

Blue Outdoor Media LLC v Silverpoint Media Group LLC
2019 NY Slip Op 31018(U)
April 9, 2019
Supreme Court, New York County
Docket Number: 152072/2014
Judge: Robert R. Reed
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ROBERT R. REED

PART 43

Justice

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INDEX NO. 152072/2014

BLUE OUTDOOR MEDIA LLC,

Plaintiff,

MOTION DATE _____

- v -

MOTION SEQ. NO. 003

SILVERPOINT MEDIA GROUP LLC and REID SCHUSTER

Defendant.

DECISION AND ORDER

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ROBERT R. REED, J.

In plaintiff’s attempt to collect on a judgment, plaintiff moves for an order to punish for contempt and arrest defendant Reid Schuster for noncompliance with subpoenas and court orders. Under Judiciary Law § 753, New York’s civil contempt statute,

“[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.”

El-Dehdan v El-Dehdan, 26 NY3d 19, 29 (2015), citing Judiciary Law § 753 (A).

To prevail on a motion for civil contempt under Judiciary Law § 753, the movant must demonstrate by clear and convincing evidence that the alleged contemnor knowingly violated a clear and unequivocal court order, prejudicing the rights or remedies of his adversary. *See El-Dehdan*, 26 NY3d at 29 (setting forth elements of civil contempt); *McCormick v Axelrod*, 59 NY2d 574, 583 (1983) (same). The burden then shifts to the alleged contemnor to refute the movant’s showing, or to offer evidence of a defense, such as an inability to comply with the order. *El-Dehdan*, 26 NY3d at 17. A hearing is required only if the papers in opposition raise a factual dispute as to the elements of civil contempt, or the existence of a defense. *Id.*

If the court finds that an alleged contemnor has caused an actual loss to the aggrieved party, then a fine “sufficient to indemnify the aggrieved party” must be imposed. *See* Judiciary Law § 773. The fine may include attorneys’ fees and costs. *See Schwartz v Schwartz*, 79 AD3d 1006, 1010 (2d Dept 2010) (Judiciary Law § 773 permits “recovery of attorney’s fees and costs from the offending party by a party aggrieved by the contemptuous conduct); *Clinton Corner*

H.D.F.C. v Lavergne, 279 AD2d 339, 341 (1st Dept 2001). Nevertheless, to collect for actual loss, the movant must specifically request it and submit proof. *Socialistic Co-operative Pub. Ass'n v Kuhn*, 164 NY 473, 475-76 (1900); *Fed. Deposit Ins. Corp. v Richman*, 98 AD2d 790, 792 (2d Dept 1983) (noting that trial court erred in awarding actual loss costs where plaintiff never specifically sought to recover actual loss).

If no “actual loss” has occurred, the court may impose a fine “not exceeding the amount of the [moving party's] costs and expenses” plus \$250. *Id.* “Costs and expenses” in the statute refers to the costs and expenses of the motion to punish for contempt, and not the entire costs of the proceeding out of which the alleged contempt arose. 10 Carmody-Wait 2d § 66:42; *Fed. Deposit Ins. Corp.*, 98 AD2d at 792. New York law recognizes that a party's failure to comply with a subpoena issued by an officer of the court is punishable as a contempt. CPLR § 2308(a) (failure to comply with judicial subpoena punishable by contempt, \$150 fine, and imprisonment); CPLR § 5251 (refusal to obey subpoena punishable as contempt of court); Judiciary Law § 753(A)(6) (punishment appropriate for person subpoenaed as witness, who refuses or neglects to obey subpoena, or to attend, or to be sworn, or to answer as witness); *see also Korea Chosun Daily Times, Inc. v Dough Boy Donuts Corp.*, 129 AD 3d 918 (2d Dept. 2015) (contempt finding appropriate where party failed to comply with subpoena duces tecum); *Zanani v Schwimmer*, 36 Misc. 3d 144(A) (App. Term 2012) (costs and attorneys' fees appropriate as punishment for refusing to obey post-judgment subpoena); *Schneider v Liberty Mut. Ins. Co.*, 2011 WL 3290547 (Sup. Ct., N.Y. County 2011) (contempt motion granted for failure to comply with information subpoena).

The instant application turns on plaintiff's attempt as a judgment-creditor to obtain information from SCHUSTER related to SILVERPOINT's assets and income. Under CPLR § 5223, a party has the right to obtain financial disclosure to aid it in the recovery of the money it is due and its collection efforts. CPLR § 5223 (“[A] judgment creditor may compel disclosure of all matter relevant to the satisfaction of the judgement...”); *see also* CPLR § 5224(a) (permitting judgment-creditor to serve judgment-debtor with post-judgment subpoena). The First Department has acknowledged that this is 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. *ICD Grp., Inc. v Israel Foreign Trade Co. (USA) Inc.*, 224 AD2d 293, 294 (1st Dept 1996); *U.S. Bank N.A. v APP Intl. Fin. Co., B.V.*, 100 AD3d 179, 183 (1st Dept 2012)

(all matters “relevant to the satisfaction of the judgement [are] discoverable and the public policy is to put no obstacle in the path of those seeking to enforce a judgment.”).

Plaintiff has established that it needed access to SCHUSTER’s financial information to collect on its money judgment. Without a response from SCHUSTER to plaintiff’s subpoena, plaintiff has no other source for the necessary information. It is undisputed that SCHUSTER was served with a subpoena on May 11, 2017, followed by a letter on June 7, 2017 and that on October 11, 2017, this court ordered Schuster to produce documents and himself for deposition – none of which SCHUSTER responded to. Without the information requested in the subpoena, plaintiff is hindered from enforcing its judgment.

Accordingly, it is

ORDERED that plaintiff’s motion to punish the judgment debtor SCHUSTER for contempt of court is granted; and it is further

ADJUDGED that SCHUSTER is guilty of contempt of court in having willfully disobeyed all prior court orders and subpoenas, that SCHUSTER failed to excuse or explain said contempt, and that said misconduct was calculated to and actually did defeat, impair, impede and prejudice the rights and remedies of Schwab; and it is further

ORDERED that SCHUSTER is fined for said contempt in the sum of \$250 to be paid to plaintiff at the office of its attorney, Kaplan Kravet & Vogel P.C. located at 630 Third Avenue, 5th Floor, New York, NY 10017, within 20 days of being served with a copy of this Order; and it is further

ORDERED that upon payment of the said sum of \$250, that amount shall be credited to and applied in reduction of the judgment; and it is further


ORDERED that SCHUSTER may purge himself of his contempt and the fine herein imposed will be remitted upon his compliance with the October 11, 2017 court order within 20 days of being served with a copy of this Order; and it is further

ORDERED that upon proof by affidavit of personal service of a certified copy upon SCHUSTER and of the failure of SCHUSTER to comply with the October 11, 2017 court order within 20 days of being served with a copy of this Order, an application may be made ex parte for an order of commitment directing the Sheriff of the City of New York or the Sheriff of any County within the State of New York wherein SCHUSTER may be apprehended, commanding him forthwith to arrest SCHUSTER, only on a non-holiday weekday (Monday through Friday)

and only during the hours of 10:00 a.m. and 3:00 p.m. and produce him before Justice Robert R. Reed, presiding at the Supreme Court of the State of the New York, Part 43, 60 Centre Street, Room 412, New York, NY 10007, during the time when such part is in session for an immediate (same-day) hearing; and it is further

ORDERED that within 5 days of the entry of this order on the NYSCEF system, plaintiff shall serve a copy of this order with notice of entry upon SCHUSTER by overnight mail and regular mail.

4/9/19
DATE


ROBERT R. REED, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED SETTLE ORDER GRANTED IN PART OTHER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN SUBMIT ORDER FIDUCIARY APPOINTMENT REFERENCE