

**Matter of Two Sams Assoc., LLC v Schaeffer &
Krongold LLP**

2006 NY Slip Op 30848(U)

June 12, 2006

Supreme Court, New York County

Docket Number: 102811/05

Judge: Shirley Werner Kornreich

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

**SHIRLEY WERNER KORNREICH
J.S.C.**

PART 54

Index Number : 102811/2005
TWO SAMS ASSOCIATES LLC

INDEX NO. _____

vs
SCHAEFFER & KRONGOLD LLP

MOTION DATE _____

Sequence Number : 1

MOTION SEQ. NO. _____

PUNISH FOR CONTEMPT

MOTION CAL. NO. _____

The following papers, numbered 1 to 6 were read on this motion to for CONTEMPT

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

1-3

Answering Affidavits — Exhibits _____

4, 5

Replying Affidavits _____

6

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM
DECISION AND ORDER.**

FILED

JUN 15 2006

COUNTY CLERK'S OFFICE
NEW YORK

**SHIRLEY WERNER KORNREICH
J.S.C.**

Dated: 6/12/2006

[Handwritten Signature]

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

-----X
In the Matter of the Application of

TWO SAMS ASSOCIATES, LLC,

Petitioner,

Index No.: 102811/05

To Punish

SCHAEFFER & KRONGOLD, LLP,

**DECISION
and
ORDER**

Respondent,

FILED

for Contempt of Court.
-----X

JUN 15 2006

KORNREICH, SHIRLEY WERNER, J.:

COUNTY CLERK'S OFFICE

This action, seeking a contempt order, arises from a judgment of the Court (Lebedeff, J.), which was entered on February 27, 2004 in the action entitled *Two Sams Associates v. Garni Investment & Development* (Index No. 603654/02) (the "underlying action"). The judgment, as amended *nunc pro tunc* on September 7, 2004 (the "judgment"), granted partial summary judgment to plaintiff Two Sams Associates ("Two Sams") against defendant Zare Balassanian, in the amount of \$100,780.00. Petitioner claims that Mr. Balassanian has not satisfied any portion of the judgment.

I. **Facts**

It is undisputed that in February 2004 Mr. Balassanian and Garni Investment and Development Corporation ("GID"), the corporate defendant in the underlying action (collectively, the "Balassanian defendants"), retained respondent Schaeffer & Krongold, LLP ("Schaeffer") to represent them in that action. On February 27, 2004, Two Sams served a

“Restraining Notice to Garnishee” on Schaeffer, regarding the judgment (the “restraining notice”), which applied to “all property in which [Balassanian] has an interest hereafter coming into your possession or custody, and all debts hereafter coming due from you to [Balassanian.]” At that time, Two Sams also served an information subpoena on Schaeffer. On June 24, 2004, Schaeffer responded to the information subpoena, stating that it had received a \$12,000 retainer payment for the representation of Mr. Balassanian; such payment was made by “Dab Hold, Corp.” (“DAB”) on February 24, 2004; and that the retainer has since “been exhausted.”¹ According to Schaeffer, it understood that DAB “was an entity owned solely by [Mr. Balassanian’s] two adult daughters and that he was neither a shareholder, officer or director of DAB or had any interest in DAB whatsoever.”

Schaeffer avers that it had originally represented the Balassanian defendants in the underlying action, but withdrew as counsel in August 2003, with \$13,000 in legal fees remaining unpaid. Thereafter, on February 23, 2004, prior to service of the restraining notice, Schaeffer was “re-retained by Balassanian and [GID] pursuant to a Retainer Agreement.” The retainer agreement provided that the Balassanian defendants would pay Schaeffer \$25,000—with \$13,000 satisfying the previous debt and \$12,000 serving as a retainer for future legal services.

The next day, DAB wire transferred \$25,000 to Schaeffer. Between February 24, 2004 and June 2004, Schaeffer had “exhausted the \$12,000 received from DAB” in providing legal services to the Balassanian defendants. The instant verified petition states that, since GID is a

¹ Two Sams has commenced a separate action against DAB, claiming that DAB is the alter-ego of Mr. Balassanian who “dominates and controls DAB.” *See Two Sams Associates v. DAB Hold, Corp.* (Index No. 118341/04).

“defunct corporation . . . [,] any services rendered to GID were rendered to Balssanian, as the equitable owner and sole beneficiary of any services rendered by [Schaeffer] to GID.” Mr. Balassanian, in his deposition in the underlying action, acknowledged that he was the sole shareholder of GID and the Delaware Secretary of State certified that GID “is no longer in existence and good standing . . . having become inoperative and void [March 1, 1999] for non-payment of taxes.”

II. *Conclusions of Law*

CPLR 5251 provides for the punishment of contempt where a person refuses or willfully neglects “to obey a subpoena or restraining notice issued, or order granted, pursuant to this title[.]” Where a person (the “garnishee”) other than the judgment debtor is served with a restraining notice, the notice is effective if:

he or she is in the possession or custody of property in which he or she knows or has reason to believe the judgment debtor or obligor has an interest, or if the judgment creditor . . . has stated in the notice that . . . the judgment debtor or obligor has an interest in specified property in the possession or custody of the person served. All property in which the judgment debtor or obligor is known or believed to have an interest then in and thereafter coming into the possession or custody of such a person, including any specified in the notice, and all debts of such a person, including any specified in the notice, then due and thereafter coming due to the judgment debtor or obligor, shall be subject to the notice.

