

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

STRUBE CELERY & VEGETABLE CO.,))	
)	
Plaintiff,))	
v.))	
)	
LEO PUSATERI & SONS, LEO))	
PUSATERI, JR., COSIMO PUSATERI,))	Case No. 06 C 6227
)	
Defendants,))	
v.))	Hon. David H. Coar
)	
U.S. BANK,))	
)	
Citation-Respondent.))	

MOTION FOR ENTRY OF JUDGMENT AND TURNOVER

NOW COMES the Plaintiff, STRUBE CELERY & VEGETABLE CO. (“Strube”) and for its Motion for Entry of Judgment and Turnover against Citation-Respondent, U.S. BANK (“Bank”) in the amount of \$38,214.00 plus any amounts deposited into the Bank since February 19, 2010, states as follows:

I. FACTS

1. Judgment was entered in favor of the Plaintiff in the United States District Court for the Northern District of Illinois, Eastern Division, on January 10, 2007 in the aggregate sum of \$69,653.31 (“Judgment”). The entire amount of the Judgment, \$69,653.31 plus post-judgment interest in the amount of \$16,246.18 for a total of \$85,899.49 remains and due and owing to Plaintiff.

2. On February 19, 2010, a Citation in Supplemental Proceedings to Discover Assets was subsequently served on U.S. Bank. *See* attached **Exhibit 1**.

3. A copy of the Third-Party Citation Notice was served upon Defendants, Leo Pusateri, Jr. and Cosimo Pusateri on February 22, 2010. *See* attached **Exhibit 2**.

4. U.S. Bank is holding the sum of \$38,214.00 in accordance with the Citation to Discover Assets that was served upon it. *See* attached **Exhibit 3**.

II. ARGUMENT

5 Pursuant to Rule 69(a) of the Federal Rules of Civil Procedure, the procedure of this court in “proceedings supplementary to and in aid of judgment...shall be in accordance with the practice and procedure of the state in which the district court is held.”

6 Pursuant to Illinois Supreme Court Rule 277(h), this Honorable Court may require the turnover and sanction of contempt as provided as against any person who fails to obey “any order to deliver up or convey or assign any personal property. ...The court may also enforce its order by execution against the real and personal property of that person.”

7. When the Citation is directed against a third-party, it creates a lien upon all personal property belonging to the judgment debtor in the possession or control of the third-party or which thereafter may be acquired or come due the judgment debtor and comes into the possession or control of the third-party to the time of deposition of the Citation. *See* 735 ILCS §5/2-1402(m)(2).

8. Pursuant to 735 ILCS §5/2-1402(c)(4)(6), when assets of the judgment debtor are not exempt from the satisfaction of a judgment are demanded, the court is empowered by appropriate order or judgment to:

- (4) Enter any order upon judgment against the person cited that could be entered in any garnishment proceeding and,
- (6) Authorize the judgment creditor to maintain an action against any person or corporation that it appears upon proof satisfactory to the court, is indebted to the judgment debtor, for the recovery of the debt, forbid transfer of other disposition of the debt until an action can be commenced and prosecuted to judgment, direct that the papers or proof in the possession or control of the debtor and necessary in the prosecution of the action be delivered to the creditor or impounded in court, and provide for the disposition of any

monies in excess of the sum required to pay the judgment creditor's judgment and costs allowed by the court.

9. A draft Order is attached at the end of this Motion as **Exhibit 4**.

WHEREFORE, Plaintiffs move this Honorable Court to:

- A. Enter judgment against U.S. Bank in the amount of \$38,214.00;
- B. Order U.S. Bank to immediately turn over to Plaintiff's attorney the sum of \$38,214.00 plus any other sums of money deposited since February 19, 2010 up to a total amount of \$85,899.49; and
- C. Award Plaintiff such other relief deemed just and equitable.

Respectfully submitted,

STRUBE CELERY & VEGETABLE CO.

By: /s/ Joseph P. Berglund
One of Its Attorneys

Joseph P. Berglund
BERGLUND & MASTNY, P.C.
1010 Jorie Boulevard, Suite 370
Oak Brook, Illinois 60523
(630) 990-0234

William B. Kohn
150 North Wacker Drive, Suite 1400
Chicago, IL 60606
(312)553-1200