

Wyche v Haywood-Diaz
2020 NY Slip Op 30665(U)
February 21, 2020
Supreme Court, Kings County
Docket Number: 519060/2018
Judge: Loren Baily-Schiffman
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At an IAS Part 65 of the Supreme Court of the State of New York, County of Kings at a Courthouse Located at 360 Adams Street, Brooklyn, New York on the 21st day of February, 2020.

PRESENT: HON. LOREN BAILY-SCHIFFMAN
JUSTICE

DEITRA WYCHE and MARIE DAVIS, Individually and as Officers OF THE 78-88 PACIFIC STREET HOUSING DEVELOPMENT FUND CORPORATION
Petitioners,

For A Judgment pursuant to CPLR Article 78

- against -

TASHON HAYWOOD-DIAZ, LETTIE EDGERTON and PHYLISS MURDAUGH, Individually and as de facto Officers of THE 78-88 PACIFIC STREET HOUSING DEVELOPMENT FUND CORPORATION

Respondents.

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Motion Seq. # 3

DECISION & ORDER

As required by CPLR 2219(a), the following papers were considered in the review of this motion:

	<u>PAPERS NUMBERED</u>
Order to Show Cause, Affidavits, Affirmation and Exhibits	1
Affirmation in Opposition to Cross-Motion	2
Plaintiff's Reply Affirmation, Affidavit and Exhibits	3

Upon the foregoing papers Petitioners, Deitra Wyche and Marie Davis ("Petitioners"), move this Court for an Order pursuant to Article 19 of the Judiciary Law (1) finding Tashon Haywood-Diaz, Lettie Edgerton and Phyliss Murdaugh ("Respondents") Individually and as de facto officers of 78-88 Pacific Street Housing Development Fund Corporation in civil and/or criminal contempt as a result of Respondents' failure to comply with this Court's Orders dated October 11, 2018 and January 31, 2019; (2) fining Respondents \$250.00 each day hereafter that Respondents continue to fail to comply with the aforesaid Orders; (3) Granting counsel for Petitioners, Angelyn Johnson, Esq. reasonable attorneys fees, costs and disbursements incurred

as a result of having made the instant application and anticipated minimum court fees; and (4) for such other and further relief as the Court deems just and proper under the circumstances.

Background

This action emerges from a dispute as to which shareholders constitute the Board of 78-88 Pacific Street Housing Development Fund Corporation, an HDFC. On January 8, 2018, each of the Respondents was elected to the Board of the HDFC. On August 21, 2018 each of the Petitioners was elected to the Board of the HDFC. By Order dated October 11, 2018, this Court ruled that “Respondents are prohibited from withdrawing any funds from the HDFC Bank accounts ... except to pay necessary expenses and maintenance.” The October 11, 2018 further mandates that Respondents “give Petitioner’s [attorney] all documents including checks regarding any past sale of [apartments] from 9/2017 to the present by 10/15/18.” By Order dated January 31, 2019, this Court validated the August 21, 2018 Board election and found “[a]ny and all Board appointments of the Respondents void ab initio.” The Order dated January 31, 2019 further required Respondents to turn over all files, the bank account, a final accounting and the keys to all common areas of the HDFC to the Petitioners as the proper Board members. Additionally, the January 31, 2019 Order stated “[t]he superintendent retained by the [Respondents] is hereby terminated.”

On August 30, 2019, Elvis Diaz moved – by Order to Show Cause – for permission to intervene in this action and for leave to renew and reargue the Petition, modifying the Court’s January 31, 2019 Order. By Order dated October 31, 2019, this Court granted Elvis Diaz’s motion to intervene.

Discussion

“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.** “A motion to punish a party for civil contempt is addressed to the sound discretion of the court, and the movant bears the burden of proving the contempt by clear and convincing evidence.” *Savel v. Savel, 153 A.D.3d 872, 873 (2d Dep’t 2017)*. The movant must establish that: (1) a lawful order of the court, clearly expressing an unequivocal mandate, was in effect, (2) the order was disobeyed and the party disobeying the order had knowledge of its terms, and (3) the movant was prejudiced by the offending conduct. *Id.*

Respondents concede that on February 1, 2019 – the day after this Court’s Order validating the Petitioners’ composition on the Board, Respondents disbursed \$10,000 from the HDFC bank account, to Helen Maria Perdomo. Respondents claim that previous to this disbursement, Ms. Perdomo had given this money to the HDFC for safe keeping and it was permitted to return Ms. Perdomo’s funds. Respondents concede that on February 1, 2019, Respondents disbursed \$1,000, from the HDFC bank account, to Isidore Lynch the superintendent for alleged building repairs and \$800 to Isidore Lynch for her superintendent salary. This Court’s Order dated October 11, 2018 clearly prohibited the disbursement of funds “except to pay necessary expenses and maintenance.” The disbursement to Ms. Perdomo was not a necessary expense or maintenance fee. Additionally, this Court’s Order dated January 31, 2019 ruled that Ms. Lynch was no longer the superintendent. Accordingly, this Court prohibited the payment of any funds from the Respondents as Board members to Ms. Lynch after January 31, 2019.

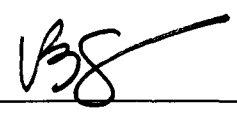
Therefore, Respondents acted in contempt of this Court by the three above referenced disbursements.

As a sanction for Respondents' contempt, the Court awards Angelyn Johnson, Esq. \$4,451.25 for legal services incurred in preparing this application, pursuant to the retainer agreement between Angelyn Johnson, Esq. and Petitioners Deitra Wyche and Marie Davis. Respondents are jointly and severally liable for paying \$4,451.25 attorney's fees to Angelyn Johnson, Esq. The foregoing constitutes reasonable legal fees and a reasonable sanction under the circumstances at bar.

The other actions the Petitioners allege constitute contempt of court are not conceded by the Respondent and constitute questions of fact which can only be resolved after a hearing. The Court need not hold such a hearing as the sanction imposed is sufficient.

This is the Decision and Order of the Court.

ENTER,



LOREN BAILY-SCHIFFMAN
JSC

HON. LOREN BAILY-SCHIFFMAN

KINGS COUNTY CLERK
FILED
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