

5600 New Utrecht Ave. LLC v 5601 13th Ave. LLC

2020 NY Slip Op 33640(U)

November 2, 2020

Supreme Court, Kings County

Docket Number: 1535/2020

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8
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5600 NEW UTRECHT AVENUE LLC,
Plaintiff, Decision and order

- against - Index No. 1535/2020

5601 13TH AVENUE LLC, & SNAP DEVELOPERS LLC,
Defendants, November 2, 2020

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PRESENT: HON. LEON RUCHELSMAN

On October 21, 2020 this court issued a decision held that pursuant to Liability Company Law §206 the plaintiff could not maintain the lawsuit. The court further held that "anticipating a swift cure of the filing requirements and a refileing of another complaint and to maintain efficiency and avoid unnecessary and repetitive motions the court must address the substantive issues in these motions" (see, Decision dated October 21, 2020). In that vein the court granted plaintiff's request seeking an injunction preventing the defendant from performing work on plaintiff's property.

The plaintiff has filed the instant order to show cause seeking a further injunction and sanctions based upon the defendant's failure to comply with the injunction. The defendant does not dispute the injunction was violated, however, the defendant contends that since the case had been dismissed there was no viable injunction, consequently the defendant did not violate any court order.

As noted the court held the plaintiff did not maintain

standing to proceed with the lawsuit until it complied with Liability Company Law §206. Thus, while the plaintiff could not continue the lawsuit in its current state, the failure to comply with Liability Company Law §206 was not a jurisdictional defect warranting dismissal (see, 2004 McDonald Avenue Realty LLC v. 2004 McDonald Avenue Corp., 25 Misc3d 1204(A), 901 NYS2d 911 [Supreme Court Kings County 2007]). Indeed, the plaintiff maintains the ability to cure the defect nunc pro tunc. The prior decision was explicit in this regard as evidenced by the above quoted language. If there was any uncertainty about defendant's permissible conduct the proper course of action was to reach out to the court for further clarification. This is certainly true since the court unmistakably continued the imposition of an injunction.

It is well settled that where a court has jurisdiction an order of the court must be obeyed (Woistencraft v. Sassower, 212 AD2d 598, 623 NYS2d 7 [2d Dept., 1995]). Thus, "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, so long as the court issuing the order had jurisdiction to do so" (Gloveman Realty Corp., v. Jeffreys, 29 AD3d 858, 815 NYS2d 687 [2d Dept., 2006]).

In reality, the defendant first concluded unilaterally that the court no longer maintained jurisdiction over the case and then second that it was not required to comply with the specific

injunction this court imposed. The defendant repeatedly argues the court "dismissed" the case and the case was "dismissed" (see, Affirmation dated October 29, 2020, "a party need not obey any purported preliminary injunction issued by the Court after the underlying action has been dismissed" ¶4, "further, and because this action has been dismissed, there exists no pending applications before the Court and this Court lacks personal jurisdiction over Defendants" ¶5, "pursuant to a "Decision and Order" dated October 21, 2020, this Court dismissed this action based upon Plaintiff's lack of standing" ¶6, "it has thus been established that the Court has no power to issue a preliminary injunction after having already dismissed the case" ¶12, "it is undisputed that here, this Court dismissed this action for lack of standing" ¶16). Therefore, the defendant argues the court lacked any authority to impose the injunction. However, the case was never dismissed at all. If the defendant had any question in that regard it could not merely conclude so unilaterally but rather was required to either appeal or at least inquire further. A party cannot interpret a decision of the court in a way that essentially dissolves the entire lawsuit. This is surely true where as here that is not the law and a further clarification would have settled the matter. Thus, there can be no other conclusion reached but that the defendant chose to ignore and disobey an order of the court. Therefore, the plaintiff's request to order the sheriff to


padlock the property pending the continuation of this lawsuit is granted. The sheriff is hereby directed to padlock the property located at 5600 New Utrecht Avenue in Kings County. Further, the defendant is enjoined from doing any work at the property until further order from the court or upon consent of the plaintiff.

All motions seeking contempt are denied at this time.

So ordered.

ENTER:

DATED: November 2, 2020
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC