

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

D33651
Y/prt

_____AD3d_____

Argued - October 25, 2011

REINALDO E. RIVERA, J.P.
DANIEL D. ANGIOLILLO
ARIEL E. BELEN
SHERI S. ROMAN, JJ.

2010-06039

DECISION & ORDER

HSBC Mortgage Corp., etc., plaintiff-respondent, v
David Oberlander, appellant, 788 Realty USA Corp.,
et al., defendants-respondents.

(Index No. 10636/02)

Joseph J. Haspel, Goshen, N.Y., for appellant.

Berkman, Henoeh, Peterson, Peddy & Fenchel, P.C., Garden City, N.Y. (Sara Z. Boriskin and Jonathan M. Cohen of counsel), for plaintiff-respondent.

Fidelity National Law Group, New York, N.Y. (Anna Tzakas of counsel), for defendants-respondents.

In an action pursuant to Real Property Actions and Proceedings Law article 15 to quiet title to real property, the defendant David Oberlander appeals, as limited by his brief, from so much of an order of the Supreme Court, Kings County (Dabiri, J.), dated April 9, 2010, as, after a hearing, denied that branch of his motion which was to hold the plaintiff and its attorneys in civil contempt for transferring title to the subject real property while a stay pending the hearing and determination of an appeal was in effect.

ORDERED that the order is affirmed insofar as appealed from, with one bill of costs to the respondents appearing separately and filing separate briefs.

“A motion to punish a party for civil contempt is addressed to the sound discretion of the motion court” (*Chambers v Old Stone Hill Rd. Assoc.*, 66 AD3d 944, 946; *see Educational*

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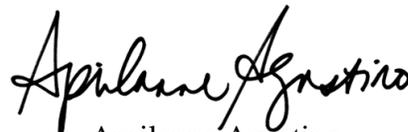
Reading Aids Corp. v Young, 175 AD2d 152). “In order to prevail on such a motion, the moving party must demonstrate that the party charged with contempt violated a clear and unequivocal mandate of the court, thereby prejudicing the moving party’s rights” (*Bais Yoel Ohel Feige v Congregation Yetev Lev D'Satmar of Kiryas Joel, Inc.*, 78 AD3d 626, 626; see *McCain v Dinkins*, 84 NY2d 216, 226; *Chambers v Old Stone Hill Rd. Assoc.*, 66 AD3d at 946; *Matter of Rothschild v Edwards*, 63 AD3d 744, 745; *Galanos v Galanos*, 46 AD3d 507, 508; *Rienzi v Rienzi*, 23 AD3d 447, 449).

Under the circumstances of this case, the Supreme Court providently exercised its discretion in denying that branch of the motion of the defendant David Oberlander which was to hold the plaintiff and its attorneys in civil contempt for transferring title to the subject real property while a stay pending the hearing and determination of an appeal was in effect. Oberlander failed to meet his burden so as to warrant holding the plaintiff and its attorneys in civil contempt.

The parties’ remaining contentions are without merit.

RIVERA, J.P., ANGIOLILLO, BELEN and ROMAN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court