

**Shvets v Lazarev**

2013 NY Slip Op 33551(U)

November 18, 2013

Sup Ct, New York County

Docket Number: 603458/05

Judge: Louis B. York

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: Hon. LOUIS B. YORK  
Justice

PART 2

-----X

ISABELLA SHVETS, Individually and on Behalf of VIA  
CAFÉ, LLC and VICTOR IVANTECHENKO,

Plaintiffs,

-against-

ANDREI LAZAREV, ALEX FAYNSHTEYN, SAMUEL  
GEZALIAN and ALBERT FEINSTEIN,

Defendants.

Index No. 603458/05  
Motion Date 11/13/13  
Motion Seq. No. 014  
Motion Cal. No.     

-----X

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to Extend Time

NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_

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

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

**FILED** PAPERS

NOV 19 2013

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Cross-Motion:  Yes  No

This is a motion to extend the time for the plaintiff to oppose a motion to confirm an award for attorney's fees awarded in connection with a finding of contempt. For the reasons discussed *infra*, the motion is denied.

This action has been pending since September of 2005. This motion is an illustration of the reason for the eight-year delay in reaching a final conclusion in this action. When the action was instituted, the plaintiff, Isabella Shvets, was seeking the Court's assistance in wresting control of the restaurant from her partners. The conflict could not be resolved so that eventually the dissolution of the restaurant was ordered.

Instead of operating the restaurant until the dissolution was completed and preserving the assets as I had ordered, Ms. Shvets returned the liquor license to the State Liquor Authority, poured all of the liquor down a sink, and moved most of the other assets to a restaurant owned by her husband, with the result that the scheduled auction of the assets could not take place. Thereafter, I held Ms. Shvets in contempt and awarded a \$250 fine and attorney's fees. The question of attorney's fees was severed and ultimately referred to J.H.O. Gammerman to Hear and Decide and to enter a judgment thereon. J.H.O. Gammerman apparently misunderstood my Order and referred his decision back to me as a Report with recommendations. Because of this misunderstanding, I have referred the matter back to J.H.O. Gammerman again to Hear and Decide.

Movant's counsel had entered into a stipulation regarding the motion to confirm J.H.O. Gammerman's award of attorney's fees which set October 29, 2013 as the adjourned date for the submission of the motion to confirm in Motion Submissions by the stipulation. The stipulation stated that the motion was marked "final" against this movant.

I do not believe I have the authority to decide this motion because the issue of the amount of attorney's fees was severed and sent to J.H.O. Gammerman to Hear and Decide, thereby relieving me from the responsibility of determining the amount

of attorney's fees. It rightfully belonged to J.H.O. Gammerman and should most likely have been a motion to reargue. I have to deny it because I no longer have any authority over it. However, if I did have the power to decide it, I would deny it. First of all, movant's statement at the end of his affirmation that "no prior application for the relief for the relief herein has been made previously [sic]." The day before this application was to be submitted in Motion Submissions, plaintiff's attorney, Mr. Worms, came to me asking for an adjournment, the very same relief he is asking for in this motion. Yet when I pointed this out during oral argument, he did not have the honesty to own up to his misrepresentation and claimed that I did not understand what this was all about. I cannot report any more statements in support of his dissemblance, because they made no sense. His reason for the adjournment was that after he signed the stipulation he had requested, he took on a very important constitutional question pertaining to a religious institution and had to do work in preparing a motion and witnesses for a hearing so that he had no time to prepare his papers in opposition to the motion to confirm the J.H.O.'s report. This is the argument he made to me the first time he asked me for the adjournment and this is the argument he made in justification for the same request in paragraphs 7 through 16 of his Affirmation in support of this motion. Yet magically, in the argument on the

record for this motion, he suddenly revealed that his default was the result of an inadvertent oversight. He was so busy he forgot about the deadline he had agreed to - another prevarification. See paragraph 12 of Mr. Worms Affirmation in Opposition where he states “Due to the urgent nature of the Maple Street Synagogue matter, I was not able to prepare timely opposition papers to defendants’ motion papers to confirm to [sic] recommendation of the legal fee award.”

See also paragraph 15: “Aware that I would not be able to get the plaintiff’s opposition papers completed timely ...”

These statements when compared to his statements at oral argument, are an indication of how unreliable Mr. Worms’ statements are.

Finally, the Court notes that Mr. Worms was not forced to take on the Synagogue case. Knowing of his obligation in the instant action, and especially of his obligation under the stipulation, his failure to abide by its terms, deprives him of any right to ask any judge to modify its terms. He was not the only attorney in New York capable of handling the synagogue matter. His bad judgment causes him to suffer the consequences.

Accordingly, it is

Shvets v Lazarev

-5-

Index No. 603458/05

**ORDERED** that this motion for an extension of time is denied.

Dated: 11/18/13

Enter:

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Louis B. York, J.S.C.

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

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE