

People v Bogart Ave. Med., PC

2006 NY Slip Op 30779(U)

July 21, 2006

Supreme Court, Westchester County

Docket Number: 05-0381-18

Judge: Richard A. Molea

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT: COUNTY OF WESTCHESTER
STATE OF NEW YORK

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THE PEOPLE OF THE STATE OF NEW YORK

FILED and ENTERED
July 21, 2006
**WEST CHESTER
COUNTY CLERK**

-against-

FILED

JUL 21 2006

DECISION AND ORDER
Indictment No. 05-0381-18

BOGART AVENUE MEDICAL, PC **TIMOTHY C. IDOM
COUNTY CLERK
COUNTY OF WESTCHESTER**
Defendant.

-----X
MOLEA, J.

In resolving the instant application, this Court has considered the notice of motion, affirmation in support and memorandum of law of Assistant District Attorney Christopher M. Shaw. The defendant has neglected to interpose any objection to the relief sought by the People through the instant application. Upon the foregoing papers, the instant application is resolved as follows:

FINDINGS OF FACT

By notice of motion, the People move the Court to enter a plea of guilty and impose sentence upon the corporate defendant pursuant to CPL 600.20 in connection with the failure of same to appear, as directed, before the Court for the entry of a plea under the instant indictment. The defendant is a professional medical corporation which was incorporated in the State of New York pursuant to Business Corporation Law § 1503 on October 6, 2003. The Certificate of Incorporation of same lists John J. Gelfand as the original shareholder, director and officer of the defendant corporation. Furthermore, the bank records maintained by JP Morgan Chase and the records maintained by the New York State Department of Taxation and Finance indicate that John J. Gelfand

is the president and sole shareholder of the defendant corporation.

Under the instant indictment, the corporate defendant is charged with a multitude of crimes including Enterprise Corruption, Insurance Fraud, Grand Larceny, Money Laundering, Conspiracy and Scheme to Defraud, which are alleged to have been committed by the corporate defendant while aiding, abetting and acting in concert with other charged and uncharged parties, thereby resulting in the illicit gain of two million, seven hundred and three thousand, three hundred and twelve dollars and ninety-seven cents (\$2,703,312.97). John J. Gelfand is also charged as a co-defendant under the instant indictment with a multitude of crimes including Enterprise Corruption, Insurance Fraud, Grand Larceny and Money Laundering, which are alleged to have been committed by co-defendant Gelfand while aiding, abetting and acting in concert with other parties including the defendant. On October 7, 2005, the Westchester County Court issued an arrest warrant for co-defendant Gelfand, which was executed on October 17, 2005. Upon execution of this arrest warrant for co-defendant Gelfand, the People obtained an *ex parte* Order of Attachment from the Court concerning the defendant's listed bank account with JP Morgan Chase, bearing a balance of fifty thousand, four hundred and eleven dollars, and forty-six cents (\$50,411.46) in furtherance of a civil forfeiture action brought pursuant to Article 13-A of the Civil Practice Law and Rules.

On October 18, 2005, co-defendant Gelfand was arraigned upon the instant indictment in the presence of his retained attorney, Patrick Broderick, Esq., before the Westchester County Court (Alessandro, J.). During co-defendant Gelfand's arraignment, the People personally served him with a corporate summons directing the corporate defendant to appear before the Westchester County Court, Duty Part, on October 27, 2005 at 9:30 AM in connection with the instant indictment. This corporate summons further advised that in the event the corporate defendant failed to appear as

directed, the Court was empowered to enter a plea of guilty against the corporate defendant under the instant indictment and impose sentence thereunder. On October 27, 2005, the People appeared before the Court for the purpose of unsealing the instant indictment and for the arraignment of the corporate defendant. Prior to the conclusion of the Court's indictment calendar, the People advised the Court that they had contacted the new attorney for co-defendant Gelfand, Eric W. Siegle, Esq., who had advised that he did not represent the corporate defendant in connection with the instant indictment, that he did not intend to represent the corporate defendant in connection therewith and that he did not know the status of the corporate defendant's representation. On January 17, 2006, co-defendant Gelfand entered a guilty plea in the Westchester County Court (DiBella, J.) to the crime of Insurance Fraud in the second degree in satisfaction of the charges pending against him under the instant indictment. During his plea allocution, co-defendant Gelfand admitted that he was the sole and legal owner of the defendant corporation and that he had engaged in fraudulent insurance acts through the use of the defendant corporation, thereupon executing a general release of any and all pending no-fault claims maintained by the defendant corporation as a condition of his plea. The Court's records reflect that neither co-defendant Gelfand, nor any other party, has contacted the Court on behalf of the corporate defendant at any time prior or subsequent to the filing of the instant motion by the People.

CONCLUSIONS OF LAW

Through the instant application, the People move the Court to enter a guilty plea against the corporate defendant under the instant indictment and to impose a sentence thereunder which includes the requirement that the corporate defendant pay restitution in the amount of fifty thousand four hundred and eleven dollars and forty-six cents (\$ 50,411.46). The People support their application with a claim that the corporate defendant's failure to respond to the corporate summons which was served upon co-defendant Gelfand, the president and sole shareholder of the defendant corporation, constitutes a willful and knowing failure on the part of the corporate defendant to challenge the entry of a guilty plea against it under the instant indictment and the imposition of a sentence thereunder.

With respect to the prosecution of crimes charged against corporate defendants in the State of New York, CPL 600.10 provides that the prosecution of a criminal action in a superior court against a corporate defendant must be commenced through the service of a corporate summons upon the corporation by delivery of same upon an officer, director or other agent of the corporation authorized to receive such service of process.¹ Should the corporate defendant named on the corporate summons fail to appear before the issuing court for entry of a plea to the indictment as directed therein, CPL 600.20 authorizes the courts to enter a plea of guilty against the corporate defendant and impose sentence thereunder. In this regard, CPL 600.20 also imposes an additional obligation upon corporate defendants requiring that all appearances before

¹A "corporate summons" is a form of process issued by a superior court which directs the corporate defendant named therein to appear before the Court at a designated time in connection with a pending indictment.

the court throughout all stages of a criminal action be made through counsel.

The record before the Court reveals that the corporate defendant failed to respond before the Court as directed in the corporate summons which was personally served upon co-defendant Gelfand, an officer of the corporation authorized to receive such service of process, in the presence of the Court and co-defendant's counsel. Furthermore, the record before the Court evidences that co-defendant Gelfand's election to answer only those charges brought against him personally, while neglecting to answer those charges brought against the corporate defendant, constitutes a willful and knowing failure on the part of the corporate defendant to oppose or challenge the entry of a guilty plea against it under the instant indictment and the imposition of a sentence thereunder.

Based upon the foregoing, the Court finds that the failure of the corporate defendant to appear before the Court, as directed in the duly served corporate summons, constitutes a default by the corporate defendant which justifies the entry of a guilty plea against it under the instant indictment and the imposition of a sentence thereunder by the Court pursuant to CPL 600.20. Accordingly, the instant application of the People is granted and it is hereby ORDERED:

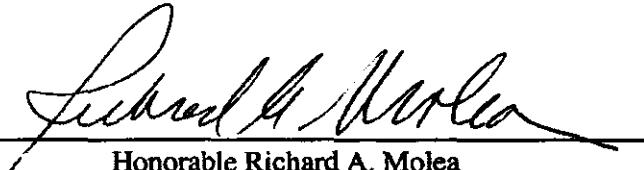
that the Clerk of the Court enter a plea of guilty against the corporate defendant to each and every count of the instant indictment under which the corporate defendant is charged with a crime, and it is hereby ORDERED:

that sentence be imposed against the corporate defendant providing for a three year conditional discharge which shall require that the corporate defendant pay restitution in the amount of \$50,411.46 to the Office of the Westchester County District Attorney to be disbursed to the victims of the crimes which are the subject of the entry of the guilty pleas entered against

the corporate defendant as set forth herein, in a manner proportional to their losses.

The foregoing shall constitute the Decision and Order of the Court.

Dated: White Plains, New York
July 21, 2006



Honorable Richard A. Molea
Acting Justice of the Supreme Court

TO:
Honorable Janet DiFiore
Westchester County District Attorney
County Courthouse
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White Plains, New York 10601
Attn: A.D.A. Christopher M. Shaw

Clerk of the Court