

Pavone v Tordy

2020 NY Slip Op 32098(U)

May 27, 2020

Supreme Court, Suffolk County

Docket Number: 016142/2009

Judge: James Hudson

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Supreme Court of the County of Suffolk
State of New York - Part XLVI
Memorandum Decision

ORIGINAL

PRESENT:

HON. JAMES HUDSON

Acting Justice of the Supreme Court

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RALPH PAVONE; JANET HEANEY;
SCOTT HEANEY; CURT MATZINGER;
JEAN MATZINGER; FARRAH SILVERSTEIN;
JANIS SILVERSTEIN; and
DARLENE A. WILSON,

Plaintiffs,

against-

LAURA ANN TORDY;
LUJANO HOLDING LIMITED;
MARTIN HARTMAN II;
OCEAN TO BAY TOURS, INC.; and
MARTIN HARTMAN III,

Defendants.

x-----x

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MOT. SEQ. NOS.:022-Mot D

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Plaintiff/Judgment Creditor Ralph Pavone ("Plaintiff") has filed his post-judgment motion (seq. no.:022) which requests an Order punishing Defendant Martin Hartman, III ("Defendant") for Contempt of Court due to the Defendant's failure to obey an April 6th, 2019 Subpoena *Duces Tecum*.

Concise History

On September 3rd, 2013, entered September 25th, 2013, the Plaintiff received a

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\$3,075,000.00 judgment (“Judgment”) in favor of Ralph Pavone and against Laura Ann Tordy, Lujano Holding Limited, Ocean to Bay Tours, Inc. and Martin Hartman III. The Plaintiff contends that \$3,039,738.00 of that Judgment remains outstanding, due and owing, together with interest thereon from September 25th, 2013.

On April 6th, 2019, Robert Goldhaber, Esq., as Attorney for the Judgment/Creditor issued a Subpoena *Duces Tecum* to take deposition of Judgment/Debtor with Restraining Notice (“Subpoena”); which, on April 22nd, 2019 and was personally served upon Martin Hartman III. Upon information and belief, the Defendant has not complied with that Subpoena. On May 28th, 2019, the Plaintiff filed his instant motion (seq. no.:022) for Contempt of Court; alleging Defendant’s non-compliance. The Plaintiff’s motion is unopposed.

On July 29th, 2019, this Court Ordered the Parties to appear for an August 14th, 2019 Conference. That conference was adjourned due to settlement discussions between the Parties, which ultimately did not settle the matter. On January 22nd, 2020 the Parties advised that they were awaiting a Decision on the instant contempt motion.

N.Y. Judiciary Law §753. Power of courts to punish for civil contempt, states, in pertinent part:

“A court of record has [the] power to punish, by fine and imprisonment, or either, a neglect or violation of duty, or other misconduct, by which a right or remedy of a party to a civil action or special proceeding, pending in the court may be defeated, impaired, impeded, or prejudiced, in any of the following cases:...

3. A party to the action or special proceeding, an attorney, counselor, or other person, for the non-payment of a sum of money, ordered or adjudged by the court to be paid, in a case

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where by law execution can not be awarded for the collection of such sum except as otherwise specifically provided by the civil practice law and rules; or for any other disobedience to a lawful mandate of the court.” (McKinney’s N.Y. Judiciary Law §753 [2020]).

“A motion to punish a party for civil contempt is addressed to the sound discretion of the court, and the movant bears the burden of proving the contempt by *clear and convincing evidence*” (*El-Dehdan v. El-Dehdan*, 114 AD3d 4, 10, 978 NYS2d 239, 245 [2d Dept 2013], *affirmed* 26 NY3d 19, 19 NYS3d 475, 41 NE3d 340 [2015]; *see also Louzoun v. Montalto*, 162 AD3d 1004, 1005, 80 NYS3d 154 [2d Dept 2018]).

