

U.S. Bank Natl. v 2K14 Rests., LLC
2021 NY Slip Op 30136(U)
January 14, 2021
Supreme Court, New York County
Docket Number: 650496/2018
Judge: Melissa A. Crane
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. MELISSA ANNE CRANE **PART** **IAS MOTION 15EFM**

Justice

-----X

U.S. BANK NATIONAL

Plaintiff,

- v -

2K14 RESTAURANTS, LLC.,

Defendant.

-----X

INDEX NO. 650496/2018

MOTION DATE 01/01/2021

MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 43, 44, 45, 46, 47, 48, 49

were read on this motion to/for CONTEMPT.

Upon the foregoing documents, it is

On or about February 21, 2019, a Judgment was entered in the amount of \$177,299.97, against the Defendants, 2K14 RESTAURANTS, LLC d/b/a SUBWAY and KINNARY PATEL (Patel). When the defendants failed to satisfy the judgment, the plaintiff served an information subpoena and a subpoena duces tecum for the deposition of Patel. Defendants failed to comply. Plaintiff then moved to compel compliance which this court granted on May 29, 2020. Plaintiff then served a copy of the court's May 29, 2020 order upon defendants on June 5, 2020. Defendants still failed to comply.

Plaintiff now moves for contempt. Plaintiff has demonstrated that the judgment remains unsatisfied, that the information subpoena remains unanswered and that Patel has never appeared for a deposition. Thus, at the present time, defendants are in contempt of court. Defendants have not opposed this motion.

Moreover, Court unequivocally mandated Patel to appear, be deposed and produce documents. Patel disobeyed the decree, warranting a contempt sanction. See, *McCain v.*

Dinkins, 84 N.Y.2d 216, 226 (1994); *Matter of Borgenicht v. Bloch*, 280 A.D.2d 306, 307 (1st Dep't 2001).

Patel and 2K14's actions defeated, impaired, impeded and prejudiced plaintiff's rights and remedies as plaintiff has a judgment against defendants that has been impossible to collect due to defendants' obstructionism

In order to purge itself of the contempt, the defendants must either comply with the information subpoena and Patel must appear for a deposition (*see McNulty v McNulty*, 81 AD2d 581 [2nd Dep. 1981]; *H.D. Smith Wholesale Drug Co. v Custom LTC, LLC*, 2010 NY Slip Op 30373[U][Sup. Ct., N.Y. County, Feb. 22, 2010] [Gische, J.]) or pay the obligation under the judgment within 60 days of service of this order upon them. Because a corporation cannot be incarcerated, the appropriate punishment for a corporation found to be in civil contempt is generally the imposition of a fine (*see Judiciary Law § 773; State of New York v Unique Ideas, Inc.*, 44 NY2d 345 [1978]; *Schreiber v Garden*, 52 App Div [1st Dept. 1912]), which may include an award of attorneys' fees as part of the movant's costs and expenses. *See 3855 Broadway Laundromat, Inc. v 600 West 161st Street Corp.*, 156 AD2d 202 (1st Dept. 1989). Accordingly, unless the defendants purge the contempt within 60 days of service of this order by complying with the restraining notice dated May 2, 2019, or by satisfying the judgment by paying \$\$177,299.97, plus statutory interest from the date of entry of the judgment, the court imposes a fine of \$250.00 upon defendants.

Defendants' disregard for the judicial system and its mandates will not be tolerated. Thus, this Court orders that both defendants, jointly and severally, will be responsible for all of plaintiff's attorney' fees and costs associated with this motion. Accordingly, it is

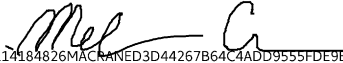
ORDERED that the motion of the plaintiff to hold the defendants in contempt of court is granted as set forth above; and it is further,

ORDERED AND ADJUDGED, that the conduct of defendants and judgment debtors 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 defendants and judgment debtors failed to comply with the information subpoena and deposition notices served upon them; and it is further,

ORDERED that, unless defendants and judgment debtors 2K14 RESTAURANTS, LLC d/b/a SUBWAY and KINNARY PATEL purge this contempt within 60 days of service by complying with the information subpoena and deposition notice or by satisfying the judgment by paying \$177,964.97, plus statutory interest from the date of entry of the judgment, they shall be fined \$250.00 and it is further

ORDERED, that 2K14 RESTAURANTS, LLC d/b/a SUBWAY and KINNARY PATEL are fined for said contempt a sum equaling the attorney's fees and costs of this motion. Along with serving this order, plaintiff is to provide 2K14 RESTAURANTS, LLC d/b/a SUBWAY and KINNARY PATEL with a list itemizing all of the costs associated with this motion. The list must be accompanied by an attorney's affirmation, representing that the costs stated were actually incurred in connection with the contempt motion. The list and affirmation are to be provided to this Court at the same time as proof of service is submitted (see, *infra*). It is further

ORDERED that a certified copy of this Order and the Order dated May 29, 2020 shall be personally served on debtors 2K14 RESTAURANTS, LLC d/b/a SUBWAY and KINNARY PATEL and proof of service of these Orders must be filed with the County Clerk and delivered to this Court no later than February 12, 2021.


 202101149184826MACRANED3D44267B64C4ADD9555FDE9B7F543A9

1/14/2021
 DATE

MELISSA ANNE CRANE, 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