

**Cadlerock Joint Venture, L.P. v Sol Greenberg &
Sons Intl., Inc.**

2010 NY Slip Op 33244(U)

November 17, 2010

Sup Ct, NY County

Docket Number: 105190/07

Judge: Jane S. Solomon

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

PRESENT: JANE S. SOLOMON
Justice

PART 55

Cadlock JV, LP

INDEX NO. 105190/07

MOTION DATE 10/4/10

MOTION SEQ. NO. 04

MOTION CAL. NO. _____

- v -

Sol Greenberg & Sons Int'l, Inc.

The following papers, numbered 1 to 3 were read on this motion to/for sanctions

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

PAPERS NUMBERED
<u>1-3</u>

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the amended memorandum decision and order.

FILED

NOV 18 2010

NEW YORK COUNTY CLERK'S OFFICE

Dated: 11/17/10

JANE S. SOLOMON 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 : IAS PART 55

-----X
CADLEROCK JOINT VENTURE, L.P.,

Plaintiff,

DECISION AND ORDER

-against-

SOL GREENBERG & SONS INTERNATIONAL, INC.,
MARILYN GREENBERG, MARSHALL GREENBERG
and RONALD GREENBERG,

Index No. 105190/07

Defendants.

FILED

NOV 18 2010

-----X
JANE S. SOLOMON, J.:

On September 22, 2010, I declined to issue an order to
show cause submitted by plaintiff's attorney. See the decision
on motion sequence number 003 dated September 22, 2010
("Decision").

Instead, based on the submission, I referred the
conduct of defendants' attorney to the Departmental Disciplinary
Committee. I did so because I was not present at the deposition
where the offending conduct underlying the proposed motion
occurred and because I believe that the defendants' attorney's
conduct at that deposition, his offensive comment to the
stenographer, and his belligerence in the courtroom concerned me
as a matter of professional fitness, rather than a matter for
sanctions under 22 NYCRR 130-1.1.

Moreover, I thought that neither lawyer had been
punctiliously professional in a variety of ways as the collection

[* 3]

dispute --between plaintiff, successor judgment creditor, and defendants, judgment debtors-- progressed before me. Not only did defendants' lawyer refuse to accept my determination that the rules governing Article 31 pre-trial discovery were inapplicable to the instant enforcement proceeding, he seemed unable to appreciate that a written submission from one of his individual clients would have had much more persuasive effect than his bluster on their behalf. These matters, as well as those presented in the order to show cause informed my referral and declination of initiation of the motion.

Also important, and relevant to this decision, is that the handling attorney for plaintiff had too frequently sought to adjust rulings I made, not only by initiating change to dates I set, but also in his failure to adhere to my decision on the motion for contempt. He noticed for settlement a proposed order which did not comport with the directions I made on the record as reflected on the transcript and so I drafted the order myself. Significantly, I refused to grant the request to direct the production of documents by the witness in advance of the deposition which would purge the contempt, but directed that they be brought to the deposition. Notwithstanding this, the attorney seems to have demanded that they be provided in advance. In the event, as indicated in the transcript which was submitted, none of the material was in the room during the deposition; when the

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witness testified he had delivered material, the attorney admitted that it had not been reviewed yet. The result is that, through no fault of his own, the witness could not refer to his own material. This misconduct by the examining lawyer is the particular reason why, in declining the order to show cause, I held that the contempt had been purged and no continuation of the deposition would be considered. Consistent with this analysis, I wrote that my decision declining the order to show cause finished the dispute, implying that further collection efforts, if advised (and I included an exhortation that plaintiff pause), should be in a new petition.

Nevertheless, within hours of being informed of the decision, this motion apparently was prepared. It was served, according to the affidavit of service "by overnight delivery by Federal Express" on September 23, 2010. This is the manner that the Decision directed for service thereof.

Curiously, the morning this motion was submitted, I learned of it from the very person one would expect to be reluctant to contact me, namely, defendants' attorney. He advised my chambers that he had learned of it by a e-courts notification, but did not have it. I had my law clerk respond that no submission or further effort was required of him until he heard further from me.

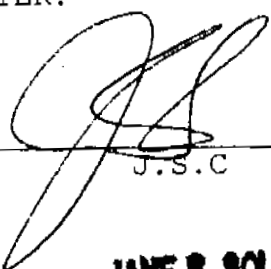
In this motion, plaintiff requests a reassignment of

this matter to another judge, apparently in reference to my having stated in the Decision that I was disabled from hearing any matter in which the defendants' attorney participates due to my referral of him to the DDC. It otherwise asks for the identical relief sought in the order to show cause I declined to sign. Although not couched as a motion to reargue under CPLR 2221, it is just that, and therefore it is appropriate for me to determine it. This new motion is disingenuous, and for all the reasons above, it is denied.

For a while I considered whether sanctions against plaintiff's attorney for the making of this motion were appropriate. In addition to the foregoing, the proposed order to show cause underlying the Decision is missing as an exhibit, while the transcript that the Decision indicated need not be public is included. Ultimately, I determined that this written description of his professional thoughtlessness, if not outright frivolity, would be adequate. Pressing sanctions, or a hearing on service of the motion, would only keep this matter alive before me, and it should be put to rest.

Dated: November 17, 2010

ENTER:



 J.S.C.
JANE S. SOLOMON

FILED
 NOV 18 2010
 NEW YORK
 COUNTY CLERK'S OFFICE