

**SUPREME COURT-STATE OF NEW YORK
SHORT FORM ORDER**

Present:

HON. TIMOTHY S. DRISCOLL
Justice Supreme Court

-----x **TRIAL/IAS PART: 22**
FRANKLIN SQUARE FORD, INC.. **NASSAU COUNTY**

Plaintiff,

-against-

Index No: 011737-08

TIMOTHY NEVITT,

Motion Seq. No: 5

Defendant.

Submission Date: 6/14/10

Papers Read on this Motion:

Notice of Motion, Affirmation in Support and Exhibit.....x

This matter is before the Court for decision on the motion filed by Plaintiff Franklin Square Ford, Inc. on May 20, 2010 and submitted, without opposition, on June 14, 2010. The Courts grants Plaintiff's motion and directs the Clerk of the Court to enter judgment in the sum of \$135,000.00 in favor of Plaintiff and against Defendant.

In his Affirmation in Support dated May 19, 2010, counsel for Plaintiff ("Counsel") affirms that, pursuant to the signed Settlement Agreement ("Agreement") between Plaintiff and Defendant Timothy Nevitt (Ex. A to Aff. in Support) dated April 19, 2010, Defendant agreed to pay to Plaintiff the sum of One Hundred and Thirty-Five Thousand and No/00 (\$135,000) Dollars in full settlement of all claims arising out of this lawsuit. The Agreement provided, specifically, that 1) Defendant would pay the sum of \$70,000 no later than April 30, 2010 and that if payment were not made by April 30, 2010, "Judgment may be entered immediately without notice[;]" and 2) Defendant would pay the balance of \$65,000 a) in installments of \$433.33, representing interest, beginning on June 1, 2010 and ending on May 1, 2012, plus b) a principal payment of \$65,000 on May 1, 2012.

Counsel affirms that Plaintiff has not received payment from Defendant. Accordingly, Plaintiff requests an Order directing the Clerk to enter judgment in favor of Plaintiff and against Defendant in the sum of One Hundred and Thirty-Five Thousand and No/100 (\$135,000.00).

Defendant has submitted no opposition or other response to Plaintiff's motion.

In light of the terms of the Agreement, a copy of which is annexed hereto, and Defendant's non-payment thereunder, the Court grants Plaintiff's motion and directs the Clerk of the Court to enter judgment in favor of Plaintiff and against Defendant in the sum of One Hundred Thirty-Five Thousand and No/100 (\$135,000).

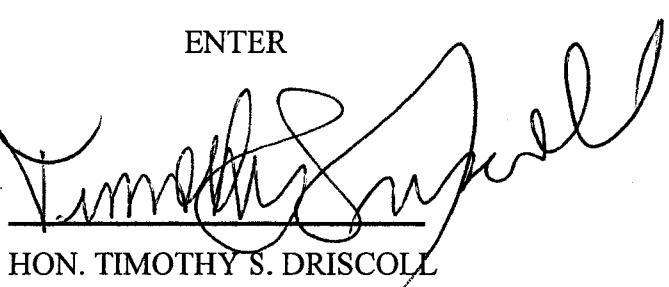
All matters not decided herein are hereby denied.

This constitutes the decision and order of the Court.

DATED: Mineola, NY

August 9, 2010

ENTER



HON. TIMOTHY S. DRISCOLL

ENTERED

AUG 11 2010

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
FRANKLIN SQUARE FORD, INC.,

Plaintiff,

Settlement Agreement

-against-

TIMOTHY NEVITT,

Defendant.

Index No.: 11737/08

-----X

IT IS HEREBY STIPULATED AND AGREED, by and between the parties and their respective attorneys, as follows:

1. The parties agree to the settlement referenced herein ("Settlement Agreement") to avoid further expense and inconvenience resulting from continuing the litigation of this matter. By entering into this Settlement Agreement, neither party is acknowledging any liability or wrongdoing whatsoever in this case. Both parties have and continue to deny liability for any and all of the allegations of wrongdoing in this case.

