

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D21494
X/cb

_____AD3d_____

Argued - October 21, 2008

ROBERT A. SPOLZINO, J.P.
ANITA R. FLORIO
WILLIAM E. McCARTHY
THOMAS A. DICKERSON, JJ.

2007-09085
2007-09224

DECISION & ORDER

Joseph Casavecchia, Sr., respondent, v William
W. Mizrahi, et al., appellants.

(Index No. 8635/05)

Barry, McTiernan & Wedinger, Staten Island, N.Y. (Laurel A. Wedinger of counsel),
for appellants.

Westerman Ball Ederer Miller & Sharfstein, LLP, Mineola, N.Y. (Jeffrey A. Miller
and Richard Gabriele of counsel), for respondent.

In an action, inter alia, to recover damages for conversion and for an injunction compelling the defendants William W. Mizrahi and Hills of Heartland, LLC, to make certain distributions to the members of Hills of Heartland, LLC, the defendants William W. Mizrahi, Hills of Heartland, LLC, and Casa Mason Corp. appeal (1) from an order of the Supreme Court, Nassau County (Warshawsky, J.), entered September 14, 2007, which, among other things, granted that branch of the plaintiff's motion which was to hold the defendant William W. Mizrahi in civil and criminal contempt for failing to obey three earlier court orders and (2), as limited by their brief, from stated portions of an order of the same court dated October 2, 2007, which, upon renewal and reargument, inter alia, adhered to so much of the original determination in the order entered September 14, 2007, as granted that branch of the plaintiff's motion which was to hold the defendant William W. Mizrahi in civil and criminal contempt.

ORDERED that the appeals by the defendants Hills of Heartland, LLC, and Casa Mason Corp. are dismissed, as those defendants are not aggrieved by the orders appealed from (*see* CPLR 5511); and it is further,

December 16, 2008

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ORDERED that the appeal by the defendant William W. Mizrahi from the order entered September 14, 2007, is dismissed as that order was superseded by the order dated October 2, 2007, made upon renewal and reargument; and it is further,

ORDERED that the order dated October 2, 2007, is affirmed insofar as appealed from by the defendant William W. Mizrahi; and it is further,

ORDERED that one bill of costs is awarded to the plaintiff.

To sustain a finding of civil contempt, a court must find that the alleged contemnor violated a lawful order of the court, clearly expressing an unequivocal mandate, of which that party had knowledge, and that as a result of the violation a right of a party to the litigation was prejudiced (*see* Judiciary Law § 753[A][3]; *McCain v Dinkins*, 84 NY2d 216, 226; *Kalish v Lindsay*, 47 AD3d 889; *Giano v Ioannou*, 41 AD3d 427, 427). “[I]t is not necessary that the disobedience be deliberate or willful; rather, the mere act of disobedience, regardless of its motive, is sufficient if such disobedience defeats, impairs, impedes or prejudices the rights of a party” (*Hinkson v Daughtry-Hinkson*, 31 AD3d 608, 608 [internal quotation marks and citations omitted]).

Here, the record reveals that the defendant William W. Mizrahi was aware of the clear and unequivocal terms of three orders previously issued by the Supreme Court, and violated them, and that such conduct defeated, impaired, impeded, or prejudiced the plaintiff's rights or remedies. Contrary to Mizrahi's contention, he failed to raise a factual issue warranting a hearing (*see Incorporated Village of Plandome Manor v Ioannou*, 54 AD3d 365).

Despite the clear and unequivocal mandates of the court, of which Mizrahi was aware, he nonetheless continued to violate them, as if the court's orders did not exist. His actions can be interpreted in no other way than as willful and thus support the finding of criminal contempt as well (*see Soho Alliance v World Farm*, 300 AD2d 22).

Mizrahi's remaining contentions are without merit.

SPOLZINO, J.P., FLORIO, McCARTHY and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court