

<b>Kiel v 501 W. 143rd St. HDFC</b>
2015 NY Slip Op 30182(U)
January 29, 2015
Supreme Court, New York County
Docket Number: 654260-13
Judge: Peter H. Moulton
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY  
PRESENT: Hon. Peter H. Moulton PART 57

RONALDO KIEL and ANITA CHENG,  
individually and as shareholders of 501 West  
143<sup>rd</sup> Street HDFC, on behalf of themselves  
and all other shareholders of 501 West 143<sup>rd</sup>  
Street HDFC similarly situated and in the  
right of 501 West 143<sup>rd</sup> Street HDFC .

INDEX NO. 654260-13

v.

501 West 143<sup>rd</sup> Street HDFC, Board of  
Directors of 501 West 143<sup>rd</sup> Street HDFC,  
Michelle Smalls, Dorthy Wint, Arlene Miller,  
Yvette Hanon, D.K. Hanon & Associates,  
LLC, the New York City Department of  
Housing Preservation & Development, and  
Eric Schneiderman as Attorney General of  
the State of New York

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

MOTION SEQ. NO. 003

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

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

Papers Numbered

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

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

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

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that the motion for an order holding Yvette Hanon and D.K. Hanon & Associates, LLC (the “Hanon defendants”) in contempt is granted, without opposition. D.K. Hanon & Associates and/or Yvette Hanon is the managing agent of the purportedly dysfunctional HDFC buidling at 501 West 143<sup>rd</sup> Street, which is the subject of this action.

On December 10, 2014, the return date for this motion and the motion by counsel for Hanon defendants to withdraw as to those defendants only, an individual appeared on behalf of Yvette Hanon to state that Ms. Hanon could not appear because she was ill. The court then called Ms. Hanon, who gave the court the proposed adjourn date of December 22, 2014 for her appearance. On the morning of December 22, 2014 the court received an email from

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

Ms. Hanon stating “I am still ill and will not be able to attend today. Doctor is concerned I may have pneumonia on top of the flu so testing is scheduled. Received your email address from Mr. Bernstein as the telephone number doesn't respond or allow me to leave a message or text. I have no readily available contact info for the Keils' attorney.”

By Decision and Order dated December 23, 2014, the court adjourned the contempt motion to January 14, 2015 to enable the Hanon defendants to secure representation.<sup>1</sup> That decision warned the Hanon defendants that a finding of contempt might have serious adverse consequences, including Ms. Hanon's arrest; it also provided that the Hanon defendants were free to send (or re-send) the documents which were directed to be turned over pursuant to the court's order dated August 28, 2014.<sup>2</sup> The affirmation of Susan Warnock states that no documents have been turned over as of January 20, 2015, and no opposition has been received from the Hanon defendants disputing this assertion.

To sustain a civil contempt, a lawful judicial order expressing an unequivocal mandate must have been in effect and disobeyed, and the party to be held in contempt must have had knowledge of the order (see McCain v Dinkins, 84 NY2d 216, 226 [1994] [internal citations omitted]; Judiciary Law § 753). In addition, prejudice to the rights of a party to the litigation must be demonstrated (id.). The Hanon defendants have wilfully failed to comply with this court's unequivocal order dated August 28, 2014, directing the Hanon defendants to turn over to Ann Henderson at Urban Homesteading Assistance Board the following copies of documents (and if those documents are non-existent or not in defendants' possession, an affidavit which specifies which documents are non-existent or not in defendants' possession):

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<sup>1</sup>The Hanon defendants' former counsel had been given permission to withdraw pursuant to the December 23<sup>rd</sup> decision.

<sup>2</sup>Mr. Bernstein of Solomon & Bernstein stated in a October 21, 2014 letter to the court that Ms. Hanon had asserted that the documents were turned over. However, the recipient has asserted that they could not locate the documents.

- (1) List of current building shareholders and apartment numbers
- (2) Rent roll for 2013 and 2014 and list of tenants in arrears for 2014
- (3) Proprietary Leases and Stock Certificates for residential apartments
- (4) Residential and Commercial Leases for tenants currently in occupancy
- (5) Income and Expense reports for 2013 and 2014 or other documents reflecting a summary of the income and expenses for the building for 2013 and 2014.

The Hanon defendants have been given several opportunities to comply, but have chosen not to do so. Plaintiff has been prejudiced, as the building cannot run effectively without the records which also may be needed in the event a new managing agent is hired. However, because plaintiff has not demonstrated the actual amount of the loss or injury, the court assesses a fine of \$250.00, reasonable counsel fees of \$1,250.00, and motion costs of \$45.00 (*see* Judiciary Law § 773), payable by the Hanon defendants to plaintiff in accordance with a separate order to be submitted on notice below.

It is hereby

ORDERED that the motion to is granted; and it is further

ORDERED that Yvette Hanon and D.K. Hanon & Associates have wilfully failed to comply with this court's unequivocal order dated August 28, 2014, directing the Hanon defendants to turn over to Ann Henderson at Urban Homesteading Assistance Board various documents necessary for efficient management of the building; and it is further

ORDERED that the court assesses a fine of \$250.00, reasonable counsel fees of \$1,250.00, and motion costs of \$45.00 under Judiciary Law § 773 payable by the Hanon defendants to plaintiff in accordance with a separate order to be submitted on notice below; and it is further

ORDERED that plaintiff submit a proposed order on notice, after consultation with the Sheriff as to the appropriate language regarding the arrest of Yvette Hanon in order to

bring her immediately before this court to Room 623 at 111 Centre Street, New York; and it is further

ORDERED that the proposed order also include language regarding the assessed fine and the opportunity to purge the contempt.

**This constitutes the Decision and Order of the Court.**

Dated: January 29, 2015

  
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New York, New York

J.S.C.  
PETER H. MOULTON

- 1. Check one: .....  Case Disposed  Non-Final Disposition
- 2. Check as Appropriate: ..... Motion is:  Granted  Denied  Granted in Part  Other
- 3. Check if Appropriate: .....:  Settle Order  Submit Order  Do Not Post  Fiduciary Appointment

Reference