

STATE OF NEW YORK : COUNTY OF ERIE
SUPREME COURT



GEORGE KURTZ,

Plaintiff,

-VS-

BEST BLUEBERRIES, LLC, MICHAEL
LORIGO, JACK WILLERT and
DAVID KAUDERER,

Defendants.

ORDER AND JUDGMENT

Index No. 812553/2015

WHEREAS, on April 13, 2017, the Defendant, Jack Willert, interposed a cross-motion seeking, amongst other relief, summary judgment against the Plaintiff, George Kurtz, in the principal sum of \$300,000 concerning a guarantee of a debt owed by the Defendant, Best Blueberries, LLC (hereinafter "BB") (hereinafter the "Willert Motion"); and

WHEREAS, on April 13, 2017, the Defendant, Michael Lorigo, interposed a cross-motion seeking, amongst other relief, summary judgment against the Plaintiff in the principal sum of \$75,000 concerning two guarantees of debts owed by BB (hereinafter the "Lorigo Motion"); and

WHEREAS, on May 3, 2017, the Plaintiff interposed a motion seeking, amongst other relief, summary judgment against the Defendants, Mr. Lorigo, Mr. Willert and David Kauderer, in the principal sum of \$105,333.28 concerning a guarantee of a debt owed by BB (hereinafter the "Kurtz Motion"); and

WHEREAS, on October 4, 2017, the Honorable Henry J. Nowak granted a Decision And Order, which, amongst other things (A) denied the Willert Motion upon a determination that

there was a singular question of fact as to whether the Plaintiff had signed the Mr. Willert's guarantee, (B) granted the Lorigo Motion, and (C) granted the Kurtz Motion; and

WHEREAS, on November 15, 2017, the Honorable Henry J. Nowak granted a Supplement To Decision And Order Dated October 4, 2017, which, amongst other things (A) clarified that the amount of Mr. Lorigo's judgment against the Plaintiff was \$104,459.92 as of October 4, 2017 (hereinafter the "Lorigo Judgment"), plus reasonable attorney's fees to be determined at a later date, (B) clarified that the amount of the Plaintiff's judgment against Mr. Lorigo, Mr. Willert and Mr. Kauderer was \$126,891.16 as of October 4, 2017 (hereinafter the "Kurtz Judgment"), plus reasonable attorney's fees to be determined at a later date, (C) offset the Lorigo Judgment against the Kurtz Judgment, thereby reducing the Kurtz Judgment to the net sum of \$22,431.24 as of October 4, 2017 (hereinafter the "Net Kurtz Judgment"), and (D) stayed the entry and enforcement of the Net Kurtz Judgment pending further order of the Court following the final adjudication of the remaining claims in this action at trial, with the stay conditioned upon Mr. Lorigo, Mr. Willert and Mr. Kauderer depositing the sum of \$24,450.06 with the Erie County Comptroller; and

WHEREAS, on January 2, 2018, Mr. Lorigo, Mr. Willert and Mr. Kauderer deposited the sum of \$24,450.06 with the Erie County Comptroller; and

WHEREAS, following a jury trial conducted on January 22, 2018 and January 23, 2018, the jury rendered a verdict determining that the Plaintiff signed Mr. Willert's Guarantee.

NOW THEREFORE, it is hereby

ORDERED, ADJUDGED AND DECREED that, Mr. Willert is hereby granted a money judgment against the Plaintiff in the amount of \$407,943.32, which includes principal, interest

and late charges calculated up to and including January 23, 2018 (hereinafter the "Willert Judgment"); and it is further

ORDERED, ADJUDGED AND DECREED that, the balance due upon the Net Kurtz Judgment as of January 23, 2018 (\$23,045.07) is hereby offset against the Willert Judgment, and accordingly Mr. Willert is entitled to a judgment against the Plaintiff in the net amount of \$384,898.25, plus statutory interest from January 23, 2018, plus an award of the costs, disbursements and expenses of this action, and that Mr. Willert have immediate execution therefor; and it is further

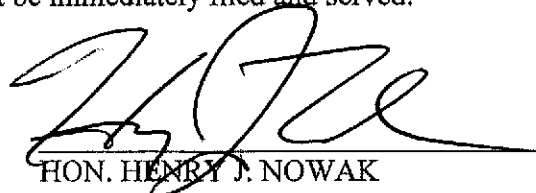
ORDERED, ADJUDGED AND DECREED that Plaintiff, pursuant to the Kurtz Judgment, is entitled to an award of reasonable attorney's fees, the amount of which is to be determined at a later date; Mr. Lorigo, pursuant to the Lorigo Judgment, is entitled to an award of reasonable attorney's fees, the amount of which is to be determined at a later date; and Mr. Willert, pursuant to the Willert Judgment, is entitled to an award of reasonable attorney's fees, the amount of which is to be determined at a later date; and it is further

ORDERED that the \$24,450.06 deposited with the Erie County Comptroller shall be immediately paid by the Erie County Comptroller to Mr. Willert, through a check made payable to "Ralph Lorigo, as attorney", less any fees, commissions, etc. due to the Erie County Comptroller; and it is further

ORDERED that this Order And Judgment be immediately filed and served.

DATED:

February 14, 2018



HON. HENRY J. NOWAK