

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

John Wiley & Sons, Inc.,

Plaintiff,

-v.-

Supap Kirtsaeng d/b/a
BlueChristine99, et al.,

Defendants.

Civil Action No. 08 Civ. 7834
(DCP)

ORDER

This Order denies Plaintiff and judgment creditor John Wiley & Sons, Inc.'s ("Wiley") motion to require Defendant to deliver certain personal property in order to partially satisfy Wiley's judgment in the captioned matter. Specifically, Wiley's motion seeks delivery of a 2001 Audi A6, a computer, a fax/printer/scanner, and a set of golf clubs pursuant to Fed. R. Civ. P. 69(a)(1) and N.Y. C.P.L.R. 5225(a) (McKinney 1997 & Supp. 2010) and in partial satisfaction of the judgment issued in Wiley's favor.¹

¹In response, Defendant agrees to provide to Wiley the title to the golf clubs, so these are no longer at issue. See N.Y. C.P.L.R. 5225(c). In addition, the temporary use of the computer and fax/printer/scanner is exempt from delivery as these are articles necessary to Defendant's professional work. See id.

The substantive dispute between the parties involves the disposition of the 2001 Audi. The issue presented is therefore whether the New York statutes upon which Wiley relies permit it to reach the car. See Fed. R. Civ. P. 69(a)(1).

N.Y. C.P.L.R. 5225 and 5227 together provide a collection device for each of three categories of assets: "(i) debts owed to the judgment debtor; (ii) property owned by and in the possession of the judgment debtor; and (iii) property owned by the judgment debtor but in the possession of someone other than the judgment debtor." Alliance Bond Fund, Inc. v. Grupo Mexicano de Desarrollo, S.A., 190 F.3d 16, 21 (2d Cir. 1999). Custody or possession of property, however, does not by itself render that property subject to collection. In addition to possession, the judgment debtor must have an "interest" in the property. N.Y. C.P.L.R. 5225(a) ("Upon motion of the judgment creditor, upon notice to the judgment debtor, where 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

5205(a)(7). Plaintiff offers no evidence to the contrary. The court notes that the Defendant agrees that he will deliver these articles to Plaintiff upon Defendant's achievement of his Ph.D.


property, or so much of it as is of sufficient value to satisfy the judgment, to a designated sheriff.”) (emphasis added).

Defendant admits to custody or possession of the car, but Defendant claims that he no longer holds the car’s title. Wiley makes no contrary showing. It follows that, on this record, Wiley’s motion cannot reach the car.²

As a result:

- Pursuant to Defendant’s agreement, Defendant is directed, upon achievement of his Ph.D., to deliver his computer and fax/printer/scanner to Plaintiff; and
- Pursuant to Defendant’s agreement, Defendant is directed to provide Plaintiff with title to the golf clubs; and
- Plaintiff’s motion is otherwise DENIED.

It is so ORDERED.



Donald C. Pogue, Judge³

Dated: February 17, 2010
New York, New York

²Any claim that Defendant fraudulently conveyed the car to another must be pursued in a special proceeding filed against the current title-holder of the car. See N.Y. C.P.L.R. 5225(b); N.Y. Debt. & Cred. Law § 270-81 (McKinney 2001 & Supp. 2010). See also Ren-Cris Litho, Inc. v. Vantage Graphics, Inc., No. 96-7802, 1997 U.S. App. LEXIS 3333, at *9 (2d Cir. Feb. 24, 1997); WBP Cent. Assoc. v. DeCola, 855 N.Y.S.2d 210, 211 (N.Y. App. Div. 2008); Gelbard v. Esses, 465 N.Y.S.2d 264, 267 (N.Y. App. Div. 1983); David D. Siegel, New York Practice 868 (4th ed. 2005).

³ Judge Donald C. Pogue of the United States Court of International Trade, sitting by designation.