

Seinfeld Capital, Inc. v John B. Rudy Co., Inc.

2021 NY Slip Op 31951(U)

June 9, 2021

Supreme Court, Nassau County

Docket Number: 600500/2021

Judge: Denise L. Sher

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER
Acting Supreme Court Justice

.....
SEINFELD CAPITAL, INC.,

TRIAL/IAS PART 30
NASSAU COUNTY

Plaintiff,

-against-

Index No.: 600500/2021
Motion Seq. Nos.: 01, 02
Motion Dates: 02/11/2021
03/23/2021

XXX

JOHN B. RUDY COMPANY, INC. and
BARBARA JEAN CHUN,

Defendants.

The following papers have been read on these motions:

	Papers Numbered
Order to Show Cause (Seq. No. 01), Affidavit and Exhibits, Affirmation and Memorandum of Law	1
Notice of Motion (Seq. No. 02), Affidavit and Exhibits, Affirmation and Memorandum of Law	2

Upon the foregoing papers, it is ordered that the motions are decided as follows:

Plaintiff moves (Seq. No. 01), pursuant to CPLR § 6301, for an order granting a preliminary injunction restraining all funds in any Wells Fargo accounts titled to John B. Rudy Company, Inc. and Barbara Jean Chun, including the accounts ending in 1298 and 2140, and the merchant number ending in 1990, up to the amount of \$22,118.75, or such other amount as the Court deems just, pending the resolution of this action and until further Order of the Court. No opposition was submitted to the motion.

Plaintiff also moves (Seq. No. 02), pursuant to CPLR § 3215, for an order granting a default judgment against defendants. No opposition was submitted to this motion.

In support of the Order to Show Cause (Seq. No. 01), plaintiff submits the affidavit of Jonah Wachtel (“Wachtel”), an Authorized Representative of plaintiff corporation. *See* Plaintiff’s Affidavit in Support. Wachtel asserts, in pertinent part, that, “[t]his is an action for breach of contract.... Seinfeld and [John B. Rudy Company, Inc. (‘Company’)] entered into a written agreement (‘Agreement’), dated January 5, 2021,... Under the Agreement, Company sold Seinfeld \$36,000.00 of its future receipts (‘Purchased Amount’) for an up front sum of \$24,000.00 (‘Purchase Price’). Under an Addendum to the Agreement, the parties agreed that the Purchase Price would be paid and the Purchased Amount would be purchased in two equal installments according to the schedule set forth therein. Chun guaranteed the obligations of Company under the Agreement. Seinfeld paid the first installment of the Purchase Price, less contractual fees, on January 5, 2021.... Under the Agreement, Company agreed to pay the Purchased Amount to Seinfeld by paying 25% of Company’s future receipts. Seinfeld was granted a security interest in all of Company’s personal property and filed a UCC-1 financing statement on January 12, 2021.... Company defaulted under the Agreement by preventing Seinfeld from collecting the Purchased Amount and by otherwise breaching its warranties and covenants to Seinfeld under the Agreement. Specifically, after making just two payments, Company informed its bank that Seinfeld’s ACH debits to Company’s bank account, which is the agreed upon method by which Seinfeld is to collect the Purchased Amount, was not authorized. This led to the bank blocking Seinfeld’s ACH debits, resulting in an ACH return code of R29. When Seinfeld contacted Company regarding this, John Rudy, one of the owners, stated ‘good luck collecting from us’. The defendants did not request any reconciliation of the payments made under the Agreement. The defendants have ignored the attempts of Seinfeld to resolve this matter. The Agreement contains provisions that I am advised authorize the Court to

issue a temporary restraining Order restraining the defendants' bank accounts on an application without notice and without the requirement of any bond or undertaking.... If the defendants' bank accounts are not restrained immediately, there will be no assets left to satisfy a final judgment. The final judgment to which Seinfeld may be entitled will be rendered ineffectual without the interim relief requested herein. Seinfeld anticipates that it will obtain a final judgment for at least \$22,118.75, consisting of \$17,659.00 in damages and legal fees of 25% of the amount claimed, which comes to \$4,423.75. The calculation of these amounts is set forth in the verified complaint. Company has a bank account with Wells Fargo Citibank ending in 1298 and 2140. Company also has a merchant account with Wells Fargo for which it is assigned a merchant number ending in 1990." See Plaintiff's Affidavit in Support Exhibits 1 and 2.

As previously indicated, no opposition was submitted to the motion (Seq. No. 01).

"To obtain a preliminary injunction, a movant must demonstrate, by clear and convincing evidence, (1) a likelihood of success on the merits; (2) irreparable injury absent a preliminary injunction; and (3) a balancing of the equities in the movant's favor." *Greystone Staffing, Inc. v. Warner*, 106 A.D.3d 954, 965 N.Y.S.2d 599 (2d Dept. 2013) quoting *Yedlin v. Lieberman*, 102 A.D.3d 769, 961 N.Y.S.2d 186 (2d Dept. 2013). See also CPLR § 6301; *Aetna Ins. Co. v. Capasso*, 75 N.Y.2d 860, 552 N.Y.S.2d 918 (1990).

"The remedy is considered a drastic one which should be used sparingly." *Town of Carmel v. Melchner*, 105 A.D.3d 82, 962 N.Y.S.2d 205 (2d Dept. 2013). A movant must satisfy each requirement with "clear and convincing evidence." *County of Suffolk v. Givens*, 106 A.D.3d 943, 967 N.Y.S.2d 387 (2d Dept. 2013). The decision to grant or deny a preliminary injunction lies within the sound discretion of the Supreme Court. See *Butt v. Malik*, 106 A.D.3d 849, 965

N.Y.S.2d 540 (2d Dept. 2013); *1650 Realty Associates, LLC v. Golden Touch Management, Inc.*, 101 A.D.3d 1016, 956 N.Y.S.2d 178 (2d Dept. 2012).

“While the existence of issue of fact alone will not justify denial of a motion for a preliminary injunction, the motion should not be granted where there are issues that ‘subvert the plaintiff’s likelihood of success on the merits...to such a degree that it cannot be said that the plaintiff established a clear right to relief.’” *Matter of Advanced Digital Sec. Solutions, Inc. v. Samsung Techwin Co., Ltd.*, 53 A.D.3d 612, 862 N.Y.S.2d 551 (2d Dept. 2008) quoting *Milbrandt & Co. v. Griffin*, 1 A.D.3d 327, 766 N.Y.S.2d 588 (2d Dept. 2003). See also CPLR § 6312(c); *Lombard v. Station Square Inn Apartments Corp.*, *supra*.

“To sustain its burden of demonstrating a likelihood of success on the merits, the movant must demonstrate a clear right to relief which is plain from the undisputed facts.” *Matter of Related Properties, Inc. v. Town Bd. of Town/Village of Harrison*, 22 A.D.3d 587, 802 N.Y.S.2d 221 (2d Dept. 2005). See also *Abinanti v. Pascale*, 41 A.D.3d 395, 837 N.Y.S.2d 740 (2d Dept. 2007).

To sustain their burden of establishing irreparable harm, “the plaintiff is required to show that the irreparable injury to be sustained is more burdensome to him than the harm that would be caused by the defendant through the imposition of the injunction.” *Lombard v. Station Square Inn Apartments Corp.*, *supra*. See also *Klein, Wagner & Morris v. Lawrence A. Klein, P.C.*, 186 A.D.2d 631, 588 N.Y.S.2d 424 (2d Dept. 1992).

Finally, plaintiff must demonstrate that the balancing of equities favors provisional relief. Plaintiff must show that “the absence of a preliminary injunction would cause it greater injury than the imposition of the injunction would inflict upon the defendant.” *Copart of Connecticut*,

Inc. v. Long Island Auto Realty, LLC, 42 A.D.3d 420, 839 N.Y.S.2d 791 (2d Dept. 2007); *Laro Maintenance Corp. v. Culkin*, 255 A.D.2d 560, 681 N.Y.S.2d 79 (2d Dept. 1998).

Based upon the papers and arguments before the Court, the Court finds that plaintiff has met its burden, as described above, in order to obtain the requested preliminary injunction.

Therefore, plaintiff's motion (Seq. No. 01), for an order granting a preliminary injunction restraining all funds in any Wells Fargo accounts titled to John B. Rudy Company, Inc. and Barbara Jean Chun, including the accounts ending in 1298 and 2140, and the merchant number ending in 1990, up to the amount of \$22,118.75, or such other amount as the Court deems just, pending the resolution of this action and until further Order of the Court, is hereby **GRANTED**.

The Court will now address plaintiff's motion for a default judgment (Seq. No. 02).

Plaintiff proves jurisdiction by annexing copies of the Affidavits of Service of the Summons and Verified Complaint upon defendants. *See* Plaintiff's Affidavit in Support Exhibits E and F. Plaintiff proves defendants' default in the Affirmation of Counsel. Plaintiff proves its claims in the Affidavit of Jonah Wachtel, an Authorized Representative of plaintiff corporation, and the supporting exhibits. *See* Plaintiff's Affidavit in Support and Exhibits A-D; CPLR § 3215(f); *Joosten v. Gale*, 129 A.D.2d 531, 514 N.Y.S.2d 729 (1st Dept. 1987).

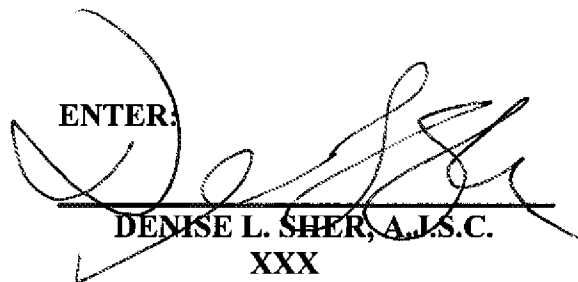
The Court notes plaintiff's compliance with additional service of the Summons and Verified Complaint, pursuant to CPLR § 3215(g)(3). *See* Plaintiff's Affidavit in Support Exhibit G.

Therefore, based upon the above, plaintiff's motion (Seq. No. 02), pursuant to CPLR § 3215, for an order granting a default judgment against defendants, is hereby **GRANTED**.

Plaintiff is directed to submit judgment to the clerk in the sum of \$17,695.00, plus interest thereon at a rate of 16% per annum from January 12, 2018, plus legal fees in the amount of \$4,423.75, plus costs and disbursements. And it is further

ORDERED that upon entry to a judgment in this action that Wells Fargo turn over to plaintiff, or its attorneys, all funds restrained pursuant to the Order of the Court.

This constitutes the Decision and Order of this Court.

ENTER.

DENISE L. SHER, A.J.S.C.
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Dated: Mineola, New York
June 9, 2021

ENTERED
Jun 14 2021
NASSAU COUNTY
COUNTY CLERK'S OFFICE