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0020817998

**IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT - LAW DIVISION**

**0020817998**

**BRANDON APPAREL GROUP, INC.,  
Plaintiff,**

9623/0121 50 001 Page 1 of 6  
**2002-07-25 15:43:37**  
Cook County Recorder 31.50

v.

**No. 00 L 13296**

**PEARSON PROPERTIES, LTD.,  
Defendant.**

**ORDER**

This matter comes before the court on defendant's Motion to Enforce Settlement Agreement. Defendant asserts that an agreement to settle this case was reached with Eric Lefkofsky and Bradley Keywell, former officers of plaintiff, during a mediation with former Circuit Court Judge Richard E. Neville on March 12, 2001. This court conducted an evidentiary hearing over several court days and, after reviewing the materials submitted herein and assessing the credibility of the witnesses, concludes that said Motion should be granted.

This matter originally came before this court as a supplemental proceeding to collect on a \$1,000,000 default judgment entered against plaintiff by a Wisconsin court. Extensive efforts by defendant over the past 1 1/2 years to collect on this judgment have been met by even more extensive efforts to frustrate collection. From the inception of these collection efforts (and even before that time) it has clearly been the position of all involved that plaintiff was judgment proof. Defendant's primary focus has been to substantiate its claim that Lefkofsky and Keywell misappropriated plaintiff's assets to bolster another company, Starbelly, that they owned. The stock of Starbelly was subsequently sold to Halo for \$240,000,000. If successful in proving its theory and tracing these funds, defendant would be entitled to a personal judgment against Lefkofsky and Keywell. *O'Connell v. Pharmaco, Inc.*, 143 Ill.App.3d 1061 (1986).

Throughout the course of these proceedings there has also been indications by defendant that serious fraud claims were being contemplated against Lefkofsky and Keywell. One of the early attempts by Lefkofsky and Keywell to quash these supplemental proceedings was based upon a willingness to pay the \$1,000,000 judgment against Brandon in full. This effort was rejected when their attorney revealed, in open court, that a release of these threatened claims was required. It is against this background that the parties proceeded to the March 12th mediation.

THE SIGNATURES OF THE PARTIES TO THIS COURT ORDER ARE COPIED AND ARE NOT ORIGINAL SIGNATURES.

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The key issue to resolving the instant Motion is whether the parties attended the mediation with the intent to settle a claim against Brandon or to settle issues concerning Lefkosky and Keywell. Clearly, the collection efforts and possible future claims against Lefkosky and Keywell motivated the interest in mediation. Defendant was in possession of a \$1,000,000 judgment that was worthless as against Brandon. Why would it waste the time, expense, and effort to attend a mediation to obtain a worthless \$2,000,000 settlement payable by the same company? Plaintiff had allowed the \$1,000,000 default judgment to be entered against it. There obviously has been little concern on the part of Lefkosky and Keywell as to the amount of a judgment against Brandon. Why would they put forth any effort to limit a settlement against a bankrupt company?

The answer to both of the questions is obvious. Lefkosky and Keywell were negotiating to release personal exposure against themselves. The only consideration that could possibly be provided on behalf of a penniless company is the promise of a financially responsible party to pay a settlement. That is what happened in the instant case.

This order will not attempt to address every piece of evidence that was introduced or every argument that was made by the lawyers. Some of these items support the result contained herein (e.g., Lefkosky and Keywell were no longer officers of Brandon at the time of mediation) and some support a contrary determination (e.g., changes in the two settlement agreements). Having presided over this case for almost two years has given this court some insight as to what was negotiated before Judge Neville.

Plaintiff argues that this settlement should not be enforced because of the confidentiality provision of the JAMS agreement. An oral settlement agreement is as binding as a written one. *Knoll v. Swanson*, 92 Ill.App.3d 398 (1968). The settlement of claims is encouraged as a matter of public policy. *Stone v. McCarthy*, 206 Ill.App.3d 893 (1990). Adopting plaintiff's argument would also lead to the result that a written agreement entered into pursuant to a JAMS mediation could not be enforced. Such a result would undermine the effectiveness of mediation.

Defendant does not maintain that Lefkosky and Keywell agreed to pay this settlement in one lump sum. Rather, defendant argues that \$800,000 was to be paid immediately and \$1,200,000 was to be paid over time. This testimony is more credible than that offered on behalf of Lefkosky and Keywell. The \$800,000 payment was to be credited by an amount held in an escrow account. Defendant states that \$220,980.78 is currently in the escrow account. This amount may have changed by the date of this order.

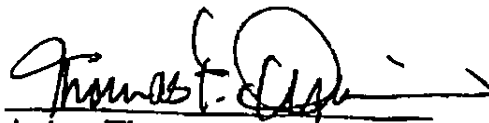
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The payment schedule contained in the "Judgment Creditor's Closing Statement" appears accurate.

Accordingly, defendant's Motion to Enforce Settlement Agreement is granted. Judgment is entered against Eric Lefkofsky and Brad Keywell jointly and severally in the amount of \$2,000,000. This judgment is to be paid by tendering a check within 30 days to defendant in the amount of \$800,000 minus the current balance in the Lefkofsky escrow account which is also to be turned over to defendant. The remainder of this judgment shall be paid pursuant to the monthly payment schedule contained on p. 23 of "Judgment Creditor's Closing Statement". There exists no just cause to delay enforcement or appeal of this order.

  
Judge Thomas P. Quinn

JUDGE THOMAS P. QUINN

APR 17 2002

Circuit Court-238

Property of Cook County Clerk's Office

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

BRANDON APPAREL GROUP,  
INC.,

Plaintiff/Judgment Debtor,

v.

PEARSON PROPERTIES, LTD.,

Defendant/Judgment Creditor.

No. 00 L 013296

ORDER

THIS MATTER having come before the Court on defendant's motion for modification, due notice having been given, and the Court having reviewed the motion and memorandum in opposition and after having heard argument,

IT IS HEREBY ORDERED:

1. This Court's April 17, 2002 order is modified to provide as follows:

Judgment is entered against Eric Lefkofsky and Brad Keywell jointly and severally in the amount of \$2,000,000. This judgment is to be paid as follows:

- (a) tendering a check for \$220,980.78, which is \$800,000 minus the amounts previously tendered in escrow, within thirty (30) days from the date of this order;
- (b) tendering a check for \$635,333.34, which is the amount due and owing since August 2001, within thirty (30) days from the date of this order; and
- (c) paying the remainder of the judgment pursuant to the following monthly payment schedule:

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AREA	WARRANTY
05	00300980955
7	40500300980955
1	740500300980955
2	300980955
3	00980955
4	0980955
5	980955
6	80955
7	0955
8	955
9	55
10	5
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OFFICE OF THE CLERK OF COOK COUNTY, ILLINOIS  
 PERMANENT REAL ESTATE INDEX NUMBER AND LEGAL DESCRIPTION  
 VOLUME ITEM  
 98

AREA SUB-AREA BLOCK PARCELL TAX CODE  
 5-7-405-3 2306  
 SEC. 7 TOWN 42 RANGE 13  
 CULVERS & JOHNSONS ADD  
 TO GLENCOE  
 & VAC ALLEY S & ADJ

DOCK	PARCEL CODE	WARRANTY	ITEM	FIRST SUFFIX	SECOND SUFFIX	THIRD SUFFIX
0	000000000000000000	000000000000000000	000000000000000000	000000000000000000	000000000000000000	000000000000000000
1	111111111111111111	111111111111111111	111111111111111111	111111111111111111	111111111111111111	111111111111111111
2	222222222222222222	222222222222222222	222222222222222222	222222222222222222	222222222222222222	222222222222222222
3	333333333333333333	333333333333333333	333333333333333333	333333333333333333	333333333333333333	333333333333333333
4	444444444444444444	444444444444444444	444444444444444444	444444444444444444	444444444444444444	444444444444444444
5	555555555555555555	555555555555555555	555555555555555555	555555555555555555	555555555555555555	555555555555555555
6	666666666666666666	666666666666666666	666666666666666666	666666666666666666	666666666666666666	666666666666666666
7	777777777777777777	777777777777777777	777777777777777777	777777777777777777	777777777777777777	777777777777777777
8	888888888888888888	888888888888888888	888888888888888888	888888888888888888	888888888888888888	888888888888888888
9	999999999999999999	999999999999999999	999999999999999999	999999999999999999	999999999999999999	999999999999999999
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 HACKETT P&S

<u>Month</u>	<u>Amount</u>
May 2002	\$70,666.67
June 2002	\$70,222.22
July 2002	\$69,777.78
August 2002	\$70,666.67
September 2002	\$70,000.00
October 2002	\$69,333.33
November 2002	\$68,666.67
December 2002	\$68,000.00
January 2003	\$67,333.33

2. There exists no just cause to delay enforcement or appeal of this order.

ENTERED:

\_\_\_\_\_  
 Judge Thomas P. Quinn

Date: \_\_\_\_\_



Order Prepared By  
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JUDGE THOMAS P. QUINN  
 MAY 08 2002  
 Circuit Court-238