

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

**DWS INTERNATIONAL, INC.,  
dba MARBLE DIMENSIONS  
WORLDWIDE, INC.,**

**Plaintiff,**

**-v-**

**MEIXIA ARTS AND HANDICRAFTS,  
CO., LTD., et al.,**

**Defendants.**

**Case No. C-3:09-cv-458**

**Judge Thomas M. Rose  
Magistrate Judge Michael R. Merz**

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**ENTRY AND ORDER DENYING MDW'S RENEWED MOTION FOR  
ORDER TO AID IN EXECUTION (Doc. #348)**

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Now before the Court is a Renewed Motion for Order To Aid In Execution of Judgment Against Meixia Arts and Handicrafts Co. Ltd. ("Meixia") filed by DWS International, Inc. d/b/a Marble Dimensions Worldwide ("MDW"). (Doc. #348.) Therein MDW again asks this Court to order Meixia to pay MDW \$20,000 immediately and \$100,000 within two (2) days of receiving funds from Yotrio Group Co. Ltd. ("Yotrio").

After MDW filed this Motion, Defendant Meixia Arts and Handicrafts ("Meixia") has retained counsel who opposes MDW's Motion. The Motion is now fully briefed and ripe for decision.

This Court has previously entered default judgment against Meixia and found that Meixia was jointly and severally liable with Home Casual for \$1,500,000 in compensatory damages. (Doc. #342.) MDW's claims against Co-Defendant Home Casual have been dismissed pursuant to a settlement agreement (the "Settlement Agreement") between MDW and Co-Defendant

Home Casual. (Doc. #345.)

The Settlement Agreement was between MDW and Co-Defendant Home Casual, Mr. Donald Corning and Mr. Peter Knudsen. (Plt. Mot. for Order To Aid In Execution, Ex. 2.) It was entered into as of October 13, 2011.

In the Settlement Agreement, Co-Defendant Home Casual agrees to pay MDW \$100,000 on or before October 13, 2011, and \$2,050,000 pursuant to a promissory note attached to the Settlement Agreement. This totals \$2,150,000.

The Parties to the Settlement Agreement agree that this payment is to resolve certain specified claims between them, and that a final judgment entry would be submitted to the Court. This final judgment entry was to acknowledge those claims, including an initial judgment award of \$1,750,000 and an additional judgment of attorneys' fees in the amount of \$1,850,000. That total final judgment to be acknowledged was thus \$3,600,000 against Co-Defendant Home Casual.

On October 18, 2011, this Court entered the Agreed Final Judgment Entry. (Doc. #341.) This Agreed Final Judgment Entry refers to the claims included in the earlier Judgment Entry wherein the Court ordered that MDW would recover from Co-Defendant Home Casual the total amount of \$1,750,000 plus attorneys' fees, post-judgment interest and costs. (Doc. #281.) Finally, on December 3, 2012, the Court dismissed with prejudice any and all claims between MDW and Co-Defendant Home Casual pursuant to the Settlement Agreement. (Doc. #345.)

On October 26, 2011, the Court entered default judgment against Meixia in the amount of \$1,500,000 in compensatory damages plus post-judgment interest and costs. (Doc. #342.) The Court also found that Meixia was jointly and severally liable with Co-Defendant Home Casual

for the compensatory damages. (Id.)

MDW argues that it has unsuccessfully attempted to execute its judgment against Meixia since October 26, 2011. Thus far, according to MDW's argument, collection efforts have only yielded one payment of \$60,000 from one of Meixia's customers. During the time that MDW has been trying to collect from Meixia, specifically in January of 2012, Meixia sold its GRC processing system to a company called Yotrio for \$1,600,000. (Deposition of Bill Job ("Job Dep.") 21, 42 Mar. 28, 2013.) Yotrio paid Meixia the first two payments for the GRC processing system of \$900,000 and \$600,000 but still owed the last payment of \$100,000 at the time of Bill Job's deposition. (Id. at 47.) Meixia used this money to pay off loans and to pay other creditors. (Id. at 48, 71-72.) At the time of Bill Job's deposition, Meixia had \$20,000 in the bank and was owed \$100,000 from Yotrio. (Id. at 47, 58.)

On May 30, 2013, MDW filed a Motion for Order To Aid In Execution of Judgment Against Meixia. (Doc. #348.) This Court overruled this Motion without prejudice to refile because the Court was not aware of how much of the \$1,500,000 joint and severable liability had been satisfied by Co-Defendant Home Casual. (Doc. #347.) MDW has now renewed its Motion for Order To Aid In Execution, and this Motion is fully briefed and ripe for decision.

### **ANALYSIS**

A federal court has "inherent power to enforce its judgment." *Virgo v. Riviera Beach Associates LTD*, 20 F. App'x 348, 350 (6th Cir. 2001)(quoting *Peacock v. Thomas*, 516 U.S. 349, 356 (1996)). Therefore, supplementary proceedings, such as this one, are used to enforce the judgments of federal courts. *Id.* at 351.

MDW first argues that it is entitled to a \$120,000 payment from Meixia because MDW's

settlement with Home Casual left \$1,450,000 of MDW's judgment against Home Casual unpaid. In support, MDW argues that Home Casual paid MDW \$2,150,000 of MDW's \$3,600,000 judgment against Home Casual leaving the difference unpaid. However, this argument is unavailing.

It is unavailing because the Settlement Agreement between MDW and Home Casual does not allocate the amount Home Casual paid to MDW between compensatory damages, punitive damages, attorneys' fees and interest. Thus, the Court cannot determine how much of the \$1,500,000 judgment against Meixia, which Co-Defendants Meixia and Home Casual were jointly liable for, was paid by Home Casual.

MDW next argues that, even if Co-Defendant Home Casual had paid the entire joint and several judgment of \$1,500,000 to MDW, Meixia has no right of contribution from MDW's settlement with Co-Defendant Home Casual because Meixia committed an intentional tort and Ohio does not provide for a right of contribution for intentional tortfeasors. This argument, too, is unavailing.

A right of contribution is a right that may be exercised between joint and severally liable tortfeasors. Ohio Rev. Code § 2307.25. However, this action is not between two joint and severally liable tortfeasors. It is between a plaintiff and one of two joint and severally liable tortfeasors. In other words, the Ohio Revised Code provides that Co-Defendant Home Casual may have a right of contribution from Meixia but it does not provide that Plaintiff MDW has a right of contribution from Meixia. If Co-Defendant Home Casual wants to attempt to exercise its right of contribution from Meixia, it may do so, but MDW may not exercise Co-Defendant Home Casual's right to contribution.

MDW cites *Eysoldt v. Proscan Imaging*, N. C-110138, 2011 WL 6885346 (Ohio Ct. App. Dec. 28, 2011) in support of this argument. In *Eysoldt*, the plaintiffs filed a lawsuit against GoDaddy.com and other defendants. The other defendants settled before trial, and the jury found against GoDaddy on all of plaintiffs' claims. After trial, GoDaddy sought partial satisfaction of judgment based upon what the other defendants had already paid to settle because the other defendants were jointly and severally liable. The Ohio Appeals Court found that GoDaddy was not entitled to set-off the amounts paid by the other tortfeasors. However, this case is not persuasive here because, here the Court is considering a request by the plaintiff and not by one of the jointly and severally liable tortfeasors.

The *Eysoldt* court also found that, "when a plaintiff recovers from or settles with another tortfeasor and subsequently obtains a judgment against an intentional tortfeasor for the same injury, the plaintiff may recover more than the amount required to make the plaintiff whole because the intentional tortfeasor is not entitled to any reduction in the award against him, regardless of the amount of the previous judgment or settlement." *Eysoldt*. 2011 WL 6885346 at \*2. Applying the *Eysoldt* court's determination to this case, the Court could conclude that Meixia is not entitled to any reduction in the award against it. However, the *Eysoldt* court was addressing the liability of GoDaddy, a tortfeasor and not the liability of joint and severally liable tortfeasors. In this case, there are joint and severally liable tortfeasors, so *Eysoldt* is distinguishable from this case.<sup>1</sup>

Meixia argues that Ohio Rev. Code § 2307.28(A) applies to this matter instead of Ohio

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<sup>1</sup>MDW also cites *Garrett v. Blum*, No. CA 447, 1987 WL 14303 (Ohio Ct. App. Jul. 20, 1987) for the same proposition. However, *Garrett* is distinguishable for the same reason as *Eysoldt*.

Rev. Code § 2307.25. Ohio Rev. Code § 2307.28(A) provides that when a release is given to one of two or more entities for the same loss, the release does not discharge any of the other tortfeasors from all liability for contribution to any other tortfeasors unless the release's terms provide otherwise, but it reduces the claim against the other tortfeasors to the extent of the greater of any amount stipulated by the release or the amount of the consideration paid for the release. In addition, intentional tortfeasors cannot benefit from the provisions of Ohio Rev. Code § 2307.28(A) regarding any right of contribution from other intentional tortfeasors. Ohio Rev. Code § 2307.25.

In this case, Meixia was found to be an intentional tortfeasor. Therefore, Meixia cannot benefit from Ohio Rev. Code § 2307.28(A) regarding any right of contribution. Yet, as determined above, this matter is not about a right of contribution as between tortfeasors. It is about a plaintiff seeking damages from one of two joint and severally liable intentional tortfeasors. Thus, neither Ohio Rev. Code §2307.25 nor § 2307.28 (A) are applicable.

Meixia cites *Spalla v. Fransen*, 936 N.E.2d 559 (Ohio Ct. App. 2010), for support of its argument that MDW has been fully compensated for its claims. However, *Spalla* is distinguishable because the *Spalla* court was addressing a breach-of-fiduciary-duty claim and not an intentional tort.

### **CONCLUSION**

The Court cannot determine how much of the \$1,500,000 that Home Casual and Meixia were jointly liable for, was paid by Home Casual. Further, the cases cited and arguments presented by the Parties are in regard to the right of contribution between joint tortfeasors and this matter does not involve an action brought by or between joint tortfeasors. Therefore, the

Court cannot order Meixia to pay anything to MDW. MDW's Renewed Motion for Order To Aid In Execution of Judgment Against Meixia (doc. #348) is DENIED.

**DONE** and **ORDERED** in Dayton, Ohio, this Twenty-Second Day of July, 2013.

**s/Thomas M. Rose**

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THOMAS M. ROSE  
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record