7/1/12
2. Defendant, Timothy Nevitt, has agreed to pay to Plaintiff, the sum of One Hundred ~~Twenty~~ Five Thousand Dollars (\$125,000), in full settlement of all claims arising out of this lawsuit.

3. Upon the execution of this Settlement Agreement, the sum of \$125,000 shall be paid as follows:

7/1/12
a. The sum of \$~~125,000.00~~ shall be paid no later than ~~February 8, 2010~~, by bank, certified check or Attorney Escrow check payable to Arnold L. Kert, Esq. As Attorney.

IN EVENT OF PAYMENT NOT MADE BY 4/30/2010 JUDGMENT (RECEIVED IMMEDIATELY WITHOUT NOTICE)

30 APRIL 2010

b. The balance of \$~~5,000.00~~ shall be paid as follows:

7/1/12 (433.33)
i. Interest only at the rate of 8% per annum, each payment in the sum of \$433.33 made payable to Elite Productions, Inc., at 709 Hempstead Turnpike, Franklin Square, New York 11010.

7/1/12 (433.33)
ii. Payments shall commence on ~~4/30/10~~ June 1, 2010 and monthly thereafter until ~~February 1, 2012~~, when the final payment of \$433.33, together with the principal of \$65,000.00 shall be due and payable. Defendant may pay the principal due at any time prior to

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May

February 1, 2012 without penalty. In the event the principal is paid early, no additional sums, interest or otherwise, will be due thereafter and this settlement will be deemed fully satisfied at that time.

iii. The final payment shall be made payable to Elite Productions, Inc. at 709 Hempstead Turnpike, Franklin Square, New York 11010.

4. In the event of Defendant's failure to make payments within seven (7) days of the due date, Plaintiff shall have the right to take steps toward default as set forth herein.

5. In the event of late payments, defendant shall be entitled to two (2) written notices per year which will state that if payment is not made within an additional seven (7) days period from the date of the notice, Plaintiff will have the right to take default measures as set forth herein.

6. All Notices required or permitted to be given under this Settlement Agreement shall be in writing and given as follows:

If to Plaintiff:

Elite Productions, Inc.
709 Hempstead Turnpike
Franklin Square, New York 11010

with an information copy to Plaintiff's attorney at:

Arnold L. Kert, Esq.
666 Old Country Road
Garden City, New York 11530
Tel: (516) 222-1860 - Fax: (516) 222-1713
E-mail: alkert@optonline.net

If to Defendant:

Timothy Nevitt
7730 ~~66th~~ Road 7415 NORTHERN BLVD.
Middle Village, NY 11379 JACKSON HEIGHTS, NY 11372

with an information copy to Defendant's attorney at:

David S. Smith, Esq.
626 Rexcorp Plaza
West Tower - 6th Floor
Uniondale, New York 11556
Tel: (516) 213-0018 - Fax: (917) 591-3244

E-mail: davidsmith@dssesq.com.

All notices required by this Settlement Agreement shall be provided by certified mail, return receipt requested, to the parties and facsimile transmission and e-mail to the fax numbers and e-mail addresses of counsel set forth above, and notice shall be deemed complete upon receipt by the sender of the return receipt.

7. Simultaneous with the execution of this Settlement Agreement, Defendant will execute a Confession of Judgment for \$65,000, to be held in escrow by Arnold L. Kert, Esq, Plaintiff's attorney, to be released in the event of default as set forth herein, or returned to the Plaintiff upon full satisfaction of the final settlement.

8. In the event of Defendant's default, as set forth above, beyond the time to cure, Plaintiff shall have the right to file the Confession of Judgment without further notice for the full amount due less credit for any payments made to date. If such filing is made, Plaintiff is to provide a copy of the filed Confession of Judgment to Defendant in accordance with the notice provision in paragraph 6 above.

9. The judgment will include interest at the rate of 15% from the date of the default, together with costs and disbursements.

10. The parties hereto hereby agree that all terms and conditions of the Settlement Agreement shall be confidential and not released to any non-party except that both parties may disclose such information as may be required by contractual obligation, statute or regulation or the issuance of process determined to be lawful by a non-party. If a party is compelled by law to disclose any such information about this case, the compelled party must notify the other party in accordance with paragraph 6 above, at least two weeks before the disclosure. In the event of a breach of this confidentiality provision, the breaching party shall be liable to the non-breaching party for any damages proximately flowing from the breach. This Settlement Agreement shall not be filed with the Court unless required to be filed with the Confession of Judgment on default.

11. Simultaneous with the execution of this Settlement Agreement, the attorney for Plaintiff and Defendant ~~and Plaintiff's~~ ^{for Plaintiff} ~~both~~ parties will execute a Stipulation of Discontinuance with Prejudice for this case. Plaintiff's counsel will then file this stipulation with the appropriate court within one week of its execution.

12. Simultaneous with the execution of this Agreement, the parties will also execute the general release, annexed hereto as Exhibit A. This release will become effective on the date when Defendant pays the settlement amount in full.

13. In making and executing this Settlement Agreement, each of the parties represents, warrants and agrees as follows:

a. Each party has received independent legal advice from their respective

attorneys with respect to their rights and asserted rights arising out of the matters in controversy and with respect to the advisability of executing this Settlement Agreement.

- b. Each party has made such investigation of all matters pertaining to this Settlement Agreement as they deem necessary, and except as provided herein do not rely on any other statement, promise or representation by the other parties hereto with respect to such matter.
- c. Each party assumes the risk of any misrepresentation, concealment or mistake of fact or law.
- d. By executing this Settlement Agreement, each party, where applicable represents that:
 1. each corporate party is a corporation in good standing with the appropriate state; and
 2. the individual executing this Settlement Agreement has the authority to do so on behalf of the party for which he/she is acting, and to bind that party thereby.
- e. Each party agrees and acknowledges that the other parties have justifiably relied on all of the representations of the other parties have made in this Settlement Agreement and have been induced to settle, resolve and execute this Settlement Agreement in justifiable reliance of said representations.

14. This Settlement Agreement shall be deemed to have been executed and delivered within the State of New York, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of New York without regard to principles of conflict of laws.

This **Settlement Agreement** may be executed in counterparts, each of which when so executed and delivered shall be an original, but all such counterparts together shall constitute one and the same instrument. This Settlement Agreement shall be effective and binding on each party upon the execution of this Settlement Agreement by all parties thereto.

Signatures:

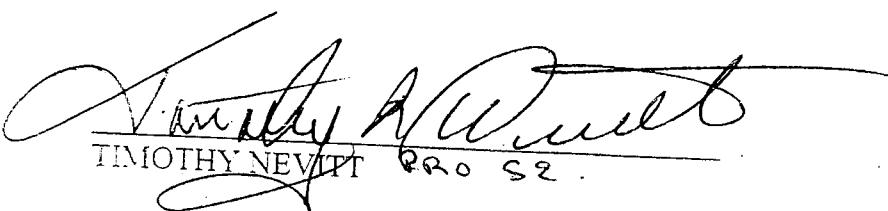
FRANKLIN SQUARE FORD

By _____
Jerry Yedid

Dated: _____


Arnold L. Kert, Esq.
Attorney for Plaintiff - Franklin Square Ford
666 Old Country Road
Garden City, New York 11530
Tel: (516) 222-1860 - Fax: (516) 222-1713

Dated: 4/19/10


TIMOTHY NEVITT PRO SE

Dated: 4/19/10

~~DS~~
David S. Smith, Esq.
Attorneys for Defendant Timothy Nevitt
626 Rexcorp Plaza
West Tower - 6th Floor
Uniondale, New York 11556
Tel: (516) 213-0018 - Fax: (917) 591-3244

Dated: _____