

**RCG LV Debt IV Non-Reit Assets Holdings, LLC v  
AC 1 Toms River, LLC**

2017 NY Slip Op 31041(U)

May 4, 2017

Supreme Court, New York County

Docket Number: 155411/16

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 2**

-----X  
RCG LV DEBT IV NON-REIT ASSETS HOLDINGS,  
LLC

Plaintiff,

-against-

**DECISION, ORDER  
AND JUDGMENT**

Index No.: 155411/16  
Mot. Seq. Nos.: 001

AC 1 TOMS RIVER, LLC, AC 1 TOMS RIVER  
MEZZ, LLC & BENJAMIN RINGEL,

Defendant.

-----X  
**HON. KATHRYN E. FREED, J.S.C. :**

RECITATION, AS REQUIRED BY CPLR 2219 (a), OF THE PAPERS CONSIDERED IN THE REVIEW OF  
THIS MOTION:

MOT. SEQ. 001.

PAPERS	NUMBERED
OSC AND VIRGA AFFS IN SUPPORT	1-2 (Exs. A-G)
RINGEL AFF IN OPP	3 (Ex. A)
DEERE AFF IN SUPPORT	4
VIRGA REPLY AFF	5
CONSENT ORDER OF 10/13/16	6
CONSENT ORDER OF 11/17/16	7
CONSENT ORDER OF 1/19/17	8
SO-ORDERED STIP OF 3/1/17	9
SO-ORDERED STIP OF 3/27/17	10

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THE MOTION IS AS FOLLOWS:

In this action seeking to enforce and collect on a money judgment entered in New Jersey and filed and docketed in New York County in favor of plaintiff RCG LV Debt IV Non-REIT Assets Holdings, LLC against defendant judgment debtor Benjamin Ringel, plaintiff moves, pursuant to Judiciary Law § 753 and CPLR 5251, for an order: 1) adjudging Ringel in contempt due to his failure

to obey a restraining notice, failure to respond to an information subpoena, and/or failure to appear at a deposition pursuant to a subpoena and punishing him by fine, imprisonment, or both; 2) directing Ringel to comply with the restraining notice and not to use, withdraw, pay, release, sell, transfer, or convey any of his assets until the subject money judgment is fully satisfied; 3) compelling Ringel to answer in writing the questions asked in the information subpoena served on him within seven (7) days of the order granting the application. After oral argument, and after a review of the parties' papers and the relevant statutes and case law, the motion is **granted to the extent indicated below.**

**FACTUAL AND PROCEDURAL BACKGROUND:**

Plaintiff RCG LV Debt IV Non-REIT Assets Holdings, LLC entered a money judgment against defendant judgment debtor Benjamin Ringel in New Jersey and filed and docketed the judgment in New York County. Exs. A, B and C. In the New Jersey action, the court awarded plaintiff judgment against Ringel in the amount of \$22,444,851.08, which sum included \$565,097.42 for Ringel's conversion of funds due and owing to plaintiff. Ex. A. The judgment arose from a mortgage foreclosure on a New Jersey shopping center. Ringel Aff., at par. 3. Plaintiff sought to enforce the judgment by, inter alia, serving an information subpoena, subpoena to take deposition, and a restraining notice (collectively "the enforcement devices") on Ringel. Exs. D, E and F.

The information subpoena, served July 27, 2016, demanded that responses be served within seven (7) days. Ex. D. However, Ringel did not respond thereto. The subpoena to take deposition, served August 2, 2016, provided that plaintiff would take the deposition of Ringel on August 15,

2016. Ex. E. However, Ringel failed to appear for deposition on that date. Ex. G. Plaintiff also claims that Ringel has violated, and continues to violate, the restraining notice served on him as part of the enforcement devices.

On September 6, 2016, plaintiff brought the instant motion, by order to show cause, seeking the relief set forth above. On October 13, 2016, the parties entered into a consent order requiring Ringel to comply with the information subpoena on or before October 28, 2016, to appear for a deposition on November 8, 2016, and adjourning plaintiff's motion until November 17, 2016. NYSCEF Doc. No. 42.

On November 17, 2016, the parties entered into another consent order. The order indicated, inter alia, that Ringel admitted that he had been served with the enforcement devices. NYSCEF Doc. No. 43. The consent order further noted that Ringel failed to appear for his deposition on October 13, 2016 due to illness. Ringel agreed to appear for a deposition on November 22, 2016, and it was stipulated that his failure to appear would result in a \$500 per day penalty, made payable to plaintiff's attorneys, Rosenberg and Estis, P.C., from November 22, 2016 until defendant appeared for the deposition. Ringel was also to reimburse plaintiff \$200 for expenses arising from his failure to appear for deposition on November 8, 2016. Pursuant to the consent order of November 17, 2016, the parties once again agreed to adjourn the contempt motion.

In a consent order dated January 19, 2017, the parties stipulated that the November 17, 2016 consent order remained in effect and that Ringel was to produce the documents and information demanded at his deposition on November 22, 2016 within 30 days. NYSCEF Doc. No. 44. If Ringel did not have such information, he was required to provide an affidavit stating in detail the efforts he made to obtain the same and the reason such could not be provided. In the consent order, the parties

agreed to adjourn the contempt motion until March 1, 2017.

On February 28, 2017, Ringel provided documents and information to plaintiff. NYSCEF Doc. No. 46. Since plaintiff needed time to review the same, the March 1, 2017 return date for the contempt motion was adjourned until March 27, 2017.

On March 27, 2017, the parties entered into a so-ordered stipulation reflecting, inter alia, that Ringel's document production on February 28, 2017 did not include bank account and investment account statements ("the outstanding information"). NYSCEF Doc. No. 48. The parties stipulated to adjourn the contempt motion until May 2, 2017 and Ringel agreed that he would provide the outstanding information by April 21, 2017. Paragraph 3 of the so-ordered stipulation provided that:

3. In the event that [Ringel] fails to produce all of the [o]utstanding [i]nformation on or before April 21, 2017, [Ringel] agrees and consents to the entry of an order granting [p]laintiff's motion for contempt against [Ringel], with the penalty for such contempt to be determined by the Court at a hearing to be held on May 2, 2017 at 10:00 a.m.

On May 2, 2017, counsel for the parties appeared before this Court. During the conference, this Court learned that Ringel had failed to provide the outstanding information, thus invoking the contempt penalty set forth at paragraph 3 of the March 27, 2017, which, as noted above, had required his compliance by April 21, 2017. Although Ringel provided some documents to plaintiff prior to April 21, 2016, he did not substantially comply with the so-ordered stipulation dated March 27, 2016 and, in fact, his attorney conceded that there were "gaps" in the information provided. Although the March 27, 2017 order reflected that this Court would conduct a hearing on May 2, 2017 if Ringel failed to produce the outstanding information, this Court advised the parties on May 2, 2017 that it would set forth the penalty for Ringel's contempt in a written order and the parties did not object.

**THE PARTIES' CONTENTIONS:**

Plaintiff argues that Ringel must be held in contempt pursuant to Judiciary Law § 753 and CPLR 5251 due to his willful failure to produce the outstanding information. Counsel for plaintiff asserts that Ringel must pay financial penalties, including attorneys' fees, as a result of the contempt, as well as imprisonment if this Court deems such penalty appropriate.

In opposition to the motion, Ringel argues that he never received any of the subpoenas and did not learn of any attempt to obtain post-judgment discovery from him until he received the instant order to show cause. He further asserts that he did not expect the discovery devices to be served on him because he did not believe that plaintiff would pursue enforcement of the \$22 million judgment. Ringel Aff., at par. 4.

In reply, plaintiff argues that Ringel failed to provide any valid defense for his failure to comply with the enforcement devices.

**LEGAL CONCLUSIONS:**

Judiciary Law § 753 (A) (5) provides, in pertinent part that:

A. A court of record has power to punish, by fine and imprisonment, or either, a neglect or violation of duty, or other misconduct, by which a right or remedy of a party to a civil action or special proceeding, pending in the court may be defeated, impaired, impeded, or prejudiced, in any of the following cases:

5. A person subpoenaed as a witness, for refusing or neglecting to obey the subpoena, or to attend, or to be sworn, or to answer as a witness.

Pursuant to CPLR 5223, a party has the right to obtain financial disclosure to assist it in the collection of money owed to it. CPLR 5251 provides that:

Refusal or willful neglect of any person to obey a subpoena or restraining notice issued, or order granted, pursuant to this title [governing the enforcement of money judgments] \* \* \* shall be punishable as a contempt of court.

In order to punish a party for civil contempt, the moving party must establish that the alleged contemnor has violated a clear and unequivocal court order about which the parties have knowledge.

Judiciary Law § 753; *McCain v Dinkins*, 192 AD2d 217, 219 (1<sup>st</sup> Dept 1993). The movant must also establish that it has been prejudiced by the acts of the alleged contemnor. *See Matter of McCormick v Axelrod*, 59 NY2d 574, 583 (1983). Here, there is no question that Ringel has violated court orders directing him to provide materials responsive to the enforcement devices and that he has failed to do so. Specifically, Ringel violated the consent order dated October 13, 2016 (NYSCEF Doc. No. 42); the consent order dated November 17, 2016 (NYSCEF Doc. No. 43); the consent order dated January 19, 2017 (NYSCEF Doc. No. 44); and, finally, the so-ordered stipulation of this Court dated March 27, 2017 (NYSCEF Doc. No. 48), pursuant to which Ringel agreed to a finding of contempt against him in the event he did not comply with that order. Ringel's contention that he was not served with the enforcement devices is undermined by the consent order of November 17, 2016, in which he stipulated that he had received the same. NYSCEF Doc. No. 43.

Although Ringel appeared for a deposition on November 22, 2016, he failed to provide plaintiff with the outstanding information demanded in the wake of that proceeding by April 21, 2017, as required by the so-ordered stipulation dated March 27, 2016. NYSCEF Doc. No. 48.

Indeed, when counsel for the parties appeared before this Court on May 2, 2017, and counsel for Ringel asserted that he had provided all of the outstanding information he could, he acknowledged that there were “gaps” in the documents he provided and he failed to proffer an acceptable excuse as to why all outstanding information required by the March 27, 2017 order was not provided. Thus, it is clear that Ringel had knowledge of this Court’s orders. This Court finds that Ringel’s failure to comply with the enforcement devices and court orders prejudiced plaintiff by impeding its right to collect on its judgment. *See Herman v Herman*, 134 AD3d 442 (1<sup>st</sup> Dept 2015).

Given the foregoing, this Court finds Ringel to be in contempt and now turns to the issue of the penalties to be imposed against him. Judiciary Law § 753 provides, inter alia, that:

Where [a party moving for contempt does not show] that [ ] an actual loss or injury has been caused, a fine may be imposed, not exceeding the amount of the [movant’s] costs and expenses, and two hundred and fifty dollars in addition thereto . . .

Thus, this Court imposes a \$250 fine on Ringel, and awards reasonable attorneys’ fees and the costs of this proceeding to plaintiff as against Ringel. Ringel may fully purge this contempt finding and the aforementioned sanction by producing all outstanding information to plaintiff within 20 days after service of this order with notice of entry by plaintiff’s counsel. Should the contempt not be purged by the end of the 20-day period, then plaintiff may seek an order issuing a warrant for Ringel’s arrest, as well as for the monetary penalties set forth above.

Therefore, in light of the foregoing, it is hereby:

ORDERED and ADJUDGED that the application by RCG LV Debt IV Non-REIT Assets Holdings, LLC seeking to have defendant Benjamin Ringel adjudged in contempt of court (mot. seq. 001) is granted, insofar as his willful conduct has impeded the ability of plaintiff to collect a judgment; and it is further,

ORDERED and ADJUDGED that defendant Benjamin Ringel is held in civil contempt. Defendant Benjamin Ringel is directed to produce all of the bank account and investment account statements as required by the stipulation so-ordered by this Court on March 27, 2017 (NYSCEF Doc. No. 48) within 20 days after service by plaintiff's counsel of this order with notice of entry. This is the sole opportunity for defendant Benjamin Ringel to purge the contempt; and it is further,

ORDERED that, in the event defendant Benjamin Ringel fails to purge his contempt, he must pay a fine of \$250 payable to plaintiff RCG LV Debt IV Non-REIT Assets Holdings, LLC; and it is further,

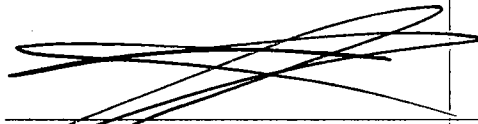
ORDERED that, in the event defendant Benjamin Ringel does not purge his contempt, plaintiff RCG LV Debt IV Non-REIT Assets Holdings, LLC may submit an application to this Court for a warrant for his arrest; and it is further,

ORDERED that, in the event defendant Benjamin Ringel does not purge his contempt, then he will be liable to plaintiff RCG LV Debt IV Non-REIT Assets Holdings, LLC for plaintiff's reasonable attorneys' fees and costs incurred as a result of his contempt; and it is further,

ORDERED that this constitutes the decision, order and judgment of this Court.

Dated: May 4, 2017

ENTER:



HON. KATHRYN E. FREED, J.S.C.

HON. KATHRYN FREED  
JUSTICE OF SUPREME COURT