

Schneider v Liberty Mut. Ins. Co.

2011 NY Slip Op 32073(U)

July 22, 2011

Supreme Court, New York County

Docket Number: 117395/09

Judge: Judith J. Gische

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

PRESENT: HON. JUDITH J. GISCHE
J.S.C.

PART 10

Index Number : 117395/2009
SCHNEIDER, MORTON
vs.
LIBERTY MUTUAL INSURANCE CO
SEQUENCE NUMBER : 003
PUNISH FOR CONTEMPT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. 003
MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

**motion (s) and cross-motion(s)
decided in accordance with
the annexed decision/order
of even date.**

FILED

JUL 27 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 7/22/11

HON. JUDITH J. GISCHE J.S.C.
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

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 10

-----X
MORTON SCHNEIDER, as Administrator for the
Estate of Gertrude Schneider,

Plaintiff,

-against-

LIBERTY MUTUAL INSURANCE COMPANY,

Defendant.

-----X
LIBERTY MUTUAL INSURANCE COMPANY,

Third-Party Plaintiff,

-against-

MORTON SCHNEIDER,

Third party Defendant.

-----X

DECISION/ORDER

Index No.: 117395/09

Seq. No.: 003

Present:

Hon. Judith J. Gische

J.S.C.

Third-Party Index No.:

590054/10

FILED

JUL 27 2011

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

NEW YORK
COUNTY CLERK'S OFFICE

PAPERS

NUMBERED

Def's n/m [compel] w/ZL affirm, exhs	1
Pltf's opp w/MS affid, exhs	2
Def's reply w/ZL affirm	3

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

Defendant/third-party plaintiff, Liberty Mutual Insurance Company ("LMIC"),
moves for an order pursuant to CPLR § 5251 holding plaintiff/third-party defendant,
Morton Schneider ("Schneider"), in contempt for failure to respond to an Information
Subpoena and Questionnaire. Schneider, who is self-represented, has filed opposition

to the motion. In this court's prior decision/order, LMIC's motion for summary judgment was granted dismissing the complaint and LMIC was granted summary judgment on the second count of the third-party complaint, against Schneider, in the amount of \$10,938.19 plus statutory costs and disbursements. The first count of the third-party complaint was dismissed. Decision/Order, Hon. Judith J. Gische, 1/5/11. LMIC now seeks to hold Schneider in contempt and compel him to respond to the Information Subpoena and Questionnaire so that it may obtain information regarding Schneider's assets and property and be able to enforce the judgment.

Schneider does not dispute that he received the subpoena and failed to answer. Rather, Schneider argues that he disagrees with the Court's prior decision and addresses the underlying merits of that decision.

Discussion

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. DRL § 245; Judiciary Law § 753[A][3]; *See also McCormick v. Axelrod*, 59 N.Y.2d 574, 583 *amended* 69 N.Y.2d 652 (1983); *Puro v. Puro*, 39 A.D.2d 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. *Farkas v. Farkas*, 209 A.D.2d 316 (1st Dept. 1994). A party seeking contempt must show that there are no alternative effective remedies available. *Farkas v. Farkas*, 201 A.D.2d 440 (1st Dept. 1994) (remedies).

Under CPLR § 5222 (b), a party has the right to obtain financial disclosure to aid

it in the recovery of the money it is due and its collection efforts. CPLR § 5251; Gabor v. Renaissance Associates, 170 A.D.2d 390 (1st Dept. 1991); *See also* Skylake State Bank v. Solar Heat and Insulation, 148 Misc.2d 559 (Sup Ct., N.Y. Co. 1990). 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).

LMIC has established that it needs access to the requested information so that it may enforce its judgment. Without a response from Schneider, LMIC has no other source for the necessary information. It is undisputed that LMIC served the subpoena on Schneider on February 18, 2011, followed by a letter dated March 10, 2011; neither of which Schneider responded to.

LMIC has established that Schneider's disobedience of the subpoena has defeated, impaired, impeded or prejudiced its right to ascertain information about Schneider's financial resources. Judiciary Law § 753 [a]; Farkas v. Farkas, 209 A.D.2d 316 (1st Dept. 1994); Great Neck Pennysaver v. Central Nassau Publications, 65 A.D.2d 616 (2d Dept. 1978). Finally, LMIC has shown that without the information, Schneider cannot easily enforce its judgment. Therefore, LMIC's motion for contempt is granted. While Schneider may be upset by the judgment entered against him, such arguments cannot be addressed in response to a contempt motion. His redress on the merits was to file an appeal.

Schneider is, therefore, in civil contempt. The court will, however, order Schneider to respond to the information subpoena within TWENTY DAYS of being served with a copy of this Order. This is a FINAL opportunity to PURGE the contempt. If Schneider fails to comply with this PURGE, the Clerk shall enter a money judgment

against Schneider in the sum of \$500, starting from twenty days following service of a copy of this order and subpoena.

Legal Fees

Generally, each party to a litigation is required to pay its own legal fees, unless there is a statute or an agreement providing that the other party shall pay same. AG Ship Maintenance Corp. v. Lezak, 69 N.Y.2d 1 (1986). There is no provision within Article 52 allowing LMIC to recover its legal fees. Furthermore, there is no agreement providing that Schneider shall pay LMIC's attorneys fees. Consequently, each side is responsible for its own legal fees.

Conclusion

In accordance herewith, it is hereby:

ORDERED that LIBERTY MUTUAL INSURANCE COMPANY's motion for an order adjudicating MORTON SCHNEIDER in contempt is hereby GRANTED; and it is further

ORDERED that MORTON SCHNEIDER is held in civil contempt. MORTON SCHNEIDER is directed to respond to the subpoena within TWENTY DAYS of being served with a copy of this Order and the subpoena itself. This is a FINAL opportunity to PURGE the contempt; and it is further

ORDERED that if MORTON SCHNEIDER fails to comply with this PURGE, as punishment, the Clerk shall enter a money judgment against MORTON SCHNEIDER in the sum of \$500, starting from twenty days following service of a copy of this order and

subpoena; and it is further

ORDERED that any relief not expressly addressed has nonetheless been considered and is hereby denied; and it is further

ORDERED that this shall constitute the decision and order of the Court.

Dated: New York, New York
July 22, 2011

So Ordered:



HON. JUDITH J. GISCHE, J.S.C.

FILED

JUL 27 2011

NEW YORK
COUNTY CLERK'S OFFICE