

Davidoff Hutcher & Citron LLP v Miller
2022 NY Slip Op 33051(U)
September 8, 2022
Supreme Court, New York County
Docket Number: Index No. 652073/2019
Judge: Laurence L. Love
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. LAURENCE L. LOVE PART 63M

Justice

-----X

DAVIDOFF HUTCHER & CITRON LLP,

Plaintiff,

- v -

CHAIM MILLER, SAM SPREI, 3052 BRIGHTON FIRST
LLC,3052 BRIGHTON FIRST LOFT LLC,3052 BRIGHTON
MB LLC,3112 EMMONS LOFTS LLC,203-205 NORTH 8TH
STREET LOFT LLC,203-205 N8 MB LLC,271 SEA BREEZE
AVENUE LLC,261 LOFTS MANAGER LLC,BESAD 5TH
LLC,97 GRAND AVENUE MEMBER LLC,97 GRAND MB
LLC,11-45 RYERSON HOLDINGS LLC,11-45 RYERSON
MB LLC,OLDEN EQUITIES LLC

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 007) 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262 were read on this motion to/for CONTEMPT.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 263, 264, 265, 266, 267, 268, 269 were read on this motion to/for ATTORNEY - DISQUALIFY/RELIEVE/SUBSTITUTE/WITHDRAW.

Upon the foregoing documents, plaintiff’s motion seeking an Order pursuant to CPLR §§ 5251 and 2308(a) and N.Y. Jud. Law §§ 753, 756, 760, 770, and 772-75, holding defendants in contempt of Court based upon their failure to comply with subpoenas duces tecum and ad testificandum, and compelling plaintiff to comply with said subpoenas and Edward Harold King, PLLC’s motion seeking to be relieved as counsel of record for Chaim Miller a/k/a Harry Miller and Sam Sprei a/k/a Yechial Shimon Sprei, are decided as follows:

In an Order dated March 2, 2022, resolving plaintiff’s prior motion for i) contempt, pursuant to CPLR 5251, 2308(a), and N.Y. Jud. Law 753, 756, 760, 770, and 772-75; and ii) for

defendants to comply with Subpoena Duces Tecum to Judgment Debtor and Subpoenas to Take Deposition Upon Oral Questions; iii) to impose upon each defendant a penalty of one – hundred and fifty dollars (\$150); iv) impose upon each defendant a fine of two – hundred fifty dollars (\$250); and v) if defendants do not comply with said Subpoena’s to issue a warrant directed to the sheriff, this Court denied plaintiff’s prior motion seeking the same relief, with “leave to renew within thirty days of entry of said Order if defendant continue to ignore the above. If said Motion seeking Contempt is filed a second time this court will give the granting of same very serious consideration.” It is undisputed that defendants have failed to respond to plaintiff’s subpoenas. Upon the expiration of said thirty days, Edward Harold King, PLLC moved to be relieved as counsel and oral argument of said motion was held on September 8, 2022. As such, it is

ORDERED that the motion of Edward Harold King, PLLC to be relieved as attorney for Chaim Miller a/k/a Harry Miller and Sam Sprei a/k/a Yechial Shimon Sprei is granted without opposition upon filing of proof of compliance with the following conditions; and it is further

ORDERED that, within 10 days from entry, said attorney shall serve a copy of this order with notice of entry upon the former clients at their last known addresses by certified mail, return receipt requested, and upon the attorneys for all other parties appearing herein by posting to the New York State Courts Electronic Filing System; and it is further

ORDERED that, together with the copy of this order with notice of entry served upon the former clients, moving counsel shall forward a notice directing the former clients to appoint a substitute attorney within 30 days from the date of the mailing of the notice and the clients shall comply therewith, except that, in the event defendants intend instead to represent themselves, they shall notify the Clerk of the Part of this decision in writing within said 30-day period; and it is further

ORDERED that any new attorney(s) retained by defendants shall file a notice of appearance with the Clerk of the General Clerk's Office (60 Centre Street, Room 119) and the Clerk of the Part within 40 days from the date the notice to retain new counsel is mailed; and it is further

ORDERED that no further proceedings may be taken against the former clients without leave of this court for a period of 40 days after service on the former client of the aforesaid notice to appoint a substitute attorney; and it is further

ORDERED that the departing attorney shall, within 10 days from entry, serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (Room 119); and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office, the filing of a notice of appearance as provided herein, and the filing of papers as aforesaid 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 Plaintiffs renewed motion for contempt of court and to compel against Defendants is GRANTED to the following extent:

ORDERED that upon the expiration of the above ordered stay, Defendants shall comply with the Information Subpoena, Subpoenas Duces Tecum and Subpoenas to Take Deposition by producing the books, papers, records, and other documents requested by the Information Subpoena and Subpoenas Duces Tecum, e-filed as NYSCEF Documents 241 and 242 within thirty (30) days and appear for a deposition under oath upon oral questions on all matters relevant to the satisfaction

of the Judgment as demanded in NYSCEF Document 243 within ninety (90) days of service of the aforementioned books, papers, records, and other documents; and it is further

ORDERED that each Defendant shall pay a penalty of one hundred fifty dollars (\$150.00) to plaintiff pursuant to CPLR § 2308(a) within thirty (30) days of the expiration of the above stay; and it is further

ORDERED that if Defendants fail to comply with the instant Order, they shall be fined two hundred fifty dollars (\$250.00) each, plus Plaintiffs costs and expenses; and it is further


ORDERED that payment of these penalties and fines shall be delivered to counsel for plaintiff and written proof of such payment shall be provided to the Clerk of Part 63 within 30 days of the expiration of the above stay; and it is further

ORDERED that, in the event that timely payment is not made, the Clerk of the Court, upon service upon him of a copy of this order with notice of entry and an affirmation or affidavit reciting the fact of such non-payment, shall enter a judgment in favor of the plaintiff and against defendants in the aforesaid sum; and it is further

ORDERED that proof of payment shall be provided to the Clerk of the Part and such service upon the Clerk of the Court 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 if Defendants do not comply with the Subpoenas Duces Tecum and Subpoenas to Take Deposition as set forth above, the Court may issue a warrant directed to the sheriff or other enforcement officer of any jurisdiction in which Miller and Sprei are found,

committing them to jail, there to remain, until they comply with the Subpoenas Duces Tecum and Subpoenas to Take Deposition or are otherwise discharged according to law.

9/8/2022 DATE	 LAURENCE L. LOVE, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	<input type="checkbox"/> REFERENCE
	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/> FIDUCIARY APPOINTMENT