

Ferrari Fin. Servs., Inc. v Freidman
2020 NY Slip Op 30193(U)
January 23, 2020
Supreme Court, New York County
Docket Number: 156676/2018
Judge: Nancy M. Bannon
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. NANCY M. BANNON Justice PART IAS MOTION 42EFM

INDEX NO. 156676/2018
MOTION DATE 1/22/2019
MOTION SEQ. NO. 003

FERRARI FINANCIAL SERVICES, INC.

Plaintiff,

- v -

EVGENY FREIDMAN,

Defendant.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 50

were read on this motion to/for CONTEMPT

In this action seeking damages for breach of contract and for replevin, the plaintiff seeks to recover three Ferrari automobiles purchased but not paid for by the defendant, Evgeny Freidman, or the value of the vehicles. The defendant failed to answer or appear. The plaintiff moved for leave to enter a default judgment against the defendant pursuant to CPLR 3215, and for an order of seizure pursuant to CPLR 7102. No opposition was submitted. By an order dated January 9, 2019, the court granted the motion with respect to the plaintiff's causes of action sounding in replevin pursuant to CPLR 7101, and directed as follows:

ORDERED and ADJUDGED that the plaintiff, Ferrari Financial Services, Inc., recover from the defendant, Evgeny Freidman, the possession of certain described chattels, to wit, (1) one 2014 Ferrari, Model FF (V.I.N. ZFF73SKA6E0196929), (2) one 2015 Ferrari 458 Speciale (V.I.N. ZFF75VFA1F0204538), and (3) one 2014 Ferrari F12 (V.I.N. ZFF74UFA1E0199286), and alternatively, if the possession of the chattels is not returned to the plaintiff, that the plaintiff recover from the defendant the amount of \$575,558.56, with statutory interest from November 28, 2018, and that the plaintiff have execution for enforcement of this judgment.

The defendant failed to comply with that order, and failed to respond to the plaintiffs' information subpoena dated May 20, 2019. One vehicle has since been recovered.

The plaintiff thereafter moved pursuant to CPLR 5223, 5251 and 2308(b) to punish the defendant for contempt or for an order directing the defendant to comply with the subpoena. By an order dated August 28, 2019, the court granted the plaintiff's motion to the extent of directing the defendant to comply in full with the subpoena and produce all requested documents within 30 days of service of that order with notice of entry. The motion was otherwise denied without prejudice. In that order, the court cautioned the defendant that:

"[F]ailure to comply with an information subpoena is governed by CPLR 2308(b), which allows the court to issue a warrant directing a sheriff to bring a witness before the person or body who issued the subpoena and, if the subpoenaed individual "refuses without reasonable cause to be examined," the court, "upon proof by affidavit, may then issue a warrant directed to the sheriff of the county where the person is, committing him to jail, there to remain until he [or she] submits to do the which he [or she] was so required to do or is discharged according to law."

The defendant again failed to comply.

The plaintiff now moves for a second time pursuant to CPLR 5223, 5251, and 2308(b) to punish the defendant for contempt. The motion was scheduled for January 22, 2020 at 11:30 a.m. Although notified, the defendant failed to respond or appear.

CPLR 5223 provides that "[a]t any time before a judgment is satisfied or vacated, the judgment creditor may compel the disclosure of all matter relevant to the satisfaction of the judgment, by serving upon any person a subpoena." That is, "[a] judgment debtor is entitled to discovery from either the judgment debtor or a third party in order 'to determine whether the judgment debtor[] concealed any assets or transferred any assets so as to defraud the judgment creditor or improperly prevented the collection of the underlying judgment' (Young v Torelli, 135 AD2d 813, 815 [1987])." Technology Multi Sources, S.A. v Stack Global Holdings, Inc., 44 AD3d 931 (2nd Dept 2007). CPLR 5223 further provides that "failure to comply with the

subpoena is punishable as a contempt of court." "Contempt is a drastic remedy which should not be granted absent a clear right to such relief." Pinto v Pinto, 120 AD2d 337, 338 (1st Dept. 1986). To prevail on a motion to punish a party for civil contempt, a party must establish that the party to be held in contempt violated a clear and unequivocal court order, known to the parties. See Judiciary Law § 753(A)(3); see also McCormick v Axelrod, 59 NY2d 574 (1983), amended 60 NY2d 652 (1983). The movant must also establish that the party to be held in contempt engaged in conduct that was calculated to and actually did defeat, impair, impede, and prejudice the rights of the movant. See 450 West 14th St. Corp. v 40-56 Tenth Avenue, LLC, 15 AD3d 166 (1st Dept. 2005); Lipstick, Ltd. v Grupo Tribasa, S.A. de C.V., 304 AD2d 482 (1st Dept. 2003).

The plaintiff has met its burden.

The plaintiff has adduced proof of entry of the judgment against the defendant, that the judgment had not been satisfied, and that Evgeny Freidman had been duly served, but had not complied with either the subpoena or the order. The motion to hold Evgeny Freidman in contempt is now granted in its entirety.

The failure to comply with an information subpoena is governed by CPLR 2308(b). See CPLR 5224(a)(3)(iv). CPLR 2308(b) allows the court to issue a warrant directing a sheriff to bring a witness before the person or body who issued the subpoena and, if the subpoenaed individual "refuses without reasonable cause to be examined," the court, "upon proof by affidavit, may then issue a warrant directed to the sheriff of the county where the person is, committing him to jail, there to remain until he [or she] submits to do the which he [or she] was so required to do or is discharged according to law."

The plaintiff has established that a lawful order of the court was in effect, clearly expressing an unequivocal mandate, that the order was disobeyed, that Evgeny Freidman had knowledge of its mandate and made no attempt to comply therewith, and that the plaintiff's ability to ascertain the location of the defendants' assets so as to enable them to collect on their judgment was prejudiced by Evgeny Freidman's failure to comply. See CPLR 5251; Gryphon Domestic VI, LLC v APP Intl. Finance Co., 58 AD3d 498 (1st Dept. 2009); Farkas v Farkas, 209 AD2d 316 (1st Dept. 1994).

Accordingly, it is

ORDERED that the motion of the plaintiff to hold defendant Evgeny Freidman in contempt of court is granted in its entirety; and it is further,

ORDERED AND ADJUDGED, that the conduct of Evgeny Freidman was willfully contemptuous of this court and was calculated to and actually did defeat, impair, impede, or prejudice the rights of the plaintiff inasmuch as Evgeny Freidman violated the order directing him to comply with the information subpoena served upon him; and it is further,

ORDERED that the plaintiff shall serve a copy of this order with notice of entry upon Evgeny Freidman by Federal Express or Overnight Mail within 10 days of its receipt thereof; and it is further,

ORDERED that Evgeny Freidman shall voluntarily appear before the Supreme Court, New York County, 60 Centre Street, Part 42, Room 448, New York, New York, within 30 days of the date of the service upon him of this order with notice of entry, during working hours on a weekday to answer this order of contempt; and it is further,

ORDERED that Evgeny Freidman is directed to, within 30 days of the service upon him of this order with notice of entry, deliver to the plaintiff possession of certain described chattels, to wit, (1) one 2014 Ferrari, Model FF (V.I.N. ZFF73SKA6E0196929), (2) one 2015 Ferrari 458 Speciale (V.I.N. ZFF75VFA1F0204538), and (3) one 2014 Ferrari F12 (V.I.N. ZFF74UFA1E0199286), and alternatively, if the possession of the chattels is not returned to the plaintiff, that the defendant shall pay the plaintiff \$575,558.56, with statutory interest from November 28, 2018, and it is further,

ORDERED that upon the failure of Evgeny Freidman to voluntarily appear before the Supreme Court to answer this order of contempt, the court will issue a warrant pursuant to CPLR 2308(b) directing the sheriff to bring Evgeny Freidman before the court, and it is further

ORDERED that if Evgeny Freidman refuses without reasonable cause to be examined or produce relevant items demanded by the subpoena, then the court, upon proof by affidavit, will issue a warrant to the sheriff of the county where he is residing or situated, committing him

to jail, there to remain until he submits to the acts that he was required to do or is discharged according to law.

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

1/23/2020
DATE


NANCY M. BANNON, J.S.C.

HON. NANCY M. BANNON

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE