

**Invar Intl. Holding, Inc. v 136 Field Point Circle  
Holding Co. LLC**

2020 NY Slip Op 30407(U)

February 11, 2020

Supreme Court, New York County

Docket Number: 651197/2014

Judge: Margaret A. Chan

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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. MARGARET A. CHAN PART IAS MOTION 33EFM

Justice

-----X

INVAR INTERNATIONAL HOLDING, INC., ALEXANDER RAZINSKI, TANYA RAZINSKI,

Plaintiffs,

INDEX NO. 651197/2014

MOTION DATE 07/19/2019

MOTION SEQ. NO. (MS) 010

- v -

136 FIELD POINT CIRCLE HOLDING COMPANY LLC,

Defendant.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 010) 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 206, 207, 210

were read on this motion to/for CONTEMPT

In this action for breach of contract and breach of covenant of good faith, among other claims, that resulted in the eviction of plaintiffs Alexander Razinski and Tanya Razinski from their mansion, defendant 136 Field Point Circle Holding Company, LLC moves by Order to Show Cause to hold plaintiffs Alexander Razinski and Tanya Razinski in contempt of court pursuant to Judiciary Law § 756. Plaintiffs oppose the motion. The Decision and Order is as follows:

FACTS

This is a matter with a long and tortured history as reflected in the prior decisions of this and a related case (see 136 Field Point Circle Holding Co., LLC v Razinski, 2019 N.Y. Slip Op. 31484[U], 1 [N.Y. Sup Ct, New York County 2019]). Since 2013 the parties have been litigating a complex financial deal that soured. The Razinskis and their corporation, Invar International Holding, Inc. (Invar), entered into an agreement with 136 Field Point Circle Holding Company, LLC ("136 Field Point" or "defendant") wherein 136 Field Point acquired a purchase option on the Razinskis' rented Connecticut mansion in exchange for financing an international arbitration between Invar and a Turkish construction and energy conglomerate regarding power plants in Russia (id). However, the arbitration did not end in a higher yield to Invar as the Razinskis had hoped, which the Razinskis blame 136 Field Point for not extending Invar additional financing to continue the arbitration.

The instant action was initiated by Invar and the Razinskis to determine if 136 Field Point breached the financing agreement. 136 Field Point counterclaimed

for deferred rent that went unpaid by the Razinskis on the Connecticut home. This court, by another justice, issued an order granting 136 Field Point summary judgment on the deferred rent (NYSCEF #58 – Decision and Order of Hon. Joan A. Madden dated October 30, 2015). The Razinskis have yet to pay on the judgment and defendant continues its attempts to collect. Not only has defendant's attempts to enforce the 2015 judgment been stifled, its attempt to evict the Razinskis from the mansion met with litigation across Connecticut and New York in both state and federal courts (NYSCEF ## 128, 137, 138, 139, 144 – various court decisions and orders on the Razinskis' eviction and their attempts to stop the eviction). Indeed, the Razinskis continued to occupy the Connecticut home until December 2018 when they were evicted and removed from the premises.

The following facts are pertinent to the instant motion for contempt:

On November 1, 2018, defendant served upon Alexander Razinski and Tanya Razinski subpoenas to attend depositions and to produce certain documents by November 28, 2018 (NYSCEF ## 189-190). The Razinskis requested an adjournment, which was granted, and the depositions were rescheduled to January 23, 2019 (NYSCEF #183 – Leshko Aff, ¶5).

As the January 23, 2019 date drew near, defendant was informed that the Razinskis were not available and the date of February 21, 2019 was agreed upon (*id.* at ¶6). As February 21, 2019 came closer, defendant's counsel asked plaintiffs' counsel if he could confirm the date; he could not, and defendant made its first motion to the court to hold the Razinskis in contempt (NYSCEF # 145). The motion was resolved by a Stipulation So-Ordered on February 28, 2019, between the parties that called for the Razinskis to produce documents by March 31, 2019, and appear for depositions on April 11, 2019 (NYSCEF ## 154-155).

On March 31, 2019, plaintiffs' counsel advised defendant that they would not appear for their depositions and did not provide the requested documents (NYSCEF #183 at ¶9). On April 8, 2019, defendant filed a second Order to Show Cause to this court to hold the Razinskis in contempt (NYSCEF # 179). This court issued a Decision and Order on May 9, 2019, directing that the Razinskis produce the documents requested no later than June 30, 2019, and appear for the depositions on July 15, 2019 (NYSCEF # 180).

On June 19, 2019, defendant received an email from plaintiffs' counsel informing him that the Razinskis were out of the country and one of them suffered a fracture and was unable to travel (NYSCEF #183 at ¶12). Defendant's counsel replied that there was no excuse for the failure to produce the requested documents (*id.* at ¶13). The Razinskis did not appear at their depositions and did not turn over any of the requested documents (*id.* at ¶14).

Defendant filed this instant application for a contempt order on July 30, 2019 (NYSCEF #194). The parties were originally scheduled to appear in this court on August 28, 2019, but on August 22, 2019, plaintiffs' counsel filed an Order to Show Cause to be relieved as counsel, which was granted on September 5, 2019 (NYSCEF ## 198 and 200). The contempt hearing was therefore adjourned until October 2, 2019, on which date this court issued another order requiring the Razinskis to respond to the November 1, 2018 subpoenas by October 14, 2019, and to appear for depositions on October 17, 2019 (NYSCEF #204).

The Razinskis produced partial responses to the November 1, 2018 subpoenas; defendant continues to allege that they are incomplete. The Razinskis also appeared for their October 17, 2019 depositions, but again, defendant alleges that the responses were incomplete.

At the contempt hearing held on October 23, 2019, both Alexander and Tanya Razinski testified. Their testimonies revealed that they failed to comply with the request for bank statements and other financial documents, claiming that the records are contained in a storage facility in Port Chester, New York, or faulting the banks for Alexander Razinski's alleged inability to retrieve them. Those statement records have not been turned over to date. The records that were turned over were mostly redacted hiding the very information defendant seeks (NYSCEF #214 – Tr of Contempt Hearing on October 23, 2019, at 3-5). However, what can be discerned from those furnished records were transfers and withdrawals of funds (*id.* at 18-20).

Tanya Razinski testified that her husband had made \$4 to \$5 million a year (*id.* at 63). And now, they have no money; their daughter pays for their home, which is in a hotel in Westchester County. She also testified they have no income and live with only the clothes they have on their backs (*id.* at 30, 36-37). But the Razinskis' testimony indicated that they had traveled for sometimes long periods of time to Virginia, Pakistan, Dubai, and Abu Dhabi for the last four years. And while Tanya Razinski testified that she sold or pawned her jewelry worth \$2.2 million, she has no receipts or record of the jewelry sales, which was requested in the November 1, 2018 subpoena under items twelve and thirteen (*id.* at 50, 52-56).

## DISCUSSION

### *Defendant's Contempt Motion*

Judiciary Law § 753 states that “[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” (Judiciary Law § 753). To make a finding of civil contempt, the court must first determine “that a lawful order of the court, clearly expressing an unequivocal mandate, was in

effect.... Second, '[i]t must appear, with reasonable certainty, that the order has been disobeyed'. Third, 'the party 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'. Fourth, 'prejudice to the right of a party to the litigation must be demonstrated'" (*El-Dehdan v El-Dehdan*, 26 NY3d 19, 29 [2015] quoting *McCormick v Axelrod*, 59 NY2d 574 [1983]).

"In a case of civil contempt, the Court must expressly find that the person's actions were calculated to or actually did defeat, impair, impede, or prejudice the rights or remedies of a party to a civil proceeding" (*Oppenheimer v Oscar Shoes, Inc.*, 111 AD2d 28 [1st Dept 1985]). The movant must establish "by clear and convincing evidence [the non-movant's] violation" of the order (*El-Dehdan*, 26 NY3d at 29). Judiciary Law § 774(1) provides that "[w]here the misconduct proved consists of an omission to perform an act or duty, which is yet in the power of the offender to perform, he shall be imprisoned only until he has performed it, and paid the fine imposed" (Judiciary Law § 774[1]).

In addition to civil contempt, Judiciary Law § 750 permits the court to punish parties for criminal contempt if there is "willful disobedience to its lawful mandate" (Judiciary Law § 750[A][3]). "To determine whether or not there was a willful violation, the respondent's conduct must be examined in light of the terms of the order" (*Sheridan v Kennedy*, 12 AD2d 332, 334 [1st Dept 1961]). Criminal contempt must be proved beyond a reasonable doubt (*see N.A. Development Co. Ltd. v Jones*, 99 AD2d 238, 242 [1st Dept 1984]). "Although the line between the two types of contempt may be difficult to draw in a given case, and the same act may be punishable as both a civil and a criminal contempt, the element which serves to elevate a contempt from civil to criminal is the level of willfulness with which the conduct is carried out" (*McCain v Dinkins*, 84 NY2d 216, 226 [1994] [internal citation omitted]).

The Razinskis did not comply with the November 1, 2018 subpoenas, the February 28, 2019 So-Ordered Stipulation, the May 9, 2019 Order, and the October 2, 2019 Order. Next, it is undisputed that the Razinskis had knowledge of this court's orders. The Razinskis' willfulness at non-compliance is palpable. Even after every courtesy by way of adjournments was afforded them to appear for depositions and produce bank statements and other records, they have evaded depositions for months with excuses and ignored producing the requested documents. When the Radzinskis ultimately submitted some of the requested documents, the documents were either redacted so that the pertinent information was hidden, or manufactured, such as Tanya Razinski's pawned jewelry spreadsheet to account for her jewelry worth \$2.2 million.

As an excuse for their non-compliance, the Razinskis explained that the documents are in storage, and they could not sort through their storage. They added

that they have no financial means to pay someone to get the boxes out of storage. The Razinskis' excuse regarding their lack of financial means to pay even a minor sum to extract the boxes of documents is not credible given the evidence of their lifestyle and ability to travel and live abroad extensively, not to mention their daughter's financial ability to finance them. Certainly, it is not a reasonable excuse to disregard court directives.

Finally, the Razinskis' actions prejudiced defendant in its defense of plaintiffs' claims against it and in its enforcement of its judgment from 2015 against plaintiffs. Thus, this court finds that, by clear and convincing evidence, the Razinskis, by disregarding multiple orders in this matter, are guilty of civil contempt and subject to civil penalties pursuant to Judiciary Law § 773.

The court also notes that in addition to the Razinskis' conduct regarding the subpoenas, the Razinskis have thumbed their noses at both defendant and the courts at all stages of this protracted litigation. This instant contempt matter is predicated on plaintiffs' failure to pay a judgment issued on November 17, 2015 (NYSCEF #184). Plaintiffs have used every tactic to avoid fulfilling their legal obligations. Plaintiffs' duplicitous conduct is not isolated to this court. Judge Gregory Wood of the District Court of the Southern District of New York noted that "Alexander Razinski, and his wife, Tanya Razinski, hold themselves out as sophisticated multi-millionaires, and live in a luxury, waterfront mansion in Greenwich, CT. But it is rented. The Razinskis promised to leave the property at the end of the lease's term. But they did not leave. The Razinskis promised to pay a hold-over payment if they occupied the house beyond the lease term. But they have not paid... The [Razinskis'] argument is akin to a dishonest child's claim that her fingers were crossed behind her back when she made a promise" (*136 Field Point Holding Co., LLC. v Invar Int'l Holding, Inc.*, 2015 US Dist LEXIS 34768, \*1, \*9, 2015 WL 1254846, \*1 [SD NY, March 19, 2015, No. 1:13-cv-6285-GHW]) (NYSCEF #192). Plaintiffs have engaged in an evasive course of conduct that disrespects the rule of law.