CPLR 5222 (b). The garnishee “is forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any such property[.]” Such garnishee may not avoid the restrictions of the restraining notice “by claiming that the judgment debtor has no interest in the money merely because he will not acquire physical possession of such money.” *Ray v. Jama Productions, Inc.*, 74 A.D.2d 845, 845-846 (2d Dept. 1980) *appeal denied* at 49 N.Y.2d 709

(1980). “The fact that a judgment debtor will directly benefit from the payment of this sum is sufficient to require the party served with the restraining notice to comply with the provisions or be subject to the appropriate legal sanctions.” *Id.*

Here, it is clear that Mr. Balassanian, the judgment debtor, had an interest in the retainer fee paid to Schaeffer. Respondent argues that Mr. Balassanian “never had any claim to the money which [Schaeffer] had received from DAB [and that it] was never his money, did not come from him, nor does he have any interest whatsoever in the entity which it came from.” Even if the court accepts this argument as true, Mr. Balassanian still had an interest in the fund, since it is he who directly benefitted from them, *viz., those funds paid for legal services provided to him*, and not to DAB. *Cf. Sumitomo Shoji New York, Inc. v. Chemical Bank New York Trust Co.*, 47 Misc. 2d 741, 744 (Sup. Ct. N.Y. County 1965) (“If such person does make payment or transfer in disregard of the restraining notice, he takes the risk of liability for damages and contempt if the judgment creditor can establish that the debt was owed to the judgment debtor or that he had an interest in such property”). That Mr. Balassanian may never have had physical possession of the money does not change this. *See Ray*, 74 A.D.2d at 845-846.

The cases cited by respondent in support of its argument that Mr. Balassanian had no direct interest in the monies paid to it, are inapposite.² Although respondent argues that the facts

² *See Cascade Automatic Sprinkler Corp. v. Chase Manhattan Bank*, 60 A.D.2d 901 (2d Dept. 1978) (where bank-mortgagee took possession of mortgaged property previously belonging to judgment debtor, that debtor had no interest in cash receipts therefrom); *Sumitomo* at 744-745 (finding that “direct interest” is required and that “indirect interest in the proceeds of the property, such as that of a stockholder in the entity to which the property belongs” is insufficient).

of the *Ray* case are distinguishable, the court disagrees. In rendering its decision, the Appellate Division, Second Department, relied on the judgment debtor's interest in the specific property involved, finding that even though judgment debtor would not receive any funds directly, the subject funds would "be utilized to satisfy [judgment debtor's] debts and expenses. Thus, he derived the benefits thereof." Similarly, in the case at bar, Mr. Balassanian directly derived the benefits of DAB's wire transfer to Schaeffer in that he received legal services as a result of Schaeffer being paid. Thus, he had sufficient interest in the funds such that the restraining notice applied to them. Consequently, Schaeffer improperly failed to comply with the restraining notice. *See Kanbar v. Quad Cinema Corp.*, 195 A.D.2d 412, 414 (1st Dept. 1993) (Court may enter finding of contempt for "[r]efusal or willful neglect" to obey restraining notice); *see also* CPLR 5210 (conferring to the Court power to punish contempt of court committed with respect to enforcement procedure). Accordingly, it is

ORDERED that this application by plaintiff for an order pursuant to CPLR 5251 punishing respondent Schaeffer & Krongold, LLP, for contempt of court for failure to obey a restraining notice served upon it pursuant to CPLR 5222 is granted; and it is further

ORDERED that respondent is hereby directed to pay any amount of the \$12,000 retainer fee that existed after February 27, 2004 (date of service of restraining notice), together with costs and expenses incurred by petitioner, including reasonable attorney's fees; and it is further

ORDERED that the issue of attorney's fees is referred to a Special Referee to hear and determine; and it is further

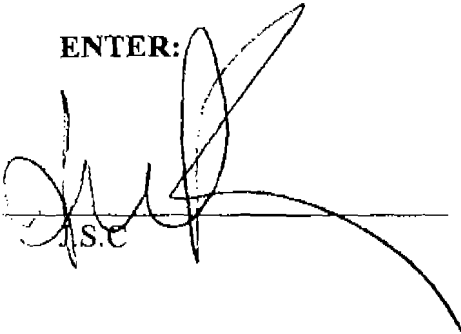
ORDERED that a copy of this order with notice of entry shall be served on the Clerk of

the Reference Part (Room 119) to arrange a date for the reference to a Special Referee; and it is further

ORDERED that the Clerk shall notify all parties of the date of the hearing on the issue attorney's fees; and it is further

ORDERED that, within twenty-five (25) days from the date hereof, petitioner shall serve a copy of this order with notice of entry on respondent by personal service, and thereafter file the affidavit of service with the Clerk of the Court and by regular mail upon respondent and the Clerk of this Court.

Date: June 12, 2006
New York, New York

ENTER:

J.S.C.

FILED

JUN 15 2006

COUNTY CLERK'S OFFICE
NEW YORK