

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

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315 HUDSON LLC,

Plaintiff,

-against-

FIVE BELLS, INC. F/K/A AMSCO SCHOOL
PUBLICATIONS, INC.,

Defendant.
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Index No. 159900/2015

**AFFIRMATION OF
BURTON R. ROSS IN
SUPPORT OF
PLAINTIFF'S ORDER
TO SHOW CAUSE**

BURTON R. ROSS, an attorney duly admitted to practice in the Courts of the State of New York, hereby affirms under penalties of perjury as follows:

1. I am a partner in the law firm of Jaffe, Ross & Light LLP ("JRL"), attorneys for the Plaintiff 315 Hudson LLC ("Plaintiff," or "Landlord"). I am fully familiar with the facts stated herein.
2. This affirmation is submitted in support of Plaintiff's motion by Order to Show Cause for an order pursuant to CPLR § 5229 (a) restraining defendant Five Bells, Inc. f/k/a Amsco School Publications, Inc. ("Defendant") (see Exhibit A) from making or suffering any sale, assignment, transfer or interference with any property or assets in which Defendant has an interest or may be entitled to receive at any time, until the pending judgment based on this Court's Decision and Order dated and entered on May 24, 2016 (NYSCEF Doc. No. 38) is satisfied (see Exhibit C); (b) ordering Defendant to appear and attend before a notary public at the offices of Plaintiff's counsel, Jaffe, Ross & Light LLP, 880 Third Avenue, New York, New York 10022, for the taking of a deposition under oath upon oral questions on all matters relevant

to the satisfaction of said pending judgment; and (c) ordering such other and further relief as this Court may deem just and proper.

3. Upon information and belief, Defendant, which was formerly known as Amsco School Publications, Inc., was in the business of providing educational publications and materials to K-12 schools across the country and internationally. A printout of the New York Department of State Division of Corporations website showing Defendant's "Entity Information" is annexed hereto as Exhibit A.

4. Upon information and belief, Lawrence Beller is the sole shareholder of Defendant.

5. In May 2013, Defendant sold its business to Perfection Learning, an Iowa company. See Exhibit B, a printout from Defendant's website.

6. Upon information and belief, monies continue to be paid to Defendant as a result of that sale either in the form of payment on account of the sale price or as a license fee. It is our belief that any monies paid to Defendant are immediately disbursed to Lawrence Beller.

7. Plaintiff commenced this action on September 28, 2015 for unpaid rent and additional rent due from Defendant by Plaintiff as a result of Defendant's default under its commercial lease with Plaintiff. Defendant appeared and answered the complaint in this action, and Plaintiff moved for summary judgment.

8. By Decision and Order dated and entered on May 24, 2016 (NYSCEF Doc. No. 38), this Court granted Plaintiff's motion for summary judgment and awarded Plaintiff the principal sum of \$503,101.02 plus interest, costs and disbursements. The Court also ordered a hearing before a Special Referee to determine the amount of Plaintiff's attorney's fees. A copy of Decision and Order is annexed hereto as Exhibit C.

9. CPLR § 5229, entitled “Enforcement before judgment entered,” states as follows:

In any court, before a judgment is entered, upon motion of the party in whose favor a verdict or decision has been rendered, the trial judge may order examination of the adverse party and order him restrained with the same effect as if a restraining notice had been served upon him after judgment.

10. Thus, “[t]he only statutory requirement is that the application for CPLR 5229 relief be made by the prevailing party.” *Gallegos v. Elite Model Mgmt Corp.*, 1 Misc.3d 200, 202, 768 N.Y.S.2d 134 (Sup. Ct. N.Y. Co. 2003). “It is in the trial court’s discretion whether to grant the injunctive relief in light of the purpose of the statute: to prevent an adverse party from disposing of assets in order to avoid judgment.” *Id.*

11. The moving party is not required to submit evidence that assets are definitively being disposed of or diverted in order to win injunctive relief. *Id.*, at 207. Rather, as the Court in *Gallegos* found:

Such evidence often may only surface on examination of the adverse party, ordered pursuant to CPLR 5229. A requirement of a showing that the adverse party has already disposed of assets runs counter to the purpose of CPLR 5229, which is a preventative measure designed to frustrate the adverse party from disposing of assets before such disposition takes place.

Id. at 207.

12. In order to prevent Defendant from disposing of its assets so as to avoid the substantial pending judgment against it, Plaintiff respectfully seeks injunctive relief pursuant to CPLR § 5229.

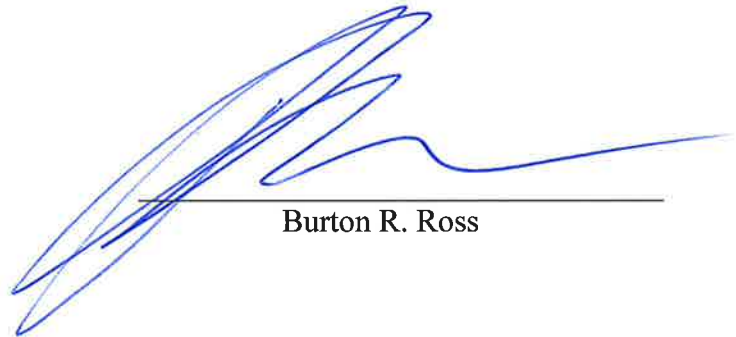
13. On June 6, 2016, my associate, Mark N. Antar, Esq., notified Defendant’s counsel, Eve Kerzhner and Kathleen M. Kunder, of Fox Horan & Camerini LLP, by email that

we would be submitting this application to the Court on June 7, 2016 at 9:30 am. A copy of Mr. Antar's email is annexed hereto as Exhibit D.

14. No prior application has been made for the relief sought herein.

WHEREFORE, for these reasons it is respectfully requested that Plaintiffs' motion be granted in its entirety.

Dated: New York, New York
June 3, 2016



Burton R. Ross