“In order to hold a party in civil contempt, the moving party must establish the following elements by clear and convincing evidence: First, it must be determined that a lawful order of the court, clearly expressing an unequivocal mandate, was in effect; Second, it must appear, with reasonable certainty, that the order has been disobeyed; Third, the party to be held in contempt must have had knowledge of the court’s order...; and Fourth, prejudice to the right of a party to the litigation must be demonstrated” (*Matter of Behan*, 180 AD3d 671, 677, 119 NYS3d 222 [2d Dept 2020]; *quoting Cover v. Cover*, 173 AD3d 970, 971, 104 NYS3d 669 [2d Dept 2019]; *see Cook v. Cook*, 142 AD3d 530, 535, 36 NYS3d 222, 227-228 [2d Dept 2016]; *Trabanco v. City of New York*, 81 AD3d 490, 492, 916 NYS2d 90, 92 [1st Dept 2011]).

In order to sustain a finding of civil contempt, it is not necessary that the disobedience be deliberate or willful, rather, the mere act of disobedience, regardless of its motive, is sufficient if such disobedience defeats, impairs, impedes or prejudices the rights of a party (*Doors v. Greenberg*, 151 AD2d 550, 542 NYS2d 324, 325 [2d Dept 1989]). “A party is obligated to comply with a court order, however incorrect the party may consider that order to be, until that order is set aside, either by appeal or otherwise, as long as the court issuing the order had jurisdiction to issue it” (*Astrada v. Archer*, 71 AD3d 803, 807, 898 NYS2d

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149, 152 [2d Dept 2010]). “The aim of civil contempt is to vindicate a party’s right to the benefits of a judicial mandate or to compensate that party for the interference by the contemnor” (*Matter of Ferrante v. Stanford*, 172 AD3d 31, 36, 100 NYS3d 44 [2d Dept 2019]; quoting *Matter of Banks v. Stanford*, 159 AD3d 134, 140, 71 NYS3d 515 [2d Dept 2018]). “Once the movant makes the required showing, the burden shifts to the alleged contemnor to refute that showing, or to offer evidence of a defense such as an inability to comply with the order” (*Matter of Ferrante* at 36; quoting *Matter of Mendoza-Pautrat v. Razdan*, 160 AD3d 963, 964, 74 NYS3d 626 [2d Dept 2018]). “It is well to note, however, that where a party alleges an excuse for disobedience to a judgment or order of a court or alleges matters in mitigation, the burden of proof is upon him to establish the same. Such burden must be met by a factual showing” (*In re Hildreth*, 28 AD2d 290, 294, 284 NYS2d 755, 760 [1st Dept 1967]; see *21 Carmody Wait*, New York Practice §123, p. 273; *Clark v. Bininger*, 75 NY 344 [1878]).

“The fines that may be imposed for a civil contempt are found in *Judiciary Law* §773. The Statute provides for two types of awards: one where actual damage has resulted from the contemptuous act in which case an award sufficient to indemnify the aggrieved party is imposed, and one where the complainant’s rights have been prejudiced but an actual award or injury is incapable of being established” (*Matter of Department of Hous. Preserv. & Dev. Of City of N.Y. v. Deka Realty Corp.*, 208 AD2d 37, 43, 620 NYS2d 837 [2d Dept 1995]). “An application to adjudicate a party in contempt is treated in the same fashion as a motion and a hearing must be held if issues of fact are raised” (*Gomes v. Gomes*, 106 AD3d 868, 869, 965 NYS2d 187, 189 [2d Dept 2013]; quoting *Quantum Heating Servs. v. Austern*, 100 AD2d 843, 844, 474 NYS2d 81 [2d Dept 1984]).

In the case at bar, it is improvident of the Court to grant the civil contempt request made by the Plaintiff in his instant motion (seq. no.:022) without a contempt hearing.


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Accordingly, it is

ORDERED, that the motion (seq. no.022:) of the Plaintiff which seeks a finding of civil contempt against Defendant Martin Hartman III is granted to the extent that a contempt hearing will be held at the New York State Supreme Court of Suffolk County, One Court Street, Riverhead, NY, Part XLVI, on **Tuesday, July 28th, 2020 at 10:00 am.**

This Memorandum also constitutes the Order of the Court.

DATED: MAY 27th, 2020
RIVERHEAD, NY



HON. JAMES HUDSON
Acting Justice of the Supreme Court