

Baum v Suzuki

2020 NY Slip Op 33506(U)

October 21, 2020

Supreme Court, New York County

Docket Number: 654981/2018

Judge: Debra A. James

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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: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

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MARK BAUM,

Plaintiff,

- v -

SAMMY SUZUKI,

Defendant.

INDEX NO. 654981/2018

MOTION DATE 10/21/2020

MOTION SEQ. NO. 004 005

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 65, 66, 67, 68, 69, 70, 71, 72, 90, 93, 94, 95, 96, 97, 98, 99, 100, 120

were read on this motion to/for VACATE - WARRANT

The following e-filed documents, listed by NYSCEF document number (Motion 005) 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 91, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119

were read on this motion to/for CONTEMPT

ORDER

Upon the foregoing documents, it is

ORDERED that defendant's motion to vacate the warrant and commitment order filed on June 4, 2020, effective upon "resumption of in person operations of courthouses in New York County" (which in court operations with respect to civil contempt warrants for arrest have not resumed to date) (Mot. Seq. Nos. 004 and 005) is GRANTED and such **warrant and commitment order** are **VACATED**, on condition that, within 20 days of receipt of proposed authorizations, prepared and delivered to defense counsel by

plaintiff's counsel, defendant sign and return such authorizations to plaintiff that direct

- (1) Citibank to release to plaintiff copies of defendant's statements of account pertaining to his Citi Card account ending 9674, for the period January 1, 2016 through August 21, 2018, and for the period after March 19, 2020 to date; records pertaining to any Citibank personal checking or saving account(s) belonging to defendant, for the period January 2016 to date to, or a statement that there are no such personal checking or saving accounts belonging to defendant for such period;

and

- (2) Macy's to release to plaintiff copies of statements of account pertaining to defendant's credit card account ending 2991 for the period July 2019 through November 2019;

and

- (3) Schwab to release to plaintiff copies of statements of account pertaining to investment account ending (Individual) 817 for the period June 4, 2019 to date;

and it is further

ORDERED that to the extent that plaintiff cross moves to modify the foregoing warrant (mistakenly filed under Motion Seq. No. 005 instead of Motion Sequence No. 004), such motion is DENIED; and it is further

ORDERED that to the extent that the order to show cause of plaintiff seeks to compel defendant to comply with an information subpoena issued to him on April 29, 2020, and to compel non-parties Bob Delidimitrious, Barry Regenstein and Darius Toraby Architects PC to comply with the information subpoenas, subpoenas duces tecum and subpoena ad testificandum issued to them on June 1, 2020, July 13, 2020 and March 9, 2020,

respectively, (Motion Seq. No. 005), such motion is granted to the extent that, within thirty days of service of a copy of this order with notice of entry

- (1) defendant shall respond to the information subpoena served upon him on April 30, 2020;

and

- (2) non-party Barry Regenstein shall respond to the information subpoena issued to him on July 13, 2020;

and

- (3) non-party Bob Delidimitrious shall respond to the information subpoena issued to him on June 1, 2020;

and

- (4) non-party Darius Toraby Architects PC shall respond to the information subpoena and subpoena duces tecum issued to it on March 9, 2020;

and it is further

ORDERED that to the extent that plaintiff seeks to compel non-parties Regenstein and Delidimitrious to comply with the subpoena duces tecum and subpoena ad testificandum and to compel non-party Toraby Architects PC to comply with subpoenas ad testificandum, such motion is held in abeyance for further oral argument upon the review by plaintiff of the information and/or records disclosed pursuant to the information subpoenas and the subpoenas duces tecum; and it is further

ORDERED that to the extent that plaintiff seeks to hold non-parties Delidimitrious, Regenstein and Darius Toraby Architects PC in contempt for failing to comply with the various

post judgment enforcement subpoenas issued by plaintiff's counsel (Motion Seq. No. 005), such motion is denied; and it is further

ORDERED that defendant shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that counsel are directed to appear for further argument as to the motion to compel the non-parties to submit to depositions on November 19, 2020, 11:30 AM via Microsoft Teams, upon filing by any counsel of the standard request for conference form (sfc-conferencerequest@ncourts.gov) no more than five and no less than two days in advance of such hearing date' and it is further


ORDERED that should no standard request for conference form be filed as aforesaid, the motion for depositions of the non-parties shall be deemed denied.

DECISION

Defendant, who plaintiff does not deny has appeared for a post judgment deposition and made substantial payments toward satisfaction of the judgment, has demonstrated that to the extent that he was in violation of the order dated December 13, 2019 holding him in contempt, unless he produced certain records, he has now purged himself of such violation with the Dropbox production of documents and a statement, under oath, that he has no additional responsive documents in his possession. Defendant has also consented to providing a signed authorization to allow plaintiff to subpoena any of statements belonging to him for the periods in question from Citibank, Schwab and Macy's. See Marino v Myers, 64 AD2d 600 (1st Dept. 1978).

To the extent that plaintiff seeks to hold the non-parties in contempt for failing to comply with the subpoenas that his counsel issued to them, such motion is unavailable, as

premature; since such subpoenas were non-judicial. See Reuters Limited v Dow Jones Telerate, Inc., 231 AD2d 337 (1st Dept. 1997); Citibank, N.A. v Angst, Inc., 61 AD3d 484 (1st Dept. 2009).

<u>10/21/2020</u> DATE	 DEBRA A. JAMES, J.S.C.							
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE