

TRIVELLA & FORTE, LLP
Attorneys for Defendants
1311 Mamaroneck Avenue, Suite 170
White Plains, New York 10605
(914) 949-9075

FILED
IN CLERK'S OFFICE
U S DISTRICT COURT E D N Y

★ JUN 21 2012 ★

LONG ISLAND OFFICE
FILED
IN CLERK'S OFFICE
U S DISTRICT COURT E D N Y

★ JUN 22 2012 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
BELLEZA FRUIT, INC.,

LONG ISLAND OFFICE

Plaintiff,

Case No.: 12-CV-3033
(SJF)(WDW)

-against-

SUFFOLK BANANA CO., INC., LONG ISLAND
BANANA CORP., LONG ISLAND BANANA, and
THOMAS HOEY, JR.,

Defendants.

-----X

Amended ORDER

Upon the application of the Plaintiff by the declaration of Andrew P. Persichetti, dated June 15, 2012, the attorney certification of Laura M. Dilimetin, Esq., dated June 15, 2012, and the Plaintiff's Memorandum of Law dated June 15, 2012, seeking preliminary injunctive relief and a Temporary Restraining Order pursuant to Rule 65(a) of the Federal Rules of Civil Procedure enforcing a statutory trust pursuant to Section 5(c) of the Perishable Agricultural Commodities Act , 7 U.S.C. §499e(c) ("PACA") whereupon by Order of this Court, dated June 18, 2012, the Temporary Restraining Order was granted setting the following restrictions: (a) prohibited the alienation, dissipation, pay over or assignment of any PACA trust assets including Produce received by the Defendants in all transactions; (b) prohibited the dissipation, alienation, pay over or assignment of all inventories of food or other products derived from the Produce; (c) prohibited the alienation, dissipation, pay over or assignment of any receivables or proceeds from the sale of Produce; (d) restrained the Defendants bank accounts at Wells Fargo Bank

(account ending in 1688) and Wachovia Bank (account ending in 1662); and (e) restraining the Defendants accounts receivable, customer lists, any and all bank accounts and banking institutions that relate to funds belonging to Plaintiff and/or real estate assets;

Upon the opposition and cross-motion to dismiss of the Defendants submitted by Declaration of Thomas Hoey, dated June 20, 2012 and Defendants' Memorandum of Law dated June 20, 2012 and filed via ECF on June 20, 2012 and said application having been orally argued before this Court on June 20, 2012 whereby the prior Order granting the Temporary Restraining Order was modified as follows:

IT IS HEREBY ORDERED that the defendant shall post the bond in the amount of \$750,000.00 as hereinafter set forth, on or before 5:00 p.m. on the 25th day of June, 2012, and it is further

~~ORDERED, that the plaintiff may take no actions which are not in the ordinary course of business, and may issue checks in payment of bills incurred in the ordinary course of business including payroll, payroll taxes, insurance, vendors, and it is further~~

~~ORDERED, that the order granted by this court on the 18th day of June, 2012 is hereby stayed through 5:00 p.m. on the 25th day of June, 2012, and it is further~~

ORDERED, that the bond posted by the defendant shall issue to the order of the Clerk of the United States District Court for the Eastern District of New York, and shall provide as follows:

It shall be a condition of this bond, that upon a termination of the within action, with a judgment in favor of defendant, that the issuer shall be released of any further liability under this bond, and in the event of the entry of a final judgment in favor of the plaintiff against the defendant, the issuer hereof shall pay over the sum of \$750,000.00 to the Clerk of the United States District Court of the Eastern District of New York, or such lesser amount, as shall be equal to the final judgment entered by this court, and the Clerk of the Court shall hold such funds subject to further direction of this court.

[Handwritten signature]
\$450,000
SJF
USDS

SJF
USDS

\$450,000
SJF
USDS

s/ Sandra J. Feuerstein

Dated: 6/22/12
at 11:45 a.m.

[Handwritten signature]
U.S.D.J.