

Reliance Ins. Co. v JP Maguire Co. Inc.

2009 NY Slip Op 32851(U)

December 2, 2009

Supreme Court, New York County

Docket Number: 605469/99

Judge: Judith J. Gische

Republished from New York State Unified Court
System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 10**

-----x
RELIANCE INSURANCE COMPANY and
RELIANCE INSURANCE COMPANY OF NEW
YORK,

Plaintiffs,

-against-

JP MAGUIRE COMPANY INC., JP MAGUIRE
SERVICE COMPANY, INC., CHRISTOPHER
J. MAGUIRE, ARLENE MAGUIRE, PETER
SZLASA and KAREN SZLASA,

Defendants.
-----x

DECISION/ ORDER
Index No.: 605469/99
Seq. No.: 005

PRESENT:
Hon. Judith J. Gische

J.J.C.

FILED
DEC 07 2009
NEW YORK
COUNTY CLERK'S OFFICE

Recitation, as required by CPLR § 2219 [a] of the papers considered in the review of
this (these) motion(s):

Papers	Numbered
Pltfs OSC (Contempt) w/RK affirm, exhs	1
Proof of service	2

Upon the foregoing papers, the decision and order of the court is as follows:

This is plaintiffs' motion for an order adjudicating non-party Prestige Air & Design, LLC ("Prestige") in contempt for its failure to respond to an information subpoena that plaintiffs served on it. Neither Prestige nor any of the defendants have opposed the relief requested, despite due service. Nor did Prestige appear for oral argument on the return date of this motion, or otherwise submit opposition in writing. Therefore, this motion has been submitted to the court on default, and without opposition.

Plaintiffs obtained a money judgment against defendant Christopher J. Maguire

in the amount of \$170,564.01 on September 8, 2000 ("money judgment"). As of the date of this motion, the money judgment remains unsatisfied. Prestige currently employs Maguire. Plaintiffs served an information subpoena on Prestige on July 15, 2009 via US Postal Service Certified Mail, Return Receipt Requested, and with a self-addressed stamped envelope. CPLR § 5224 (a) (3) (l). On August 25, 2009, plaintiffs received a US Postal Service Return Receipt indicating that the package containing the information subpoena was received by Prestige on August 24, 2009.

By September 1, 2009, Prestige still failed to respond to the information subpoena. On September 4, 2009, plaintiffs' attorney, Barry E. Janay, Esq., called the number he had in his files for Prestige and left a message for Isaac Schwartz, CEO of a sister company of Prestige. To date, Prestige has not yet responded to the information subpoena. The subpoena warned Prestige that its failure to appear would be punishable by contempt.

Plaintiffs argue that their rights are jeopardized by Prestige's disobedience of the subpoena. Plaintiffs maintain that Prestige's disobedience is wanton, designed to help Maguire evade plaintiffs' efforts to collect on the judgment, and that therefore, Prestige should be held liable for the balance of the judgment pursuant to CPLR § 5242 (e).

To prevail on a motion to punish a party for civil contempt, the movant must demonstrate that the alleged contemnor has violated a clear and unequivocal court order, known to the parties. Judiciary Law § 753 (A) (5); see also McCormick v. Axelrod, 59 NY2d 574, 583 *amended* 69 NY2d 652 (1983); Puro v. Puro, 39 AD2d 873 (1st dept. 1990). The actions of the alleged contemnor must have been calculated to, or actually defeated, impaired, impeded or prejudiced the rights or remedies of the

other side. County of Orange v. Rodriguez, 283 AD2d 494 (2d Dept 2001). A party seeking contempt must show that there are no alternative effective remedies available. Farkas v. Farkas, 201 AD2d 440 (1st Dept 1994).

Plaintiffs have proven that this motion was properly served on Prestige. Judiciary Law § 761; Minzer v. Heffner Agency Inc., 214 AD2d 547 (2d Dept 1994); Hampton v. Annal Management Co. Ltd. 168 Misc2d 138 (Sup Ct NY Co 1996). The notice provisions of the motion warn Prestige that it may be punished by the imposition of a fine, or imprisonment, or both, thus complying with the requirements of Judiciary Law § 756. Plaintiffs have also established that the information sought in the subpoena is to aid it in the recovery of the money it is due and its collection efforts. CPLR § 5251; Gabor v. Renaissance Associates, 170 AD2d 390 (1st Dept 1991); see also Skylake State Bank v. Solar Heat and Insulation, 148 Misc2d 559 (Sup Ct NY Co 1990). Although Prestige has actual knowledge of the subpoena and its terms, it disregarded it and failed to respond to the questionnaire. Ottomanelli v. Ottomanelli, 17 A.D.3d 647 (2d Dept 2005). The failure to comply with a subpoena issued by an officer of the court shall be punishable as a contempt of court. CPLR § 2308 [a].

Plaintiffs have established that Prestige's disobedience of the subpoena has defeated, impaired, impeded or prejudiced plaintiffs' right to ascertain information about Maguire's financial resources. Judiciary Law § 753 [a]; Farkas v. Farkas, 209 AD2d 316 (1st Dept 1994); Great Neck Pennysaver v. Central Nassau Publications, 65 AD2d 616 (2d Dept 1978). Finally, plaintiffs have shown that there are no alternative effective remedies available. Plaintiffs' motion, to hold Prestige in contempt for failing to comply with the subpoena, is granted.

Plaintiffs are not, however, entitled to the relief requested, to wit, to hold Prestige liable for the money judgment. Under CPLR § 5242 (c) (2), "If an employer shall fail to so pay the creditor, the creditor may commence a proceeding against the employer for accrued deductions, together with interest and reasonable attorney's fees." Plaintiffs have not commenced a separate action, but rather, merely move for contempt. Plaintiffs have not requested an alternative remedy, therefore leaving the matter to the court's discretion.

Prestige is therefore in civil contempt. The court will, however, order Prestige to respond to the information subpoena within FIVE DAYS of being served with a copy of this Order. This is a FINAL opportunity to PURGE the contempt. If Prestige fails to comply with this PURGE, the Clerk shall enter a money judgment against Prestige in the sum of \$500 as punishment for its contempt of court upon plaintiffs' attorney filing a sworn affidavit attesting to such compliance, without the need for further order from the court.

Conclusion

In accordance with the foregoing decision,

It is hereby

ORDERED that plaintiffs' motion for an order adjudicating Prestige Air and Design, LLC in contempt is hereby **GRANTED** upon default; plaintiff has proved that Prestige Air and Design, LLC was served with the information subpoena requiring it to respond to a questionnaire, but disregarded the subpoena; and it is further

ORDERED that Prestige Air and Design, LLC's disobedience of the subpoena has defeated, impaired, impeded or prejudiced plaintiffs' right to ascertain information about

Christopher J. Maguire's financial resources and plaintiff has no alternative effective remedies available because Prestige Air and Design employs Mr. Maguire; and it further

ORDERED that Prestige Air and Design, LLC is held in civil contempt. Prestige Air and Design is directed to respond to the information subpoena within FIVE DAYS of being served with a copy of this Order and the information subpoena itself. This is a FINAL opportunity to PURGE the contempt; and it is further

ORDERED that if Prestige Air and Design, LLC fails to comply with this PURGE, as punishment, the Clerk shall enter a money judgment against Prestige Air and Design, LLC in the sum of \$500 upon plaintiffs' attorney filing a sworn affidavit attesting to such non-compliance, without the need for further order from the court; and it is further

ORDERED that this constitutes the decision and order of the court.

Dated: New York, New York
December 2, 2009

So Ordered:



Hon. Judith J. Gische, J.S.C.

FILED
DEC 07 2009
COUNTY OF NEW YORK
CLERK'S OFFICE