

SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. JOSEPH COVELLO

Justice

CULINARY CONNECTION HOLDINGS, INC.,

Petitioner,

-against-

JEFFERSON WELLS INTERNATIONAL, INC.,
and MANPOWER INC.,

Respondents.

TRIAL/IAS, PART 28
NASSAU COUNTY

Index #: 18826/02

Motion Seq. #: 01, 02

The following paper read on this motion:

| | |
|---|------|
| Notice of Motions / Orders to Show Cause..... | 1, 2 |
| Affirmations in Opposition | 3, 4 |
| Reply Affirmations..... | 5, 6 |
| Answer..... | 7 |

The motion by petitioner, Culinary Connection Holdings, Inc., (hereinafter "petitioner") brought by Order to Show Cause dated November 22, 2002, to restrain respondents, Jefferson Wells International, Inc., (hereinafter "JWI") and Manpower, Inc., (hereinafter "Manpower") from making payments to the judgment debtor under the severance agreement and to turn over all available funds to the petitioner is granted to the extent set forth herein.

The motion brought by Order to Show Cause dated January 22, 2003, by judgment debtor, Anthony Sirica, (hereinafter "A. Sirica") for leave to intervene in this turnover proceeding; to stay these proceedings; and to enjoin, restrain and prohibit payment of any monies, stock options, etc., from respondents to petitioner is denied, in its entirety.

This special proceeding was commenced by petitioner to compel respondents' JWI and Manpower, to turn over all funds in their possession that are owed to A. Sirica, as partial satisfaction of a judgment obtained by petitioner, on or about November 21, 2000, (the "Judgment") against Anthony J. Sirica (the "A. Sirica"), Demetra Sirica (a/k/a Demetra Plagkis; "Demetra Sirica"), (hereinafter "D. Sirica") and The Culinary Connection of Great Neck, Inc.

(hereinafter "Culinary of Great Neck"), in an action previously pending in this Court entitled, Culinary Connection Holding, Inc. v. The Culinary Connection of Great Neck, Inc., et al., Index No. 4747/95.

Pursuant to the Judgment issued by Hon. Daniel Martin (Supreme Court, Nassau County), petitioner was awarded the sum of \$528,472.90, jointly and severally, against judgment debtors, A. Sirica, D. Sirica, and Culinary of Great Neck, and the additional sums of \$41,454.00, against D. Sirica, individually, and \$31,030.00, solely against Culinary of Great Neck. The Judgment in that action was entered with the County Clerk of Nassau County on December 4, 2000.

Petitioner asserts that as of September 30, 2002 the sum of \$576,671.22 was owed on the judgment plus statutory interest, which continues to accrue, remains wholly unpaid and unsatisfied by the judgment debtors.

Petitioner also asserts that between December 1, 1998 and August 26, 2002, A. Sirica was employed by respondent JWI as the managing director of its New York office and that during the course of his employment with JWI, he was granted stock options, a portion of which vested and were exercised by A. Sirica, and the remainder of them having vested on December 31, 2002, for which A. Sirica is still owed the sum of \$21,442.40. It is also asserted that Manpower granted 4,000 shares in stock options to A. Sirica, on or about July 21, 2001.

Petitioner, also asserts that on February 14, 2002, its attorney served upon A. Sirica a restraining notice with a copy of it being sent to his attorney. On the same day an income execution was delivered to the Sheriff of New York County in furtherance of petitioners' efforts to collect the judgment. Petitioner's attorney, on February 14, 2002, served an income execution upon JWI to garnish A. Sirica's wages, (a copy was also sent to A. Sirica). On June 3, 2002, petitioner's attorney served an information subpoena with restraining notices upon JWI and

Manpower, (copies of each notice was sent to A. Sirica; on August 5, 2002). In addition, at the request of JWI, petitioner's attorney delivered an additional copy of the income execution with restraining notice to JWI's human resources department. On or about August 14, 2002, JWI advised petitioner that JWI would not be able to honor the income execution because A. Sirica "was currently beyond the 25% disposable earnings limit for garnishments already in effect". Thereafter, A. Sirica's employment with JWI was terminated, effective as of August 26, 2002.

It is further asserted that as a consequence of the termination of A. Sirica's employment, petitioner's counsel was advised by Manpower's counsel that: 1,000 of the A. Sirica's, Manpower stock options were vested and the remaining 3,000 options were cancelled and that the vested 1,000 Manpower stock options expired as they were not exercised by A. Sirica within the required ninety (90) day period.

It is also asserted by petitioner that A. Sirica and JWI entered into a severance agreement and release dated September 6, 2002 (the "severance agreement"). And that under the terms of the severance agreement, JWI agreed to pay A. Sirica "a severance payment equal to six (6) month's regular pay and shall be paid in bi-weekly installments of \$10,768.23, concurrent with the company's regular payroll cycle and subject to all applicable payroll deductions...." which amounted to \$139,999.99. JWI partially paid A. Sirica under the severance agreement the sum of \$55,999.70 leaving a balance of \$84,000.29.

Counsel for JWI advised counsel for petitioner that JWI is scheduled to pay the remaining sum of \$84,000.29 due to A. Sirica, under the severance agreement.

In opposition, JWI contends that the income execution was not properly served, since it was not initially served by a sheriff upon A. Sirica, the judgment debtor, or that a sheriff

attempted to serve A. Sirica before the sheriff served it upon JWI making service defective under CPLR §5231(d). Further, JWI contends that the income execution was served by having a copy sent to JWI and not by a sheriff. Accordingly, JWI contends that since the service requirements under CPLR § 5231 were not met it was not obligated to honor the income execution.

JWI also asserts that it would not honor the income execution because the judgment debtor would be subjected to court-ordered payments in excess of 25% of his disposable earnings as the income execution, added with A. Sirica's alimony and child support payments, would put the judgment debtor over the statutory percentage. Under CPLR § 5241 or 5242, the weekly amount withheld from a judgment debtor's earnings shall not exceed 25% of the disposable earnings of the judgment debtor.

JWI further contends that the restraining notice was improper because a restraining notice served upon a person other than the judgment debtor, or obligor is effective only if, at the time of service, the entity served owes a debt to the judgment debtor, or obligor. JWI asserts that it did not owe Sirica any debt at the time of service of the restraining notice as it only owed wages and other compensation to A. Sirica, its employee and that the stock option profits due to A. Sirica are part of his wages and compensation and not a debt owed. Furthermore, JWI asserts that the restraining notice was not properly served as it was sent via certified mail to JWI's New York City office, which is not its headquarters, nor was it served upon a corporate officer.

JWI, as well as A. Sirica, want the judgment debtor to intervene in these proceedings asserting that, Mr. Sirica, the judgment debtor, has a direct and substantial interest in the proceeding and that his intervention would not cause an undue delay and the minor delay caused would in no way prejudice the substantial rights of petitioner.

The petitioner, Culinary Connection Holdings, Inc., denies the assertions of the respondent JWI and asserts that the income execution was properly served upon JWI and A. Sirica. Petitioner, has provided sufficient proof of service. The petitioner also sets forth that JWI is “trying to have its cake and eat it to”. Petitioner, states that JWI first claimed that A. Sirica’s stock option profits were not part of his wages and other compensation subject to garnishment by the income execution. However, JWI then says that it did not owe a debt to A. Sirica at the time that the restraining notice was served because A. Sirica’s stock option profits were part of his wages and other compensation.

Petitioner contends that service of the restraining notice was proper pursuant to CPLR § 5222(a), which states “[a restraining notice] shall be served personally in the same manner as a summons, or by registered, or certified mail, return receipt requested.” Further, it is not stated that personal service is required, or that it must be to a corporation’s headquarters. Petitioner also faxed a copy to JWI’s headquarters to ensure they were aware of the Notice. Petitioner produced a signed return receipt in support of its assertion that the restraining notice was received by JWI’s New York office. In total, seven copies of the restraining notice were sent to JWI, A. Sirica and Manpower (the parent company of Jefferson Wells).

