cannot now rewrite the Settlement Agreement. Assuming *arguendo* that defendant met its burden on the motion, which it did not, since it didn’t even provide to the court the Settlement Agreement from which the underlying judgment arises, defendant is bound by the terms of same. The Settlement Agreement clearly defines a default thereunder as “failure to remain current in remitting dues deductions to Equity and benefit fund contributions and salary deferrals to the Funds” Absent from defendant’s motion is any proof that it made such payments.

To the extent that defendant claims no monies were owed because its required contributions were offset by the 045 credit, it is defendant’s burden to come forward with proof of this claim. It has not. Instead, plaintiff has shown that benefit contributions must be paid as they become due irrespective of the 045 credit, i.e. “401(k) contributions, for example, must be submitted within five business days after the close of the week where the contributions were earned”. Defendant has otherwise failed to substantiate its claim that plaintiff, and presumably the non-party Funds, were required to “provide the analysis of the 045 Credit” for defendant’s review and approval.

Defendant’s remaining arguments are equally unavailing: it has failed to establish that plaintiff did not provide the requisite notice due under the Settlement Agreement and it is of no moment that plaintiff has a bond as security for defendant’s obligations in the approximate amount of \$300,000. As plaintiff’s counsel correctly argues, the bond has no relevance to defendant’s request for relief before the court.

CONCLUSION

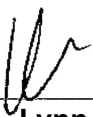
In accordance herewith, it is hereby:

ORDERED that defendant's motion to vacate the judgment filed by the County Clerk on August 11, 2022 for the total sum of \$191,838.84 is denied in its entirety.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly rejected and this constitutes the decision and order of the court.

Dated: 11/9/23
New York, New York

So Ordered:



Hon. Lynn R. Kotler, J.S.C.