

Kudelka v Brooks
2012 NY Slip Op 31431(U)
May 25, 2012
Supreme Court, New York County
Docket Number: 106267/10
Judge: Judith J. Gische
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT:

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

PART

10

KUDELA, LIODATIL, ET AL.

PIERRE BROOKS, ET AL.

INDEX NO.

106267/10

MOTION DATE

MOTION SEC. NO.

04

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:

Δ failed to appear (11:25am) ⊗

Motion granted per separate decision and
Order signed.

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

FILED

MAY 30 2012

Dated:

5/25/12

NEW YORK
COUNTY CLERK'S OFFICE

GISCHE
HON. JUDITH J. GISCHE, 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**

Lloudmila Kudelka and Flow Brandeslgn, LLC,

Plaintiffs,

-against-

Pierre Brooks and Pet Warehouse Distributors Inc. ,

Defendants.
_____x

DECISION/ ORDER
Index No.: 108267/10
Seq. No.: 004

PRESENT:
Hon. Judith J. Glache
J.S.C.

FILED

MAY 30 2012

Recitation, as required by CPLR § 2219 [a] of the papers considered in the review of ~~the~~ NEW YORK
(these) motion(s): COUNTY CLERK'S OFFICE

Papers	Numbered
Pltf's OSC (Contempt) w/OW affirm, exhs	1
Affid. of Service	2
Proposed Warrant	3

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

This is plaintiff's motion for an order adjudicating defendant Pierre Brooks ("Brooks") in contempt for his failure to comply with the Subpoena to Take Deposition of Judgment Debtor ("subpoena") that plaintiff served on him. Plaintiff obtained a money judgment against Brooks ("money judgment") that he owes, but failed to pay. Plaintiff is attempting to enforce and satisfy this money judgment. CPLR § 5225; Gabor v. Renaissance Associates, 170 A.D.2d 390 (1st Dept. 1991).

Although plaintiff has filed proof of service of the within motion, Brooks did not appear for oral argument on the return date of the motion. He has not opposed the motion in writing. Therefore, this motion has been submitted to the court on default, and without opposition. This is not the first time Brooks has defaulted in this case. The money

judgment was also entered against her on default (see Final Judgment dated March 19, 2012).

As of the date of this motion, the money judgment remains unsatisfied. The subpoena was served upon Brooks to obtain information about his income and assets so that plaintiff can ascertain whether any of these assets are available to satisfy the judgment. Without Brooks' cooperation, plaintiff has no other source of information about his income.

Plaintiff has established that it served the subpoena on April 14, 2011. CPLR § 5224 (a); CPLR § 308. The notice provision of the subpoena contains the date (April 28, 2011), time (2:00 pm) and place (plaintiff's attorney's office) where he had to appear for his deposition. Brooks, however, failed to appear as directed. The subpoena warned him that his failure to appear would be punishable by contempt. The court has previously found Brooks in contempt of this court on September 9, 2011 and again on March 15, 2012.

Contempt is a drastic remedy which should not be granted absent a clear right to such relief. Pinto v. Pinto, 120 A.D.2d 337 (1st Dept. 1986); see also Usina Costa Pinto SA v. Sanco Sav Company Limited, 174 A.D.2d 487 (1st Dept. 1991). 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 NY2d 574, 583 *amended* 69 NY2d 652 (1983); Puro v. Puro, 39 AD2d 873 (1st Dept. 1990); Daleasio v. Kressler, 6 A.D.3d 57 (2d Dept. 2004). 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 AD2d 316 (1st Dept. 1994). A party seeking contempt must show that there are no alternative effective remedies available. Farkas v. Farkas, 201 AD2d 440 (1st Dept. 1994) [remedies].

Plaintiff has proven that this motion was served on Brooks. Judiciary Law § 761; Minzer v. Heffner Agency Inc., 214 AD2d 547 (2nd dept. 1994); Hampton v. Anna Management Co. Ltd. 168 Misc2d 138 (Sup Ct N.Y. Co. 1996). The notice provisions of the motion warn Brooks that he may be punished by the imposition of a fine, or imprisonment, or both, thus complying with the requirements of Judiciary Law § 756. Plaintiff has 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., N.Y. Co. 1990). Although defendant has actual knowledge of the subpoena and its terms, he disregarded it and failed to appear for his deposition, one more than one occasion, the last of which was scheduled, by this court, to take place on October 13, 2011, under the penalty of contempt. Ottomanelli v. Ottomanelli, 17 A.D.3d 647 (2nd 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].

Plaintiff has established Brooks' disobedience of the subpoena has defeated, impaired, impeded or prejudiced plaintiff's right to ascertain information about defendant'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 (2nd dept. 1978). Plaintiff has also shown that there are no alternative effective remedies available. Farkas v. Farkas, 201 AD2d 440 (1st Dept. 1994). Indeed, notwithstanding prior orders of

contempt imposing less severe remedies, Brooks continues his pattern of non-compliance. Plaintiff's motion, to hold defendant Brooks in contempt for failing to comply with the subpoena, is granted.

The court hereby imposes the following punishment: The court adjudicates Pierre Brooks to be in contempt of court. A separate warrant for his arrest, so that he may be brought before the court for a hearing, has been issued.

Conclusion

In accordance with the foregoing decision, *It is hereby:*

ORDERED that plaintiff's motion for an order adjudicating defendant debtor Pierre Brooks in contempt is hereby GRANTED upon default; plaintiff has proved that Brooks was served with the Information subpoena requiring him to appear for her deposition, but disregarded the subpoena; and it is further

ORDERED that Brooks' disobedience of the subpoena has defeated, impaired, impeded or prejudiced plaintiff's right to ascertain information about defendant's financial resources and plaintiff has no alternative effective remedies available; and it further

ORDERED that the court has issued a separate warrant for Brooks' arrest, so that he may be brought before the court for a hearing; and it is further

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

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

Dated: New York, New York
May 25, 2012

So Ordered:

Hon. Judith J. Glesche, J.S.C.

FILED

MAY 30 2012

NEW YORK
COUNTY CLERK'S OFFICE