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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CASCADE YARNS, INC., a Washington
corporation,

Plaintiff,

v.

KNITTING FEVER, INC., a New York
corporation, et al.,

Defendant.

CASE NO. C10-861RSM

ORDER ON MOTION FOR WRIT
OF ATTACHMENT

This matter is before the Court for consideration of plaintiff’s motion for a writ of attachment. Dkt. # 93. Defendants have opposed the motion, and the matter has been fully briefed. For the reasons set forth below, the motion shall be denied.

BACKGROUND

Plaintiff Cascade Yarns, Inc. (Cascade) moves the Court for a prejudgment writ of attachment pursuant to F.R.Civ.P. 64(a) and RCW 6.25.010 *et seq.* Cascade seeks a writ to secure “at least \$10 million of assets” against Knitting Fever, Inc. (KFI) and its principles, Sion and Diane Elalouf, and Jay Opperman. Dkt. # 93, p. 12. Cascade, a Washington corporation, brings this suit under Lanham Act section 43(a), 15 U.S.C. § 1125; Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961 *et seq.* (RICO); and RCW 19.86 for unfair

1 competition and false advertising, all regarding the labeling of knitting yarn. On September 29,
2 2010, the Court heard oral argument regarding Cascade's motion for a preliminary injunction, at
3 which time the parties agreed to resolve the matter at issue with a stipulation in lieu of a ruling
4 on the preliminary injunction motion. Defendants' motions to dismiss under F.R.Civ.P. 12(b)(2)
5 and 12(b)(6) are still pending before the Court.

6 DISCUSSION

7 F.R.Civ.P. 64(a) guarantees that every remedy available under state law remains
8 available to a federal court litigant. *L.C. v. Gilbert*, 2010 WL 2650603 *1 (W.D. Wash. 2010).
9 In Washington, prejudgment attachment is governed by RCW 6.25 *et seq.* The statute allows a
10 party to obtain a prejudgment attachment of assets or property to secure the satisfaction of a
11 potential favorable judgment. *Id.* A court may issue a writ of attachment provided the movant
12 establishes (1) probable cause to believe that the alleged statutory ground for attachment exists,
13 and (2) the probable validity of the claim sued on. *Id.* Under this standard, the Court finds that
14 Cascade's motion fails to satisfy the probable cause requirement.

15 Pursuant to RCW 6.25.030, there are ten grounds for which the issuance of writs of
16 attachment is proper. The statute requires the following:

- 17 (1) That the defendant is a foreign corporation; or
- 18 (2) That the defendant is not a resident of this state; or
- 19 (3) That the defendant conceals himself so that the ordinary process of law
20 cannot be served upon him; or
- 21 (4) That the defendant has absconded or absented himself from his usual
22 place of abode in this state, so that the ordinary process of law cannot be
23 served upon him; or
- 24 (5) That the defendant has removed or is about to remove any of his
property from this state, with intent to delay or defraud his creditors; or

1 (6) That the defendant has assigned, secreted, or disposed of, or is about to
2 assign, secrete, or dispose of, any of his property, with intent to delay or
3 defraud his creditors; or

4 (7) That the defendant is about to convert his property, or a part thereof,
5 into money, for the purpose of placing it beyond the reach of his creditors;
6 or

7 (8) That the defendant has been guilty of a fraud in contracting the debt or
8 incurring the obligation for which the action is brought; or

9 (9) That the damages for which the action is brought are for injuries
10 arising from the commission of some felony, gross misdemeanor, or
11 misdemeanor; or

12 (10) That the object for which the action is brought is to recover on a
13 contract, express or implied.

14 RCW 6.25.030. Cascade alleges that it meets its burden for KFI under (1), (2), or (9) and that it
15 meets its burden for the Elaloufs and Mr. Opperman under (2) or (9).

16 While it appears that Cascade has alleged enough for satisfaction of RCW 6.25.030,
17 plaintiff must further satisfy the requirements of RCW 6.25.040 because it moves for
18 prejudgment attachment of a “debt not yet due.” RCW 6.25.040 limits the grounds for
19 attachment in instances where, as here, a debt has not yet accrued. To satisfy this section, a
20 movant must demonstrate that:

21 nothing but time is wanting to fix an absolute indebtedness, and when the
22 complaint and the affidavit allege, in addition to that fact, one or more of
23 the following grounds:

24 (1) That the defendant is about to dispose or has disposed of his property
in whole or in part with intent to defraud his creditors; or

1 (2) That the defendant is about to remove from the state and refuses to
2 make any arrangements for securing the payment of the debt when it falls
3 due, and the contemplated removal was not known to the plaintiff at the
4 time the debt was contracted; or

5 (3) That the debt was incurred for property obtained under false pretenses.

6 RCW 6.25.040.

7 Here, Cascade fails to make the required allegations. Although Cascade offers
8 speculation that the defendants are selling off and secreting personal assets, defendants'
9 opposition dispels the concerns raised in Cascade's affidavit. The mere allegation of ownership
10 of valuable real estate, valuable cars, and a yacht that has been listed for sale since 2005 does not
11 persuade the Court that defendants are "about to or ha[ve] disposed of [their] property in whole
12 or in part with intent to defraud [their] creditors." *See* Dunbabin Decl., Ex. A.; RCW 6.25.040.
13 Thus, Cascade has not demonstrated that the statutory basis for a writ of attachment exists at this
14 point in time.

15 Because the Court resolves plaintiff's motion on the probable cause prong, it does not
16 reach the "probable validity" of plaintiff's claims, or the jurisdictional issues raised by
17 defendants.

18 **CONCLUSION**

19 Plaintiff's motion for a writ of attachment is accordingly DENIED.

20 Dated November 30, 2010.

21 

22 RICARDO S. MARTINEZ
23 UNITED STATES DISTRICT JUDGE
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