

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 10-23726-CIV-HUCK/O'SULLIVAN

VANESSA PATINO and
VIVIANA PATINO,

Plaintiffs,

vs.

EL REY DEL CHIVITO CORP.,
and ARON WOLFSON,

Defendants,

vs.

CHIVITO MANIA, LLC, JUAN
IGNACIOFRASCHINI and GARRA
CHARRUA,

Impleaded Defendants.

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ORDER

THIS MATTER comes before the Court on the Plaintiffs' Motion for Proceedings Supplementary and to Implead Execution Defendants (DE# 84, 11/13/13). On November 13, 2013, the plaintiffs filed the instant motion. The undersigned issued a prior Order stating that "[i]f the plaintiffs renew their motion [for proceedings supplementary], the defendant and non-party Chivito Mania, LLC shall have **five (5) business days** to file a response. If no response is filed, the Court will assume that the renewed motion is unopposed and rule accordingly." See Order (DE# 79, 11/7/13). No response was filed. On November 13, 2013, the Clerk of the Court issued writs of execution against the judgment debtors, El Rey del Chivito Corp. and Aron Wolfson,

and the plaintiffs filed the affidavit of attorney Anthony F. Sanchez attesting that the writs of execution remain outstanding and unsatisfied. See Plaintiffs' Affidavit in Support of Motion for Proceedings Supplementary and Impleader (DE# 83 at ¶6, 11/13/13); Writ of Execution Against El Rey Del Chivito Corporation (DE# 86, 11/14/13); Writ of Execution Against Aron Wolfson (DE# 87, 11/14/13).

The plaintiffs seek to commence proceedings supplementary to execution and implead third parties Chivito Mania, LLC, Juan Ignacio Frascini and Garra Charrua. See Plaintiffs' Motion for Proceedings Supplementary and to Implead Execution Defendants (DE# 84 at 2, 11/13/13). "The procedure on execution – and in proceedings supplementary to and in aid of judgment or execution – must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies." FED. R. CIV. P. 69(a)(1). Accordingly, Florida law governs the commencement of proceedings supplementary in the instant case. See Kovacs v. National Hebrew Glatt, Inc., 2008 WL 3851465, at *4 (S.D. Fla. Aug. 14, 2008). Florida law states that a person who holds an unsatisfied judgment "may file an affidavit so stating, identifying, if applicable, the issuing court, the case number, and the unsatisfied amount of the judgment . . . , and stating that the execution is valid and outstanding, and thereupon the judgment holder . . . is entitled to these proceedings supplementary to execution." Fla. Stat. § 56.29(1). "[S]ection 56.29 requires . . . the filing of an affidavit showing a valid unsatisfied writ of execution on any assets prior to instituting supplementary proceedings." Kovacs, 2008 WL 3851465, at *5 (citing Continental Cigar Corp. v. Edelman & Co., Inc., 397 So.2d 957, 958 (Fla. 3d DCA 1981); Bleidt v. Lobato, 664 So.2d 1074, 1075 (Fla. 5th DCA 1995)).

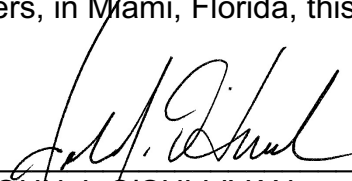
The plaintiffs have met the statutory requirements of Fla. Stat. § 56.29. The affidavit of attorney Anthony F. Sanchez attested to the unsatisfied amount of the judgment. See Plaintiffs' Affidavit in Support of Motion for Proceedings Supplementary and Impleader (DE# 83 at ¶5, 11/13/13). The affidavit attaches two writs of execution and states that they remain outstanding and unsatisfied. Id. at ¶6. Accordingly, it is

ORDERED AND ADJUDGED that the Plaintiffs' Motion for Proceedings Supplementary and to Implead Execution Defendants (DE# 84, 11/13/13) is **GRANTED**. Proceedings supplementary are hereby commenced in this action pursuant to Federal Rule of Civil Procedure 69 and Fla. Stat. § 56.29. It is further

ORDERED AND ADJUDGED that Chivito Mania, LLC, Juan Ignacio Fraschini and Garra Charrua (collectively "impleaded defendants") are impleaded in this action. **This Order and the Motion (DE# 84) shall be served upon the impleaded defendants by a process server in accordance with the applicable rules of procedure.** It is further

ORDERED AND ADJUDGED that the plaintiffs shall file with the Court a notice of service when each of the impleaded defendants is served with this Order and the Motion. **Once all of the impleaded defendants have been served, the plaintiffs shall file a motion requesting a status hearing before the undersigned.**

DONE AND ORDERED, in Chambers, in Miami, Florida, this **25th** day of November, 2013.



JOHN J. O'SULLIVAN
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:
United States District Judge Huck