

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**ABERCROMBIE & FITCH STORES,  
INC.,**

**Plaintiff,**

**v.**

**AMERICAN COMMERCIAL  
CONSTRUCTION, INC., et al.,**

**Defendants.**

**Case No. 2:08-cv-925**

**JUDGE EDMUND A. SARGUS, JR.**

**MAGISTRATE JUDGE KING**

**ORDER**

Plaintiff, Abercrombie & Fitch Stores, Inc., (“Abercrombie”) filed this interpleader action seeking the Court’s determination of the rights and priorities of the competing claimants to certain limited funds (“the Funds”) totaling \$200,521.37 and a discharge from any liability for any claims against it with respect to the Funds. In connection with this action, Abercrombie deposited the Funds into the Court’s registry on April 30, 2009.

Abercrombie admitted owing the Funds to Defendant American Commercial Construction, Inc. (“ACC”) for work performed by ACC. (Am. Compl. ¶ 9.) Multiple other parties were identified as having a claim to the Funds, including Defendants United States Internal Revenue Service (“IRS”), Richard J. Annen, Timothy Cupps, Primary Funding Corporation, Gianarelli, Inc., and Paul D. Mendelson.

In its answer to the complaint, Primary Funding Corporation denied that it has an interest in the Funds. (Doc. 12.) Accordingly, the Court dismissed Primary Funding Corporation as a

party to this action. (Doc. 24.) In an opinion and order dated March 18, 2010, the Court, in denying Defendant Timothy Cupps's motion for summary judgment, determined that the IRS's lien is superior to that of Timothy Cupps (Doc. 83). By opinion and order dated April 22, 2010, the Court, in granting the United States's motion for summary judgment against Richard Annen and denying Richard Annen's motion for summary judgment against the United States, found that the United States's claim to the Funds is superior to the claim of Richard Annen. (Doc. 84.) On June 7, 2010, the Court granted the United States's motion for default judgment against the remaining Defendants ACC, Gianarelli, Inc., and Paul Mendelson.

This action is now before the Court on the United States's Motion for Final Judgment, Disbursement of Funds, and Discharge of Liability (Doc. 92)<sup>1</sup> and on Abercrombie's Motion for Final Judgment. (Doc. 93.) Defendant Timothy Cupps filed a response to Abercrombie's motion, in which he "objects to any order or judgment that permits disbursement of the funds prior to [its] becoming final." (Doc. 94.) To the extent that Cupps's response is intended to ask this Court to stay disbursement pending appeal, his request is both inadequately briefed and, given that the request was made prior to the entry of final judgment, premature. Therefore, having adjudicated all asserted claims of the parties and dismissed and defaulted the remaining parties, the Court **GRANTS** the United States's Motion for Final Judgment, Disbursement of Funds, and Discharge of Liability (Doc. 92),<sup>2</sup> **OVERRULES** without prejudice Defendant Timothy Cupps's objection, and **GRANTS** Abercrombie's Motion for Final Judgment. (Doc. 93.) It is therefore **ORDERED** that:

- 1) Final judgment shall be entered in favor of Defendant United States, this Court having found that the United States has a first priority to the Funds;

---

<sup>1</sup> Although docketed as a "Notice," this filing is styled as a "Motion."

<sup>2</sup> Although docketed as a "Notice," this filing is styled as a "Motion."

2) The Clerk of Courts shall disburse the Funds to the United States in the amount of \$200,521.37, plus any interest that has accrued on the foregoing; the payment should be made out to "United States Treasury" and mailed to Steve A. Sherman, Esq., United States Department of Justice, Tax Division, P.O. Box 55, Washington, D.C. 20044; and

3) Abercrombie & Fitch Stores, Inc. is discharged from any and all claims that could have been brought against it with respect to the Funds, including but not limited to claims brought by persons claiming through or on account of American Commercial Construction, Inc.

**IT IS SO ORDERED.**

3-28-2011  
**DATED**

  
**EDMUND A. SARGUS, JR.**  
**UNITED STATES DISTRICT JUDGE**