Treasures London Ltd. v Keswani
2020 NY Slip Op 33497(U)
October 20, 2020
Supreme Court, New York County
Docket Number: 652666/2019
Judge: Jennifer G. Schecter

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JENNIFER G. SCHECTER **PART** IAS MOTION 54EFM

Justice

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TREASURES LONDON LIMITED, HARJIT ATHWAL,

Plaintiffs,

- v -

POONAM KESWANI, TREASURES OF PRINCE, LLC,

Defendants.

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INDEX NO. 652666/2019

MOTION SEQ. NO. 002, 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 70-71, 74-75, 77-79, 85-91, 95-96.

were read on this motion to/for SANCTIONS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 69, 73, 74, 76, 80-84, 92-93.

were read on this motion to/for RELIEVE COUNSEL.

Plaintiffs Treasures London Limited and Harjit Singh Athwal, move pursuant to 22 NYCRR 130-1.1, for sanctions, attorneys' fees and expenses against Karamvir Dahiya, Esq. and Dahiya Law Offices, LLC (individually and collectively, Dahiya), jointly and severally, as counsel for defendants Poonam Keswani a/k/a Paris Keswani a/k/a Poonam Paris Keswani and Treasures of Prince, LLC (TOP) (Seq. 002). Dahiya opposes and purports to cross-move for sanctions. Dahiya, moves, pursuant to CPLR 321, for an order permitting Dahiya to withdraw and be relieved as counsel of record for defendants in this action and for a stay of proceedings (Seq. 003). Dahiya is relieved as counsel for defendants but must appear for a hearing in connection with the motion for sanctions.

Background

Plaintiffs commenced this action in May 2019, asserting causes of action for, among other things, fraud and breach of contract. Defendants were initially represented by Susan Adler. A preliminary conference was held on August 15, 2019, in which an order was entered requiring the parties to serve and respond to non-ESI discovery on or by October 8, 2019 (Dkt. 29 [PC Order]). Defendants failed to timely respond to interrogatories or to produce bank statements, and were ordered to respond to the interrogatories and to provide regular updates to plaintiffs on the status of the bank statements (Dkt. 44 [compliance conference order]). Having failed to provide certain books and records, including bank statements, at a December 5, 2019 conference call, defendants through counsel voluntarily agreed to produce their tax returns for the years 2015, 2016, 2017 and 2018, and were ordered to do so by December 19, 2019. Defendants were also ordered to produce books and records concerning their joint venture and to produce or to explain their failure to produce the requested bank statements (*see* Dkt. 47 [Dec. 5, 2019 status conference order]).

Defendants failed to produce the tax returns as they had already agreed to do or to timely request an extension. Through counsel, defendants represented that the tax returns were then being prepared and would be ready by January 31, 2020. Defendants agreed to object or respond to plaintiffs' supplemental document requests dated December 19, 2019 by January 9, 2020. Defendants were ordered to produce their signed or unsigned tax returns for the years 2015, 2016, 2017 and 2018 within three business days of receiving them from their accountant or else, if they were not produced by February 5, 2020, by March 6, 2020 they were to produce their accountant for deposition, with plaintiffs' costs to be borne by defendants because defendants were repeatedly noncompliant and did not produce materials as agreed and ordered (*see* Dkt. 48 [status conference order dated Dec. 24, 2019]).

On February 2, 2020, Ms. Adler filed a notice of bankruptcy on Keswani's behalf, automatically staying the litigation as against Keswani individually (Dkt. 50 [notice of bankruptcy]). On February 7, 2020, Dahiya appeared as counsel of record for defendants (Dkt. 51 [notice of appearance]). A notice of substitution signed by Keswani, Ms. Adler and Mr. Dahiya was e-filed on February 19, 2020 (Dkt. 52 [notice of substitution]). When Dahiya appeared in this case as counsel, Dahiya was obligated comply with court orders. Dahiya and TOP did not do so.

By letters dated March 3, 2020, Dahiya argued that the automatic stay, which was in effect as to the debtor, was applicable to non-debtor defendant TOP (Dkts. 53 & 55). On March 5, 2020, a teleconference was held. A stay was not issued as to TOP (Dkt. 60 [automatic stay applied to debtor "case was still to proceed against" TOP]). In fact, a "stay has never applied . . . to plaintiff's claims" against TOP (Dkt. 92 at ¶ 2). The next status teleconference was set for March 13, 2020.

