

Brummer v Wey

2018 NY Slip Op 30023(U)

January 8, 2018

Supreme Court, New York County

Docket Number: 153583/2015

Judge: Manuel J. Mendez

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ PART 13
Justice

CHRISTOPHER BRUMMER,
Plaintiff,
-against-

INDEX NO. 153583/2015
MOTION DATE 12-13-17
MOTION SEQ. NO. 028
MOTION CAL. NO. _____

BENJAMIN WEY, FNL MEDIA LLC, and
NYG CAPITAL LLC d/b/a NEW YORK GLOBAL
GROUP,
Defendants.

The following papers, numbered 1 to 10 were read on this motion to punish the defendants for contempt::

	<u>PAPERS NUMBERED</u>
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1 - 5</u>
Answering Affidavits — Exhibits _____ cross motion _____	<u>6 - 9</u>
Replying Affidavits _____	<u>10</u>

Cross-Motion: Yes No

Upon a reading of the foregoing cited papers, it is ordered that plaintiff's motion for an Order punishing the defendants for contempt of this Court's October 11, 2017 Decision and Order filed under Motion Sequence 025, and the August 1, 2017 Decision and Order of the Supreme Court Appellate Division, First Department; to have the defendants jointly and severally fined an additional \$250.00 for civil contempt; permitting plaintiff to submit an Ex Parte Order having defendant Benjamin Wey taken into custody by the sheriff until he purges his contempt, and a hearing before a judicial referee to determine the reasonable attorney fees and costs to be awarded plaintiff for defendants' failure to purge the contempt associated with Motion Sequence 025, is granted as stated herein.

Plaintiff pursuant CPLR §6301sought an injunction and a temporary restraining order. The Decision and Order of this Court filed under Motion Sequence 015 on June 6, 2017 granted plaintiff's motion, enjoined and restrained defendants from posting any articles about plaintiff for the duration of this action, and upon being served, to remove all articles that were previously posted about or concerning plaintiff from *TheBlot* (see NYSEF Dockets 306 - 316).

Defendants subsequently filed a motion with the Supreme Court Appellate Division First Department, pursuant to CPLR §5519 [c], seeking a stay of the June 6, 2017 Decision and Order of this Court. A June 15, 2017 interim order of the Appellate Division First Department granted a full stay of this Court's Order. The August 1, 2017 Decision and Order of the Appellate Division First Department filed under M-3328, partially lifted the interim Stay and directed the defendants to "remove all photographs or other images and statements from websites under defendants' control which depict or encourage lynching; encourage the incitement of violence; or that feature statements regarding plaintiff that in conjunction with the threatening language and imagery with which these statements are associated, continue to incite violence against plaintiff. The interim stay was also lifted so as to prohibit defendants from posting on any traditional or online media site any photographs or other images depicting or encouraging lynching in association with plaintiff" (See Christopher Brummer v. Benjamin Wey, FNL Media LLC, and NYG Capital LLC, d/b/a New York Global Group, 2017 N.Y. Slip Op. 81412 (U)).

On August 31, 2017 defendants filed a motion with the Appellate Division First Department under M-4743, to reargue and/or, in the alternative, for leave to appeal to the New York Court of Appeals. The Appellate Division First Department motion filed under M-4743 was decided on October 24, 2017 denying defendants motions in its entirety (See Christopher Brummer v. Benjamin Wey, FNL Media LLC, and NYG Capital LLC, d/b/a New York Global Group, 2017 N.Y. Slip Op. 90195(U))

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Plaintiff's motion filed under Motion Sequence 025 for an Order finding the defendants in civil contempt was submitted to this Court while the Appellate Division First Department motion filed under M-4743 was pending. The October 11, 2017 Decision and Order of this Court filed under Motion Sequence 025 granted plaintiff's motion and directed that defendants: "may purge their contempt through their own actions or by requesting action to be taken by others on websites under their control, removing the photographs or other images and statements posted about or concerning plaintiff in *TheBlot* and defendants' websites which depict and encourage lynching, encourage the incitement of violence, or that feature statements which depict or encourage lynching or the incitement of violence, including those previously identified by this Court in the Decision and Order filed on June 6, 2017 (see NYSEF Docket Nos. 306 - 316) and those identified by plaintiff on this motion in the Order to Show Cause (NYSEF Docket No. 563), within seven (7) days."

