

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number: 09-61882-CIV-MORENO

RUBY ROBINSON CO., INC.,

Plaintiff,

vs.

NATURE'S FRESH CHOICE, INC.,

Defendant.

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT
AND RECOMMENDATION AND GRANTING PLAINTIFF'S
MOTION FOR TEMPORARY RESTRAINING ORDER AND
SETTING HEARING ON MOTION FOR PRELIMINARY INJUNCTION**

THE MATTER was referred to the Honorable Edwin G. Torres, United States Magistrate Judge, for a Report and Recommendation on Plaintiff's Motion for Temporary Restraining Order (D.E. No. 5), filed on November 25, 2009. The Magistrate Judge filed a Report and Recommendation (D.E. No. 18) on December 18, 2009. The Report and Recommendation recommends that the motion be granted and, because the motion seeks relief on an *ex parte* basis, there is no need for the Court to wait for objections to the Report and Recommendation. In any event, the time for filing objections has expired. The Court has reviewed the entire file and record, has made a *de novo* review of the issues, and is otherwise fully advised in the premises. It is

ADJUDGED that United States Magistrate Judge Edwin G. Torres's Report and Recommendation (D.E. No. 18) is **AFFIRMED** and **ADOPTED**. Plaintiff filed an affidavit by its president certifying that Plaintiff sold and delivered to Defendant \$28,813.10 worth of wholesale quantities of produce, all of which remains unpaid. Plaintiff also certifies that Defendant does not

dispute the amount owed and that Defendant informed Plaintiff that Defendant does not intend to pay Plaintiff and that Defendant is paying other creditors. As explained in detail in the Report and Recommendation, the Court finds that Plaintiff's injury is irreparable due to Defendant's dissipation and threatened dissipation of Plaintiff's PACA trust assets. Accordingly, it is further

ADJUDGED that:

1. Plaintiff's *ex parte* motion for temporary restraining order is **GRANTED**.
2. Under 7 U.S.C. § 499e(c), Defendant Nature's Fresh Choice, Inc. and its agents, officers, subsidiaries, assigns, banking institutions, and related entities shall be temporarily restrained from dissipating, paying, transferring, assigning, or selling any and all assets covered by or subject to the trust provisions of the PACA without agreement from Plaintiff or until further order of the Court. The assets subject to this Order shall include all of Defendant's assets unless Defendant demonstrates that a particular asset is not derived from perishable agricultural commodities, inventories of food, other products derived from perishable agricultural commodities, or receivables from the sale of such commodities or products.
3. Defendant may sell perishable agricultural commodities for fair compensation on the condition that Defendant maintains the proceeds of such sale subject to this Order.
4. This order is binding upon the parties to this action and all other persons or entities who receive actual notice of this Order, by personal service or otherwise.
5. If Defendant fails to pay Plaintiff \$28,813.10 in certified funds within five (5) days of service of this order on Defendant, then Defendant shall file with the Court an accounting that identifies all of Defendant's assets and liabilities, as well as each of Defendant's account receivables, signed under penalty of perjury. In addition, within ten (10) days of the date of service of this order

on Defendant, Defendant shall furnish to Plaintiff's counsel all documents related to Defendant's (and any of Defendant's subsidiary or related entities) assets, liabilities, and account receivables, including, but not limited to, the most recent balance sheets, profit/loss statements, accounts receivable reports, accounts payable reports, accounts paid records, and income tax returns.

6. The \$28,813.10 in PACA trust assets belonging to Plaintiff and in the possession of Defendant will serve as Plaintiff's security for this temporary restraining order.


7. This order is being entered without notice to Defendant to assure retention of the trust assets.

8. Plaintiff shall serve Defendant or Defendant's registered agent or counsel with a copy of this order as soon as possible. Plaintiff shall file a certificate of such service with the Court.

9. A hearing on Plaintiff's Motion for Preliminary Injunction (D.E. No. 4) shall take place on **Thursday, January 14, 2010 at 10:00 a.m.** at the C. Clyde Atkins Courthouse, Courtroom 4, 301 North Miami Avenue, Miami, Florida, before the Honorable Edwin G. Torres.

DONE AND ORDERED in Chambers at Miami, Florida, this 14 day of January, 2010 at

3:40 p.m.


FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies provided to:

United States Magistrate Judge Edwin G. Torres

Counsel of Record