

OFFICE RECORD

DOCKET YES NO CLOSED

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. MICHAEL D. STALLMAN
Justice

PART 7

MARCO EVANI, INC. and SERGIO IACCARINO,

INDEX NO. 103795/2009

Plaintiffs,

- v -

MOTION DATE 4/23/09

MOTION SEQ. NO. 001

JP MORGAN CHASE BANK, NA,

MOTION CAL. NO. 7

Defendant.

FILED
MAY 05 2009
COUNTY CLERK'S OFFICE
NEW YORK

The following papers, numbered 1 to 3 were read on this order to show cause to quash garnishment

Order to Show Cause — Affidavit — Exhibits A-C

Answering Affirmtion — Exhibits A-F

Replying Memorandum of Law

PAPERS NUMBERED

1-2

3

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion, by order to show cause, to quash the garnishment of plaintiff's bank accounts with defendant, and releasing all money garnished, is denied, without prejudice to an application before the Texas Court.

Non-party Lucchese, Inc. obtained a judgment against Bambini Marco Evani, Inc. and Sergio Laccarino in a Texas court in Tarrant County, Texas, Lucchese, Inc. v Bambini Marco Evani, Inc. and Laccarino, Cause No, 2006-043429-3. Thereafter, in Texas, Lucchese, Inc. obtained a writ of garnishment for the judgment against Bambini Marco Evani and Laccarino for proceeds held with defendant JP Morgan Chase Bank, NA, which does business in Texas. JP Morgan Chase Bank, NA froze the accounts of plaintiffs, because the account number in the writ of garnishment revealed plaintiffs' names on the account.

This order to show cause for an order "temporarily quashing" the garnishment of plaintiffs' bank accounts with JP Morgan Chase Bank NA, and releasing all garnished money followed. On the same day that the order to show cause was signed, Lucchese, Inc. obtained a judgment of garnishment against plaintiffs in the Texas Court. Plaintiffs' legal argument, raised in the reply, is that full faith and credit does not attach to the Texas Court order, because plaintiffs claim they were never served or cited to appear in Texas.

"Under our Federal structure, each State has its own judicial system capable of adjudicating the rights and responsibilities of the parties brought before it. Given this structure, there is always a risk that two or more States will exercise their power over


(Continued . . .)

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

the same case or controversy with the uncertainty, confusion, and delay that necessarily accompany re litigation of the same issue. The purpose of the full faith and credit clause was to avoid such conflicts and weld the Independent States into a Nation . . . The doctrine does not make a foreign State judgment a judgment in the forum State. Before that occurs and a locus remedy may be obtained, an action must be brought and a judgment entered on the foreign judgment in the forum State."

Farmland Dairies v Barber, 65 NY2d 51, 55 (1985) (emphasis added, internal citation omitted). Here, neither the default judgment in Texas against Bambini Marco Evani, Inc and Sergio Lacciarino nor the judgment of garnishment against plaintiffs are being enforced in an action in New York. The judgment creditor, who is not a party in this action, has not brought an action in New York based on the Texas order and judgment of garnishment. JP Morgan Chase Bank NA is not asserting the Texas judgment as a defense to plaintiff's application. Thus, plaintiffs' argument that New York should not give full faith and credit to the Texas judgment does not apply. Plaintiffs may not initially mount a collateral attack on the Texas judgment in New York because neither the judgment creditor nor JP Morgan Chase Bank, NA have sought for the Texas judgment to be recognized in New York. Moreover, the Texas judgment creditor is not a party to this action and would be adversely affected.

Dated:



New York, New York



J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

HON. MICHAEL D. STALLMAN

FILED

MAY 05 2009

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