

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOHN WILEY & SONS, INC., :

Plaintiff, :

-against- : 08 Civ. 7834 (DCP)

SUPAP KIRTSANG D/B/A : ECF Case

BLUECHRISTINE99 AND JOHN :

DOE NOS. 1-5, :

Defendants. :

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MEMORANDUM OF PLAINTIFF IN SUPPORT OF ITS MOTION FOR
AN ORDER DIRECTING DEFENDANT TO BRING HIS PERSONAL PROPERTY
INTO NEW YORK STATE AND APPOINTING A RECEIVER TO COLLECT IT

Plaintiff and judgment creditor John Wiley & Sons, Inc. ("Wiley") respectfully submits this memorandum of law in support of its motion for an order (i) pursuant to FRCP 69 and New York CPLR § 5225, directing defendant and judgment debtor Supap Kirtsaeng ("Kirtsaeng") to bring his out-of-state personal property into New York, and (ii) pursuant to Rule 69 of the Federal Rules of Civil Procedure and New York CPLR § 5225(b), appointing a receiver to take custody of Kirtsaeng's personal property brought into this State to partially satisfy Wiley's judgment.

Statement of Facts

Based upon the documentary evidence and Kirtsaeng's admissions, the following facts are not subject to reasonable dispute.

On September 8, 2008, Wiley filed this action. The complaint alleged that Kirtsaeng infringed 8 of Wiley's copyrights. (Dunnegan Dec. ¶ 3)

On November 3, 2009, the trial in this action commenced. (Dunnegan Dec. ¶ 4)

On November 3, 2009, Kirtsaeng owned a car. (Trial Trans. 100:17-18)

On November 4, 2009, the Jury awarded Wiley \$600,000 against Kirtsaeng. (Dunnegan Dec. ¶ 5)

On November 24, 2009, Kirtsaeng filed an appeal. (Dunnegan Dec. ¶ 6)

On January 14, 2010, Kirtsaeng testified at his deposition that, during the course of the litigation, he transferred title to his car, a 2001 Audi A6, to a classmate, whose name he did not recall. (Dunnegan Dec. Ex A; Kirtsaeng January 14, 2010 Dep. 8:22-10:25 and 85:7-87:6) Kirtsaeng also testified that after he transferred title, he retained possession, control and use of his car. (Dunnegan Dec. Ex A; Kirtsaeng Dep. 101:3-102:1)

On January 14, 2010, Kirtsaeng testified at his deposition that he owned a set of golf clubs, a computer, a scanner, and a fax machine, and had about \$2,000 in cash. (Dunnegan Dec. Ex A; Kirtsaeng Dep. 68:20-69:23; 109:9-21)

Kirtsaeng has not paid any portion of the judgment. (Dunnegan Dec. ¶ 6)

Argument

I.

THE COURT SHOULD ORDER KIR TSAENG TO BRING
HIS OUT-OF-STATE PERSONAL PROPERTY TO NEW YORK
TO PARTIALLY SATISFY WILEY'S JUDGMENT

As of January 14, 2010, Kirtsaeng owned a 2001 Audi A6, a set of golf clubs, a computer, a scanner, a fax machine, and about \$2,000 in cash (the "Personal Property"). (Dunnegan Dec. Ex A; Kirtsaeng Dep. 68:20-69:23; 109:9-21) This Personal Property is not exempt from being used to satisfy a judgment under CPLR § 5205.

Under CPLR § 5225(a), a court with personal jurisdiction may order a judgment debtor to bring out-of-state personal property into New York. That section states, in relevant part:

"[W]here it is shown that the judgment debtor is in possession or custody of money or other personal property in which he has an interest, the court shall order that the judgment debtor pay the money, or so much of it as is sufficient to satisfy the judgment,

to the judgment creditor and, if the amount to be so paid is insufficient to satisfy the judgment, to deliver any other personal property, or so much of it as is of sufficient value to satisfy the judgment, to a designated sheriff."

See Koehler v. The Bank of Bermuda Ltd., 2009 WL 1543698 (N.Y. 2009) ("When a judgment debtor is subject to a New York court's personal jurisdiction, that court has jurisdiction to order the judgment debtor to bring property into the State, because the Court's authority is based on its personal jurisdiction over the judgment debtor."); Starbare II Partners, L. P. v. Sloan, 216 A.D.2d 238, 239 (1st Dep't. 1995) ("Since the IAS Court had personal jurisdiction over defendant and judgment debtor Stephen Sloan, it was entitled under CPLR 5225(a) to order him to turn over to the Sheriff of the City of New York property located outside of the State.") cited by, Gryphon Domestic VI, LLC v. APP Int'l Finance Company, 41 A.D.3d 25, 31-32 (1st Dep't 2007); McCarthy v. Wachovia Bank, N.A., 2008 U.S. Dist. LEXIS 98586 at *11-12 (E.D.N.Y. Dec. 4, 2008) ("New York law is clear that where, as here, a court has jurisdiction over a judgment debtor, it can compel that debtor to turn over out-of-state assets to a judgment creditor.")

In fact, when the out-of-state property is less than the amount needed to satisfy a New York judgment, the court may abuse its discretion by not ordering such a turnover. Starbare II Partners, 216 A.D.2d at 239 ("Since the judgment. . . was in

an amount far in excess of the value of the subject artwork in defendant's possession and purportedly located in New Jersey, we find that the court erred in failing to extend the reach of its order to include it.")

II.

THE COURT SHOULD APPOINT A RECEIVER
TO TAKE CUSTODY OF, AND LIQUIDATE,
KIRTSAENG'S PERSONAL PROPERTY

Under CPLR 5225(a) a "sheriff" would take custody of, and liquidate, the personal property that a defendant brings into the state. The closest federal equivalent to a sheriff would be the U.S. Marshal. See e.g. 28 U.S.C. § 2005. While we have no objection to the Court directing that the U.S. Marshal take custody of this property, the U.S. Marshal may be too busy to do so. Instead of requiring the U.S. Marshal to take custody of, and liquidate, the Personal Property, we request that the Court appoint a receiver.

Conclusion

For the reasons set forth above, Wiley respectfully requests that the Court (i) order Kirtsaeng to bring his out-of-state Personal Property into New York; and (ii) appoint a

receiver to collect and liquidate Kirtsaeng's Personal Property.

Dated: New York, New York
February 2, 2010

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