

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF ERIE

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Index No.: 806534/2017

APP GROUP INTERNATIONAL LLC,

Plaintiff,

**AFFIDAVIT for TEMPORARY
RESTRAINING ORDER**

- against -

ANTONIO'S BISTRO & CAFÉ LLC,
ANTONIO'S PIZZERIA & RESTAURANT
and GIUSEPPE SAVARESE

Defendants.

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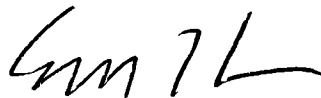
STATE OF NEW YORK)
COUNTY OF ERIE :
CITY OF BUFFALO)

Seth L Hibbert, being duly sworn, deposes and says:

1. I am attorney at the firm of Getman & Biryala, LLP, and have been retained to represent defendants Antonio's Bistro & Cafe, LLC, Antonio's Pizzeria & Restaurant and Giuseppe Savarese in this matter.
2. I have reviewed all prior pleadings and proceedings in connection with this matter and as such I am fully familiar with the action and the current application to vacate a previously entered Confession of Judgment and the request by non-party Manny Vinci for a Temporary Restraining Order pending a hearing on the request for vacatur and voiding of Plaintiff APP Group International LLC's claim.
3. This affidavit is offered in support of Defendants' and Mr Vinci's request for a TRO to be issued and remain in place until a hearing on Defendants' application can be held.
4. This action stems from a Confession of Judgment entered against Defendants on or about May 18, 2017 (See Savarese Affidavit **Exhibit A**)
5. The Confession of Judgment was entered without Defendants knowledge and since entry 10 months ago it does not appear that Plaintiff has taken any steps to enforce said judgment.
6. Plaintiff is now trying to enforce the judgment by employment of a Sheriff in New Jersey to seize personal property belonging to a company owned by Mr Vinci. to

7. The items the Plaintiff is seeking to seize and sell are those which go to the very core of operations at Antonio Too, namely, all of the equipment necessary to run the restaurant.
8. As detailed in the accompanying affidavits of Mr Savarese and Mr Vinci, the assets of Antonio Too were subject to an arms-length sale on November 17, 2017. (See Savarese Affidavit **Exhibit B**). As a result of said sale those assets are not property of the Defendants and it is axiomatic that an absolute condition precedent to said seizure is that they be Defendants property in order for any Sheriff to seize and sell same to satisfy a judgment entered against Defendants.
9. Simply put, Plaintiff is trying to seek satisfaction of its judgment through the use of legal process against the property of an entity with whom it had no dealings and which is not a judgment debtor in this matter.
10. If Plaintiff's actions are allowed to move forward, and the assets of Antonio Too are seized and sold, there will be irreparable harm to Antonio Too for which there is no adequate remedy at law. Conversely, in light of Plaintiff sitting on its enforcement rights for almost a full year it would appear that a temporary pause in enforcement of its judgment would cause no harm at all.
11. As more completely outlined in the affidavits of Defendants, and the accompanying Memorandum of Law, it seems highly likely that Defendants will succeed on their application for vacatur of the judgment entered by Confession on May 18, 2017, pursuant to CPLR §5015(a)(3) due to the fact that said judgment was obtained through misconduct of the Plaintiff in that Plaintiff violated NY Penal Law §190.40 by charging interest on a loan at a rate of approximately 200% per annum.
12. This application is being made on an *ex parte* basis because there is a pending Sheriff execution seizure and sale set for March 22, 2018 which if completed will harm non-party Antonio Too and shutter its business operations.

For the foregoing reasons, and those outlined in the accompanying affidavits and Memorandum of Law, if it respectfully requested that this Court grant a Temporary Restraining Order which temporarily enjoins Plaintiff or the Sheriff of any County of the State of New York or New Jersey from enforcing the judgment entered in this matter on or about May 18, 2017, and for such other and further relief that this Court deems just and proper.



Seth L Hibbert, Esq.

Sworn to before me this
19th day of March 2018