

Matter of Cambridge Packing Co, Inc. v LaJaunie

2019 NY Slip Op 30689(U)

March 18, 2019

Supreme Court, New York County

Docket Number: 158128/2018

Judge: John J. Kelley

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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: HON. JOHN J. KELLEY PART IAS MOTION 56EFM

Justice

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INDEX NO. 158128/2016

In the Matter of
CAMBRIDGE PACKING COMPANY, INC.

MOTION DATE 12/06/2018

Petitioner,

MOTION SEQ. NO. 004

- v -

PHILIPPE LAJAUNIE,

DECISION AND ORDER

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 64, 65, 66

were read on this motion to/for

POST JUDGMENT OTHER/ENFORCE STIP OF SETTLEMENT

In this proceeding to hold the respondent in contempt, which was settled by two so-ordered stipulations, the petitioner moves pursuant to CPLR 5223 and 2308(b) to compel the respondent to comply with the most recent so-ordered stipulation and to hold it in default for failing to comply therewith. The respondent opposes the motion

On May 16, 2016, the petitioner secured a \$117,788.99 judgment by confession against the respondent. It thereafter served an information subpoena upon the respondent, with which he did not comply. The petitioner thereafter commenced this proceeding (SEQ 001) seeking to hold the respondent in contempt. By stipulation dated May 10, 2017, the parties agreed that the petitioner would specify which documents it sought, and the respondent would appear for a deposition. By interim order also dated May 10, 2017, the court (Bannon, J.) adjourned the petition to permit the parties to abide by the stipulation. The matter was thereafter transferred to this part. The respondent then moved to compel the petitioner "to show how it switched the action" from one index number and caption to another index number and caption (SEQ 002).

By order dated April 25, 2018, this court denied the contempt petition (SEQ 001) and marked the proceeding disposed, although it did not enter judgment formally dismissing the proceeding. By order also dated April 25, 2018, the court resolved SEQ 002 in accordance with a so-ordered stipulation dated April 17, 2018. In that stipulation, the respondent agreed to produce numerous documents and to appear for a post-judgment deposition on July 19, 2018. In a third order also dated April 25, 2018, the court denied the respondent's motion (SEQ 003) to dismiss the petition, presumably because that motion had been rendered academic by the disposition of applications heard under SEQ 001 and 002.

The petitioner now moves (SEQ 004) to compel the respondent to comply with the April 17, 2018, so-ordered stipulation. The respondent contends that he did his best to comply, but claims that he cannot retrieve all of the bank statements for accounts maintained by several of his businesses, that it is not his fault that the statements he did produce were illegible, and that he had a reasonable excuse for cancelling his deposition.

CPLR 5223 provides that “[a]t any time before a judgment is satisfied or vacated, the judgment creditor may compel the disclosure of all matter relevant to the satisfaction of the judgment, by serving upon any person a subpoena.” That is, “[a] judgment debtor is entitled to discovery from either the judgment debtor or a third party in order ‘to determine whether the judgment debtor[] concealed any assets or transferred any assets so as to defraud the judgment creditor or improperly prevented the collection of the underlying judgment’ [*Young v Torelli*, 135 AD2d 813, 815 (1987)]” (*Technology Multi Sources, S.A. v Stack Global Holdings, Inc.*, 44 AD3d 931 [2d Dept 2007]). CPLR 5223 further provides that “failure to comply with the subpoena is punishable as a contempt of court.” The disclosure provisions of CPLR 5223 articulate “a generous standard which permits the creditor a broad range of inquiry through either the judgment debtor or any third person with knowledge of the debtor's property [see generally, Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR

C5223:2, at 214].” ICD Group v Israel Foreign Trade Co. (USA), 224 AD2d 293, 293-294 (1st Dept 1996); see generally Pratt v Greiner, 122 AD2d 786 (2nd Dept 1986).

“A person who is served with [a] non-judicial subpoena [pursuant to CPLR 2308 (b)] cannot be held in contempt for failure to comply unless and until the court has issued an order compelling compliance, which order has been disobeyed” (*Reuters, Ltd. v Dow Jones Telerate, Inc.*, 231 AD2d 337, 341 [1st Dept 1997]; see CPLR 2308(b)[1]; *Dias v Consolidated Edison Co. of New York, Inc.*, 116 AD2d 453 [1st Dept 1986]). A non-judicial subpoena is one, like the instant one, that is not returnable in court (*Irizarry v New York City Police Dept.*, 260 AD2d 269 [1st Dept 1999]). Thus, a party “seeking enforcement of a non-judicial subpoena must first seek a court order to compel compliance with a non-judicial subpoena” (*Lyon Financial Services v Pinto Trading Co.*, 24 Misc 3d 1237[A] [Sup Ct., Kings County 2009]; see *Reuters, Ltd. v Dow Jones Telerate, Inc.*, 231 AD2d at 341; *Dias v Consolidated Edison Co. of New York, Inc.*, 116 AD2d 453 [1st Dept 1986]). The petitioner seeks to compel compliance with the subpoena here by compelling the respondent to comply with the stipulation of settlement. Inasmuch as the court has not yet entered a judgment dismissing or disposing of the proceeding, any party may move herein to enforce a stipulation of settlement, rather than be compelled to commence a plenary action (see *Teitelbaum Holdings, Ltd. v Gold*, 48 NY2d 51 [1979]). The petitioner has properly sought that relief here.

The respondent is a pro se litigant and judgment debtor who has done all that he can do to obstruct and thwart the petitioner from discovering where he maintains assets. The judgment itself was entered almost three years ago, and the respondent has been given numerous opportunities to provide necessary information to bring himself into compliance with the information subpoena. There is no reason to delay enforcement of the so-ordered stipulation. The excuses that he provides are not reasonable. Hence, the petitioner shall provide the names of the specific banks and entities from which it seeks documents and information. Within 45 days of his receipt of that information from the petitioner, the respondent shall obtain and

thereupon forward legible copies of all such documentation to the petitioner. The respondent shall also appear for a post-judgment deposition on or before May 31, 2019.

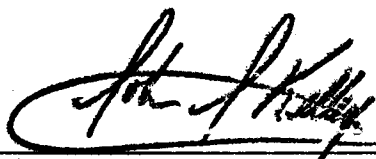
If the respondent fails to comply with this order, the petitioner may again move to hold him in contempt of court, which may result in the imposition of a monetary penalty or commitment to a jail.

Accordingly, it is

ORDERED that the petitioner's motion to compel compliance with the so-ordered stipulation date April 17, 2018, is granted, and the respondent shall, within 45 days of his receipt of the names of the specific banks and entities from which the petitioner seeks documentation and information, obtain and forward to the petitioner legible copies of all such documentation, and shall appear for a deposition on or before May 31, 2019.

This constitutes the Decision and Order of the court.

3/18/2019
DATE



JOHN J. KELLEY, J.S.C.
HON. JOHN J. KELLEY
J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE