

DOCKETED

JUL 31 2019

R. POSTELL  
COMMERCE PROGRAM

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION—CIVIL

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COMPLETE BUSINESS SOLUTIONS GROUP, INC.	:	January Term, 2019
	:	Case No. 02307
<i>Plaintiff</i>	:	
	:	
v.	:	Commerce Program
	:	
THE BARACH GROUP LLC	:	
and	:	
JONATHAN BARACH	:	Control No.19065484
	:	
<i>Defendants</i>	:	

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ORDER

AND NOW, this <sup>st</sup> 31 day of July, 2019, upon consideration of  
defendants' motion for sanctions and plaintiff's response in opposition, it is **ORDERED**  
that the motion is **DENIED**.

BY THE COURT,

  
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RAMY I. DJERASSI, J.

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## OPINION

“Plaintiff” and “Defendants” are parties to a Factoring Agreement (the “Agreement”), executed on August 29, 2018.<sup>1</sup> In January 2019, Plaintiff confessed judgment against Defendants for their failure to deliver certain account receivables to Plaintiff, as required under the Agreement.<sup>2</sup> Defendants filed a petition to strike or open the judgment, and on March 19, 2019, this Court issued a Rule Returnable staying execution proceedings, if any, until further Order. On June 4, 2019, while execution proceedings remained suspended, Plaintiff forwarded a UCC 9-406 statement to a number of entities doing business with Defendants (the “Entities”). The UCC Statements informed the Entities that Defendants had defaulted, and asked the Entities to hold in reserve any payments which they owed Defendants.<sup>3</sup> On June 5, 2019, Defendants filed the instant motion for sanctions. On June 17, 2019, this Court entered an Order opening the confession-of-judgment

## DISCUSSION

The motion for sanctions asserts that Plaintiff violated the stay of execution by forwarding to the Entities its UCC 9-406 statements.<sup>4</sup> The motion seeks counsel fees of \$5,000.00 plus punitive damages as a deterrent to future violations.<sup>5</sup> In the response in opposition, Plaintiff asserts that the motion for sanctions should be denied because its UCC notifications to the Entities should not be confused with an execution proceeding.<sup>6</sup> According to Plaintiff, an execution “is the act of the Sheriff levying on a Writ of

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<sup>1</sup> Factoring Agreement, Exhibit A to the complaint.

<sup>2</sup> Complaint, ¶ 7.

<sup>3</sup> U.C.C. 9-406 notification, Exhibit E to the motion for sanctions.

<sup>4</sup> Motion for Sanctions, ¶ 10.

<sup>5</sup> *Id.*, ¶¶ 17-18.

<sup>6</sup> Memorandum of law in opposition to the motion for sanctions, p. 3.

Execution,” whereas a UCC 9-406 statement forwarded by Plaintiff to the entities is an altogether different act.<sup>7</sup>

I. **The authority to stay execution proceedings.**

The Pennsylvania Rules of Civil Procedure instruct that under legal and equitable grounds—

[e]xecution may be stayed by the court as to all or any part of the property of the defendant upon its own motion....<sup>8</sup>

[T]he principal effect of a stay of execution is to render improper ... any action thereunder in violation of the stay while it is in force.<sup>9</sup>

In this case, the Court issued a Rule Returnable, including a Stay of Execution, on March 19, 2018. Upon issuance of the Rule and Stay, any additional actions in pursuit of execution became suspended until further Order of this Court.

II. **The stay of execution was not violated.**

Under Pennsylvania law—

**[a] writ of execution is an authorization to a sheriff or other officer to enforce a money judgment, usually by means of seizing and selling the judgment debtor's property.**<sup>10</sup>

In this case, Plaintiff forwarded a number UCC 9-406 statements to certain Entities which presumably owed monies to the Defendants. These statements did not authorize a sheriff to seize and sell any property owed by the Entities to the Defendant. Instead, the statements informed the Entities that a judgment had been entered against Defendants as a consequence of their default. Stated differently, while a writ or

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<sup>7</sup> Id.

<sup>8</sup> PA. R.C.P. 3121(b)

<sup>9</sup> Mayo v. House of Pasta, Inc., 75 Pa. D. & C.2d 424, 425 (Pa. Com. Pl. 1975).

<sup>10</sup> Shearer v. Naftzinger, 474 A.2d 859, 860 (Pa. 2000) (emphasis supplied).

execution issued by a plaintiff authorizes any sheriff to seize and sell the property of a defendant, a UCC 9-406 statement merely informs anyone who might owe a debt to a defendant that a judgment has been entered against him. Here, the Court issued a stay of execution on March 19, 2018, and subsequently plaintiff, on June 4, 2018, forwarded its UCC 9-406 statements to the Entities. However, such statements did not interfere with the Stay of Execution and did not violate the Order of this Court. For this reason the motion for sanction is denied.

**BY THE COURT,**

A handwritten signature in black ink, appearing to read 'R. I. Djerasi', is written over a horizontal line.

***RAMY I. DJERASSI, J.***