Petitioner has provided sufficient proof that the income execution and restraining notice were properly served. Petitioner has also sufficiently shown that JWI owed a debt to the judgment debtor, A. Sirica at the time the restraining notice was served. The stock option profits due to A. Sirica from JWI, are not wages or other compensation but a debt owed. In addition, the funds held in an escrow account by JWI for A. Sirica is also a debt owed.

Petitioner also opposes the request by A. Sirica, the judgment debtor, to intervene in this

proceeding. Petitioner asserts that this is a further attempt by A. Sirica to delay and frustrate the attempts by petitioner to collect the judgment. Petitioner, further asserts that the judgment debtor has failed to pay any sum of money for the judgment at this time, and that if A. Sirica is permitted to intervene in this action it would just further delay the resolution of this action and the collection of a portion of the judgment.

Therefore, it is hereby

ORDERED, that respondents, Jefferson Wells International Inc. and Manpower, Inc. are enjoined; restrained and prohibited from making any payments, or transferring any assets options, warrants, and rights, or the sale proceeds thereof to the judgment debtors, or his family members, agents, nominees, or representatives, unless otherwise ordered by a court. It is further

ORDERED, that respondents, Jefferson Wells International, Inc., and Manpower Inc. are directed to fully comply with the subpoenas duces tecum served upon them, within thirty (30) days of service of this Order with notice of entry, this includes providing to petitioner copies of all canceled checks representing any and all payments to, or on behalf of Judgment Debtors, Anthony Sirica and Demetra Sirica, from February 14, 2002, and all documentation that Jefferson Wells International, Inc. relied upon in making its determination not to honor petitioner's income execution including the front and back of all checks it paid to the judgment debtor during the year 2002. It is further

ORDERED, that Jefferson Wells International, Inc. shall within ten (10) days of service of this Order with notice of entry, pay over to petitioner (by payment to the Sheriff or Marshall of the City of New York) all sums due to Anthony Sirica, judgment debtor, under the severance

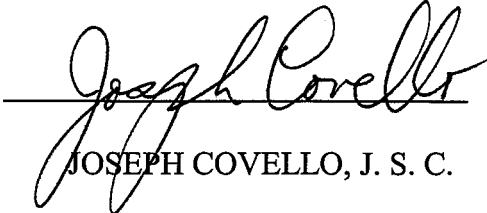
agreement, Jefferson Well's stock options and contained in the escrow account, pursuant to CPLR§5225(b). This includes the sum of \$105,442.69, which is the total of the sum of \$84,000.29, representing the remaining amount due and unpaid to A. Sirica, under the Severance Agreement and the sum of \$21,442.40, representing the sum remainder of the value of the Jefferson Wells International, Inc. stock option profits due and unpaid to A. Sirica. It is further

ORDERED, that the portion of petitioner's motion for an order and judgment against respondent, Jefferson Wells International, Inc., for its failure to honor the restraining notices and income execution is granted to the extent that a hearing shall be held to determine if Jefferson Wells International Inc. paid any funds to A. Sirica in violation of the income execution and restraining notices, and whether counsel fees and costs should be awarded to petitioner. It is further

ORDERED, that counsel for petitioner and respondents shall appear on September 16, 2003 in Supreme Court, Nassau County, IAS Part 28, 100 Supreme Court Drive, Mineola, New York, at 9:30a.m. for a conference and to set the hearing date. Petitioner shall file a Note of Issue and pay all appropriate fees prior to September 16, 2003.

This constitutes the decision and order of the court.

Dated: July 16, 2003


JOSEPH COVELLO, J. S. C.

ENTERED

JUL 23 2003

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**