

**Janes v Grambling**

2011 NY Slip Op 32817(U)

October 3, 2011

Sup Ct, NY County

Docket Number: 603313/09

Judge: Louis B. York

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

PRESENT: LOUIS B. YORK  
~~J.S.C.~~ Justice

PART 2

Thomas W. Janes

INDEX NO. 603313-09

MOTION DATE \_\_\_\_\_

- v -

John A. Grambling aka  
John Grambling, Jr.

MOTION SEQ. NO. 6

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

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

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this motion

~~THIS IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION.~~

**FILED**

OCT 05 2011

NEW YORK COUNTY CLERK'S OFFICE

Dated: 10/3/11

Lly  
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 2

----- x  
**THOMAS W. JANES,**

Plaintiff,

Index No. 603313/09

-against-

**JOHN A. GRAMBLING a/k/a JOHN A. GRAMBLING, JR.,**

Defendant.  
----- x

**LOUIS B. YORK, J.:**

**FILED**

**OCT 05 2011**

NEW YORK  
COUNTY CLERK'S OFFICE

This interim decision addresses the motion by Order to Show Cause by plaintiff seeking punishment for contempt of defendant John A. Grambling (hereafter Grambling) for his failure to comply with a *subpoena duces tecum* seeking testimony and documents relevant to the satisfaction of the judgment obtained against Grambling dated April 29, 2010. Grambling has not opposed the motion. However, Grambling's attorney has made a cross-motion requesting to be relieved as counsel for Grambling. For the reasons stated *infra*, both the motion and cross-motion are denied.

**FACTS**

The present controversy involves failure of a judgment debtor, Grambling, to appear for a post-judgment deposition seeking disclosure of matters relevant to the satisfaction of the judgment against him. According to the affidavit of service, the subpoena was served on Grambling on May 14, 2010 by leaving a copy of the subpoena with a person of suitable age and discretion at his dwelling and then mailing a copy of the subpoena to that address. Grambling did not appear pursuant to the subpoena. Since then, Grambling's deposition has been

rescheduled several times only to have Grambling cancel or fail to appear. Plaintiff contends that Grambling's conduct has prejudiced his rights by impeding his ability to obtain information on matters relevant to the satisfaction of the judgment. Plaintiff has previously sought punishment for contempt against Grambling but was unable to complete service of the motion on Grambling. Because of these difficulties, the Court allowed the present order to show cause to be served upon Grambling's attorney with a second copy to be mailed to Grambling.

No opposition to the motion has been filed by Grambling. Instead, Grambling's attorney, Michael S. Federoff, served a notice of cross motion seeking a declaration by the Court that Grambling is not represented by him, or in the alternative that the Court relieve him from representation of Grambling. It is worth noting that the affidavit of service attached to the notice of cross-motion only mentions service upon the plaintiff. Furthermore, the cross-motion submitted to the court had the incorrect attorney affirmation attached to it. The correct affirmation was later filed with the court, but several weeks after the motion and cross-motion had been taken on submission by the Court. In that affirmation, Mr. Federoff states, *inter alia*, that his ability to communicate with Grambling has broken down and he does not have Grambling's current address. Furthermore, letters directed to the court indicate that Grambling may have retained new counsel.

## **DISCUSSION**

### **A. Contempt**

The law is clear that failure to comply with a subpoena "shall be punishable as a contempt of court" (CPLR § 2308[a]). Furthermore, the Judiciary Law allows for service of the motion upon the attorney of the accused, when ordered by the court (Judiciary Law § 761).

[\* 4]

However, underlying the Court's decision to allow service upon Grambling's attorney was the expectation that such service would be likely to make Grambling aware of the application and thus afford him a adequate opportunity to be heard (*see Patillo v Patillo*, 12 Misc2d 645, 650 [Sup Ct 1958]). Here, given the stated breakdown in communication between Grambling and his attorney and absent any evidence that Grambling received notice, the Court must reconsider its determination of the method of service. As such, given the serious nature of the penalties involved with a finding of contempt, the Court denies the motion without prejudice. Furthermore, any future motion should be made by personal service so that the court can be assured that Grambling has been made aware of such a motion.

**B. Cross-Motion Requesting to be Relieved of Counsel**

Under CPLR § 321 (b) (2), "[a]n attorney of record may withdraw . . . upon motion on such notice to the client of the withdrawing attorney. . . ." As such, it is inappropriate for the Court to grant a request to withdraw where, as here, the record contains no proof that Grambling has received notice of this cross-motion (*see e.g. Patenaude v Empire Contr. & Sales Co., Inc.*, 47 AD3d 1006, 1006-1007 [3d Dept 2008]).

For the reasons stated *supra*, the Court denies the motion to punish defendant John A. Grambling for contempt. Furthermore, the court denies the cross-motion of Michael S. Federoff to be relieved as counsel for Mr. Grambling.

Based on the foregoing, it is

**ORDERED** the motion seeking punishment of the defendant for contempt is denied without prejudice; and it is further

**ORDERED** that the cross-motion by Michael S. Federoff, Esq. to be relieved as attorney for John A. Grambling is denied.

Dated: 10/3/11

ENTER: **FILED**

**OCT 05 2011**

*LY*  
\_\_\_\_\_  
Louis B. York, J.S.C.

NEW YORK  
COUNTY CLERK'S OFFICE

**LOUIS B. YORK**  
**J.S.C.**