The March 13, 2020 teleconference was canceled after Dahiya informed the court and opposing counsel that he was unwell that day. A control date was set for March 20, 2020 for counsel to email chambers for potential rescheduling. On March 19, 2020, Dahiya requested a two-week adjournment on grounds that he remained unwell, which was also, of course, granted. On March 30, 2020, the court e-mailed Dahiya, requesting an update on his ability to proceed. There was never a response. Weeks later, on April 22, 2020, counsel for plaintiffs e-mailed the court, stating that Mr. Dahiya had not responded to emails dated March 30, 2020 and April 16, 2020, and that a call to Mr. Dahiya's office that day had gone unanswered (*see* Dkt. 60 [April 28, 2020 status conference order]). Because the earlier court initiated e-mail had received no response, by order dated April 28, 2020, the court instructed TOP to contact the court through counsel to arrange for the next telephonic status conference to discuss outstanding discovery issues. A status teleconference was provisionally scheduled for May 11, 2020, with a warning that TOP would

need to appear by counsel to avoid being held in default (*see* Dkt. 60 [April 28, 2020 status conference order]).[1]

On May 5, 2020, Dahiya emailed "ready" to plaintiffs' counsel and the court (*see* Dkt. 62 [May 15, 2020 status conference order]). At teleconferences on May 13, 2020 and May 14, 2020, Dahiya appeared for TOP, but could not simply confirm whether he had the requisite authority to represent TOP in the action (*id.*). Dahiya was given one week to e-file a notice of substitution, to move by order to show cause to withdraw as TOP's counsel in this matter, or else e-file a sworn affidavit attesting to his authority to represent TOP (*id.*). The court ordered TOP to appear by counsel for a teleconference on May 26, 2020 and be prepared to proceed with discovery at that time (*id.*).

Dahiya then e-filed an "Affirmance Regarding the Continued Representation With a Request For Dismissal of the Lawsuit," which was amended on May 22, 2020 (Dkt. 66 [Dahiya Amended Aff.]). In it, he claimed that the "bankruptcy stays" continued to apply, despite the court's April 28, 2020 Status-Conference Order to the contrary and that counsel "shall prosecute the claims of the Defendants upon the lifting of the stay" (*id.*). Dahiya further stated, without making any motion: "It must however be brought to the court's attention, that the attached guarantee . . . which is the basic premise of the instant lawsuit initiated by plaintiffs, clearly divests this court of any jurisdiction" (*id* at ¶ 4). In arguing that "this Court must dismiss this case forthwith," Dahiya misquoted the provision, changing its meaning (*compare* Dkt. 66 [Dahiya Amended Aff.] at 2 ["This Guarantee will be governed by and construed in accordance with English law and the parties hereto irrevocably **submit it to** the jurisdiction of the English courts"

[1] Plaintiffs' counsel attests to his own efforts to reach out to Dahiya, and Dahiya's limited responses or failures to respond, during the time period between March 13, 2020 and May 11, 2020 (Dkt. 71 [Wurgaft Aff.] at 3-5).

(emphasis added)] *with* Dkt. 67 [Guarantee] at 10 ["This Guarantee will be governed by and construed in accordance with English law and the parties hereto irrevocably **submit to** the jurisdiction of the English courts" (emphasis added)]). Dahiya, a lawyer, who should know better, sought dismissal without making any motion.

On May 26, 2020, a teleconference was held in which plaintiffs' counsel, Dahiya, and counsel for the trustee of Keswani's bankruptcy estate appeared. Purportedly on TOP's behalf, Dahiya continued to assert his rejected argument for a stay of the action as against TOP pending Keswani's bankruptcy. Over that and other objections, TOP was ordered to produce, by June 25, 2020, the tax returns that it had agreed to produce months earlier reflecting TOP transacting business since 2016, contact information for preparers of TOP's financial statements or tax returns since 2016, and unredacted statements for credit card accounts on which TOP made any payments since 2016, or else an affidavit by a corporate representative of TOP supporting its excuse for failing to disclose such items (Dkt. 68 [May 26, 2020 status conference order]).

