

Century Tokyo Leasing (USA) Inc. v Mekawy Group Intl., Inc.

2018 NY Slip Op 31043(U)

May 25, 2018

Supreme Court, New York County

Docket Number: 652027/2016

Judge: Melissa A. Crane

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15

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CENTURY TOKYO LEASING (USA) INC.
f/k/a TOKYO LEASING (USA), INC.,

Plaintiffs,

Index No.: 652027/2016

-against-

Mot. Seq. No. 02

MEKAWY GROUP INTERNATIONAL, INC.,
WAEL MEKAWY and EMAD GARAS,

Decision and Order

Defendants.

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MELISSA A. CRANE, J.S.C.:

This is a post-judgment motion to punish for contempt for defendants' failure to respond to an information subpoena and to appear for a deposition. The application by plaintiff and judgment creditor Century Tokyo Leasing (USA) Inc. ("Plaintiff") to hold Mekawy Group International, Inc. ("MIG") and Wael Mekawy, the judgment debtors, in contempt is granted to the extent that MIG and Wael Mekawy are found in civil contempt for failing to comply with the subpoenas.

On April 13, 2016, plaintiff Century Tokyo Leasing (USA) Inc. initiated this action against defendants MIG, Wael Mekawy, and Emad Garas. The dispute stemmed from defendants' non-payment of a secured promissory note issued to defendants on about November 4, 2013 in relation to their purchase of a commercial truck. This secured promissory note was subsequently assigned by the original lender to plaintiff. Defendants failed to respond to plaintiff's allegations, retain counsel, or object to this motion and plaintiff's motion for default judgment. On January 17, 2017, this court, in a decision by Judge Eileen Rakower, granted a default judgment in favor of plaintiff against defendants, jointly and severally, for a total of \$30,535.13 (the "Judgment").

On May 16, 2017, plaintiff served a subpoena duces tecum and ad testificandum on MGI through the Secretary of State pursuant to Section 303 of Limited Liability Company Law.

On May 18, 2017, Plaintiff served a subpoena duces tecum and ad testificandum on Wael Mekawy, the alleged owner of MGI, by affixing a copy of the subpoena on his door per CPLR § 308(4). Further, on May 19, 2017, plaintiff mailed an additional copy of the subpoena to Wael Mekawy via First Class mail.

Plaintiff's May 2017 subpoenas (the "subpoenas") sought to expedite the recovery of funds due to it under the Judgment by identifying the assets and liabilities of MIG and Wael Mekawy ripe for collection. On August 14, 2017, after defendants failed to respond, plaintiff moved to hold MIG and Wael Mekawy in contempt of court for their failure to comply with the subpoenas duly served upon them. In support of their motion, plaintiff annexed affidavits of service evincing proper service of the subpoenas upon defendants MIG and Wael Mekawy. Defendants failed to oppose the motion and failed to appear at oral argument that the court scheduled for 4/2/2018.

Refusal or neglect to obey an information subpoena is punishable as a contempt of court under CPLR § 5251 and Judiciary Law § 753(A)(5). In order to punish a judgment debtor for contemptuous conduct in reference to a CPLR article 52 money judgment enforcement device, the judgment creditor must establish the judgment debtor's "refusal or willful neglect" (CPLR § 5251; *see* Weinstein-Korn-Miller, NY Civ Prac P 5251.05).

The Court finds that MIG and Wael Mekawy failed to respond to the aforementioned subpoenas and therefore have not complied with their legal obligation to produce documents as demanded by the information subpoena, which is punishable as a contempt of court pursuant to

CPLR § 5251 and Judiciary Law Section 753(a)(5) (*Majurinen v. Cici-Tash, Inc.*, 2016 WL 192738 [N.Y.Sup.], 1).

ORDERED, that the motion to punish MIG and Wael Mekawy for contempt of court is granted; and it is

ADJUDGED, that MIG and Wael Mekawy are guilty of contempt of court in having disobeyed subpoenas served on May 16, 2017, and May 18, 2017 respectfully, in that defendants failed to satisfactorily excuse or explain said contempt; and it is

ADJUDGED, that said misconduct of MIG and Wael Mekawy was calculated to and actually did defeat, impair, impede, and prejudice the rights and remedies of plaintiff, and it is further

ORDERED, that MIG and Wael Mekawy are fined for said contempt a sum equaling the costs of this motion. Along with serving this order, plaintiff is to provide MIG and Wael Mekawy with a list itemizing all of the costs associated with this motion. The list must be accompanied by an attorney's affirmation, representing that the costs stated were actually incurred in connection with the contempt motion. The list and affirmation are to be provided to this Court at the same time as proof of service is submitted (see, *infra*); and it is further

ORDERED, MIG and Wael Mekawy may purge themselves of this civil contempt by both scheduling the requested deposition(s) and producing information concerning MGI's assets and liabilities requested by plaintiff within thirty (30) days of being served with a copy of this order –or– an application may be made to imprison Wael Mekawy and/or fine him in the amount of up to \$250. Where Wael Mekawy may be apprehended, commanding the Sheriff of the City of New York or the Sheriff of any County within the State of New York forthwith to arrest Wael Mekawy and produce him before the justice presiding at the Supreme Court, New York County,

Part Fifteen during the time when such part is in session, to be committed or for such disposition as the court in its discretions shall direct; and it is further

ORDERED that if MIG and Wael Mekawy fail to comply with the foregoing, plaintiff may move for any appropriate additional relief; and it is further

ORDERED plaintiff must serve a copy of this order, with notice of entry, upon MIG and Wael Mekawy within twenty (20) days of the e-filing date of this order.

This constitutes the Decision, Order and Judgment of the Court.

Dated: New York, New York
May 25, 2018

ENTER



Hon. Melissa Crane
HON. MELISSA A. CRANE
J.S.C.