

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

SUN COMMODITIES, INC.,

Plaintiff,

v.

SELECTOS WHOLE FOODS, INC., et al,

Defendants.

CIVIL NO. 13-1429 (CCC)

REPORT AND RECOMMENDATION

On June 10, 2013 the Court referred plaintiff Sun Commodities, Inc.'s request for a preliminary injunction to this Magistrate Judge. The Court denied the Temporary Restraining Order requested by plaintiffs. (Docket Nos. 9 and 10).

A Status Conference was held this morning. Counsel Orlando Fernández appeared on behalf of plaintiff Sun Commodities, Inc. d/b/a Sun International Produce Co., counsel Carlos Rodríguez Quesada appeared on behalf of Selectos Whole Foods, Inc. ("Selectos"), and counsel David Carrión Baralt appeared on behalf of defendants Thomas Ward and Caroline Ward. Counsel for the parties discussed at the Status Conference that Selectos has filed for Chapter 11 bankruptcy, and that Selectos has filed a motion in the bankruptcy court to address the payment of trust claims made under the Perishable Agricultural Commodities Act at 7 U.S.C. §499e(c), including the claim made herein by Sun Commodities, Inc. Counsel for the parties stipulated to the entry of a Preliminary Injunction against defendant Thomas Ward, and that the hearing on the Motion for Preliminary Injunction against Caroline Ward be continued. A separate

order was issued which continues the hearing date on the Motion for a Preliminary Injunction against Caroline Ward for June 26, 2013 at 10:00 am. (Docket No. 20).

Subsequent to the Status Conference, the undersigned was informed that Counsel for the parties further stipulated to the form of the Preliminary Injunction that appears below.

Based on the foregoing, this Magistrate Judge recommends to the Court the entry of a Preliminary Injunction which provides as follows:

1. Defendant Thomas Ward, on behalf of himself only, admits he is the principal of Selectos Whole Foods, Inc. (“Selectos”), and that Selectos owes Sun Commodities, Inc., an amount (and as of today not determined) of money for the purchase of perishable agricultural commodities, and that Sun Commodities, Inc., preserved its trust rights against Selectos under the Perishable Agricultural Commodities Act at 7 U.S.C. §499e(c) by placing the language required by 7 U.S.C. §499(e)(c)(3) on its invoices to Selectos. Sun Commodities, Inc. is making a claim of \$143,526.56.

2. Defendant Thomas Ward, and his agents, assigns, and financial institutions, are restrained and enjoined from dissipating, disbursing, or otherwise encumbering any and all monies and/or unliquidated assets of any type in their possession and/or their control that are derived in whole or in part from their receipt of money from Selectos. All financial institutions receiving this Order are directed to

comply with this requirement until further notice. Defendant Thomas Ward is required to promptly serve a copy of this Preliminary Injunction on all financial institutions in which he has an account.

3. Within twenty (20) days from the date of this Order, Thomas Ward will provide Sun Commodities, Inc., with a written accounting which identifies the assets he received from Selectos since January 1, 2012, and which further identifies in reasonable detail the date the assets were received and the amount, the form of the assets, and to the extent that the assets consists of money, the location of the money received, and the names, addresses, and telephone numbers of the persons who have possession or control of the money received, and if the money was used to purchase non-cash assets, then a detailed description of the nature of the assets purchased, the location of the assets, and the names, addresses, and telephone numbers of the persons who have possession or control of such assets.

IT IS SO RECOMMENDED.¹

In San Juan, Puerto Rico, this 20th day of June 2013.

s/CAMILLE L. VELEZ-RIVE
CAMILLE L. VELEZ-RIVE
UNITED STATES MAGISTRATE JUDGE

¹ The parties waived the fourteen (14) days to file any objections to this Report and Recommendation in light of the agreement reached. (Docket No. 20).