

Moriber v Thomas

2019 NY Slip Op 33093(U)

October 15, 2019

Supreme Court, New York County

Docket Number: 153855/2019

Judge: Kathryn E. Freed

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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. KATHRYN E. FREED PART IAS MOTION 2EFM

Justice

-----X INDEX NO. 153855/2019

LLOYD MORIBER,

Plaintiff,

MOTION SEQ. NO. 001

- v -

PHILIP THOMAS,

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18

were read on this motion to/for PUNISH FOR CONTEMPT

This is a post-judgment motion to punish for contempt due to defendant Philip Thomas' failure to respond to an information subpoena and to appear for a deposition. The application by plaintiff/judgment creditor Lloyd A. Moriber to hold Thomas, the judgment debtor, in contempt is granted to the extent that Thomas is found in civil contempt for failing to comply with Moriber's subpoena.

On March 7, 2019, Moriber was awarded a judgment against Thomas in the amount of \$1,047,425, plus interest, in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Circuit Civil Division. Doc. 3. Moriber domesticated the judgment in New York, where Thomas was located, on April 15, 2019. Doc. 10. On June 3, 2019, Moriber had Thomas served with a subpoena duces tecum and ad testificandum in an attempt to ascertain information about Thomas' assets. Docs. 7, 13. Thomas failed to respond to the subpoena and Moriber now moves, pursuant to CPLR 5251, to hold Thomas in contempt. Doc. 16.

On or about August 7, 2019, Moriber moved, by order to show cause: 1) pursuant to CPLR 5251, to hold Thomas in contempt for willfully disobeying the subpoena; 2) pursuant to CPLR 2308, directing Thomas to pay Moriber \$50.00 in costs, a \$50.00 penalty, plus attorneys' fees incurred by Moriber in filing the instant motion; and 3) for such other relief that this Court deems just and proper. Doc. 16.

Thomas neither opposed the motion nor appeared for oral argument scheduled for October 15, 2019.

Refusal or neglect to obey an information subpoena is punishable as a contempt of court under CPLR 5251 and Judiciary Law § 753(A)(5). In order to punish a judgment debtor for contemptuous conduct in reference to a CPLR article 52 money judgment enforcement device, the judgment creditor must establish the judgment debtor's "refusal or willful neglect". CPLR 5251; *see* Weinstein-Korn-Miller, NY Civ Prac P 5251.05.

This Court finds that Thomas failed to respond to the aforementioned subpoena and therefore 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). *See Majurinen v. Cici-Tash, Inc.*, 2016 WL 192738 (Sup Ct New York County 2016).

Therefore, in light of the foregoing, it is hereby:

ORDERED, that the motion to punish defendant Philip Thomas for contempt of court is granted; and it is

ORDERED and ADJUDGED that defendant Philip Thomas is guilty of contempt of court in having disobeyed the subpoena served on him on June 3, 2019; and it is

ORDERED and ADJUDGED that said misconduct of defendant Philip Thomas was calculated to and actually did defeat, impair, impede, and prejudice the rights and remedies of plaintiff Lloyd A. Moriber, and it is further

ORDERED, that defendant Philip Thomas is fined for said contempt a sum equaling the costs of this motion. Along with serving this order with notice of entry, plaintiff Lloyd A. Moriber is to provide Philip Thomas with a list itemizing all of the costs associated with this motion. The list must be accompanied by an attorney's affirmation, representing that the costs stated were actually incurred in connection with the contempt motion. The list and affirmation are to be provided to this Court at the same time as proof of service is submitted (see, *infra*); and it is further

ORDERED that Philip Thomas may purge himself of this civil contempt by both scheduling the requested deposition(s) and producing information concerning his assets and liabilities requested by plaintiff within thirty (30) days of being served with a copy of this order with notice of entry —or— an application may be made to imprison Philip Thomas and/or fine him in the amount of up to \$250. Where Philip Thomas may be apprehended, commanding the Sheriff of the City of New York or the Sheriff of any County within the State of New York forthwith to arrest Philip Thomas and produce him before the justice presiding at the Supreme

Court, New York County, Part Two during the time when such part is in session, to be committed or for such disposition as the court, in its discretion, shall direct; and it is further

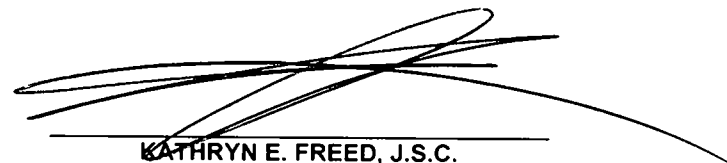
ORDERED that if Philip Thomas fails to comply with the foregoing, plaintiff Lloyd A. Moriber may move for any appropriate additional relief; and it is further

ORDERED plaintiff must serve a copy of this order, with notice of entry, upon Philip Thomas by overnight mail within twenty (20) days of the e filing date of this order, and proof of such service is to be filed with NYSCEF; and it is further

ORDERED that this constitutes the decision, judgment and order of the court.

10/15/2019

DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE