

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

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SLEEK AUDIO, LLC, MARK KRYWKO,
MICHAEL KRYWKO, JASON KRYWKO AND
GREGORY WYSOCKI,

Index No.: 161145/2014

Plaintiffs,

**AFFIRMATION OF
OFER REGER**

-against-

CURTIS J. JACKSON, III,

Defendant.
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Ofer Reger, an attorney duly admitted to practice before the Courts of the State of New York, hereby affirms the following under penalties of perjury:

1. I am an associate attorney with the law firm Robins Kaplan Miller & Ciresi LLP, attorneys for the Defendant Curtis J. Jackson, III ("Defendant") in this action. I am familiar with the facts set forth herein, based on my review of the case file. I submit this Affirmation in support of Plaintiff's motion, brought by Order to Show Cause, to (a) vacate the Plaintiffs' filing to domesticate a foreign Florida judgment and any domesticated judgment, and (b) for a temporary restraining order and a preliminary injunction: (1) enjoining the Plaintiffs from enforcing or attempting to enforce any domesticated judgment until such time as the Florida courts determine the appropriate security, if any, required to secure the Florida judgment pending Defendant's appeal of that judgment in Florida; or, in the alternative, (2) staying enforcement of any domesticated judgment until Defendant's pending appeal in the Florida courts is finally decided, without the need for any bond in New York; and (c) enjoining Plaintiffs from taking any steps to execute on any such domesticated judgment, including by issuing any writs, liens,

information subpoenas, or notices of restraint, garnishment, levy, execution or the like in the State of New York; and (d) granting Defendant such other and further relief as the Court deems just and proper.

SUMMARY OF ARGUMENT

2. A brief synopsis of the relevant facts, included in more detail below, is necessary to understand the posture of this matter. Plaintiffs in the above captioned action won a final arbitration award in Florida against Defendant in July 2013. A Palm Beach County, Florida court entered a final judgment based on this arbitration award on October 16, 2014, after that court denied Defendant's motion to vacate the award (initially filed in July, 2014). On October 24, 2014, Defendant moved in the Florida court to stay execution of the judgment pursuant to Florida law (and to set an appropriate bond). On October 29, 2014, Defendant filed a notice of appeal regarding, *inter alia*, the judgment. On November 3, 2014, Defendant filed a second motion to stay execution of the judgment (based on the Florida Rules of Appellate Procedure) and requesting a determination of appropriate security. On or about November 7, 2014, Plaintiffs, without contemporaneously notifying Defendant, filed a copy of the Florida judgment in this Court with an accompanying affidavit.

3. Plaintiffs' attempt to domesticate their Florida judgment in New York is premature and fatally deficient for a number of reasons. First, Plaintiffs' filing is premature because there are motions currently pending in Florida affecting the enforcement of the Florida judgment and regarding the amount of a bond, if any, necessary to stay enforcement of that judgment in Florida, pending Defendant's appeal in the Florida courts. Second, Plaintiffs' filed affidavit is defective because it mischaracterizes the judgment as well as the relevant enforcement procedures applicable in Florida. Third, Plaintiffs' filing is premature because most of the

named Plaintiffs have not filed judgment lien certificates in Florida and may not execute on their Florida judgment (only one of five Plaintiffs, Sleek Audio, LLC, has filed a judgment lien certificate). Plaintiffs are improperly trying to begin execution on a domesticated judgment in New York prior to completing the steps necessary to execute their underlying judgment. The Court should vacate Plaintiffs' filing and any domesticated judgment.

4. Even if the Court does not vacate Plaintiffs' filing, it should stay enforcement of a domesticated judgment in this Court. Defendant has two motions pending before the Florida courts, both requesting a stay of execution and regarding the setting of a bond or undertaking. If this Court allows Plaintiffs to enforce their judgment in New York while Defendant's motions are pending in Florida, this Court will be superseding the authority of the Florida courts by rendering any possible decision for a stay in Florida a nullity. If Plaintiffs are allowed to enforce a domesticated judgment, and thus restrain any of Defendant's accounts, Defendant will also effectively be impaired from posting a bond if so required by the Florida court. Counsel is informed by Defendant that he will not transfer assets outside the ordinary course of business, consistent with his obligations under Florida law. Furthermore, if the Florida courts require an undertaking during the pendency of Defendant's Florida appeal, Plaintiffs are protected and suffer no harm. The balance of the equities clearly lies with preventing Plaintiffs' enforcement efforts, and comity and logic dictate that the Florida courts should decide all pending issues before Plaintiffs are allowed an end-run around the remedies of their chosen forum.

5. Defendant is entitled to a Temporary Restraining Order because immediate and irreparable harm will result unless Plaintiffs are restrained from attempting to enforce a domesticated judgment when Defendant has motions pending in the Florida courts regarding a stay of execution and regarding the setting of an undertaking.

6. This Court should issue a Preliminary Injunction as Defendant demonstrates herein (1) a likelihood of success on the merits, (2) the prospect of irreparable injury if the provisional relief is withheld and (3) a balance of equities tipping in Defendant's favor.

FACTS

7. An arbitration hearing was held in February, 2013, in the consolidated proceedings entitled *Sleek Audio, LLC v. Curtis J. Jackson, III*, (JAMS Ref. No. 1440003176), and *Curtis Jackson, III, individually and derivatively on behalf of Sleek Audio, LLC v. Sleek Audio, LLC, et al.*, (JAMS Ref. No. 1440003314). The arbitrator found in favor of Sleek Audio, LLC and the other Plaintiffs named herein, and issued an Interim Award on May 2, 2013, and a Final Award on July 15, 2013.

8. Thereafter, on July 8, 2014, Defendant filed his Motion to Vacate Arbitration Award with the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County Florida ("Palm Beach Court"), Case No. 502013-CA-012120.

9. On September 30, 2014, the Palm Beach Court entered its Order Denying Defendant's Motion to Vacate Arbitration Award (hereinafter "Order Denying Motion to Vacate").

10. On October 16, 2014, the Palm Beach Court entered its Order Confirming Arbitration Award and Final Judgment (hereinafter "Final Judgment", a copy of which is attached hereto as Exhibit "A"), in which it confirmed the Partial Final Award dated February 8, 2013, Interim Arbitration Award dated May 2, 2013, and Final Arbitration Award dated July 15, 2013, in the consolidated arbitration proceedings. The Final Judgment awarded Plaintiff herein Sleek Audio, LLC, a total sum of \$17,247,426.11 (which included amounts for attorneys' fees and costs), plus interest. See Exhibit A. The Final Judgment awarded Plaintiffs herein Mark

Krywko, Michael Krywko and Jason Krywko a total sum of \$125,728.40, plus interest. *Id.*

Finally, the Final Judgment awarded Plaintiff herein Gregory Wysocki a total sum of \$53,853.72, plus interest.

11. On October 24, 2014, Defendant filed in Palm Beach Court, a Motion to Stay Issuance of Execution of the Final Judgment, pursuant to Florida Rule of Civil Procedure 1.550(b). A Copy of this October 24, 2014 Motion to Stay Issuance of Execution (with exhibits) is attached hereto as Exhibit "B." As explained in that motion, under the Florida Rules, Rule 1.550(b) serves as a stop-gap between the entry of a final judgment and the filing of a Notice of Appeal, at which time the Florida Rules of Appellate Procedure take effect. *See* Exhibit B at 3, ¶ 11. The Plaintiffs herein filed a response in opposition to this motion on October 28, 2014. No hearing has been held, nor any decision made on this motion, which is still pending.

12. On October 29, 2014, Defendant filed a Notice of Appeal in Florida's Fourth District Court of Appeal regarding two of the Palm Beach Court's orders: 1) the Order Denying Motion to Vacate, and 2) the Final Judgment.

13. On November 3, 2014, Defendant filed, pursuant to Florida Rule of Appellate Procedure 9.310(a), a Motion for Stay Pending Review in the Palm Beach Court, seeking a stay of the Final Judgment, pending review by Florida's Fourth District Court of Appeal. A copy of this Motion for Stay Pending Review is attached hereto as Exhibit "C." Under Florida Rule of Appellate Procedure 9.310(a), a party seeking to stay a final order pending review shall file a motion pursuant to that rule in the lower tribunal, which has continuing jurisdiction in its discretion to grant, modify or deny such relief. Fla. R. App. P. 9.310(a). In this latter Motion for Stay, Defendant argues that the Palm Beach Court should exercise its discretion under Fla. R. App. P. 9.310(a) to determine that a bond is not necessary for a stay pending review, or

alternatively, that the court should consider various mitigating factors in exercising its discretion to set the amount of the bond required for a stay. *See* Exhibit C at 3-4. Among these factors, is the fact that Defendant was the prevailing party in two recent arbitrations in which he was awarded judgments totalling over \$700,000.00 against Plaintiff Sleek Audio, LLC.¹ Furthermore, Defendant currently has a claim for \$6,500,000.00 in damages pending in arbitration in New York against Sleek Audio, LLC. The final briefing in that New York arbitration was submitted by the parties by October 31, 2014, and a decision has not yet been received. Finally, Defendant possesses a **23.8288% ownership interest in Sleek Audio, LLC.**

As of today, a hearing on this Motion to Stay has been set in Palm Beach Court for next Wednesday, November 19, 2014. Attached hereto as Exhibit “D” is the Notice of Hearing on the motion, along with a copy of Defendant’s Amended Motion to Stay.

14. On or about November 7, 2014, counsel for Plaintiff Sleek Audio, LLC filed an electronic copy of the Final Judgment from the Palm Beach Court in this Court, under the caption “Foreign Judgment [5402]” along with an accompanying affidavit of Carl W. Stursberg. While Mr. Stursberg’s affidavit includes language from CPLR § 5402, nowhere in the affidavit (or any of the documents filed on NYSCEF), does Mr. Stursberg state that he is seeking or explicitly request a domestication of the Florida Final Judgment. Counsel for Plaintiff did not notify counsel for Defendant when he filed this affidavit, nor thereafter (electronically or otherwise). Counsel for Defendant first became aware of this application in the evening of November 10.

¹ Final judgments confirming each of these arbitration awards were entered in separate actions by orders of the Circuit Court for the Twelfth Judicial Circuit in and for Manatee County, Florida, dated January 23, 2013 and May 1, 2013, respectively. Copies of these orders are attached as exhibits B and C to the October 24, 2014 Motion to Stay Issuance of Execution (which is Exhibit B to this Reger Affirmation).

ARGUMENT

I. THE COURT SHOULD GRANT DEFENDANT'S MOTION TO VACATE THE PLAINTIFFS' FILING TO DOMESTICATE THE FLORIDA JUDGMENT BECAUSE THE FILING IS DEFECTIVE AND PREMATURE.

15. As established above, Defendant currently has two separate motions for a stay of execution of the Florida Judgment and has followed the proper procedure to have the Florida courts determine the appropriate undertaking or bond necessary to protect Plaintiffs' interests while Defendant pursues his appeal. Neither of Defendant's two separate motions has been decided by the Palm Beach Court. Plaintiffs' attempt to enter and enforce a domesticated judgment in New York puts this Court at risk of ruling in direct conflict with the Florida courts, which have been overseeing this case from its inception. Plaintiffs chose their forum and are now attempting to make an end-run around the procedures of that forum. This Court should prevent Plaintiffs from doing so. Plaintiffs' enforcement efforts in New York are premature.

16. Pursuant to CPLR § 5402(a), a copy of a foreign judgment authenticated in accordance with an act of congress may be filed in the office of any county clerk of the state.

This section provides that a judgment creditor must file with the judgment:

an affidavit stating that the judgment was not obtained by default in appearance or by confession of judgment, that it is unsatisfied in whole or in part, the amount remaining unpaid, and that its enforcement has not been stayed and setting forth the name and last known address of the judgment debtor.

CPLR § 5402(a). While Plaintiffs superficially include much of the above-quoted language, a close reading of Plaintiffs' submitted Affidavit of Carl W. Stursberg, Jr. (Dkt No. 2) reveals important defects. Mr. Stursberg purports in paragraph 1 of his affidavit to be "counsel to Sleek Audio, LLC, the Judgment Creditor and Petitioner..." but does not state that he is counsel to the remaining Plaintiffs, Mark Krywko, Michael Krywko, Jason Krywko and Gregory Wysocki. In

paragraph 2 of his affidavit, Mr. Stursburg states that the Florida judgment was “entered in favor of Sleek Audio, LLC,” but does not mention the remaining Plaintiffs. Thus, while he states in this paragraph that the Judgment was not obtained by default in appearance or by confession of judgment, he misstates that the Judgment was only in favor of one of the Plaintiffs. A plaintiff’s failure to comply with the technical requirements of CPLR § 5402(a) has been held to preclude enforcement. *See Nagy v. Wood*, 95 A.D.2d 728 (1st Dep’t 1983) (finding that enforcement of Florida judgments had to be enjoined until status and effect of judgments was clarified).² It also appears that the Judgment was submitted *prior to* being authenticated by the Clerk of the Palm Beach Court. Docket Entry 1 in this matter is stamped on the first page “FILED: NEW YORK COUNTY CLERK 11/04/2014,” but the “Exemplification Certification” by the Clerk of the Palm Beach Court on page 6 of the document purports to certify this copy of the Judgment on November 6, 2014, *two days* after the Judgment was stamped “FILED” on the first page.

17. Furthermore, while Mr. Stursberg’s Affidavit correctly states that the enforcement of the Judgment has not been stayed in the State of Florida (Stursburg Aff. ¶ 6), there is no mention whatsoever of Defendant’s *TWO* pending motions to stay enforcement of the Judgment. *See* Exhibits B and C hereto. In the next paragraph, the affidavit misleadingly states that, as of November 4 (15 days following entry of judgment), the Judgment can be executed upon by any sheriff in the state of Florida. Stursburg Aff. ¶ 7. This is not technically accurate because a judgment in Florida may only be executed upon by a sheriff after a certified copy of a judgment is recorded (*see* Fla. R. Civ. P. 1.550(a)), and a judgment lien certificate issued, after which a creditor must secure a writ of execution, which can only then be delivered to a sheriff for execution. *See generally* Fla. Stat. § 55; Fla. Stat. 30.30; Fla. R. Civ. P. 1.550(a). In other

² While it is true that paragraph 4 of the Stursburg Affidavit lists the amounts of the Judgment remaining unpaid to all of the Plaintiffs herein, the difference in characterization of the Judgment between this and the earlier paragraph is, at best, inconsistent.

words, several official steps must be taken by a judgment creditor before a judgment “can be executed upon by any sheriff in the state of Florida.” *See Stursberg Aff.* ¶ 7. Here, according to a search undertaken by Defendant’s counsel in Florida, only Sleek Audio, LLC has filed a judgment lean certificate with the Florida Department of State. Accordingly, while Mr. Stursberg’s submission appears to try to enable enforcement of a domesticated judgment by all Plaintiffs, it is likely that only one of the Plaintiffs has taken the necessary steps to execute on the Judgment in Florida. While these may appear to be minor deceptions or inconsistencies, this Court should not reward Plaintiffs’ sloppy (at best) procedural work, but rather vacate Plaintiffs’ filing and domesticated judgment. Rather than properly go through all the steps of Florida procedure to enforce a Florida judgment, Plaintiffs are attempting to create new and potentially-conflicting obligations in New York.

18. In this regard, it is also worth mentioning that there appears to be no connection whatsoever to the State of New York on the face of Plaintiffs’ filing. Defendant’s address is listed in paragraph 8 of the Stursberg Affidavit as being in Connecticut. While the Appellate Division, First Department has recently stated that an action to recognize and enforce a foreign judgment does not require a showing of personal jurisdiction (*see, e.g., Abu Dhabi Commercial Bank PJSC v. Saad Trading*, 117 A.D.3d 609, 610-611 (1st Dep’t 2014)), the glaring absence of any connection whatsoever to New York here simply smacks of gamesmanship – particularly when Defendant has **TWO** motions to stay execution pending in Florida and counsel for Plaintiff did not contemporaneously notify Defendant of his attempt to domesticate the Florida judgment. For all of these reasons, the Court should vacate Plaintiffs’ filing and domesticated judgment.

II. DEFENDANT IS ENTITLED TO A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION ENJOINING PLAINTIFFS' ENFORCEMENT OF A DOMESTICATED JUDGMENT.

