

City of New York v Justiniano
2019 NY Slip Op 31501(U)
May 20, 2019
Supreme Court, New York County
Docket Number: 452582/2015
Judge: Lyle E. Frank
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK PART IAS MOTION 52EFM

Justice

-----X INDEX NO. 452582/2015

THE CITY OF NEW YORK MOTION DATE 05/15/2019

Plaintiff, MOTION SEQ. NO. 005

- v -

NINA JUSTINIANO, **DECISION AND ORDER**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 005) 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 173, 174, 175, 176, 180

were read on this motion to/for PUNISH FOR CONTEMPT.

Plaintiff, the City of New York, moves this Court pursuant to New York Judiciary Law §§ 753(A) and 773, for an order of contempt against defendant, Nina Justiniano, for her failure to comply with two of this Court's Orders, one dated November 1, 2016, dated August 24, 2017. The underlying orders arise from an action to compel defendant to repair the historic building designated as a New York City individual landmark, the subject premises, as required by Section 25-311 of the Administrative Code of the City of New York ("Landmarks Law").

Judiciary Law Section 753 permits a court "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." *Id.*, § 753(A). In order to establish a finding of civil contempt, a party must establish the following factors by clear and convincing evidence: (1) "a lawful order of the court, clearly expressing an unequivocal mandate, was in effect," (2) "the order has been disobeyed," (3) by a party with "knowledge of the court's order, although it is not necessary that the order actually have been served upon the party," and (4) as a result, the rights of a party to the litigation have been

prejudiced. *El-Dehdan v. El-Dehdan*, 26 NY3d 19, 29 [2015] (quoting *McCormick v. Axelrod*, 59 NY2d 574, 583 [1983]). “[C]ivil contempt seeks ‘the vindication of a private right of a party to litigation and any penalty imposed upon the contemnor is designed to compensate the injured private party for the loss or interference with that right.’” *Id.* at 34 (quoting *McCormick*, 59 NY2d at 583). Contrary to criminal contempt, discussed *infra*, there is no willfulness requirement for civil contempt. *McCormick*, 59 NY2d at 583. However, to be held in contempt, the offense must amount to more than an “honest mistake.” *Sentry Armored Courier Corp. v. N.Y.C. Off-Track Betting Corp.*, 75 AD2d 344, 344 [1st Dept 1980]. Here, the City has demonstrated, by clear and convincing evidence, the presence of all four factors required to find defendant, Nina Justiniano, in civil contempt.

The Existence of a Lawful Order of the Court

With respect to the first factor for a finding of civil contempt, the City has met its burden of establishing that there were two lawful orders of this Court, which clearly expressed an unequivocal mandate, and which defendant failed to comply. The order dated November 1, 2016 ordered defendant Justiniano to “immediately take all steps necessary to immediately and permanently repair and restore” the premises located at 28 West 130th Street a/k/a Block 1727 Lot 51, in the County of New York, City and State of New York (the “subject premises”) “to a lawful condition in accordance with the Landmarks Law, and in compliance with the Order of the Chair of the Landmarks Preservation Commission issued on March 6, 2013, including but not limited to immediately obtaining all necessary permits and authorizations for the immediate repair and restoration of the subject premises to a lawful condition in compliance with the Landmarks Law” and “permanently enjoined” her “to maintain the subject premises and to keep in good repair all exterior portions of the improvement thereon and all interior portions thereof, which, if not so

maintained, may cause or tend to cause the exterior portion of such improvement to deteriorate, decay or become damaged or otherwise fall into a state of disrepair".

Upon defendant's non-compliance with the first order, another order was issued dated August 24, 2017, which ordered defendant Justiniano to "comply with the Order dated November 1, 2016 within 90 days of the date of this Order."

Defendant Failed to Comply with this Court's Orders

Defendant has failed to comply with two previous orders issued by the Court. Defendant does not dispute this, in fact in her opposition papers she "apologizes for the delay".

Consequently, as this issue is undisputed, the City has established this element to find defendant in contempt.

Defendant had Knowledge of this Court's Orders

An additional element in finding a party in contempt of court is knowledge of its existence. As stated previously, "the part[ies] to be held in contempt must have had knowledge of the court's order, although it is not necessary that the order actually have been served upon the party." *McCormick*, 59 NY2d at 583.

This issue is not in dispute. Defendant has not alleged that she was unaware of this Court's previous orders.

The City's Rights Have Been Prejudiced

The City has demonstrated that its rights have been prejudiced as a result of the defendant's non-compliance with this Court's prior orders. The City has demonstrated through various reports and affidavits that the buildings condition is continuing to decline.

Moreover, the City avers that if the subject premises is not repaired and the deterioration continues such that it becomes a threat to public safety, then DOB may order its demolition.

Insofar as defendant Justiniano has failed to protect, enhance or perpetuate the use of the Building which the Landmarks Commission has found to have a special character or special historical or aesthetic interest, the purpose of the Landmarks Law has been disregarded and the public policy upon which the Landmarks Law is based is undermined. This "irreplaceable loss to the people of the city of New York" constitutes prejudice under the Landmarks Law.

Accordingly, as the City has established all of the elements required to hold the defendant in contempt for non-compliance with this Court's orders, the defendant is found to be in civil contempt.

ORDERED that the plaintiff's motion that seeks to punish defendant for civil contempt of Court, pursuant to Judiciary Law Section 753, is granted; and it is further,

ORDERED that defendant may purge the civil contempt by paying the City of New York a statutory penalty in the amount of \$250.00 within thirty (30) days of service of a copy of this order with notice of entry and complying with the order dated August 24, 2017.

This constitutes the decision and order of the Court.

5/20/2019
DATE

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE

LYLE E. FRANK, J.S.C.
HON. LYLE E. FRANK
J.S.C.