

Board of Directors of Windsor Owners Corp. v Platt

2016 NY Slip Op 33223(U)

May 13, 2016

Supreme Court, New York County

Docket Number: Index No. 155985/14

Judge: Jennifer G. Schechter

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BOARD OF DIRECTORS OF WINDSOR OWNERS CORP.,

Index No. 155985/14

Plaintiff,

-against-

ELAINE PLATT,

Defendant.

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JENNIFER G. SCHECTER, J.:

In motion sequence number 08, the Board of Directors of Windsor Owners Corp. (Board) moves to hold defendant Elaine Platt in contempt based on her violation of a permanent injunction (Judgment) entered on April 8, 2015 (Affirmation in Support [Supp], Ex C, Judgment [Moulton, J]). Ms. Platt, a member of the Board and a shareholder of Windsor Owners Corp. (Windsor), cross-moves to modify the Judgment.

The Board's motion is granted and the cross-motion for modification of the Judgment is denied.

Background

In 2014, the Board commenced this action seeking relief based on Ms. Platt's disclosure of information protected by the attorney-client privilege.

In September 2014, this Court granted the Board's motion for a preliminary injunction and "ORDERED that pending determination of this lawsuit, defendant Elaine Platt . . . shall not in any manner disclose or disseminate privileged communications between [Windsor] and its legal counsel, with

the exception that Platt herself may communicate with members of the [Board] and [Windsor's] legal counsel, concerning attorney-client privileged communication. Platt shall ensure that any such conversations with other board members, or with counsel, are confidential and are conducted so as to preserve the privilege; and it is further ORDERED that this order includes, but is not limited to, any statements covered by [Windsor's] attorney-client privilege that were previously disclosed by defendant" (Supp, Ex B at 1-2 [Moulton, J] [emphasis added]).

Subsequently, the Board moved for partial summary judgment. Its motion was granted. The Judgment signed by Justice Moulton on March 31, 2015 provides that it is:

"ORDERED, ADJUDGED AND DECREED that Defendant Elaine Platt ('Defendant' or 'Platt') has, without authority of Plaintiff Board of Directors of [Windsor] violated the attorney client privilege of [Windsor] by disclosing to third parties confidential attorney client communications by attorneys for Windsor; and it is further

"ORDERED, ADJUDGED AND DECREED that Platt or any of her agents . . . are permanently enjoined from disclosing, disseminating, talking about, showing, transmitting, or making available for viewing, and/or providing written copies in whole or in part, or in any other manner distributing or participating in such activity, of information contained in written, electronic, or oral communications by any attorney for Windsor made to the [Board] . . . or any of its committees, to anyone not then a member of the Board; and it is further

. . .

"ORDERED, ADJUDGED AND DECREED that this order includes but is not limited to, any statements covered by Windsor's attorney-client privilege that were previously disclosed by Platt without authority of the Board" (Supp, Ex C at 2-5 [emphasis added]).

It is undisputed that at an April 14, 2015 shareholders meeting, Ms. Platt, along with other materials, distributed a copy of an email containing the privileged information that was the subject of this action and the Judgment. She had sent the email almost a year earlier to a shareholder who had commenced suit against Windsor. The email states that in one paragraph of the shareholder's complaint he quoted her "as saying that [Windsor] withdrew a former ejection action because 2 lawyers had said that it was fatally flawed. The Board is saying that I broke the privilege by revealing this obvious information, and that this gives them grounds to exclude me from Board participation" (Supp, Ex 1).

The next day, the Board made this motion for contempt based on violation of the Judgment.

Ms. Platt opposes the motion and cross-moves for modification of the injunction pursuant to CPLR 6314. She urges that issuance of the Judgment was inappropriate (see e.g., Affidavit in Opposition [Opp] at ¶ 31). She does not deny that she violated the Judgment and that she is enjoined from repeating information that she had previously disclosed (Opp at ¶ 84). She argues that because the Board has not

suffered economic loss as a result of the disclosure--the information that she disclosed is already part of the public domain because it does in fact appear in the shareholder's complaint--there has been no prejudice and there can be no penalty for contempt (Opp at ¶¶ 55-56, 84-88, 93). Ms. Platt maintains that distribution of the email that contained the privileged information was careless but there "was no willfulness on [her] part to repeat the attorney disclosure that [she] had made a year ago" (Opp at ¶¶ 100, 96).

Analysis

Cross-Motion to Modify Judgment

This Court is without authority modify the Judgment (CPLR 2221[a] [motion to modify must be directed "to the judge who signed the order"]; see also December 16, 2015 Decision and Order, NYSCEF DOC NO 398 [denying reargument], *appeal dismissed* ___ AD3d ___, 2016 NY Slip Op 02750 [1st Dept 2016]; see also CPLR 6314 [authorizing the judge who granted preliminary or temporary injunctive relief to modify order]). Ms. Platt's cross-motion is thus denied.

Contempt

The Board's motion for contempt must be granted. "[A] civil contempt generally has as its purpose the provision of

a remedy for an injured suitor, to preserve and enforce the rights of private parties and to compel obedience to orders and decrees made for the benefit of such parties" (*State of New York v Congress of Racial Equality [C.O.R.E]*, 92 AD2d 815, 817 [1st Dept 1983]). "Any penalty imposed is designed not to punish but, rather, to compensate the injured private party or to coerce compliance with the court's mandate or both" (*Dept. of Env'tl. Protection of City of New York v Dept. of Env'tl. Conservation of State of New York*, 70 NY2d 233, 239 [1987]; *Soho Alliance v World Farm Inc.*, 300 AD2d 22 [1st Dept 2002]; Judiciary Law § 753[A][3]).

The Judgment in clear and in no uncertain terms prohibits Ms. Platt from distributing "statements covered by Windsor's attorney-client privilege that were previously disclosed by Platt without authority of the Board" (Supp, Ex C). Ms. Platt disobeyed that mandate by circulating the email containing the previously-disclosed privileged information along with her opinion that the information that she had revealed was "obvious" (Supp, Ex 1). The absence of monetary damages does not preclude a finding of contempt as the Board's rights pursuant to the Judgment were "defeated, impaired, impeded [and] prejudiced" by Ms. Platt's conduct (Judiciary Law § 753[A]). Indeed, the Judiciary Law itself contemplates

contempt without a showing of "an actual loss or injury" and authorizes a \$250 fine (Judiciary Law § 773).

Ms. Platt, an attorney, understood the terms of the Judgment and chose to include the communication with materials that she had prepared in an effort to set the record straight about what was being represented by others (Opp at ¶ 65). Under the circumstances, a finding of contempt is warranted (see *Hero Boy, Inc. v Dell'Orto*, 306 AD2d 226, 227 [1st Dept 2003]).

Accordingly, it is

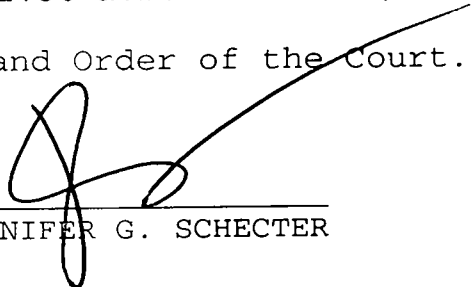
ORDERED and ADJUDGED that plaintiff's motion is granted and defendant is held in contempt as her conduct--distribution of an email including information covered by Windsor's attorney-client privilege--defeated, impaired, impeded and prejudiced plaintiff's rights pursuant to the Judgment; it is further

ORDERED and ADJUDGED that pursuant to Judiciary Law § 773 a \$250 fine is imposed; it is further

ORDERED that a hearing will be held to determine the costs and expenses incurred by the Board in moving for contempt and issues related to the hearing will be addressed at the parties' next conference at 11:30 a.m. on June 1, 2016.

This constitutes the Decision and Order of the Court.

Dated: May 13, 2016



HON. JENNIFER G. SCHECTER
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