

**We Got Lites Inc. v Goldstein**

2014 NY Slip Op 33050(U)

August 19, 2014

Supreme Court, Richmond County

Docket Number: 101042/2013

Judge: Philip G. Minardo

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SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF RICHMOND

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WE GOT LITES INC., MARSHALL LIGHTING  
 GROUP LLC., and JOSHUA MARSHALL  
 GOLDSTEIN,

Plaintiff(s),

-against-

BRIAN GOLDSTEIN, WE GOT LITES  
 BROOKLYN, INC., and BRIAN GOLDSTEIN  
 d/b/a WE GOT LITES BROOKLYN,

Defendant(s).

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DCM PART 6

HON. PHILIP G. MINARDO

DECISION AND ORDER

Index No.: 101042/2013

Motion No.:

Plaintiffs seek to hold defendants in civil contempt of an Order of this Court, dated June 12, 2013, which temporarily enjoined defendants from: (a) using the name “We Got Lites” in any advertising, signage, or business operations at Defendants’ store located at 1929 86<sup>th</sup> Street, Brooklyn, New York, (b) communicating with any of Plaintiffs’ employees, customers, or vendors, and (c) otherwise interfering in any way with Plaintiffs’ business operations.

“To prevail on a motion to punish a party for civil contempt, the movant must demonstrate that the party charged with contempt willfully violated a clear and unequivocal mandate of a court’s order, with knowledge of that order’s terms, thereby prejudicing the movant’s rights” (*Suissa v. Baron*, 107 AD3d 690, 691 [2013] quoting *Rubin v. Rubin*, 78 AD3d 812, 813 [2008]; see Judiciary Law §753[A][3]). “Additionally, the movant has the burden of proving contempt by clear and convincing evidence” (*Suissa, supra.*, at 691).

A hearing was held over a four day period during which plaintiff JOSHUA MARSHALL GOLDSTEIN, defendant BRIAN GOLDSTEIN, and other non-party witnesses testified. Plaintiffs contend that the defendants violated the subject temporary restraining order by, among other things, continuing to use the name “We Got Lites” at defendants’ store in Brooklyn; ordering fixtures and other goods from plaintiffs’ vendors; utilizing plaintiffs’ Federal Express account; causing a New York City Environmental Protection Agency water bill to be charged against plaintiffs; continuing to use the trade name “We Got Lites” on the internet and in trade journals; and by defendant BRIAN GOLDSTEIN interfering with plaintiffs’ business operations by arriving at plaintiffs’ business premises unannounced and without permission on July 5, 2013.

#### Store Sign and Merchandise Tags

Plaintiffs have failed to establish by clear and convincing evidence that defendants failed to take the appropriate steps necessary to remove and/or change the sign at defendants’ store in Brooklyn. It is uncontroverted that defendants did, in fact, open the corporation named “We Got Lights of Brooklyn, Inc.” prior to the filing of plaintiffs’ Order to Show Cause. It is also evident that defendants ordered a replacement sign which was installed within 10 after days the issuance of the temporary restraining order (TRO). Defendants have also established that they removed and changed the merchandise tags in an efficient and prompt manner. Accordingly, as defendants took affirmative action to alleviate the alleged violations, there has been no showing that defendants willfully violated the TRO with respect to the store sign and merchandise tags.

### Vendors

Plaintiffs have also failed to establish by clear and convincing evidence that defendants' violated the TRO by ordering goods utilizing the trade name "We Got Lites" from vendors, including Crystorama, Elk Sterling, and Minka Group. The testimony of the witnesses and documentary evidence established that the orders for the merchandise were placed by defendants prior to the issuance of the TRO. In addition, defendants demonstrated that any subject invoices for merchandise that was ordered by defendants from these vendors was paid by defendants and that plaintiffs did not suffer any pecuniary loss.

### Federal Express

Plaintiffs have also failed to establish by clear and convincing evidence that defendants' violated the TRO by utilizing plaintiffs' Federal Express account as the testimony of non-party Justin Goldstein demonstrated that he used the account without the knowledge of defendant BRIAN GOLDSTEIN.

### Water Bill

There has been no showing by the plaintiffs that the receipt of a New York City Environmental Protection Agency water bill constitutes a violation of the TRO. The water bill which imputes service charges to defendants' Brooklyn store was not paid by plaintiffs and there was no showing that defendants caused the invoice to be mailed to plaintiffs' business premises during the effective period of the TRO.

### Internet and Trade Journals

Plaintiffs did not demonstrate by clear and convincing evidence that defendants willfully took

any action to place advertisements or other materials on the internet or in trade journals after the effective date of the TRO.

Incident of July 5, 2013

However, plaintiffs have demonstrated, by clear and convincing evidence, that defendant BRIAN GOLDSTEIN intentionally and willfully violated the subject TRO by arriving at plaintiffs' business premises on July 5, 2013, without permission, and interfering with plaintiffs' business operations. Defendant BRIAN GOLDSTEIN maintains that he went to the premises to facilitate the removal of personal property belonging to his son, non-party Justin Goldstein. The Court finds that there was sufficient evidence to support plaintiff JOSHUA MARSHALL GOLDSTEIN's contention that defendant BRIAN GOLDSTEIN quarreled with plaintiffs' employees resulting in the arrival of police to remove him from the premises. There is no plausible explanation for the necessity of defendant BRIAN GOLDSTEIN to arrive at plaintiffs' business premises.

Plaintiffs having established that defendant BRIAN GOLDSTEIN has willfully violated a clear and unequivocal mandate of the court's order, with knowledge of that order's terms, and thereby prejudicing the plaintiffs' rights, the court finds defendant BRIAN GOLDSTEIN in civil contempt. Where, as here, no actual damages have been demonstrated by plaintiffs, "a fine may be imposed, not exceeding the amount of the complainant's costs and expenses, and two hundred and fifty dollars in addition thereto, and must be collected and paid, in like manner" (Judiciary Law §773). In addition, the court may include reasonable costs and expenses, reasonable attorney's fees (*Manes v. Manes*, 248 AD2d 516 [1998], Judiciary Law §773).

Accordingly, this court finds defendant BRIAN GOLDSTEIN in civil contempt of the

temporary restraining order, dated June 12, 2013, and a fine of \$250.00 is imposed against defendant BRIAN GOLDSTEIN together with an award of reasonable attorney's fees to plaintiffs. Plaintiffs' counsel is directed to submit an affidavit, in connection with the settlement of the order, of the specific services rendered in connection with this matter for review and consideration by the court.

This shall constitute the decision and order of the Court.

Dated: August 19, 2014

E N T E R,

/s/ Philip G. Minardo  
HON. PHILIP G. MINARDO