19. To obtain a temporary restraining order, the movant must demonstrate that immediate and irreparable harm will result unless the defendant is restrained before a hearing can be had. *See* C.P.L.R. § 6313. A court should issue a preliminary injunction when the party seeking relief demonstrates (1) a likelihood of success on the merits, (2) the prospect of irreparable injury if the provisional relief is withheld and (3) a balance of equities tipping in the moving party's favor. *Doe v. Axelrod*, 73 N.Y.2d 750, 750 (1988); *W. T. Grant Co. v. Srogi*, 52 N.Y.2d 496, 517 (1981). The purpose of such relief is not to reach a determination of the ultimate merits of the action, but to maintain the status quo pending such resolution. *New York Auto. Ins. Plan v. New York Sch. Reciprocal*, 241 A.D.2d 313, 314 (1st Dep't 1997). A movant is not required to show a certainty of success, but rather must make a *prima facie* showing of its right to relief. *Terrell v. Terrell*, 279 A.D.2d 301, 303 (1st Dep't 2001). "Evidence demonstrating a likelihood of success on the merits need not be conclusive." *Id.* (citation omitted). Under these standards, the Court should grant temporary and preliminary relief.

A. Defendant Will Likely Succeed in Showing that Plaintiffs' Enforcement of a Domesticated Judgment Will Cause Irreparable Damage to Defendant.

20. A *prima facie* showing of a right to relief on the merits is all that is necessary to demonstrate a "likelihood of success on the merits." *Terrell*, 279 A.D.2d at 303; *Akos Realty Corp. v. Vandemark*, 157 A.D.2d 632, 634 (1st Dep't 1990). In other words, the moving party need not show that success is certain. *Props for Today, Inc. v. Kaplan*, 163 A.D.2d 177, 178 (1st Dep't 1990). Actual proof should be left to further court proceedings. *Terrell*, 279 A.D.2d at 303 (quoting *McLaughlin, Piven, Vogel, Inc. v. W. J. Nolan & Co.*, 114 A.D.2d 165, 172-73 (2d

Dep't 1986)).

21. As mentioned above, Plaintiffs are attempting to enforce a Judgment that is not only the subject of a pending appeal in Florida but also the subject of two pending motions to stay enforcement of the judgment and to set the amount of any undertaking. Pursuant to CPLR § 5404, a judgment debtor may stay enforcement of a foreign judgment until an appeal in a foreign court is concluded if the judgment debtor shows the supreme court that an appeal from the foreign judgment is pending or will be taken, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered. CPLR §5404(a). Here, Defendant has shown that an appeal from the foreign judgment will be taken, and the foreign court has yet to decide what security it will require. Defendant has not delayed in any manner, but has rather been diligent (as the above factual recitation shows) in seeking to determine what security, if any, the Florida court will require. Under this subsection (a) of CPLR 5404, Defendant is likely to succeed on the merits of its request for a stay of enforcement because Defendant has shown diligence regarding its timely requests for the Palm Beach Court to set the required security, if any. Again, a hearing has been set on the Motion to Stay in Palm Beach Court on November 19, 2014. Exhibit D.

22. Defendant would also succeed under the merits of subsection (b) of CPLR § 5404, which provides that the court shall stay enforcement of a foreign judgment for an appropriate period if the judgment debtor shows the supreme court any ground upon which enforcement of a judgment of the supreme court of this state would be stayed, upon requiring the same security for satisfaction which is required in this state. CPLR § 5404(b). First, basic principles of efficient judicial administration dictate that enforcement of a domesticated judgment should be stayed. As mentioned above, Defendant holds two of his own judgments against Sleek Audio, LLC, and

more importantly, an arbitration claim seeking \$6,500,000.00 against that same entity is now fully briefed and awaiting a decision by a New York arbitrator. Judicial economy would be best-served by treating all of the competing claims together once they all reach a final resolution (which time is soon approaching). As established below, New York courts have discretion to both stay enforcement of a judgment pending appeal and set any conditions for a bond.

23. Under CPLR § 5519(c), this court may, in its discretion, stay all proceedings to enforce a judgment or order appealed from pending an appeal. Courts have found that judgment enforcement may be stayed even without the posting of a bond. *See, e.g., Pickwick Int'l, Inc. v. Tomato Music Co.*, 119 Misc.2d 227, 462 N.Y.S.2d 781 (N.Y. Sup. 1983). In *Pickwick*, the court was faced with a situation analogous, though not identical, to the one at bar. Defendant judgment creditors were litigating in Minnesota a judgment which had been obtained against defendants in Minnesota. 119 Misc.2d at 227-28. While an appeal to the Minnesota Supreme Court was pending, the Minnesota court refused to grant a stay of execution of judgment pending appeal unless a bond was posted. *Id.* at 229. Plaintiff had filed to domesticate the Minnesota judgment in New York. The defendant judgment debtors sought a stay of enforcement of the domesticated judgment under CPLR § 5404(b) *without* the posting of a bond. *Id.* The *Pickwick* court found that, even though the Minnesota court would have required a bond to stay execution of the original judgment, because pursuant to CPLR §§ 5402(b) and 5404(b) a foreign judgment could be stayed in New York in the same manner as if it were a New York judgment, the domesticated New York judgment could be stayed without the posting of a bond under CPLR §§ 5404(b) and 5519(c). *Id.* at 231-32.

24. Thus, according to *Pickwick*, this Court can properly stay execution of a domesticated judgment without the posting of a bond even if the Florida courts ultimately

determine that a bond is necessary to stay execution of the Judgment in Florida. In any event, there is no question that this Court should stay execution of a domesticated judgment prior to the original jurisdiction's determination of a stay. As shown below, any other result is likely to conflict with the Florida court's decision while creating conflicting obligations for Defendant.

B. Defendant Will Likely Suffer Irreparable Harm if Plaintiffs Are Allowed to Enforce the Domesticated Judgment.

25. If Plaintiffs are allowed to enforce a domesticated judgment, Defendant will likely suffer irreparable harm. If Plaintiffs execute on a domesticated judgment, they will likely attempt to restrain any assets Defendant may have in New York. This could potentially impair Defendant's ability to post security in Florida, which would be significantly prejudicial to him. Any requirement from the Florida court to post a bond could also subject Defendant to double jeopardy on the same underlying liability. Basic fairness dictates that Defendant should only have to pay the underlying liability once, especially when other arbitration matters remain pending between Plaintiffs and Defendant. If the Plaintiffs are allowed to enforce a judgment in New York and are successful in doing so prior to the Florida courts' decisions (on the stay and the appeal), any stay or reversal issued by the Florida courts will be rendered a nullity.

C. The Equities Weigh Heavily In Plaintiff's Favor.

26. Because an injunction is equitable in nature, the "probability of hardship to each of the parties from the grant or denial of the application must be weighed in the balance." *Finger Lakes Health Sys. Agency v. St. Joseph's Hosp.*, 81 A.D.2d 403, 408 (3d Dep't 1981). The Court must balance the equities and determine if the irreparable injury to be sustained by the movant is more burdensome than the harm caused to the respondent through imposition of the injunction. *See Burmax Co., Inc. v. B & S Indus., Inc.*, 135 A.D.2d 599, 601 (2d Dep't 1987). The equities

will often favor a movant who seeks only to preserve the status quo pending determination of the issues. *See Doe v. Axelrod*, 136 A.D.2d 410, 415 (1st Dep't 1988).

27. Here, balancing the equities clearly favors a stay of Plaintiffs' ability to execute on a domesticated judgment. If the requested relief is not granted, Defendant is likely to face significant conflicting obligations. If his accounts or assets are restrained, he faces a significant risk of violating Florida court orders because his ability to post the necessary bond in Florida may be impaired. By contrast, Plaintiffs will not be substantially harmed if a stay is granted. As mentioned above, Defendant has informed his counsel that he does not plan on transferring assets outside the ordinary course of business. Indeed, Defendant could be sanctioned under Florida law if he did so (*see* Fla. Stat. § 45.045(4)), and Defendant has no intention of running afoul of the Florida courts' orders. The Florida courts have not yet ruled on Defendant's motions to set the appropriate amount of a bond to stay execution of the Florida judgment. If an undertaking is required by the Palm Beach Court during the pendency of Defendant's appeal, Plaintiffs will be protected by that undertaking. Indeed, it does not appear that Plaintiffs will suffer any harm from a brief stay of execution. It bears noting that even if Plaintiffs are allowed to execute on a domesticated judgment in New York, they would still have to wait thirty days after mailing and filing proof of notice to Plaintiff prior to collecting any proceeds per CPLR § 5403. Waiting an additional brief period (likely to be only several days) for the Florida courts to decide the salient issues causes Plaintiffs no discernible harm. This is especially true because Plaintiffs' arbitration award had been final for over a year prior to Plaintiffs' recent attempts to enforce the judgment based on this award.

28. A temporary restraining order and preliminary injunction is necessary here to preserve the status quo until the Florida courts decide the pending motions. To clarify, the Palm

Beach Court can only rule in one of three possible ways: the Florida court could 1) eliminate the bond requirement but stay enforcement of the Florida judgment; 2) reduce the bond requirement and stay enforcement once the undertaking is presented; or 3) require a full bond and stay enforcement once the undertaking is presented.³ In each of these scenarios, Plaintiffs are not substantially prejudiced by a short delay in their ability to enforce a domesticated judgment in New York. In scenarios (2) and (3), Plaintiffs are protected by the undertaking Defendant must post in Florida. In scenario (1), Plaintiffs will, at worst, have to wait until Defendants' appeal is decided. By contrast, in each of these scenarios, Defendant will suffer substantial harm if Plaintiffs are allowed to enforce a domesticated judgment in New York because Defendant will be subject to onerous (and potentially conflicting) financial obligations. Moreover, the decision of this Court would directly conflict with the decision of the Florida courts in each scenario (because it will conflict with Florida's stay), at least until Defendant is able to submit proof to the Court that he has furnished the required security under CPLR § 5404(a). But Plaintiff may not be able to furnish the required security if assets are frozen in New York. The balance of equities here lie strongly in favor of issuing a stay to enforcement of a domesticated judgment in this Court.

³ Under Florida Rule of Appellate Procedure 9.310(a), "[a] stay pending review may be conditioned on the posting of a good and sufficient bond, other conditions, or both." A judgment debtor solely for the payment of money is entitled to a stay of enforcement pending review if it posts a sufficient bond. Fla. R. App. P. 9.310(b). There is some question here regarding whether the orders about which Defendant has filed a notice to appeal are solely for the payment of money. See Exhibit C hereto. In any event, according to Florida Statute §45.045(2), no matter what the legal theory, a Florida court has discretion to stay execution of judgment pending appeal, and to reduce a supersedeas bond or "set other conditions for the stay with or without a bond." Fla. Stat. § 45.045(2).

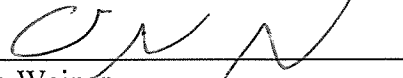
CONCLUSION

29. **WHEREFORE**, based upon the foregoing, Defendant respectfully requests that this Court grant the Order to Show Cause in its entirety and grant such other and further relief as it deems just and proper.

Dated: New York, New York
November 13, 2014

Respectfully submitted,

ROBINS KAPLAN MILLER & CIRESI, LLP

By: 

Craig Weiner

Ofer Reger

601 Lexington Avenue

New York, New York 10022

Telephone: (212) 980-7428

Facsimile: (212) 980-7499

Email: oreger@rkmc.com

Counsel for Defendant Curtis J. Jackson, III

AFFIRMATION OF SERVICE

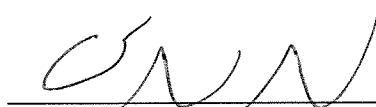
I, Ofer Reger, an attorney duly licensed to practice law before the Courts of the State of New York, do hereby further affirm the following subject to the penalties of perjury:

1. On November 12, 2014, at approximately 9:48 p.m., I notified counsel for Plaintiffs that Defendant intended to bring this Order to Show Cause on November 14, 2014 at approximately 10:00 a.m in the ex parte motion room of the New York Supreme Court (New York County). A copy of my email to Plaintiffs' counsel giving notice of this application is annexed hereto and made a part hereof as Exhibit "E." This email was sent to the following attorneys, each of whom (besides Carl W. Stursberg, Jr., who, according to the NYSCEF docket, filed the Florida Judgment in New York) have appeared for Plaintiffs in the Florida action in Palm Beach County Court:

Carl W. Stursberg, Jr.
Kristin Maria Ahr
Lynn Abraham Sheehy
Mark Francis Ryamond
Rhett Traband
Dennis K. Egan

2. No prior request for the relief sought herein, or for similar relief, has been made to this Court.

Affirmed this 13th day
of November, 2014



Ofer Reger

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

-----X

SLEEK AUDIO, LLC, MARK KRYWKO,
MICHAEL KRYWKO, JASON KRYWKO AND
GREGORY WYSOCKI,

Index No.: 161145/2014

Plaintiffs,

-against-

CURTIS J. JACKSON, III,

Defendant.

-----X

**ORDER TO SHOW CAUSE
FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Upon the annexed affirmation of Ofer Reger, dated November 13, 2014, together with the exhibits annexed thereto, and upon all of the prior proceedings heretofor had herein and good cause appearing therefor,

LET the Plaintiffs SLEEK AUDIO, LLC, MARK KRYWKO, MICHAEL KRYWKO, JASON KRYWKO and GREGORY WYSOCKI (collectively, the "Plaintiffs"), or their attorneys show cause before this Court at IAS Part _____, to be held at the Courthouse located at 60 Centre Street, New York, New York, Room _____, on the _____ day of November, 2014, at _____ o'clock in the _____ of that day, or as soon thereafter as counsel can be heard, why an order should not be issued, pursuant to CPLR § 6301, (a) vacating the Plaintiffs' filing to domesticate a foreign Florida judgment and any domesticated judgment; and (b) enjoining Plaintiffs from enforcing any domesticated judgment in New York based upon their Florida judgment (Case No. 502013-CA-012120 in the Circuit Court of the Fifteenth Judicial District in and for Palm Beach County, Florida) until such time as (1) the Florida courts determine the appropriate security, if any, required to secure the Florida judgment pending Defendant's appeal

of that judgment in Florida; or, in the alternative, until such time as (2) Defendant's pending appeal in the Florida courts is finally decided, without the need for any bond in New York; and (c) enjoining Plaintiffs from taking any steps to execute on any such domesticated judgment, including by issuing any writs, liens, information subpoenas, or notices of restraint, garnishment, levy, execution or the like in the State of New York; and (d) granting Defendant such other and further relief as the Court deems just and proper; and it is

ORDERED that, sufficient reason having been shown therefor, pending the hearing of this motion, Plaintiffs are hereby temporarily restrained and enjoined from enforcing or attempting to enforce any domesticated judgment in New York based upon Plaintiffs' Florida judgment until such time as the Florida courts determine the appropriate security, if any, required to secure the Florida judgment pending Defendant's appeal of that judgment in Florida; and Plaintiffs are further temporarily restrained and enjoined from taking any steps to execute on any such domesticated judgment, including by issuing any writs, liens, information subpoenas, or notices of restraint, garnishment, levy, execution or the like in the State of New York.

Sufficient reason appearing therefor, let service of a copy of this Order, together with the papers upon which it is based, upon counsel for the Plaintiffs by email and overnight mail on or before on November __, 2014, be deemed good and sufficient service.

E N T E R:

J.S.C.

Dated: November __, 2014

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

**SLEEK AUDIO, LLC, MARK KRYWKO,
MICHAEL KRYWKO, JASON KRYWKO
AND GREGORY WYSOCKI,**

Plaintiffs,

against

CURTIS J. JACKSON, III

Defendant.

Index No.

**AFFIDAVIT OF
CARL W. STURSBURG, JR.**

STATE OF NEW YORK)

) ss:

COUNTY OF NEW YORK)

Carl W. Stursberg, Jr., being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and a member of Stursberg and Associates, LLC, counsel to Sleek Audio, LLC, the Judgment Creditor and Petitioner and Counter-Respondent in the matter Sleek Audio, LLC *et al.*, Petitioners and Counter-Respondents vs. Curtis J. Jackson, III, Respondent and Counter-Petitioner in the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida (Case No. 502013CA01220XXXXXMBAA).
2. The judgment, a copy of which is annexed hereto as Exhibit A (the "Judgment"), entered in favor of Sleek Audio, LLC in the matter Sleek Audio, LLC, Mark Krywko, Michael Krywko, Jason Krywko and Gregory Wysocki, Petitioners and Counter-Respondents vs. Curtis J. Jackson, III, Respondent and Counter-Petitioner in the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida

(Case No. 502013CA012120XXXXMBAA), was not obtained by default in appearance or by confession of judgment;

3. The Judgment entered in favor of plaintiffs Sleek Audio, LLC, Mark Krywko, Michael Krywko, Jason Krywko and Gregory Wysocki and against Curtis J. Jackson, III is unsatisfied in whole or in part as of the date hereof;
4. The amount of the Judgment remaining unpaid (i) to Sleek Audio, LLC, with an address at 3904 9th Avenue West, Bradenton, Florida 34205, is \$17,247,426.11, upon which interest is continuing to accrue, (ii) to Mark Krywko, residing at 927 83rd Street NW, Bradenton, Florida 34209, Michael Krywko, residing at 6358 Grand Oak Circle #102, Bradenton, Florida 34203 and Jason Krywko, residing at 2410 33rd Street West, Bradenton, Florida 34205, is \$125,748.40, and (iii) to Gregory Wysocki, residing at 225 Guilford Road, Bloomfield Hills, Michigan 48304, is \$53, 853.72.
5. The amount of the Judgment of \$125,728.40 awarded to Mark Krywko, Michael Krywko and Jason Krywko and the amount of the Judgment of \$53,853.72 awarded to Gregory Wysocki are not part of the \$17,247,426.11 awarded to Sleek Audio, LLC.
6. The enforcement of the foregoing Judgment has not been stayed in the State of Florida;
7. The Judgment is a final determination of the Circuit Court for the Fifteenth Judicial District in and for Palm Beach County, Florida and pursuant to the Florida Court Rules, could not have been executed upon for fifteen (15) days following the entry of judgment. The Judgment was filed by the Clerk of the Court on October 17, 2014 and as of November 4, 2014, the Judgment can be executed upon by any sheriff in the state of Florida; and

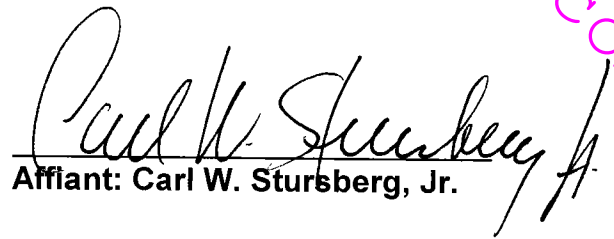
8. Curtis J. Jackson, III is the judgment debtor whose last known address is 50 Poplar Hill Drive, Farmington, CT 06032

Dated: November 7, 2014
New York, New York

Sworn to and subscribed before me this

7th day of November, 2014


NOTARY PUBLIC


Affiant: Carl W. Stursberg, Jr.

My Commission expires:

MAY FOLKENSIK
NOTARY PUBLIC, State of New York
No. 02FC4735483
Qualified in New York County
Commission Expires Sept. 30, 2017

IN THE CIRCUIT COURT FOR THE FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY, FLORIDA

SLEEK AUDIO, LLC, MARK KRYWKO,
MICHAEL KRYWKO, JASON KRYWKO
And GREGORY WYSOCKI,

Petitioners and Counter-Respondents,

Case No. 502013CA012120XXXXMBAA
Judge Peter D. Blanc

vs.

CURTIS J. JACKSON, III,

Respondent and Counter-Petitioner

ORDER CONFIRMING ARBITRATION AWARD AND FINAL JUDGMENT

THIS CAUSE having come on to be heard upon Petitioners Slek Audio, LLC, Mark Krywko, Michael Krywko, Jason Krywko and Gregory Wysocki's (sometimes collectively the "Petitioners") Amended Application/Motion to Confirm Arbitration Award and having been briefed and argued, and the Court being fully advised in the premises,

1. Under Section 9 of the Federal Arbitration Act, 9 U.S.C. § 9, the Court must confirm the Arbitration Award unless the Award is vacated, modified or corrected.¹

2. The Court denied Counter-Petitioner's Application/Motion to Vacate Arbitration Award in its Order Denying Defendant's Motion to Vacate Arbitration Award dated September 30, 2014. No motion to modify or correct the Award is pending.

¹ Similarly, under the Florida Arbitration Code, Fla. Stat. § 683.13(4), if a motion to vacate is denied, and no motion to modify or correct the Award is pending, the court shall confirm the Award.

3. Accordingly, Petitioners' Amended Application/Motion to Confirm Arbitration Award is granted.

4. The Partial Final Award dated February 8, 2013, Interim Arbitration Award dated May 2, 2013 and Final Arbitration Award dated July 15, 2013, all filed with the Court and entered by the Arbitrator in the consolidated proceedings entitled *Sleek Audio, LLC v. Curtis J. Jackson, III* (JAMS Case No. 1440003176), and *Curtis Jackson, III, individually and derivatively on behalf of Sleek Audio, LLC v. Sleek Audio, LLC, et al.*, (JAMS Case No. 1440003314) are hereby confirmed as the judgment of this Court.

5. Accordingly, it is hereby Ordered and Adjudged that a Judgment is entered in Sleek Audio LLC's favor on its claims against Curtis J. Jackson III for:

- (a) Misappropriation of trade secrets;
- (b) Breach of Jackson's duty of confidentiality to Sleek;
- (c) Civil conspiracy;
- (d) Jackson's breach of his non-disclosure agreement with Sleek; and
- (e) Unjust enrichment.

6. Sleek Audio LLC shall recover from Curtis J. Jackson, III the amount of \$11,693,247, with prejudgment interest from the date of the Interim Award, May 2, 2013 through October 16, 2014 in the amount of \$808,703.84; plus \$4,488,331.17 in attorneys' fees and costs, awarded by the Arbitrator with prejudgment interest from the date of the Final Award, July 15, 2013 through October 16, 2014 in the amount of \$257,144.10, for the total sum of \$17,247,426.11, plus interest from the date of this Order at the judgment rate of 4.75% under Fla. Stat. §55.03 for which sum let execution issue.

7. Judgment is also entered in Petitioners' favor on Jackson's claims against Petitioners for:

- (a) Fraudulent inducement by Mark, Michael and Jason Krywko and Sleek regarding Jackson's execution of the Securities Purchase Agreement No. 1 and investment in Sleek;
- (b) Breach of fiduciary duty by Mark, Michael and Jason Krywko;
- (c) Breach of fiduciary and other duties by Gregory Wysocki;

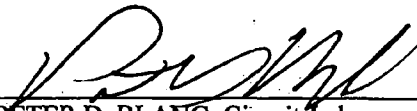
and Jackson shall take nothing from his counterclaims against Petitioners and Petitioners shall go henceforth without day.

8. Petitioners Mark, Mike and Jason Krywko shall recover from Curtis J. Jackson, III the amount of \$118,661.47, in attorneys' fees and costs, awarded by the Arbitrator with prejudgment interest from the date of the Final Award, July 15, 2013, through October 16, 2014 in the amount of \$7,066.94, for the total sum of \$125,728.4, plus interest from the date of this Order at the judgment rate of 4.75% under Fla. Stat. §55.03 for which sum let execution issue.

9. Petitioner Gregory Wysocki shall recover from Curtis J. Jackson, III the amount of \$50,826.34, in attorneys' fees and costs, awarded by the Arbitrator with prejudgment interest from the date of the Final Award, July 15, 2013, through October 16, 2014 in the amount of \$3,027.38, for the total sum of \$53,853.72, plus interest from the date of this Order at the judgment rate under Fla. Stat. §55.03 for which sum let execution issue.

10. The Court retains jurisdiction to address the award of post-arbitration award attorney's fees and costs incurred by Petitioners.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, on this 16 day of October, 2014.


PETER D. BLANC, Circuit Judge

ADDRESS OF CREDITORS:

Sleek Audio, LLC
3904 9th Ave West
Bradenton, FL 34205

ADDRESS OF DEBTOR:

Curtis J. Jackson, III
50 Poplar Hill Drive
Farmington, CT 06032

Copies Furnished to:

Kristin M. Ahr, Esq. (063290)
kahr@broadandcassel.com
Broad and Cassel
One North Clematis Street, Suite 500
West Palm Beach, Florida 33401
Telephone: 561.832.3300
Facsimile: 561.655.1109

Dennis K. Egan (pro hac vice)
degan@kotzsangster.com
Lynn A. Sheehy (pro hac vice)
lsheehy@kotzsangster.com
Kotz Sangster Wysocki, P.C.
400 Renaissance Center, Suite 3400
Detroit, Michigan 48243

Mark F. Raymond, P.A. (373397)
mraymond@broadandcassel.com
Rhett Traband, PA (0028894)
rtraband@broadandcassel.com
Broad and Cassel
One Biscayne Tower, 21st Floor
2 S. Biscayne Blvd.
Miami, Florida 33131
Telephone: 305.373.9400
Facsimile: 305.373.9443

*Attorneys for Petitioners Sleek Audio, LLC, Mark Krywko, Michael Krywko, Jason Krywko
and Gregory Wysocki*

R. Bruce Beckner, Esq.
Garvey Schubert Barer
1000 Potomac Street, N.W.
Fifth Floor
Washington, DC 20007
bbeckner@gsblaw.com

John F. Mariani, Esq.
Shutts & Bowen, LLP
525 Okeechobee Blvd.
1100 City Place Tower
West Palm Beach, FL 33401
jmariani@shutts.com

Attorneys for Respondent Curtis J. Jackson, III



STATE OF FLORIDA • PALM BEACH COUNTY

I hereby certify that the foregoing is a true copy of the record in my office with redactions, if any as required by law.

THIS 6th DAY OF November, 2014

SHARON R. BOCK
CLERK & COMPTROLLER

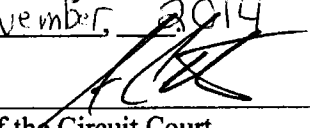
By [Signature]
DEPUTY CLERK

EXEMPLIFICATION CERTIFICATION

**STATE OF FLORIDA
COUNTY OF PALM BEACH**

I, ~~JEFFREY J. COLBATH~~ Judge of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, DO HEREBY CERTIFY that SHARON BOCK, whose name is subscribed to the foregoing certificate and attestation, is the duly appointed and qualified Clerk of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, and that the seal thereto affixed is the genuine seal of the said Court, and that the said certificate and attestation are in due form and made by the proper officer, and full faith and credit are due and ought to be given to all of the official acts of said Clerk, as well in courts of judicature as elsewhere.

IN TESTIMONY WHEREOF, I have hereunto set my hand at West Palm Beach, Palm Beach County, Florida this 6th day of November, 2014



Judge of the Circuit Court
of Palm Beach County, Florida

**STATE OF FLORIDA
COUNTY OF PALM BEACH**

I, SHARON BOCK, Clerk of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, DO HEREBY CERTIFY that the Honorable Jeffrey Colbath is a Judge of the Circuit Court of Palm Beach County, Florida, duly commissioned, qualified and acting, and that the signature of the foregoing certificate and attestation is genuine and in his/her own proper handwriting, and that full faith and credit are due and ought to be given to all of his/her official acts as well in courts of judicature as elsewhere.

IN TESTIMONY WHEREOF, I have hereunto set my hand at West Palm Beach, Palm Beach County, Florida this 6th day of November, 2014



SHARON BOCK
CLERK OF THE CIRCUIT COURT
PALM BEACH COUNTY, FLORIDA

BY: 

Deputy Clerk

This document is used for providing exemplified copies of court orders.