On the June 25, 2020 production deadline, Dahiya made the current motion to withdraw as counsel for defendants (Dkt. 69 [proposed OSC]). Dahiya averred that Keswani had terminated the representation (Dkt. 73 [Dahiya Aff.] at 1-2). The following day, plaintiffs moved for sanctions. The court refused to grant a blanket stay of discovery pending the court's decision on the motion to withdraw, ordering TOP to once and for all by July 14, 2020 produce the long-sought discovery that TOP had agreed and was then ordered to produce numerous times so that the case could finally proceed (Dkt. 74 [order dated June 26, 2020]; Dkt. 76).

Dahiya never moved for a stay of any of this court's orders.

In opposition to the motion for sanctions, Dahiya filed an affidavit/memorandum (Dkt. 85), and again purported to cross-move for relief without ever making any motion.[2] In a 23-page submission 10 pages were dedicated to attacking the complaint--though no relief whatsoever could ever even possibly be granted procedurally even if it were appropriate. Dahiya also challenged the discoverability of the tax returns that prior counsel had agreed must be produced because other documents had not been and could not be produced despite orders requiring compliance long before the pandemic hit and before Dahiya appeared. Dahiya averred that he, in fact, "did not have the authority to appear for the TOP" during the conferences in which he purported to appear on TOP's behalf (Dkt. 85 at 17). Dahiya also argued that non-essential court functions had been postponed due the COVID-19 health crisis despite the court actually being in touch with counsel throughout the pandemic and his awareness that this part was operational as he had received emails about proceeding. Finally, Dahiya sought sanctions against plaintiffs' counsel explaining that frivolous "*conduct shall include the making of a frivolous motion for costs and sanctions*" (*id.*at 2, 22-23).[3]

Discussion

22 NYCRR 130-1.1(a) states as follows, in relevant part:

> (a) The court, in its discretion, may award to any party or attorney in any civil action … costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct …. [T]he court, in its discretion

[2] Confusingly, in a footnote counsel stated that proactive relief was not being sought; yet, the papers were denominated "cross motion for sanctions" and repeatedly requested sanctions against plaintiffs (Dkt. 85 n 17).

[3] After these motions were filed, Keswani made certain e-mailed submissions to the court, her filings having been reportedly rejected by court staff because she was still represented by counsel of record (Dahiya). With permission from chambers, Dahiya e-filed certain of Keswani's submissions (*e.g.* Dkt. 97). Chambers also e-filed certain of Keswani's emails as appendices to court orders (*e.g.* Dkts. 82 & 84).

> may impose financial sanctions upon any party or attorney in a civil action or proceeding who engages in frivolous conduct ….

Sanctions may be imposed as against "either an attorney or a party to the litigation or against both" including "against the attorney personally" or upon the "partnership, firm, corporation … with which the attorney is associated and that has appeared as attorney of record" (22 NYCRR 130-1.1[b]).

Pursuant to 22 NYCRR 130-1.1(c), conduct is frivolous if:

> (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
>
> (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
>
> (3) it asserts material factual statements that are false.

Frivolous conduct also includes, as Dahiya points out, the making of a "frivolous motion for costs or sanctions." The court is required to consider "the circumstances under which the conduct took place, including the time available for investigating the legal or factual basis of the conduct, and whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel or the party."

Dahiya's conduct appears to have been "completely without merit in law" and "undertaken primarily to delay or prolong resolution of the litigation." Significantly, as a lawyer who appeared in this action, he cannot repeatedly seek relief without properly moving for it in accordance with the CPLR. His filings would be understandable if made by a self-represented litigant unversed in procedure. He, however, is a lawyer and is held to higher standards (though they are most basic). He also failed to comply with or seek timely relief from discovery orders, having appeared in the action and having notice of the orders and of his obligations, prolonging this case needlessly (e.g. Dkt. 47 ["defendants have agreed to produce tax returns"]; Dkt. 48 [ordering defendants, including

TOP, to provide tax returns or to produce their accountant for deposition]; Dkt. 62 [ordering TOP to appear by counsel and be prepared to proceed with discovery]; Dkt. 68 [ordering TOP to provide discovery]). He also ignored court communications without providing any excuse[4] and only responded to the court when actually ordered to do so despite having engaged in email communications with the court in the past. He also materially misquoted the contractual provision on which he purported to seek relief. He also incorrectly insisted a stay was in effect despite being ordered to proceed and without seeking appellate relief. Dahiya also sought sanctions against plaintiffs' counsel without a motion or basis for doing so, insisting that defense counsel had always been clear that he did not have authority to appear for TOP and, most amazingly, that there "is no single order . . . which has not been complied with" (Dkt. 85 at 17-18).

Considered alone, with a remorseful attorney, against the backdrop of a global pandemic perhaps the court could let one of these issues go. The problem is that counsel refuses to acknowledge and take any responsibility for these repeated missteps and this type of practice cannot be encouraged or even tolerated.

Dahiya's motion to be relieved as counsel is granted without opposition; however, Dahiya must appear for a hearing to address whether sanctions will be imposed.

Accordingly, it is

ORDERED that the motion of Karamvir Dahiya, Esq. and Dahiya Law Offices, LLC to withdraw as counsel for defendants Poonam Keswani a/k/a Paris Keswani a/k/a Poonam Paris

[4] Plaintiffs' counsel attests, and Dahiya does not deny, that he posted on social media during the period when he refused to respond to emails from the court or opposing counsel to reschedule the appearances that were adjourned at his request. Dahiya does not maintain that illness prevented him from responding or that he was unable to obtain an Appellate Division stay of discovery deadlines as late as in response to the June 2020 order to show cause which, made clear that the obligation was continuing.

Keswani and Treasures of Prince, LLC is granted, and Karamvir Dahiya, Esq. and Dahiya Law Offices, LLC are relieved as counsel for defendants upon the e-filing of proof of compliance with the following conditions within two days; and it is further

ORDERED that Dahiya shall serve a copy of this order with notice of entry upon its former clients by overnight mail and by email; and it is further

ORDERD that, together with the copy of the order with notice of entry served upon his clients, Dahiya shall forward a cover letter directing defendants to retain substitute counsel by November 4, 2020 and informing them that substitute counsel must serve and file a notice of appearance by that date. The letter must also advise defendants of the consequences of failing to retain counsel (including that Keswani may appear pro se but must be on the phone for telephonic conferences and TOP, without counsel, will be in default); and it is further

ORDERED that should Treasures of Prince, LLC fail to retain new counsel, it will be unable to avoid a future default or move to vacate any prior default, since an LLC may only appear in court by counsel; and it is further

ORDERED that no further proceedings may be taken against Poonam Keswani or Treasures of Prince, LLC, without leave of this court, through November 4, 2020; it is further

ORDERED that if Ms. Keswani decides to represent herself, by November 4, 2020, she must email her contact information to the part clerk at ddeland@nycourts.gov and must also ensure that plaintiff's counsel (mwurgaft@kraviswurghaft.com) is copied on that email; and it is further

ORDERED that there will be a telephonic status conference on November 10, 2020 at 4:00 p.m. Plaintiffs' counsel, copied to all counsel and Ms. Keswani, if she is representing herself, shall email the court at mrand@nycourts.gov with a dial-in number 30 minutes before the conference; it is further

ORDERED that on November 13, 2020 at 11:00 a.m., the court will hold a hearing on Microsoft Teams to determine whether to impose sanctions on Mr. Dahiya; Mr. Dahiya will have up to 20 minutes to present direct testimony (he may present testimony himself or retain counsel to question him) and plaintiff's counsel shall have the same amount to time cross-examine him; and it is further

ORDERED that by November 5, 2020 at noon, the parties and Mr. Dahiya shall provide by email to the part clerk (ddeland@nycourts.gov, copying mrand@nycourts.gov) the email addresses of anyone attending the Microsoft Teams hearing so they can be sent an invitation to the hearing and be provided additional logistical information regarding the hearing.

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10/20/2020
DATE

JENNIFER G. SCHECTER, J.S.C.

CHECK ONE: [ ] CASE DISPOSED [X] NON-FINAL DISPOSITION

[ ] GRANTED [ ] DENIED [X] GRANTED TO EXTENT SET FORTH [ ] OTHER