

**Koegler v Amraly**

2020 NY Slip Op 32402(U)

July 22, 2020

Supreme Court, New York County

Docket Number: 650089/2014

Judge: Robert R. Reed

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

PRESENT: HON. ROBERT R. REED PART 43

*Justice*

-----X

MICHAEL KOEGLER, MARK PRESTIA

Plaintiff,

- v -

STEFAN AMRALY,

Defendant.

-----X

INDEX NO. 650089/2014

MOTION DATE 01/29/2020

MOTION SEQ. NO. 006

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 006) 107, 108, 109, 110, 111, 112

were read on this motion for CONTEMPT

ROBERT R. REED, J.:

In this action seeking to recover under two promissory notes, plaintiff, Michael Koegler moves post-judgment, pursuant to CPLR 2308 (a), for an order holding defendant, Stefan Amraly, in contempt for failure to produce subpoenaed documents. The motion is unopposed.

**Background**

By decision and order dated October 3, 2017, the court awarded plaintiffs summary judgment finding that defendant failed to comply with a promissory note and personal guaranty and directed the Clerk to enter judgment in favor of plaintiff Koegler in the amount of \$675,000 together with interest at a rate of six percent from January 1, 2012 through December 31, 2012, and thereafter at a rate of 12 percent (NYSCEF No. 83). The Clerk was also directed to enter judgment in favor of plaintiff Prestia in the amount of \$100,000, together with the same interest schedule (*id.*). By decision and order dated September 12, 2018, the court, granting plaintiffs' motion without opposition, ordered that the correct date interest was payable to plaintiffs "shall

accrue . . . pursuant to the terms of the promissory note” from January 2007 through December 2012 (NYSCEF No. 100). The Judgement was filed on November 20, 2018 (NYSCEF No. 105). On or about August 17, 2019, counsel for plaintiff Michael Koegler served defendant personally with a subpoena duces tecum at his place of work, Hamptons Farms Restaurant, located at 412 Montauk Highway in East Quogue, New York (plaintiff exhibit A). The subpoena compelled defendant to appear for a deposition on October 7, 2019, and to bring those documents demanded in the subpoena. Though defendant appeared for the deposition, he failed to bring the demanded documents (Amaraly dep at 67-69, plaintiff exhibit B).

During his deposition, Amaraly agreed to produce the documents via email through his counsel, Alexander Dudelson (*id.* at 67-69). According to plaintiff’s counsel, despite several emails to defendant’s attorney, the documents have not been produced (O’Brien affirmation, ¶ 5).

Plaintiff seeks an order directing defendant to deliver the subpoenaed documents to plaintiff’s counsel’s office no later than February 10, 2012 [sic]; the failure of which will result in a warrant directing the Sheriff to bring the defendant into court. Additionally, pursuant to CPLR 2308, plaintiff seeks an order imposing a \$150 penalty plus damages, including attorney’s fees, due to defendant’s noncompliance.

The instant motion was served via email to defendant to his personal email account, as well as by email and regular mail to defendant’s counsel, Alexander M. Dudelson, Esq., 26 Court Street – Suite 2306, Brooklyn, New York 11242 (affirmation of service dated January 16, 2020). Defendant has not opposed the motion. Rather, by order to show cause filed on February 27, 2020, defendant sought an order to “[d]eny the plaintiff’s motion to hold defendant in contempt of the court as requested by plaintiff” (motion seq. No. 007; NYSCEF No. 113). The court

declined the application stating “This application does not seek affirmative relief. It appears that it is intended to oppose a motion already made by plaintiff. Seeking a separate order to show cause is not the way to oppose a motion” (NYSCEF No. 114).

