

**JAS3 Holdings LLC v Hatro Holdings XVI LLC**

2023 NY Slip Op 31598(U)

May 11, 2023

Supreme Court, Kings County

Docket Number: Index No. 511878/2017

Judge: Reginald A. Boddie

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This opinion is uncorrected and not selected for official publication.

At an IAS Commercial Term Part 12 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 11th day of May 2023.

**P R E S E N T:**  
Honorable Reginald A. Boddie  
Justice, Supreme Court

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JAS3 Holdings LLC,

Plaintiff,

Index No. 511878/2017

-against-

Cal. No. 13 MS 5

**Decision & Order**

Hatro Holdings XVI LLC, et. al.,

Defendants.

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The following e-filed papers read herein:  
MS 5

NYSCEF Doc Nos.  
118-139

Upon the foregoing papers, plaintiff’s motion to hold defendants in contempt is decided as follows:

Plaintiff commenced this action against defendants for fraudulent inducement and breach of contract in connection with alleged defects of a residential property plaintiff purchased from defendants in Brooklyn, New York. After a conference held on March 11, 2022, this matter was settled on the record, for \$90,000, payable over three years, at \$30,000 per year. Defendants agreed to execute a mortgage note and Confession of Judgment. Any additional terms were to be set forth by the parties in a written agreement (see “Conference Order” at NYSCEF Doc #95). By motion filed on August 15, 2022, plaintiff sought to compel defendants to sign the settlement agreement, confession of judgment, mortgage and note pursuant to the Conference Order. On November 10,

2022, the Court granted plaintiff's motion ordering defendant to comply within ten days ("Enforcement Order") (NYSCEF Doc #114). On December 23, 2022, plaintiff submitted a letter seeking leave of court to file a motion for contempt, which the Court so ordered on the same day ("Pre-motion Letter") (NYSCEF Doc #117). On February 28, 2023, plaintiff served a certified copy of the Enforcement Order on defendants and requested that they comply within fourteen days to avoid a filing of motion for contempt ("Notice") (NYSCEF Doc #124). On March 22, 2023, plaintiff moved, under motion sequence five, for an order holding defendants in contempt for failure to obey the Enforcement Order and imposing sanctions and costs pursuant to CPLR 5104 and Judiciary Law 753.

In support of its motion for contempt, plaintiff argues that defendants failed to comply with the Conference Order and Enforcement Order. Specifically, that defendants have not sent plaintiff complete original copies of the settlement documents including the settlement agreement, the mortgage and note, and the confession of judgment. Additionally, that defendants have not cured the deficiencies on those documents. Plaintiff contends that the original signed settlement documents without deficiencies are necessary to perfect the security interest and record such interest with the County Clerk. Plaintiff further argues that the Court should grant the relief it seeks because (a) defendants unequivocally defeated, impaired, impeded, and prejudiced its rights by preventing effectuation of the settlement; (b) defendants continuously failed to comply with the Conference Order even with judicial intervention compelling it; (c) defendants had notice of the Conference Order, Enforcement Order, and the instant motion for contempt. Accordingly, plaintiff argues that defendants' failure to comply is clearly a violation of court orders necessitating monetary sanctions.

In opposition, defendants argue that plaintiff attempted to expedite defendants' settlement payment by unilaterally setting December 31, 2022 as the deadline for the initial \$30,000.00 settlement payment, even though that date was never discussed between the parties. Defendants contend that they misunderstood the settlement terms during the conference on March 11, 2022 and thought that the full settlement amount of \$90,000 would be payable over three years from March 11, 2022. Defendants further contend that plaintiff disregarded their request to extend the payment deadline and insisted that they execute the settlement documents as proposed. Additionally, that plaintiff would not accept copies of their signature pages of settlement documents including those not required to be recorded. Moreover, defendants argue that thereafter, they could not make the settlement payments as there was insufficient equity in the property securing the mortgage and note. Thus, defendants argue that they could not return the signed documents without placing themselves in immediate default. Moreover, defendants argue that plaintiff has not established the element of prejudice for civil contempt. Defendants contend that there was no actual prejudice to plaintiff because at the time the Enforcement Order was issued, the \$30,000 settlement payment was not yet due. Further, defendants argue that they demonstrated their inability to comply with the Enforcement Order. Defendants contend that their failure to comply is immaterial and does not rise to the level of contempt. Finally, defendants seek an opportunity to purge the contempt should the Court be inclined to hold them in contempt.

In reply, plaintiff argues that defendants are distorting the truth. First, plaintiff submits that the record shows defendants understood the settlement terms that "parties have agreed to settle this matter for the total amount of \$90,000 and have agreed to a mortgage and confession of judgment and \$30,000 payable each year over three years." Plaintiff contends that "payable each year over three years" means the first \$30,000 payment should be paid no later than December 31,


2022. Thus, that defendants' argument regarding the December 31, 2022 deadline is baseless. Second, plaintiff argues that when the \$30,000 settlement payment was due is irrelevant because defendants violated the Enforcement Order by not providing plaintiff with signed and complete originals of the settlement documents within ten days. Plaintiff contends that defendants are in the business of real estate and knew that the copies they sent with deficiencies could not be recorded. With respect to plaintiff's claim that there was insufficient equity in the collateral property, plaintiff further submits that defendants assured the Court at the conference on March 11, 2022 that the property they gave as collateral has enough equity to cover the \$90,000 settlement payment. Moreover, plaintiff argues that it has been seriously prejudiced. Plaintiff contends that it has been over a year since settlement was reached and memorialized in Court and plaintiff has no settlement funds, no collateral, and no judgment. Finally, plaintiff submits that in the event the Court allows defendants to purge the contempt, the Court should give defendants five days to effectuate the settlement.

#### **Discussion**

In order to prevail on a motion to hold another party in civil contempt, the movant is required to prove, by clear and convincing evidence, (1) that a lawful order of the court was in effect, clearly expressing an unequivocal mandate, (2) the appearance, with reasonable certainty, that the order was disobeyed, (3) that the party to be held in contempt had knowledge of the court's order, and (4) prejudice to the right of a party to the litigation (*Bd. of Managers of Brightwater Towers Condominium v M. Marin Restoration, Inc.*, 206 AD3d 605 [2d Dept 2022]). Once the movant establishes a knowing failure to comply with a clear and unequivocal mandate, the burden shifts to the alleged contemnor to refute the movant's showing, or to offer evidence of a defense, such as an inability to comply with the order (*id.*).

Here, plaintiff has established by clear and convincing evidence that defendants were fully aware of the Conference Order, Enforcement Order, and the Notice of the instant motion, which defendants disobeyed while having full knowledge of the terms, resulting in prejudice to the plaintiff. In opposition, defendants failed to establish their inability to comply. The record shows that the collateral property has sufficient equity to pay for the \$90,000 settlement payment when the parties settled the case. Defendants averred that there was insufficient equity in the property and thus could not execute the settlement documents. However, defendants fail to present any evidence in support of their contention. Thus, the record established all elements of civil contempt, and defendant failed to meet their burden of rebutting that evidence. In light of defendants' request and plaintiff's consent to allow defendants to purge the contempt, it is ordered that plaintiff's motion for contempt is granted to the extent that defendants shall have five days to provide originals of signed and duly notarized documents of the settlement agreement, confession of judgment, and mortgage and note. It is further ordered that plaintiff's attorney fees and costs in making the instant motion are awarded. Plaintiff is directed to submit a proposed order on notice regarding the award of attorney fees with a supplemental affirmation of the fee requested and itemization of the hours.

ENTER:

  
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Honorable Reginald A. Boddie  
Justice, Supreme Court