

Spent Serv., Inc. v Marcano

2015 NY Slip Op 32021(U)

June 19, 2015

Supreme Court, New York County

Docket Number: 113308/2011

Judge: Lucy Billings

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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: LUCY BILLINGS
J.S.C.
Justice

PART 46

SPENT SERVICES, INC.

INDEX NO. 11 3308/2011

MOTION DATE _____

-v-
STEVEN MARCANO and MY LITTLE STAR BABY
PRODUCTS, INC.

MOTION SEQ. NO. 003

The following papers, numbered 1 to _____, were read on this motion ~~to~~ for Contempt
Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). 1
Answering Affidavits — Exhibits _____ No(s). _____
Replying Affidavits _____ No(s). _____

Upon the foregoing papers, it is ordered that ~~this motion is~~ *and adjudged that:*

The court grants plaintiff's motion to hold defendants in contempt to the extent set forth pursuant to the accompanying decision. C.P.L.R. § 5251; N.Y. Jud. Law §§ 750(A)(3), 751(1), 753(A)(5), 773. The parties are to appear again in Part 46 7/20/15 at 9:30 a.m.

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

FILE

SEP 4 2015

COUNTY CLERK'S OFFICE
NEW YORK

Lucy Billings, J.S.C.

LUCY BILLINGS

Dated: 6/19/15

- 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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

-----X

SPENT SERVICES, INC.,

Index No. 113308/2011

Plaintiff

- against -

DECISION AND ORDER

STEVEN MARCANO and MY LITTLE STAR BABY
PRODUCTS, INC.,

FILED

Defendants

SEP 4 2015

-----X

LUCY BILLINGS, J.S.C:

COUNTY CLERK'S OFFICE
NEW YORK

As provided by the order dated May 11, 2015, plaintiff served the order with notice of entry pursuant to C.P.L.R. § 311(a)(1) on defendant My Little Star Baby Products, Inc., June 11, 2015. Based on that order, the court fines defendant corporation \$250 per day for each day of this defendant's continued contempt of the information subpoena with debtor interrogatories served April 21, 2015, to which the court ordered the corporation to respond fully by April 28, 2015. N.Y. Jud. Law §§ 753(A)(5), 773. Defendant corporation also failed to appear in Part 46, 71 Thomas Street, New York County, June 16, 2015, to explain the noncompliance or be subject to further penalties for the contempt, including an order for the arrest of the corporation's chief executive officer (CEO) Steven Marcano, who controls the corporation so as to effect its compliance with the subpoena and interrogatories. N.Y. Jud. Law §§ 750(A)(3), 751(1), 773; Richardson v. Gray, 284 A.D.2d 198, 200 (1st Dep't 2001); James Talcott Factors v. Larfred, Inc., 115 A.D.2d 397,

401 (1st Dep't 1985); Riverside Capital Advisors, Inc. v. First Secured Capital Corp., 43 A.D.3d 1025, 1026 (2d Dep't 2007); Frankel v. Frankel, 111 A.D.2d 447, 448 (3d Dep't 1985).

The continued refusal and willful neglect by defendant My Little Star Baby Products, Inc., to comply with the subpoena and orders have continued to impair, impede, and prejudice plaintiff's rights in enforcing the judgment in its favor in this action. Therefore the court grants plaintiff's motion to the further extent of holding defendant My Little Star Baby Products, Inc., in contempt of both the order dated April 15, 2015, and the order dated May 11, 2015, as well as of the information subpoena with debtor interrogatories served April 21, 2015. C.P.L.R. § 5251; N.Y. Jud. Law § 753(A)(5). Since the court has given this defendant repeated opportunities to show its inability to comply with the subpoena and interrogatories or to pay any fines, the court fines defendant My Little Star Baby Products, Inc., \$1,250 through June 16, 2015, and \$250 per day for each day of this defendant's continued contempt after June 16, 2015. Richardson v. Gray, 284 A.D.2d at 200; Riverside Capital Advisors, Inc. v. First Secured Capital Corp., 43 A.D.3d at 1026. The fines shall be paid to plaintiff to indemnify the party aggrieved by this defendant's continued contempt. N.Y. Jud. Law § 773. E.g., Goodman v. State of New York, 31 N.Y.2d 381, 384 (1972).

Upon service of this order with notice of entry, accompanied by the subpoena with interrogatories served on defendants April 21, 2015, on defendant My Little Star Baby Products, Inc.,

pursuant to C.P.L.R. § 311(a)(1), and on the Sheriff of any county in the state, the Sheriff shall take CEO Steven Marcano of My Little Star Baby Products, Inc., into custody wherever he may be found. The Sheriff shall collect from My Little Star Baby Products, Inc., through Steven Marcano, the fines of \$250 per day beginning June 12, 2015, and continuing until defendant corporation fully responds to the subpoena with interrogatories.

The arrest of CEO Steven Marcano is to prevent defendant My Little Star Baby Products' continued evasion of its obligations to plaintiff and the court. E.g., Gucci v. Gucci, 213 A.D.2d 356, 357-58 (1st Dep't 1995). Therefore, upon My Little Star Baby Products' payment of the accrued fines and compliance with the subpoena and debtor interrogatories, the Sheriff shall release Steven Marcano from custody. Otherwise, the Sheriff shall deliver Marcano to the Commissioner of Corrections of New York County to be detained in custody until payment of the accrued fines and compliance with the subpoena and interrogatories.

If Steven Marcano is still in the custody of the Commissioner of Corrections of New York County July 20, 2015, the Commissioner shall deliver him in custody to this court, Part 46, Room 204, 71 Thomas Street, New York County, on that date at 9:30 a.m. Defendant My Little Star Baby Products, Inc., through an attorney, also shall appear at that time and place or continue to be in default. C.P.L.R. § 321(a).

The order dated May 11, 2015, remains in effect as to both

defendants. Upon service by July 10, 2015, of that order and this order, each with notice of entry, at the same email address designated by Steven Marciano and specified in the order dated April 15, 2015, and pursuant to C.P.L.R. § 308 on Marciano, he also shall appear in Part 46, Room 204, 71 Thomas Street, New York County, July 20, 2015, at 9:30 a.m. At that time and place he may explain any continued noncompliance by him. If after service according to this order he fails to appear and explain any continued noncompliance by him, he shall be subject to an order for his arrest and further penalties for any continued contempt by him. N.Y. Jud. Law §§ 750(A)(3), 751(1), 773.

DATED: June 19, 2015



LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C.

FILED

SEP 4 2015

COUNTY CLERK'S OFFICE
NEW YORK