

Town of Nassau v Nalley
2009 NY Slip Op 30980(U)
April 9, 2009
Supreme Court, Rensselaer County
Docket Number: 208220
Judge: George B. Ceresia
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STATE OF NEW YORK
SUPREME COURT

COUNTY OF RENSSELAER

TOWN OF NASSAU, NEW YORK,

Plaintiff,

- against-

STEPHEN O. NALLEY d/b/a IMPACT AUTO,

Defendant.

All Purpose Term

Hon. George B. Ceresia, Jr., Supreme Court Justice Presiding

RJI: 41-0290-03 Index No. 208220

Appearances: Edward Fassett, Jr., Esq.
Attorney For Plaintiff
202 Union Street
Schenectady, New York 12305

Lynch, Farrell & Hetman, PLLC.
Attorneys For Defendant
111 State Street
Albany, New York 12207

DECISION/ORDER

George B. Ceresia, Jr., Justice

The defendant has operated a junk yard on property he owns in the Town of Nassau, Rensselaer County, the plaintiff in the instant action. Over the years defendant and plaintiff had various disputes over the regulation of the junkyard. In 2003 plaintiff commenced an action against defendant which culminated in a judgment of this court dated June 8, 2007 which, among other things, enjoined defendant from operating the junkyard.

Subsequent to the judgment defendant engaged JB Car Services, Inc. to remove vehicles, trailers, tires, equipment, and all other miscellaneous materials from the premises. Removal operations were scheduled to be completed by October 1, 2008. On October 1,

2008 Rudolph Jahn of the Town of Nassau Building Department inspected the property and recorded various violations of the zoning law. Plaintiff then moved to hold the defendant in contempt for disobeying the injunction. Plaintiff served the notice of motion upon defendant by mail on October 17, 2008. Defendant, in his opposing papers, denied that he was in violation of the court order and denied that he had been properly served.

The Court, in an order dated January 9, 2009, directed that a traverse hearing be held on January 23, 2009 in order to determine whether defendant was properly served and whether defendant was in violation of the June 8, 2008 injunction. At the January 23, 2009 court appearance, defendant served a demand for jury trial pursuant to CPLR 4102.¹

A person is entitled to a jury trial only where the contempt is a serious crime (see Bloom v State of Ill., 391 US 194, 209-210 [1968]; New York City Transit Authority v Transport Workers Union of America, AFL-CIO, 35 AD3d 73, 84 [2d Dept., 2006]). There is no right to a jury trial for a civil contempt or a criminal contempt that amounts to a petty offense (see Bloom v State of Ill., 391 US 194, 209-210 [1968]; International Union, United Mine Workers of America v Bagwell, 512 US 821, 826-827[1994]; New York City Transit Authority v Transport Workers Union of America, AFL-CIO, *supra*, at 84). Therefore, in determining whether a party to a contempt proceeding is entitled to a jury trial, the court must first determine whether the contempt at issue is criminal or civil in nature, and then, if criminal, whether it is a serious crime or a petty offense (see New York City Transit Authority v Transport Workers Union of America, AFL-CIO, *supra*, at 86-87).

¹During the January 23, 2009 court appearance defendant Nalley withdrew his claim that he was not served with a copy of the notice of petition and supporting papers.

A criminal contempt punishes the flouting of judicial authority in order to protect the integrity of the courts, while a civil contempt redresses the harm to a private party caused by the contemnor's failure to obey a court order (see Matter of Department of Env'tl. Protection of City of N.Y. v Department of Env'tl. Conservation of State of N.Y., 70 NY2d 233, 240 [1987]; New York City Transit Authority v Transport Workers Union of America, AFL-CIO, *supra*, at 86-87; Altbach v Kulon, 302 AD2d 655, 659 [3d Dept., 2003]). The purpose of a criminal contempt is to punish the offender for disobeying a court order and to vindicate the authority of the courts (see Matter of Department of Env'tl. Protection of City of N.Y. v Department of Env'tl. Conservation of State of N.Y., 70 NY2d 233, 240 [1987]). The purpose of a civil contempt is remedial; either to compensate the complainant or to compel obedience in the future (see Matter of Department of Env'tl. Protection of City of N.Y. v Department of Env'tl. Conservation of State of N.Y., 70 NY2d 233, 239-240 [1987]; Altbach v Kulon, 302 AD2d 655, 659 [3d Dept., 2003]). Generally, coercive sanctions intended to modify the contemnor's future behavior and compel compliance with a court order are civil in nature (see Matter of Department of Env'tl. Protection of City of N.Y. v Department of Env'tl. Conservation of State of N.Y., 70 NY2d 233, 239-240 [1987]; State of New York v Unique Ideas, 44 NY2d 345, 349-350 [1978]). Coercive sanctions deemed civil can include the imposition of fines and imprisonment for each day a party is non-complying, as well as fixed terms of incarceration where the contemnor has the ability to purge the contempt and obtain early release by complying with the court order (see International Union, United Mine Workers of America v Bagwell, 512 US 821, 828 [1994]).

If the contempt is criminal, the court must then determine whether it is a serious

crime or a petty offense (New York City Transit Authority v Transport Workers Union of America, AFL-CIO, supra, at 86-87). A crime is of sufficient severity to trigger the right to a jury trial where a single offense may be punished by a term of imprisonment of more than six months (Lewis v U.S., 518 US 322, 325-326 [1996]; People v Foy, 88 NY2d 742, 745 [1996]). Thus, a contempt is a serious crime where the contemnor may be imprisoned for more than six months (see International Union, United Mine Workers of America v Bagwell, 512 US 821, 826-827 [1994]). Additionally, if a fine is sufficiently large, the contempt will be a serious crime for which the accused has a right to a jury trial (New York City Transit Authority v Transport Workers Union of America, AFL-CIO, supra, at 88-89).²

In the matter at hand, plaintiff seeks the imposition of fines or the incarceration of defendant for every day that he continues to disobey this Court's injunction. While plaintiff, in its papers, states that defendant's behavior is sufficiently egregious to subject him to punishment, the sanctions requested by plaintiff are purely prospective coercion: incarceration or the imposition of per diem fines upon defendant in order to compel him to obey the injunction. As the purpose of any incarceration or fines would be to compel defendant's obedience to the injunction in the future rather than to punish him for past misbehavior, the sanctions contemplated are coercion of the sort resulting from civil contempt. Therefore, to the extent that any sanctions to potentially be imposed are remedial

² The precise magnitude at which a fine triggers a right to a jury trial has not been established as a matter of law (see International Union, United Mine Workers of America v Bagwell, 512 US 821, 838 n 5 [1994]; New York City Transit Authority v Transport Workers Union of America, AFL-CIO, supra, at 89). However, contempts punished by fines of as much as \$10,000 have been found to be petty offenses (see Muniz v Hoffman, 422 US 454, 477 [1975])

and derive from a civil contempt, the defendant is not entitled to a jury trial.

In the event this court were to find defendant in criminal contempt and levy punitive sanctions, the maximum punishment for criminal contempt that this Court may impose under Judiciary Law § 751 (1) includes a term of incarceration that does not exceed 30 days or a fine that does not exceed \$1,000. A fine of \$1,000 is not a serious penalty for a business such as defendant (see International Union, United Mine Workers of America v Bagwell, 512 US 821, 838 n 5 [1994]; New York City Transit Authority v Transport Workers Union of America, AFL-CIO, supra, at 89). Therefore, because the upper limits of this court's statutory authority to punish are beneath the threshold between serious crimes and petty offenses, criminal contempt under Judiciary Law § 751 is a petty offense for which there is no right to a jury trial (see Judiciary Law § 751 [1]; People v Foy, 88 NY2d 742, 745 [1996]; In re Dyandria D., 22 AD3d 354, 355 [1 Dept.,2005]).

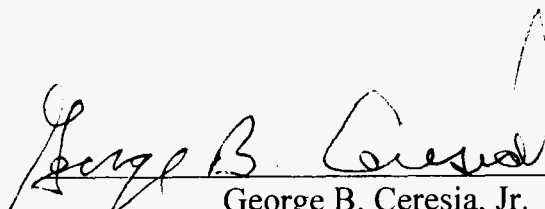
The Court concludes that the defendant is not entitled to a jury trial of the instant matter.

Accordingly it is,

ORDERED, that defendant's demand for a jury trial is denied; and it is further

ORDERED, that a hearing with respect to the application to hold the defendant in contempt is scheduled to be held at the Rensselaer County Courthouse on **Thursday, May 14, 2009 at 9:30 a.m.**

Dated: April 9, 2009
Troy, New York


George B. Ceresia, Jr.
Supreme Court Justice

Papers Considered:

1. Defendant's Demand for Jury Trial
2. Plaintiff's Notice of Motion for Contempt dated October 3, 2008, together with the Affirmation of Edward Fassett, Jr., Esq. dated October 3, 2008 in support thereof with supporting Exhibits.
3. Memorandum of Law of Edward Fassett, Jr., Esq. dated October 3, 2008.
4. Affidavit in Opposition of Stephen O. Nalley sworn to October 22, 2008.
5. Affirmation in Opposition of Peter A. Lynch, Esq. dated October 22, 2008 with supporting Exhibits.
6. Reply Affirmation of Edward Fassett, Jr., Esq. dated October 26, 2008.