There is sufficient evidence to find the Razinskis in civil contempt as their knowing non-compliance with the subpoenas and deposition schedules did "defeat, impair, impede, or prejudice the rights or remedies of a party to a civil proceedings" (*Oppenheimer*, 111 AD2d at 28). The evidence is also arguably sufficient to show a willfulness aspect in their non-compliance to find them in criminal contempt. However, their saving grace to stave off this finding is their adherence to the court's October 2 order directing them to the deposition and their production of documents as demanded in the subpoena. While the responses to questions at the deposition were vague or incomplete, and the production of documents meager and largely redacted, the Razinski promised a better result at the contempt hearing. And while their promises have been compared to those of a dishonest child's by another court, the Razinskis are on notice of their inadequacies in carrying out their promises and

fulfilling their obligations. With all the concerns considered before liberty is taken away from a party, there is no finding of criminal contempt at this time.

*Costs and Legal Fees Associated with Contempt Motions*

While it is not for the courts to assess costs, expenses, and fees associated with the entirety of this matter, the court is permitted to impose legal fees when they constitute “an actual loss or injury related to the contempt as a means of compensating [movant], rather than punishing [contemnor’s]... wrong” (*id.* at 619; *see also 1319 Third Ave. Realty Corp. v Chateaubriant Restaurant Development Co., LLC*, 57 AD3d 340, 341 [1st Dept 2008] [“the court should have limited defendant’s recovery to costs and fees related to the disobedience of the order and judgment, and should not have awarded all costs, expenses and fees ‘resulting from the various motions, appeals, and the trial on damages’”]). “Legal fees that constitute actual loss or injury as a result of a contempt are routinely awarded as part of the fine” (*Gottlieb v Gottlieb*, 137 AD3d 614, 618 [1st Dept 2016] citing Judiciary Law § 773, *Bell v White*, 112 AD3d 1104, [3d Dept 2013] lv dismissed 23 NY3d 934 [2014]). These may include the legal fees incurred in bringing the contempt motions (*see Glanzman v. Fischman*, 143 AD2d 880, 881 [2d Dept 1988])

Here, it is appropriate to impose costs and legal fees on plaintiffs for the previous contempt motions as those motions are part of the overall sequence of plaintiffs’ contemptible conduct. Plaintiffs’ knowing disregard for the earlier resolved contempt motions is but a part of plaintiffs’ non-compliance of this court’s orders related to the subpoena. As such, defendant has been actually harmed in having to compose and file not one, not two, but three contempt motions to obtain plaintiffs’ compliance. Therefore, costs and legal fees for the three contempt motions on plaintiffs’ non-compliance (Motion Sequences 008, 009, and 010) are appropriate.

Accordingly, it is ORDERED and ADJUDGED that Alexander Razinski and Tanya Razinski are guilty of civil contempt, and each shall, pursuant to Judiciary Law § 773, pay a fine in the sum of \$250.00 totaling \$500.00 to defendant 136 Field Point Circle Holding Company LLC and defendant shall have execution therefor; it is further

ORDERED and ADJUDGED that plaintiffs Alexander Razinski and Tanya Razinski are jointly liable for defendant’s reasonable legal fees and expenses incurred in the three contempt motions with statutory interest to be calculated by the Clerk of the Court as of October 23, 2019, the date of the contempt hearing and to the date of entry of judgment; it is further

ORDERED that the parties shall appear for an inquest on defendant’s attorney’s fees incurred in the three contempt motions in Part 33, 71 Thomas

Street, Room 305, New York, NY on February 19, 2020 at 9:30 a.m.; and it is further

ORDERED that defendant shall serve entry of this order and judgment upon plaintiffs within five (5) days of this Decision and Order.

This constitutes the decision, order, judgment and decree of the court.

2/11/2020

DATE



MARGARET A. CHAN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE