

Scherer v Namra Corp.
2017 NY Slip Op 32238(U)
October 23, 2017
Supreme Court, New York County
Docket Number: 150977/2015
Judge: James E. d'Auguste
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: PART 55

-----X
 INBAL SCHERER and MICHAEL SCHERER,

Plaintiffs,

-against-

NAMRA CORP.,

Defendant.

-----X
Hon. James E. d'Auguste

DECISION AND ORDER

Index No. 150977/2015

Mot. Seq. No. 002

The application by plaintiffs and judgment creditors Inbal Scherer and Michael Scherer (“judgment creditors”) to hold Arman Kohan (“Kohan”), the principal of defendant and judgment debtor Namra Corp. (“judgment debtor”), in contempt is granted to the extent that he is found in civil contempt for failing to comply with the subpoena duces tecum discussed herein. Kohan may purge this civil contempt by producing the within documents within thirty (30) days of being served with a copy of this order or an application may be made to imprison Kohan and/or fine him in the amount of up to \$250.

In this Article 52 supplemental proceeding, a default judgment was granted by the Hon. Cynthia Kern by decision and order dated April 24, 2015 in favor of the judgment creditors and against the judgment debtor. *See* NYSCEF Doc. No. 54. An inquest was held before the Hon. Ira Gammerman on October 15, 2015, which resulted in the recommendation of a \$120,000 judgment to the Court. NYSCEF Doc. No. 56. After the addition of costs and interests, the total judgment was entered by the County Clerk in the amount of \$126,253.90 on April 5, 2016. NYSCEF Doc. No. 57. Mr. Kohan was served with a post-judgment enforcement subpoena requiring his production of documents and appearance at a deposition. The purpose for the subpoena being that Mr. Kohan is the sole owner of the judgment debtor and it that Kohan allegedly transferred the

judgment debtor's assets to paying the judgment entered by this Court, which remains completely unsatisfied. Kohan apparently appeared to answer oral questions but failed to produce any documents. As a result of Kohan's continued failure to produce documents, the judgment creditor filed the instant contempt motion. The sole opposition to the motion is a one-page affirmation that merely asserts that the "order to show cause has been rendered moot because the deposition of Arman Kohan has occurred in June, 2017." NYSCEF Doc. No. 62.

The Court finds that Kohan has not complied with his legal obligation to produce documents as demanded by the information subpoena, which is punishable as a contempt of court pursuant to CPLR 5251 and Judiciary Law Section 753(a)(5). *Majurinen v. Cici-Tash, Inc.*, 2016 WL 192738, at *1 (Sup. Ct. N.Y. County Jan. 12, 2016) (Silver, J.). The judgment debtor is not limited to having Kohan answer oral questions, but is entitled to the requested documents seeking to ascertain the location of the judgment debtor's assets, which would include any assets that may have been diverted by Kohan, the judgment debtor's sole owner. Notably, no application was ever made to quash the information subpoena and such an application would presently be untimely. The judgment creditors have met their burden of demonstrating Kohan's contempt. Kohan will be provided with an opportunity to purge the contempt within thirty (30) days of his counsel being served with a copy of this order by producing the following documents:

- (1) bank statements for each account wherein the judgment debtor or Arman Kohan was a signatory, owner, or depositor for the period from January 1, 2013, to the present, for each month during that period;
- (2) credit card statements for each credit card that the judgment debtor corporation or Arman Kohan has used, as an individual or on behalf of a corporation, for the period from January 1, 2013 to the present, for each month during that period;

- (3) the judgment debtor's and Arman Kohan's federal and state tax returns for tax years 2012, 2013, 2014, and 2015;
- (4) statements of account for the judgment debtor or Kohan for the period from January 1, 2013, to the present for each investment account, savings account, securities purchase account, 401k, defined benefits plan, IRA account, Roth IRA account, or other investment account;
- (5) net worth statements the judgment debtor or Kohan prepared between January 1, 2013, to the present, setting forth financial information about the judgment debtor or Kohan;
- (6) motor vehicle registrations for each motor vehicle owned by the judgment debtor or Kohan;
- (7) employment contracts for all employers for which the judgment debtor has been employed during the period from January 1, 2013 to the present; and
- (8) independent contractor contracts for all employers for which Kohan has worked as an independent contractor during the period from January 1, 2013 to the present.

A failure to comply with this order may result in incarceration and or a fine. As such, Kohan should be guided accordingly.

Based upon the foregoing, it is hereby

ORDERED that the motion for an order adjudicating non-party Arman Kohan in contempt is granted in part; and it is further,

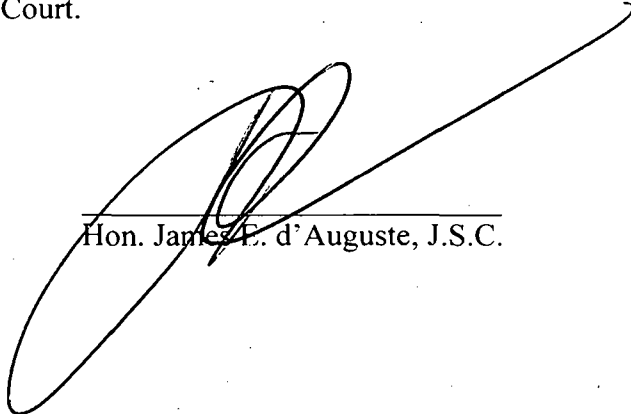
ORDERED and ADJUDGED that non-party Arman Kohan is in civil contempt. Non-party Arman Kohan may purge himself of the contempt by producing documents as set forth in this order within thirty (30) days of his counsel being served with a copy of this order with notice of entry; and it is further,

ORDERED that if non-party Arman Kohan fails to comply with the foregoing, judgment creditors may move for any appropriate additional relief; and it is further,

ORDERED that a copy of this order, with notice of entry, be served upon counsel for non-party Arman Kohan within twenty (20) days of the date of this order.

This constitutes the decision and order of this Court.

Dated: October 23, 2017



Hon. James E. d'Auguste, J.S.C.