

Gordon v Voronova
2017 NY Slip Op 31736(U)
August 16, 2017
Supreme Court, New York County
Docket Number: 151694/16
Judge: Barbara Jaffe
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 12

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DMITRY GORDON,

Index No. 151694/16

Plaintiff/Judgment Creditor,

Mot. seq. no. 13

- against -

DECISION AND ORDER

YELENA VORONOVA,

Defendant/Judgment Debtor.
-----X

BARBARA JAFFE, J.:

For plaintiff:

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646-450-6177

For defendant:

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Layliev Law, PC
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Kew Gardens, NY 11415
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By order to show cause, submitted on default, plaintiff, the holder of an unsatisfied judgment against defendant-judgment debtor, moves (1) pursuant to CPLR 2308, 5210, 5251 and Judiciary Law § 753(3) for an order punishing defendant for civil contempt of court for her violation of a subpoena requiring her attendance at an examination and the production of documents and for her willful disobedience of the lawful mandate set forth in the order dated March 28, 2017, and entered on March 29, 2017; (2) pursuant to CPLR 3124, 5223 and 5224, for an order compelling her to comply with the subpoena served upon her by producing all subpoenaed documents within five (5) days of this order, to appear for a deposition at the offices of Barrister Reporting Service, 80 Broad Street, 5th floor, New York, New York 10004, on such dates as are provided by plaintiff-judgment creditor, and directing her to answer all questions within her knowledge that are within the scope of post-judgment disclosure pursuant to CPLR 5223 and 5224; (3) allowing plaintiff/judgment creditor to file an application for an arrest

warrant, without further notice, should defendant fail to comply with the directives set forth above; and (4) ordering defendant to pay plaintiff/judgment creditor costs and fees, including, without limitation, attorney fees incurred in connection with all post-judgment disclosure to date, all post-judgment motions to date, and with this application. (NYSCEF 249). Although duly served with this motion (NYSCEF 256), defendant did not respond.

By decision and order dated March 28, 2017, and entered and served on March 29, 2017, and insofar as pertinent here, defendant was ordered to comply, within 20 days of service of the order with notice of entry, with a subpoena dated August 22, 2016, issued as part of plaintiff's effort to collect on a judgment against defendant for \$16,000 plus interest, costs, and expenses. The date for defendant's response and compliance has long expired.

The purpose of civil contempt is to compel compliance with a court order or compensate a party injured by the disobedience of a court order. (*State of New York v Unique Ideas*, 44 NY2d 345, 349 [1978]). "[T]o prevail on [such] a motion . . . the movant must demonstrate that the party charged with the contempt violated a clear and unequivocal mandate of the court, thereby prejudicing a right of another party to the litigation." (Judiciary Law § 753[A]; *Riverside Cap. Advisers, Inc. v First Secured Cap. Corp.*, 43 AD3d 1023, 1024 [2d Dept 2007]). Generally, "the mere act of disobedience, regardless of motive, is sufficient to sustain a finding of civil contempt if such disobedience defeats, impairs, impedes or prejudices the rights of a party." (*Yalkowsky v Yalkowsky*, 93 AD2d 834, 835 [2d Dept 1983]). The party moving for contempt bears the burden of proving the contempt by clear and convincing evidence (*Riverside*, 43 AD3d at 1024), which "requires a finding of high probability" (*cf. Matter of Eichner [Fox]*, 73 AD2d 431, 469 [2d Dept 1980], *mod on other grounds* 52 NY2d 363, *cert denied* 454 US 858 [1981]; *Usina Costa Pinto*,

S.A. v Sanco Sav. Co., 174 AD2d 487 [1st Dept 1991] [proof or standard is “reasonable certainty”]).

Having demonstrated by clear and convincing evidence defendant’s failure to comply with the order dated March 28, 2017, plaintiff is entitled to a judgment holding defendant in contempt. Accordingly, it is hereby

ORDERED and ADJUDGED, that plaintiff’s motion for contempt is granted, and defendant is guilty of contempt in having willfully violated the information subpoena and subpoena duces tecum by failing to answer the subpoena and appear for a deposition; it is further

ADJUDGED, that said misconduct was calculated to and actually did defeat, impair, impede and prejudice plaintiff’s rights and remedies; it is further

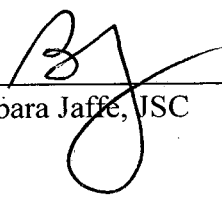
ORDERED, that plaintiff is directed to serve a copy of this order on defendant by e-filing and personal service pursuant to CPLR 308 within 10 days of the date of this order; it is further

ORDERED, that defendant may purge her contempt by sufficiently answering the August 22, 2016 subpoena and appearing for a deposition within 30 days of personal service on her of a copy of this order with notice of entry; it is further

ORDERED, that upon proof by affidavit of service of a certified copy of this order with notice of entry thereof upon defendant by personal service, and defendant’s failure to comply with this order, an application may be made ex parte for an order of commitment, directed to the Sheriff of the City of New York or of any county within the State of New York, to produce defendant before a Justice of the Supreme Court for a hearing to determine whether she will be committed to custody for contempt of court or for such other disposition as the court in its direction shall direct; and it is further

ORDERED, that upon defendant's failure to purge the contempt, she will be liable for payment of plaintiff's reasonable attorney fees and costs incurred in connection with the contempt application, with the fees and costs to be determined at a hearing.

ENTER:



Barbara Jaffe, JSC

DATED: August 16, 2017
New York, New York