

Hearst Magazines v Leslie Greene, LLC
2014 NY Slip Op 32787(U)
October 27, 2014
Sup Ct, New York County
Docket Number: 154021/2012
Judge: Debra A. James
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This decision has been published at
2014 NY Slip Op 33786(U).

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: DEBRA A. JAMES
Justice

PART 59

HEARST MAGAZINES: a Division of HEARST COMMUNICATIONS, INC.,

Index No.: 154021/2012

Plaintiff,

Motion Date: 10/21/2014

- v -

Motion Seq. No.: 004

LESLIE GREENE, LLC,

Defendant.

The following papers, numbered 1 to 4 were read on this motion to vacate Order of Contempt/Order of Commitment

Table with 2 columns: Description of papers and No(s). Rows include Order to Show Cause -Affidavits -Exhibits (1), Notice of Cross Motion/Answering Affidavits - Exhibits (2), Replying Affidavits - Exhibits (3), and Sur-Replying Affidavits - Exhibits (4).

Cross-Motion: [X] Yes [] No

Upon the foregoing papers, it is ordered that this motion shall be granted and cross motion shall be granted in part.

"The Court had the power to punish [president of corporate judgment debtor] for contempt, regardless of whether he was a party to the underlying action or not, as long as he had been personally served and had knowledge of the terms of the restraining order." Citibank, N.A. v Anthony Lincoln-Mercury, Inc., 86 AD2d 828, 829 (1st Dept 1982).

Here, plaintiff/judgment creditor Hearst Magazines admits

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

- 1. CHECK ONE: [X] CASE DISPOSED [] NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: [] GRANTED [] DENIED [X] GRANTED IN PART [] OTHER
3. CHECK IF APPROPRIATE: [] SETTLE ORDER [] SUBMIT ORDER
[] DO NOT POST [] FIDUCIARY APPOINTMENT [] REFERENCE

that non-party Leslie Greenberg, apparently the principal of Leslie Green, LLC at the time the debt was incurred, and not a party, in any event, to the underlying action, was never personally served with the subpoena with restraining notice. Instead, plaintiff/judgment creditor served such subpoena with restraining notice only upon Leslie Green, LLC, the corporate judgment debtor and sole defendant in this action, having delivered the subpoena with restraining notice to the office of Secretary of State. Thus, the orders holding non-party Leslie Greenberg in contempt and committing her to the sheriff's custody were granted in error.

Plaintiff/judgment creditor makes a colorable argument that non-party Leslie Greenberg is subject to contempt so no sanctions against it are warranted.

Accordingly, it is hereby

ORDERED that the motion of non-party Leslie Greenberg to vacate the Order dated November 20, 2013 Holding Judgment Debtor in Contempt and the Order dated April 4, 2014 of Commitment Based Upon Failure to Purge to the extent that such Orders were directed at non-party Leslie Greenberg is granted but the motion of non-party Leslie Greenberg to the extent that it seeks sanctions against plaintiff is denied; and it is further

ORDERED that the cross motion of plaintiff/judgment creditor is granted only to the extent that it seeks damages and attorneys fees against defendant/judgment debtor Leslie Greene, LLC, but is denied to the extent that it is directed at non-party Leslie Greenberg; and it is further

ORDERED that plaintiff/judgment creditor is entitled to receive from defendant/judgment debtor the reasonable value of its attorneys fees and damages incurred on its applications for compliance with the subpoena and restraining notice dated May 21, 2013, and such issue shall be referred to a Special Referee to hear and determine pursuant to CPLR §§ 4301 and 4317(b) and that within 30 days from the date of service of this order with notice entry, plaintiff/judgment shall cause a copy of this order with notice of entry, including proof of service thereof, to be filed with the Special Referee clerk (Room 119M, 646-386-3028 or spref@courts.state.ny.us) to arrange a date for a reference to hear and determine pursuant to CPLR 4301 and for placement at the earliest convenient date upon the calendar of the Special Referees Part; and it is further

ORDERED that the decision of the Special Referee shall be made within the time and in the manner specified in CPLR 4319.

This is the decision and order of the court.

Dated: October 27, 2014

ENTER:

~~Debra A. James~~
DEBRA A. JAMES J.S.C.