

<b>Ted Baker Ltd. v Wooster St., LLC</b>
2020 NY Slip Op 33882(U)
November 25, 2020
Supreme Court, New York County
Docket Number: 153077/2020
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: IAS PART 46

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TED BAKER LIMITED,

Index No. 153077/2020

Plaintiff

- against -

DECISION AND ORDER

WOOSTER STREET, LLC d/b/a JORDAN  
 WOOSTER STREET ASSOCIATES, L.L.C.,

Defendant

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LUCY BILLINGS, J.S.C.:

Plaintiff, a luxury clothing retail business, holds a commercial lease for the ground and cellar floors at 115-121 Wooster Street, New York County, owned by defendant. Defendant landlord moves to vacate the preliminary injunction issued in an order dated September 16, 2020; to hold plaintiff tenant in civil contempt of that order; and for an order requiring plaintiff to pay monthly rent directly to defendant, rather than to the court as the September 2020 order required. C.P.L.R. § 6314; N.Y. Jud. Law § 753(A)(3). Defendant also moved to require plaintiff to allow defendant's construction professionals access to the leased premises October 14, 2020, and each consecutive day afterward until defendant completed repair and remediation of plumbing and mold conditions within the premises. The temporary order dated October 8, 2020, granted this final request for relief regarding access for repair and remediation, with conditions, and shall remain in effect.

The September 2020 order explicitly required plaintiff, as

part of the undertaking for the preliminary injunction, to pay one month's rent of \$164,040.94 directly to defendant and the remaining monthly rent due to the court. Instead of paying that amount directly to defendant, plaintiff replenished its security deposit, a letter credit held by defendant, in that amount. Since defendant already had drawn on the letter of credit to pay prior rent that plaintiff had not paid, and since the preliminary injunction prohibits defendant from drawing further on the letter of credit, plaintiff's partial replenishment of the letter of credit not only violated the explicit order, but also failed to provide defendant security for the preliminary injunction.

Even if plaintiff misunderstood the September 2020 order, willfulness is not a necessary element of civil contempt. El-Dehdan v. El-Dehdan, 26 N.Y.3d 19, 34 (2015); McCain v. Dinkins, 84 N.Y.2d 216, 226 (1994); McCormick v. Axelrod, 59 N.Y.2d 574, 583 (1983); Board of Directors of Windsor Owners Corp. v. Platt, 148 A.D.3d 645, 646 (1st Dep't 2017). Plaintiff admits that it knew about the order and that it paid the \$164,040.94 in rent for July 2020 to the court rather than to defendant, in violation of the September 2020 order. Plaintiff also admits that, in violation of the prior temporary injunction dated June 5, 2020, plaintiff failed to pay the \$164,040.94 in rent for June 2020 to defendant, necessitating its resort to drawing on the letter of credit to pay the June 2020 rent. Therefore the court fines plaintiff \$250.00 for having defeated, impaired, impeded, and prejudiced defendant's rights conferred by the September 2020

order, N.Y. Jud. Law § 753(A)(3); El-Dehdan v. El-Dehdan, 26 N.Y.3d at 28; Oxman v. Oxman, 184 A.D.3d 404, 404 (1st Dep't 2020); Board of Directors of Windsor Owners Corp. v. Platt, 148 A.D.3d at 646; and, to restore the \$164,040.94 directly to defendant, modifies that order to the extent that plaintiff shall pay rent for December 2020, plus the \$250.00 fine, directly to defendant. N.Y. Jud. Law § 773; El-Dehdan v. El-Dehdan, 26 N.Y.3d at 34; Department of Env'tl. Protection of City of N.Y. v. Department of Env'tl. Conservation of State of N.Y., 70 N.Y.2d 233, 239 (1987); McCormick v. Axelrod, 59 N.Y.2d at 583; State v. Unique Ideas, Inc., 44 N.Y.2d 345, 349 (1978). If plaintiff fails to pay any part of \$164,310.94 to defendant within five days after December 2020 rent is due, defendant may enter a judgment against plaintiff for the unpaid amount.

Otherwise, defendant has not shown compelling or changed circumstances that render the preliminary injunction inequitable and warrant its vacatur. C.P.L.R. § 6314; Wellbilt Equip. Corp. v. Red Eye Grill, 308 A.D.2d 411, 411 (1st Dep't 2003); Thompson v. 76 Corp., 54 A.D.3d 844, 846 (2d Dep't 2008); Thompson v. 76 Corp., 37 A.D.3d 150, 152-53 (2d Dep't 2007). Particularly in view of defendant's failure to proceed to repair and remediate on each consecutive business day as allowed by the order dated October 8, 2020, any prior interference by plaintiff with defendant's repair and remediation as claimed by defendant has not prejudiced it. If plaintiff complies with this order, plaintiff's failure to pay the \$164,040.94 directly to defendant

will no longer serve as an excuse not to proceed with the repair and remediation.

In sum, for the reasons explained above, the court grants defendant's motion to the following limited extent. The court vacates the preliminary injunction dated September 16, 2020, only to the extent of modifying the injunction to require plaintiff to pay December 2020 rent of \$164,040.94 directly to defendant, rather than to the court. C.P.L.R. § 6314. The court grants defendant's motion for contempt to the extent of holding plaintiff in civil contempt of the order dated September 16, 2020; requiring the payment of December 2020 rent to defendant; imposing a \$250.00 fine on plaintiff to be paid with the December 2020 rent; and permitting defendant to enter a judgment against plaintiff for any amount not paid as required. C.P.L.R. § 6314; N.Y. Jud. Law §§ 753(a)(3), 773. Otherwise, the order dated September 16, 2020, remains in effect, as does the order dated October 8, 2020. The court denies all other relief requested.

DATED: November 25, 2020

*Lucy Billings*

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LUCY BILLINGS, J.S.C.

**LUCY BILLINGS**  
J.S.C