

MEMO ENDORSED

April 15, 2024

Sent via ECF
 The Honorable Edgardo Ramos
 United States District Court Judge
 Southern District of New York
 Thurgood Marshall U.S. Court House
 40 Foley Square, Court Room 619
 New York, NY 10007

The deadline for Dector to file its motion for successor liability is stayed. If Dimiceli does not respond to the discovery requests by April 22, 2024, Dector may file a motion to compel. Dector shall file that motion by May 6, 2024. The Clerk of Court is respectfully directed to terminate the motion, Doc. 185. SO ORDERED.

Edgardo Ramos, U.S.D.J.

Dated: April 16, 2024

New York, New York

Re: *Dector, et al. v. RCI PLBG, Inc., et al.*, Civil Action No. 17-cv-2269

Your Honor,

Judgment-Creditors Dector, et. al (“Dector”) in the above-captioned matter, by and through counsel, write to provide a status update on judgment debt discovery, as ordered on March 15, 2024 (ECF No. 184).

Dector additionally writes to request Court’s permission to file a Motion to Compel discovery responses from Judgment-Debtors Robert Dimiceli and RCI PLBG, Inc., and from Dimiceli-owned third-party subpoena recipient Pro Star Plumbing Heating & Mechanical, Inc. (“ProStar”), should the written discovery, due April 22, 2024, go unanswered as anticipated.

Dimiceli and RCI Status Update

As reported to the Court in the previous filing of March 15 (ECF No. 184), after months of not responding to judgment debt discovery and process in general, Dimiceli answered the telephone at alleged successor corporation ProStar on March 14, 2024. On the telephone call, Dimiceli told undersigned he intended to participate in discovery, to email him the requests at rob@rciplbg.com and to send the documents by mail to 545 Midland Avenue, 11234-6630. He further stated that ProStar is out of business, when questioned about the entity.

Counsel sent the discovery requests on March 19, 2024, by first-class mail and email; the emailed documents immediately bounced as undeliverable and the error code indicating undersigned’s email is blocked. Counsel has since called Dimiceli’s number multiple times, leaving voicemails, leaving a message with the receptionist, and being unable to leave a message due to a full mailbox. Dector granted Dimiceli until April 22, 2024 to respond to discovery in the requests, but does not anticipate a response and asks the Court’s permission to file a Motion to Compel responses should Dimiceli fail to respond by that date.

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Background

Dector and Judgment-Debtors litigated this dispute from 2017 until June of 2020 when they reached a settlement and entered into a Settlement Agreement. This Court endorsed the Settlement Agreement and retained jurisdiction to enforce it. However, Judgment-Debtors made no payments and Judgment-Creditors filed their motion to enforce settlement on May 18, 2023, requesting the Court enter judgment against Debtors, which relief this Court granted on August 21, 2023 (Dkt. 180). At the court conference of October 3, 2023, Counsel indicated to the Court that they would file a motion for successor liability by January 15, 2024, and the Court so ordered it be filed by that date. However, learned additional information regarding a potential successor and requested additional time to conduct judgment debt discovery, pursuant to Fed. R. Civ. P. 69, which the court granted, extending the deadline to March 15, 2024. The Court then stayed the deadline, following Dimiceli feigned willingness to participate.

Requests to Judgment-Debtors

Dector served Robert Dimiceli and RCI PLBG, Inc.¹ with Interrogatories and Requests for Production of Documents on December 1, 2023, under FRCP 26, 33, 34, 37, and 69. No responses were received by the deadline, January 2, 2024. Dector again propounded Interrogatories and Requests for Production of Documents in pursuit of judgment to Robert Dimiceli and RCI PLBG, Inc., on January 11, 2024, with a deadline of February 10, 2024, and again received no response. Also on January 11, 2024, undersigned counsel attempted to telephone Mr. Dimiceli to confer about the discovery requests, but Dimiceli did not pick up the phone or call back as the message requested.

As stated above and reported to the Court in the previous filing of March 15 (ECF No. 184), after months of not responding to judgment debt discovery and process in general, Dimiceli answered the telephone at alleged successor corporation ProStar on March 14, 2024. On the telephone call, Dimiceli told undersigned he intended to participate in discovery, to email him the requests at rob@rciplbg.com and to send the documents by mail to 545 Midland Avenue, 11234-6630. He further stated that ProStar is out of business, when questioned about the entity.

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¹ According to the Federal Bureau of Prison's website, co-Judgment-Debtor Christopher Chierchio is incarcerated at FCI Danbury until November of 2026.



granted Dimiceli until April 22, 2024 to respond to discovery, but does not anticipate a response and asks the Court's permission to file a Motion to Compel responses should the responses not be received.

Under Fed. R Civ. P. 37(a)(3)(B) and 69(a)(2), the Court has the authority to order both Dimiceli and RCI to comply with these requests. Dector asks the Court to grant permission to file a motion to compel discovery responses from Robert Dimiceli and RCI, should the responses remain unanswered by April 22, 2024.

3rd Party Subpoena to ProStar

Dector served an information subpoena on 3rd party Pro Star Plumbing and Heating & Mechanical Inc ("ProStar") via the Secretary of State on February 20, 2024, after failing to achieve service at their listed place of business. Judgment-Debtors believe Pro Star to be a successor in interest to RCI, as was briefed to the Court in the Dector motion to enforce the settlement. (Dkt. 179-1).

Counsel's process server, in February of 2024, attempted to serve the Subpoena at ProStar's registered address 545 Midland Avenue, 11234-6630, but on February 15, reported the location is "always closed". Instead, the Subpoena was served on the Secretary of State on February 20, 2024. No response has been received, despite Counsel giving Dimiceli actual notice of the Subpoena on the telephone call of March 14, 2024.

Dector asks the Court's permission to file a motion to compel responses from ProStar, most likely to be filed in tandem with the Motion to Compel responses from Dimiceli, should the April 22, 2024 date pass and his responses go unanswered.

Alternatively, Dector asks the Court to schedule a conference on the filing of his Motions to Compel.

Dated: April 15, 2024
New York, NY

Respectfully submitted,

SLATER SLATER SCHULMAN LLP

Geoffrey A. Kalender
Geoffrey A. Kalender, Esq.



cc: All counsel of record via ECF

Via 1st Class Mail:
Robert Dimiceli
7110 Avenue X
Brooklyn, NY 11234-6630

RCI PLBG, INC.
545 Midland Avenue
Staten Island, NY 10306

Encl.:
Exhibit A: Cover Letter to Dimiceli Discovery Requests Sent 3/19
Exhibit B: Cover Letter to RCI Discovery Requests Sent 3/19
Exhibit C: Subpoena to ProStar

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