

Matter of Grand Pac. Fin. Corp. v Bobker

2014 NY Slip Op 32462(U)

September 16, 2014

Supreme Court, New York County

Docket Number: 150509/13

Judge: Joan A. Madden

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

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In the Matter of the Application of GRAND PACIFIC
FINANCE CORP.,

Index No. 150509/13

Petitioner,
-against-

BEN BOBKER, ELI BOBKER, JOSEPH
BOBKER, DOV BOBKER, and AVI BOBKER,

Respondents.

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JOAN A. MADDEN, J.

Petitioner moves for an order pursuant to CPLR 2221(e) granting it leave to renew its application holding respondents Ben Bobker, Eli Bobker, Dov Bobker, and Avi Bobker in contempt for failing to comply with the court’s order dated June 20, 2013 (“the original order”) and for related relief. Ben Bobker, Eli Bobker, Dov Bobker, and Avi Bobker (together “the opposing respondents”) oppose the motion, which is granted to the extent set forth below.

This proceeding arises out of petitioner’s efforts to enforce a May 23, 2011 judgment in the underlying action of Grand Pacific v. 97-111 Hale, LLC, et al; Index No. 601164/09 (hereinafter “the Judgment”), entered in favor of petitioner and against 97-111 Hale, LLC, 100-114 Hale, LLC, Hale Club, LLC, Eli Bobker, Ben Bobker and Joseph Bobker (“the Judgment Debtors”) as follows: \$9,403,095.31, against 97-111 Hale, LLC, 100-114 Hale, LLC, Hale Club, LLC, Eli Bobker, and Ben Bobker, jointly and severally; \$1,855,502.01 against 97-111 Hale, LLC, 100-114 Hale, LLC, Eli Bobker, and Ben Bobker, jointly and severally; and \$2,451,426.82 against Hale Club, LLC and Joseph Bobker, jointly and severally.

To obtain information about the Judgment Debtors’ assets available to satisfy the Judgment, petitioner served subpoenas on the respondents who petitioner believed has

information about the assets. As indicated above, respondents Eli and Ben Bobker are Judgment Debtors, as is their father, respondent Joseph Bobker.¹ Respondents Avi Bobker and Dov Bobker are the brothers of Eli and Ben Bobker, and Joseph Bobker is also their father.

When the opposing respondents failed to timely comply with, or object to, the subpoenas served upon them seeking their depositions and certain documents, petitioner moved to hold them in contempt. The original order granted the petition for contempt to the extent of directing the opposing respondents “to produce the documents demanded in the subpoena by June 27, 2013 and to appear for depositions by July 8, 2013,” and stating that petitioner could renew its application for contempt and related relief in the event the respondents failed to comply with the order.

Petitioner now moves to renew its application for contempt against the opposing respondents, asserting that Avi and Dov Bobker have failed to appear for depositions despite numerous requests for them to do so. As for Eli and Ben Bobker, petitioner contends that while these respondents/judgment debtors have appeared for depositions, they have failed to provide documents and information regarding their financial affairs despite testimony from their spouses and Joseph Bobker that they possess such materials.

In response, the opposing respondents, who are now appearing *pro se*, each submit an affirmation in opposition. Avi and Dov Bobker, each assert that they attempted, through prior counsel, to schedule depositions before the July 8, 2013 deadline but were unable to do so and that they have since appeared at depositions. Eli and Ben Bobker each state that they have timely appeared for depositions and produced documents, on, respectively, July 8 and July 15, 2013.

¹Petitioner does not seek any relief against Joseph Bobker.

They further state that “I have produced numerous documents...thereby fully complying with the subpoenas” [and that] “after the deposition and thereafter [petitioner] requested additional documents not requested in the subpoenas [and that] [t]hese requests were broad and over-reaching” (Affirmation of Eli Bobker, ¶’s 4, 5; Affirmation of Ben Bobker, ¶’s 4, 5) As for additional documents sought at the depositions, these respondents contend that the delay in providing these documents was caused by the failure of petitioner to provide them with their deposition transcripts and without such transcripts it was “impossible to confirm that the list of requested documents sent to my attorney matched those requested at the depositions” (Affirmation of Eli Bobker, ¶ 8; Affirmation of Ben Bobker, ¶ 8).

In reply, petitioner argues that the opposing respondents should be held in contempt for failing to timely comply with the original order. Petitioner also argues that the documents produced by Eli and Ben Bobker did not fully respond to the subpoena and submits emails sent to these respondents, through their counsel dated July 16, 2013 and July 17, 2013, respectively, detailing the insufficiency of the documents produced, setting forth the documents that were outstanding, and indicating that petitioner intended to continue the depositions upon production of such documents. See Petitioner’s Motion, Exhibits D and F. Petitioner asserts that contrary to the position of Eli and Ben Bobker, the documents sought were encompassed in the original subpoenas, and are relevant to enforcement of the judgment. As for Eli and Ben Bobker’s argument that documents specifically requested during their depositions could not be produced because they were not provided with the deposition transcripts, such argument is without merit in light of evidence submitted by petitioner that it specified the documents sought in writing shortly after the depositions held in mid-July 2013, and that respondents did not seek copies of the

deposition transcripts until a full month after receiving the document lists.

“Contempt is a drastic remedy, which should not issue absent a clear right to such relief.” Coronet Capital Co. v. Spodek, 202 AD2d 20, 29 (1st Dept 1994), citing, Usina Costa Pinto, S.A. v. Sanco Sav. Co. Ltd., 174 AD2d 487 (1st Dept 1991). To establish civil contempt based on an alleged violation of a court order, the movant must establish, by clear and convincing evidence, that a lawful order of the court expressing an unequivocal mandate was in effect, and that the order was disobeyed with reasonable certainty. See Department of Env'tl. Protection of City of New York v. Department of Env'tl. Conservation of State of N.Y., 70 NY2d 233, 240 (1987); McCormick v. Axelrod, 59 NY2d 574, amended 60 NY2d 652 (1983). “Intent or willfulness is not required to hold a party in contempt for disobeying a court order or subpoena.” Yalkowsky v. Yalkowsky, 93 AD2d 834, 835 (2d Dept 1983).

Instead, it must be shown that the party to be held in contempt had knowledge of a clear and unequivocal order, failed to comply with its terms, and that the disobedience prejudiced the right of another party. See McCain v. Dinkins, 84 NY2d 216 (1994) McCormick v. Axelrod, supra; Garcia v. Great Atl. & Pac. Tea Co., 231 AD2d 401 (1st Dept 1996). Once this showing is made, “the burden shifts to the alleged contemnor to refute the movant's showing, or to offer evidence of a defense, such as an inability to comply with the order.” El-Dehdan v. El-Dehdan, 114 AD3d 4 (2d Dept 2013).

Under this standard, there is no basis for holding Avi and Dov Bobker in contempt based on their short delay in appear for depositions, particularly as petitioner cannot show prejudice resulting from the delay. See generally, Syndicate Bldg. Corp. v. City Univ. of New York, 159 Misc2d 898 (Ct Cl 1993).

As for Eli and Ben Bobker, a review of the document requests as outlined in the emails dated July 16, and July 17, 2013, from petitioner's counsel to respondents' then counsel indicates that such documents are relevant to the satisfaction of the judgment, and are therefore discoverable. See CPLR 5223 (when judgment has not been satisfied a judgment creditor "may compel disclosure of all matter relevant to the satisfaction of the judgment"); See also, U.S. Bank National Assn. v. APP Intern'l Finance Co., 100 AD3d 179, 183 (1st Dept 2012)(holding that all matter relevant to satisfaction of the judgment is discoverable). Moreover, Eli and Ben Bobker do not specifically challenge any of the requests but merely state that they are "broad and overreaching." (Affirmation of Eli Bobker, ¶ 5; Affirmation of Ben Bobker, ¶ 5).

Next, insofar as these respondents claim that they were unable to provide the documents as they needed the deposition transcripts, such assertion is no longer a viable excuse for non-compliance with the document requests since the transcripts have been provided. That being said, however, and while the court does not condone the failure of Eli and Ben Bobker to comply with petitioner's document requests, at this juncture the record is insufficient to support of finding of contempt.

Accordingly, Eli and Ben Bobker, shall produce the documents set forth in the emails dated July 16 and July 17, 2013 in accordance with the direction below, or they shall be held in contempt, and the court will consider various contempt sanctions, including awarding petitioner attorneys' fees incurred in connection with this motion and any further motion required to enforce this order.

In view above, it is

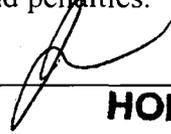
ORDERED that this motion to renew petitioner's application for contempt is granted to

the extent that on or before October 10, 2014, (1) respondent Eli Bobker is directed produce the documents set forth in the email dated July 16, 2013 which is annexed as Exhibit D to petitioner's motion, and (2) respondent Ben Bobker is directed produce the documents set forth in the email dated July 17, 2013, which is annexed as Exhibit F to petitioner's motion; and it is further

ORDERED that on or before October 24, 2014, the Eli Bobker and Ben Bobker are directed to appear for further depositions at the offices of petitioner's counsel, Herrick, Feinstein, LLP, 2 Park Avenue, New York, NY 10016, or other agreed upon location; and it is further

ORDERED that if Eli Bobker and/or Ben Bobker fail to comply with the above order, by either not producing the documents or by failing to appear for depositions as herein directed, petitioner may renew its application for contempt, costs and penalties.

Dated: September 16 2014



J.S.C. **HON. JOAN A. MADDEN**
J.S.C.