The October 11, 2017 Decision and Order of this Court further directed that upon failure of the defendants to purge their contempt, they would be made to pay a fine of \$250.00, payable to the fund for client protection, and be liable to plaintiff for all reasonable attorney fees and costs incurred in connection with Motion Sequence 025 (Wipper Aff. In Opp. Exh. A).

Plaintiff's motion seeks an Order finding the defendants in civil contempt of the June 6, 2017 Decision and Order of this Court filed under Motion Sequence 015, the August 1, 2017 Decision and Order of the Supreme Court Appellate Division, First Department, and the October 11, 2017 Decision and Order of this Court filed under Motion Sequence 025. Plaintiff's motion seeks to have the defendants jointly and severally fined an additional \$250.00 for civil contempt, if the contempt is not purged within seven days, permitting plaintiff to submit an Ex Parte Order having defendant Benjamin Wey taken into custody by the sheriff until he purges his contempt, and a hearing before a judicial referee to determine the reasonable attorney fees and costs to be awarded plaintiff for defendants' failure to purge the contempt associated with Motion Sequence 025.

Plaintiff argues that defendants have not complied with the clear mandate of the prior Orders, and are continuing to harass and threaten him with new posts, warranting the relief sought in this motion.

The elements of civil contempt are: "First, it must be determined that a lawful order of the court, clearly expressing an unequivocal mandate, was in effect" (*id.* at 583, 466 N.Y.S.2d 279, 453 N.E.2d 508). Second, "[i]t must appear, with reasonable certainty, that the order has been disobeyed" (*id.*). Third, "the party to be held in contempt must have had knowledge of the court's order, although it is not necessary that the order actually have been served upon the party" (*id.*). Fourth, "prejudice to the right of a party to the litigation must be demonstrated" (*El-Dehdan v. El-Dehdan*, 26 N.Y. 3d 19, 41 N.E. 3d 340, 19 N.Y.S. 3d 475 [2015]).

It is not required that there be a showing of willfulness to obtain civil contempt, the contemtor's motive is not a factor. Civil contempt also does not require a monetary harm, only a showing that the order was disobeyed (*Board of Directors of Windsor Owners Corp. v. Platt*, 148 A.D. 3d 645, 49 N.Y.S. 3d 293 [1st Dept., 2017]). "If the credibility of court orders and the integrity of our judicial system are to be maintained, a litigant cannot ignore court orders with impunity" (*Kihl v. Pfeffer*, 94 N.Y.2d 118, 123, 700 N.Y.S.2d 87, 90, 722 N.E.2d 55, 58 [1999]).

Defendants argument that they timely issued a "takedown request" by e-mail letter dated October 19, 2017 to James Huang (Wipper Aff. in Opp. Exh. A), resulting in a substantial removal of documents depicting lynching and compliance with the Orders of this Court, are unavailing. Defendants claim, that there were only eight (8) articles or posts addressed by the prior orders and in good faith they substantially complied with the Orders by having the lynching pictures removed, ignores the language of the August 1, 2017 Appellate Division First Department Decision and Order cited by this Court in its October 11, 2017 Decision and Order. Defendants were directed to not only

remove depictions of lynchings but also "...statements regarding plaintiff that, in conjunction with the threatening language and imagery with which these statements are associated, continue to incite violence against plaintiff." Defendants' interpretation that statements referring to lynching connected with the plaintiff do not incite violence demonstrates non-compliance with the prior orders. Defendants are in Civil Contempt for failing to comply with the Decision and Order of this Court, for failing to in any way take down the material.

