

Gomez v 162 Stuyvesant Realty LLC

2023 NY Slip Op 31822(U)

May 26, 2023

Supreme Court, Kings County

Docket Number: Index No. 509123/2017

Judge: Debra Silber

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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 : PART 9**

_____ X

FAUSTO CAMPOS GOMEZ,

Plaintiff,

DECISION/ORDER

-against-

Index No. 509123/2017

162 STUYVESANT REALTY LLC, et al,

Motion Seq. No. 15

Defendants.

_____ X

Recitation, as required by CPLR 2219(a), of the papers considered in the review of plaintiff's motion to compel compliance with post-judgment disclosure

Papers	NYSCEF Doc.
Notice of Motion, Affirmations, Affidavits, and Exhibits Annexed.....	<u>349-356, 359</u>
Affirmation in Opposition, Affidavits, and Exhibits Annexed.....	_____
Reply Affirmation.....	_____

**Upon the foregoing cited papers, the Decision/Order on this motion is
as follows:**

In motion sequences #15, plaintiff judgment-creditor moves, post-judgment, for an order of contempt, punishing defendant/judgment debtor 162 Stuyvesant Realty LLC, for failing to complete the information subpoenas with interrogatories served upon it and for failing to appear for a deposition scheduled to take its testimony, and compelling it to comply with the information subpoenas and with the subpoenas duces tecum and ad testificandum.

Both motions were brought by notice of motion.

With regard to the information subpoena, service was made on the judgment debtor by certified mail, return receipt requested, according to the affidavit of service at Doc 354. For a judgment debtor, this is sufficient.

Plaintiff's counsel also alleges that service was made on the judgment debtor of a subpoena requiring the taking of a deposition upon oral questions, and which requested

the witness to produce papers at the examination, at a time and place named therein, pursuant to CPLR 5224 (1) and (2). Such a subpoena must be served in the same manner as a summons, that is, service of a subpoena requiring attendance "shall be served in the same manner as a summons" (CPLR 2303 [a]). Here, the subpoena was properly served, and there is an affidavit of service provided at Doc 355.

Judiciary Law § 756 requires service of a motion for contempt to be "noticed, heard and determined in accordance with the procedure for a motion on notice in an action." That would be pursuant to CPLR 2214. The motion papers herein were served on the judgment debtor by Federal Express, according to the affidavit of service [Doc 359], at its business address in Brooklyn, NY. Its attorneys had previously moved to be, and were, relieved as counsel for the judgment debtor after the judgment was entered, by order dated December 19, 2022, before these motions were made. Thus, there was no attorney that could have been served. A limited liability company must appear in court by an attorney, and none has appeared for this defendant/judgment debtor since their attorney was relieved. The notice of motion complies with Judiciary Law § 756, with regard to the warning language and the timing of the motion. Federal Express is an acceptable manner of service on a party who has already appeared in an action and over whom jurisdiction was already obtained.

Refusal or neglect to obey an information subpoena is punishable as a contempt of court under CPLR § 5251 and Judiciary Law § 753(A)(5). In order to punish a judgment debtor for contemptuous conduct in reference to a CPLR article 52 money judgment enforcement device, the judgment creditor must establish the judgment debtor's "refusal

or willful neglect" (CPLR § 5251; see Weinstein-Korn-Miller, NY Civ Prac P 5251.05).

The Court finds that 162 Stuyvesant Realty LLC has failed to respond to the aforementioned subpoenas and therefore has not complied with its legal obligation to answer the questions, or to appear and produce documents as demanded by the information subpoena and the subpoena ad testificandum and duces tecum, which is punishable as a contempt of court pursuant to CPLR § 5251 and Judiciary Law Section 753(A)(5).

Accordingly, it is **ORDERED**, that the motion to punish 162 Stuyvesant Realty LLC for contempt of court is granted; and it is

ADJUDGED, that 162 Stuyvesant Realty LLC is guilty of contempt of court in having disobeyed an information subpoena and a subpoena ad testificandum, served on August 11, 2022 and December 29, 2022, respectfully, and defendant has failed to satisfactorily excuse or explain said contempt; and it is

ADJUDGED, that said misconduct of 162 Stuyvesant Realty LLC was calculated to and actually did defeat, impair, impede, and prejudice the rights and remedies of plaintiff, and it is further

ORDERED, that 162 Stuyvesant Realty LLC is fined for said contempt a sum equaling the costs of this motion. Along with serving this order, plaintiff is to provide 162 Stuyvesant Realty LLC 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 this 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*); and it is further

ORDERED, 162 Stuyvesant Realty LLC may purge itself of this civil contempt by answering the interrogatories sent with the information subpoena and scheduling the requested deposition and producing the requested documents within thirty (30) days of being served with a copy of this order —or— an application may be made to fine 162 Stuyvesant Realty LLC in an amount of up to \$250; and it is further

ORDERED that if 162 Stuyvesant Realty LLC fails to comply with the foregoing, plaintiff may move for any appropriate additional relief; and it is further

ORDERED plaintiff must serve a copy of this order, with notice of entry, upon 162 Stuyvesant Realty LLC within twenty (20) days of the e-filing date of this order.

This constitutes the Decision, Order and Judgment of the Court.

Dated: May 26, 2023

ENTER:



Hon. Debra Silber, J.S.C.