### Discussion

“Under CPLR 5223, a ‘judgment creditor may compel disclosure of all matter relevant to the satisfaction of a judgment’ any time before the judgment is satisfied or vacated” This broad standard applies to the various subpoena devices detailed in CPLR 5224, including a subpoena duces tecum under CPLR 5224 (a) (2) and an information subpoena under CPLR 5224 (a) (3). A subpoena duces tecum accomplishes disclosure through the production of documents at a specified time and place. An information subpoena is a set of questions asked and answered by mail. It is analogous to a discovery interrogatory”

(*Knopf v Sanford*, 65 Misc 3d 463, 506-507 [Sup Ct, NY County 2019]).

“Plaintiff’s reliance on CPLR 2308 (b) is . . . misplaced, because that provision governs information subpoenas, not subpoenas duces tecum” (*Ballek v First Media Mktg.*, 24 Misc 3d 532, 534 [Sup Ct, NY County 2009], citing CPLR 5224 [a] [1], [3] [iv]; CPLR 5223). Plaintiff served a subpoena duces tecum (plaintiff exhibit A). A subpoena duces tecum may be enforced pursuant to CPLR 5251, which states:

“Refusal or willful neglect of any person to obey a subpoena or restraining notice issued, or order granted, pursuant to this title; false swearing upon an examination or in answering written questions; and willful defacing or removal of a posted notice of sale before the time fixed for the sale, shall each be punishable as a contempt of court.”

“[B]road post-judgment discovery in aid of execution is the norm in federal and New York state courts and New York law entitles judgment creditors to discover all matters relevant to the satisfaction of a judgment” (*Matter of B & M Kingstone, LLC v Mega Intl. Commercial Bank Co., Ltd.*, 131 AD3d 259, 266 [1<sup>st</sup> Dept 2015] [internal quotation marks and citation omitted]).

It is undisputed that defendant has not satisfied the judgment and has defaulted on the instant motion. While defendant appeared for deposition in relation to the subpoena, he was also commanded to produce certain relevant documents in relation to the judgment, which to date he has failed to produce. However, “[c]ontempt punishment is considered a ‘back-up device’ in the enforcement of money judgments pursuant to CPLR 5251” (*Home Heating Oil Corp. v Parris*, 65 Misc 3d 1216[A], \*3, 2019 NY Slip Op 51663[U] [Civ Ct, Kings County 2019]). Plaintiff has not shown that he has exhausted the less drastic enforcement remedies before making the instant motion to hold the defendant in contempt (*Rozzo v Rozzo*, 274 AD2d 53, 56 [2d Dept 2000]). The court, therefore, orders defendant to comply with plaintiff’s subpoena duces tecum by producing the requested documents within 14 days after service upon him of this decision and order, with notice of entry. To the extent that no such documents exist, defendant so shall state within said timeframe. Failure to comply will result in a finding of contempt, including but not limited to the recovery of attorney’s fees (*Schwartz v Schwartz*, 79 AD3d 1006, 1009 [2010] [“Judiciary Law § 773 permits recovery of attorney’s fees from the offending party by a party aggrieved by the contemptuous conduct [citations omitted]”).

### **Conclusion**

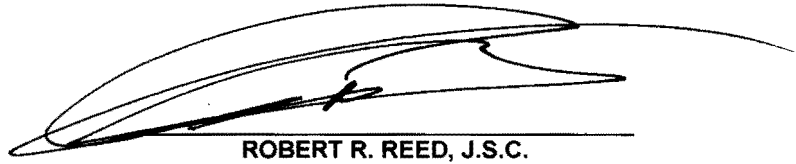
Accordingly, it is

ORDERED that the motion by plaintiff, Michael Koegler for an order holding defendant, Stefan Amraly, in contempt for failure to produce subpoenaed documents is denied, except that defendant is ordered to produce those requested documents as set forth in the subpoena duces tecum served on defendant on August 17, 2019 within 14 days after service upon him of this decision and order, with notice of entry. To the extent that no such documents exist, defendant so

shall state, by affidavit, within said timeframe. Failure to comply will result in a finding of contempt, including, but not limited to, the recovery of attorney's fees.

7/22/2020

DATE



ROBERT R. REED, J.S.C.

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