Plaintiff has not shown that Benjamin Wey is solely in control of the website and the attempt to comply by issuing a takedown request is sufficient to warrant denial of the relief sought of having the sheriff take defendant Benjamin Wey into custody until he purges his contempt (See Department of Environmental Protection of the City of New York v Department of Environmental Protection of the State of New York, 70 N.Y. 2d 233, 513 N.E. 2d 706, 519 N.Y.S. 2d 539 [1987] and N.A. Development Co. Ltd. v. Jones, 99 A.D. 2d 238, 472 N.Y.S. 2d 363 [1st Dept., 1984]).

Accordingly, it is ORDERED that plaintiff's motion for an Order punishing the defendants for contempt of this Court's October 11, 2017 Decision and Order filed under Motion Sequence 025, and the August 1, 2017 Decision and Order of the Supreme Court Appellate Division, First Department; to have the defendants jointly and severally fined an additional \$250.00 for civil contempt; permitting plaintiff to submit an Ex Parte Order having defendant Benjamin Wey taken into custody by the sheriff until he purges his contempt, and a hearing before a judicial referee to determine the reasonable attorney fees and costs to be awarded plaintiff for defendants' failure to purge the contempt associated with Motion Sequence 025, is granted as follows, and it is further,

ORDERED that defendants, BENJAMIN WEY, FNL MEDIA LLC, and NYG CAPITAL LLC d/b/a NEW YORK GLOBAL GROUP, are in civil contempt of Court, and it is further,

ORDERED that defendants, BENJAMIN WEY, FNL MEDIA LLC, and NYG CAPITAL LLC d/b/a NEW YORK GLOBAL GROUP, may purge their contempt through their own actions or by requesting action to be taken by others on websites under their control, removing the photographs or other images and statements posted about or concerning plaintiff in *TheBlot* and defendants' websites which depict and encourage lynching, encourage the incitement of violence against plaintiff, or that feature any statements which refer to lynching or to the incitement of violence, including those previously identified by this Court's October 11, 2017 Decision and Order this Court, and those identified by plaintiff on this motion, within seven (7) days from service of a copy of this Order with Notice of Entry, and it is further,

ORDERED that upon failure of defendants, BENJAMIN WEY, FNL MEDIA LLC, and NYG CAPITAL LLC d/b/a NEW YORK GLOBAL GROUP, to purge their contempt, they shall be jointly and severally liable, and made to pay a fine of \$250.00, payable to the fund for client protection, and it is further,

ORDERED that upon failure of defendants, BENJAMIN WEY, FNL MEDIA LLC, and NYG CAPITAL LLC d/b/a NEW YORK GLOBAL GROUP, to purge their contempt, they will be liable to plaintiff for all reasonable attorney fees and costs incurred in connection with this motion, which shall be determined at a hearing before a judicial referee, and it is further,

ORDERED that defendants BENJAMIN WEY, FNL MEDIA LLC, and NYG CAPITAL LLC d/b/a NEW YORK GLOBAL GROUP shall pay \$250.00 to the fund for client protection for failure to comply with this Court's October 11, 2017 Decision and Order, and it is further,

ORDERED that plaintiff shall pursuant to e-filing protocol serve a copy of this Order with Notice of Entry on the Defendants and the Special Referee Clerk located in the General Clerk's Office, who is directed to assign this matter to a

special referee for a hearing to determine the amount of reasonable attorney fees to be awarded to plaintiff as a result of the defendants contempt of this Court's October 11, 2017 Decision and Order and as stated in Motion Sequence 027, and it is further,

ORDERED that the remainder of the relief sought in this motion to permit plaintiff to submit an Ex Parte Order having defendant Benjamin Wey taken into custody by the sheriff until he purges his contempt in the event of failure to comply with this Order is denied.

ENTER:



MANUEL J. MENDEZ,
J.S.C.

MANUEL J. MENDEZ
J.S.C.

Dated: January 8, 2018

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE