

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

IZZO GOLF INC.,
f/k/a DANCORP INVESTORS, INC.,

Plaintiff

DECISION AND ORDER

-vs-

10-CV-6507 CJS

KING PAR CORPORATION, B&P BAIRD HOLDINGS,
INC., KP ACQUISITION COMPANY, KING PAR LLC,
WILLIAM J. BAIRD, PAMELA BAIRD, "JOHN DOE"
1-10, "MARY ROE" 1-10 and XYZ CORPORATION
1-10,

Defendants

INTRODUCTION

Now before the Court is Plaintiff's motion for partial summary judgment (Docket No. [#53]), "determining that Defendant William J. Baird [is] liable[, as alter ego,] for the full amount of damages for Defendant B & P Baird Holding's Inc.'s (f/k/a King Par Golf, Inc., a/k/a "Old King Par") infringement of U.S. Patent No. 5,042,704 belonging to Plaintiff Izzo Golf Inc., as adjudged in the action styled *Izzo Golf v. King Par Golf Inc.*, No. 6:02-CV-6012 (W.D.N.Y.)." The application is granted.

BACKGROUND

The general underlying facts of this case were set forth in the Court's prior Decision and Order [#38] in this action (denying Plaintiff's motion for preliminary injunctive relief and Defendant's cross-motion to dismiss), and will only be repeated here as necessary, and as viewed in the light most-favorable to non-moving defendant William J. Baird ("Baird").

This action is related to *Izzo Golf Inc. v. King Par Golf, Inc.*, 6:02-CV-6012 ("the patent infringement action"), in which Izzo sued King Par for infringement of a patent for

a golf-bag strap system. Izzo and King Par were competing manufacturers of golf equipment. On January 8, 2002, Izzo commenced the patent infringement action. King Par subsequently filed a summary judgment motion, seeking a determination that its golf bags did not infringe Izzo's patent. On July 5, 2007, the Honorable Michael A. Telesca, Senior District Court Judge, issued a Decision and Order granting in part, and denying in part, King Par's summary judgment motion. In particular, Judge Telesca found that one style of King Par's golf bags (the new-style bag) did not infringe Izzo's patent, while the other style (the old-style bag) infringed the patent.

As the patent infringement action proceeded toward a trial on damages, Izzo learned of a change in King Par's corporate circumstances. More specifically, by early January, 2009, Izzo learned that King Par had sold its assets, and had changed its name to B&P Baird Holdings, Inc.¹ On January 7, 2010, Izzo's attorneys wrote to King Par's trial counsel about the asset sale, stating, in part, "We are concerned that King Par now has insufficient assets to cover the potential damages caused by the sale of infringing golf bags[.]" Izzo's attorneys requested supplemental discovery concerning King Par's (B&P Baird's) "current assets," including the details of the asset sale, and indicated that if King Par did not provide such information, Izzo would "move for an order from the Court requiring such disclosure." King Par's trial counsel responded that he did not believe that such information was relevant or discoverable as a general matter, and that he was not aware of any particular discovery demand/response on that point that needed to be supplemented. Nevertheless, on January 27, 2010, King Par's counsel agreed to provide corporate financial information to Izzo, for the years 2004-2008, but indicated that the

¹Kar Aff. [#32-7], Ex. 1.

financial records for 2009 were not finished. The parties did not bring these matters to the Court's attention.

On January 19, 2010, the Court issued a Pretrial Order [#150], scheduling the trial to begin on June 14, 2010.² Thereafter, the parties had private settlement discussions, of which the Court was also unaware. On May 6, 2010, King Par's owner, Mr. Baird, offered a settlement in the amount of \$425,000. On June 7, 2010, an Izzo representative had a settlement discussion with Baird, in which Baird implied, as an inducement for Izzo to accept his settlement offer, that Old King Par might have been stripped of its assets, stating, "I only have a \$1,000 in the corporate account and who's to say whether the rest of the proceeds went to me or somewhere else." Izzo's representative understood Baird to mean that, "even though [King Par] only had \$1,000 from which to pay an adverse judgment, he personally was willing to use \$425,000 of his own money to settle Izzo's claims."³ Izzo rejected the offer, but indicated that it would consider settling for around \$1 million.

Between June 14, 2010 and June 18, 2010, the Court (which still had not been told about the asset sale and settlement discussions) presided over a jury trial on the issue of damages. On June 18, 2010, the jury returned a verdict against King Par in the amount

²On December 21, 2009, counsel for the parties had appeared before the undersigned for a pretrial conference, "to clarify the issues that remain to be tried, to set a trial date, and to discuss possible settlement." (The docket sheet incorrectly states that the appearance took place on December 22, 2009.) At the conference, counsel said nothing to the Court about the asset sale, discovery, or concerns about King Par's ability to pay a judgment.

³Affidavit of James Kar [#32-6] at ¶ 10 ("On June 7, 2010, approximately a week before trial, I personally spoke with Mr. Baird for approximately 40 minutes in an effort to settle the case. . . . Mr. Baird stated to me "I only have a \$1,000 in the corporate account and who's to say whether the rest of the proceeds went to me or somewhere else.") As will be discussed further below, it turned out that there actually was not even a corporate account or \$1,000 remaining in Old King Par's name at that time, but Mr. Baird was keeping that fact from Izzo.

of \$3,286,476.65. King Par was stunned by the size of the verdict, since King Par's trial counsel had estimated that damages would be well below one million dollars. Immediately following the trial, between June and August of 2010, Izzo filed motions for attorney's fees, pre-judgment interest and post-judgment interest. King Par responded by filing a motion for a new trial.

On September 7, 2010, Izzo commenced the instant action, alleging fraud and other related claims. Subject-matter jurisdiction was based upon diversity.⁴ The gist of the lawsuit was that King Par, Baird, and others committed fraud against Izzo in connection with the sale of King Par's assets, leaving only a judgment-proof corporate shell. More specifically, Izzo alleged that Baird sold King Par's assets for four million dollars (specifically, \$4,010,242.00), which was less than half of their fair-market value, and placed the sale proceeds in his personal account, leaving King Par insolvent, without sufficient corporate assets to fulfill its obligations, including a judgment in the Izzo patent-infringement case. Izzo sought to have the alleged fraudulent transfer of King Par's assets set aside, and alleged that Mr. Baird was the "alter ego" of King Par. In particular, the Complaint's "Seventh Claim for Relief," entitled "Alter Ego Liability Claim Against William Baird," demands judgment in the amount of the jury's verdict in the patent infringement action, \$3,286,476.65[,] plus interest, cost[s] and disbursements."

On September 8, 2010, the day after Izzo filed this lawsuit, B&P Baird Holdings, Inc., filed a Chapter 7 bankruptcy action in U.S. Bankruptcy Court for the Western District of Michigan. The bankruptcy petition listed the Izzo patent infringement judgment as one of the disputed claims. On or about September 16, 2010, Izzo informed this Court that

⁴Complaint [#1] at ¶ 1.

King Par had filed for bankruptcy. Due to the bankruptcy filing, both of Izzo's aforementioned actions before this Court were automatically stayed.

Either through its investigation prior to commencing this action, or during its involvement in the bankruptcy proceedings, Izzo learned the particulars of how Mr. Baird had sold King Par's assets, and how he subsequently handled the "winding-up" of the corporation. For example, Izzo learned that Baird was King Par's sole shareholder, and that he and his wife, Pamela, were the officers and directors of the corporation. Izzo also discovered that King Par had stopped keeping corporate minutes after 2005. Izzo further learned that, at about the same time that Judge Telesca issued his 2007 summary judgment ruling in the patent infringement action, Baird began seeking a buyer for King Par, and ultimately entered into an asset purchase agreement with KP Acquisition Company, LLC ("KP Acquisition"), an entity that was formed by a group of individuals including King Par's Chief Financial Officer.

The closing between King Par and KP Acquisition occurred on June 5, 2009. As part of the sale, King Par transferred all of its operating assets to KP Acquisition. However, King Par retained operating cash that it had on hand at the time, accounts payable and accounts receivable pre-dating April 2009, as well as the obligation to pay certain claims, including the Izzo patent infringement claim. Regarding the infringement claim, Mr. Baird believed at that time, based on his attorney's estimate, that King Par's potential liability at trial was approximately \$375,000.00, with a verdict as high as \$600,000.00 being an absolute worst-case scenario.

Following the asset sale to KP Acquisition, Baird changed King Par, Inc.'s name to B&P Baird Holdings, Inc. Meanwhile, KP Acquisition changed its name to King Par, LLC. Henceforth in this Decision and Order, the Court will refer to King Par, Inc./B&P Baird

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