

Trice v Tag Ct. Sq. LLC
2021 NY Slip Op 30617(U)
March 3, 2021
Supreme Court, New York County
Docket Number: 106846/2010
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. ANDREW BORROK

PART

IAS MOTION 53EFM

Justice

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INDEX NO. 106846/2010

MOTION DATE 01/05/2021

MOTION SEQ. NO. 014

ELLIOT TRICE, MYA HAN, ILONA ROSS, ENRICO FERRANTE, MATTHEW GRAY, LAUREN GRAY, GREGORY SULLIVAN, JUAN AZCONA, FEDERIQUE HENRIOTAZCONA, JENNIFER OK, LETICIA TIANGCO, ELIZABETH LEE, IRIS GOLD, AMY BASSIN, ALBERT ARANEO, AMY KIMARANEO, TOSHIKO TAKAHARA, RYAN RACUYA, VIRGILIO BARCO, JASON HOMER, TROY ALLEN, ADDIS GETAHOUNALLEN, DAVID MATIK, LOUIE RUEDA, THOMAS LINDSLEY, WILLY CHANG, ANDY HONG, EMILY GIORDANO, ANTIPAS DIMAKOPOULOS, MICHAEL SHAPIRO, DIANA SHAPIRO, MARK GOLD, JAMES GUNN, KELLY CONATY, EDNA INESCAJUMBAN, HANIFA SCULLY, CHRISTOPHER SCULLY, SUNDAR JAGANNATH, MANJULA JAGANNATH, CHRYSO KAIZER, RACHEL WORTMAN, JOSH WORTMAN, DAVID QUINTAVALLE, RAYMOND WONG, NUBIA RUEDA, VINCENT SPENCER, MATTHEW WISHNOW, JARETT LIVINGSTON, FATIMA MASTOUR, JUAN SIERRA, CHRISTOPHER KELLEY, PEGGY ANN JAYNE, CECILIA CUNNINGHAM, MICHAEL AVALLONE, BEAU MITCHELL, DEEPA MANWANI, MARIN DASKALOV, ELEONORA NIKOLOVA, CHRISTOS ATHANASIOU, ANASTASIA ATHANASIOU, STEPHEN PEPPER, SHELDON CURTIS, ASHLEY FLOTO, KRISTOPHER ABDELMESSIH, ALAN LAM, TRINI LAM, JAMES ROHAN, KEITH KANCAR, SOPHIA DRAMITINOS, MARY DRAMITINOS, MARY ZOTOS, OLLIE JOHNSON, KATHLEEN JOHNSON, AEON STANFIELD, LISA STANFIELD, CHARLES COHEN, HEE IM, BERT BUSTAMANTE, ALICIA BUSTAMANTE, THOMAS DEMSKER, ADELE DEMSKER, STUART DEMSKER, BARBARA BERNARD, DANIEL HALLMAN, ADRIANA ACEDO, STEPHEN KIM, HSUAN LEE, CHRIS NICODERMO, ZACHARY BERGER, ZMBER ZIEFER, JEFFREY WEISS, THEODORUS SANDFORT, DOUGLAS ADELMAN, LYUDMILA SHTEYNBAUM, THOMAS BARNES, YI ZHOU XIAO, CHI CHENG PUI, JULIA ROSHKOW, STEVE SALZMAN, ROCKFORD CHUN, KUEICHEN FANG, PETER UNGUREANU, MATTHEW SPIEGEL, MALKA SPIEGEL, ANDREW GERLE, MARIE POON, BO LIM MUI, ALBERT LEATHERMAN, ADRIA JOVER, LAURA ROIMERSHER, WENDY WILSON, DANIEL WU, ANNIE LAMMERS, SEAN LAMMERS, JARRED KIRSCH, ALEJANDRA KIRSCH, STEPHEN FOX, ALEXANDER CHAN, AMY CHAN, KATHLEEN CARLISLE, HUN KIM, JAVOR STOLAROV, WILLIAM ROSENBERG, PAUL HILEPO, TOM KNOTEK, ERIC BENAİM, TOVIT

**DECISION + ORDER ON
MOTION**

BENAIM, ANDERS DAHLSTROM, SALME DAHLSTROM,
 PETER JOHNSON, BUM WON, GEORGE VARSOS,
 CARMEN VARSOS, ELINOR ANKER, LALEO LLC, MING
 WONG, MICHAEL CLARKE, ANA SOKOLOFF, BETSY
 ASHTON, MARK JOHNSON, JANET COOK, MARY
 KASARIS, JULIE WON, MARGARET LEE, JEREMY
 FRIEDEL, CAROL HUANG, DARIUS TENCZA, MARINA
 TENCZA, MARIANNE HOUTENBOS, PIETER
 HOUTENBOS, KIMBERLY CONATY, SOOK KIM, YUNG
 KIM, MARVIN LIPKIND, TANIA LIPKIND, ADAM COLOMA,
 ARRIS LOFTS CONDOMINIUM,

Plaintiff,

- v -

TAG COURT SQUARE LLC, TAG QUART SQUARE
 MANAGER LLC, ALLEN SILVERMAN, ANDREW
 SILVERMAN, ALEXANDER SILVERMAN, WILLIAM
 KOGAN, THOMSON AVE APARTMENTS LLC, ANDALEX
 GROUP, COSTAS KONDYLIS & PARTNERS, MICHAEL
 PERAGINE, ETTINGER ENGINEERING ASSOCS, WSP
 CANTOR SEINUK, CANTOR SEINUK GROUP INC,
 PAVARINI MCGOVERN LLC, STRUCTURE TONE
 LLC, STRUCTURE TONE LLC, PACE PLUMBING CORP,
 GEIGER ROOFING CO INC, DRYVIT SYSTEMS INC,
 STEGLA GROUP INC, AAG CONSTRUCTION CORP,
 SUNSHINE GROUP LTD, GAF MATERIALS
 CORPORATION (3RD PARTY DEFENDANT), ELITE
 FLOORS, INC., RCC CONCRETE CORP., TOPLINE
 CONTRACTING, INC., PIONEER WINDOWS INC., PJ
 MECHANICAL CORP. (FOURTH-PARTY-DEFENDANTS),
 COMPONENT ASSEMBLY SYSTEMS INC., SPECTRUM
 PAINTING CORP. (THIRD THIRD-PARTY DEFENDANT),

Defendant.

-----X

COMPONENT ASSEMBLY SYSTEMS INC.

Plaintiff,

-against-

INSULATION CONTRACTORS INC., THOMAS J. DONNELLY,
 INC.

Defendant.

-----X

Third-Party

Index No. 595364/2014

The following e-filed documents, listed by NYSCEF document number (Motion 014) 413, 414, 415, 416,
 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428

were read on this motion to/for

CONTEMPT

Plaintiff Board of Managers of the Arris Lofts Condominium (the **Board**) moves by order to show cause to find defendants Tag Court Square LLC (the **Sponsor**) and its principals, Alexander Silverman, Andrew Silverman and Allen Silverman (the Silvermans and the Sponsor, collectively, the **Sponsor Defendants**) in contempt for failure to comply with this court's Decision and Order dated November 10, 2020 (the **Prior Decision**; NYSCEF Doc. No. 417).

The Prior Decision required the Sponsor Defendants to:

within forty-five (45) days from the date of entry of this Order the Sponsor Defendants shall fully comply with the terms of the [Parties'] Settlement Agreement by (a) paying their portion of the cash payment to plaintiff required to be paid under the Settlement Agreement; (b) executing and delivering the requisite releases contemplated under the Settlement Agreement in the form attached as Exhibit B to the July Agreement; (c) execute and deliver to plaintiff the lease negotiated between plaintiff and the Sponsor Defendants; (d) execute and deliver to plaintiff an assignment of each of the storage cages transferring ownership to plaintiff; and (e) take any such additional action as may be required to effectuate the Settlement Agreement including but not limited to executing a stipulation of discontinuance

(*id.* at 4).

The Sponsor Defendants were also required to pay the Board's attorneys' fees and costs in connection with the Prior Decision within 15 days of receipt of the invoice (*id.* at 5). To the extent that the parties could not agree on the amount of reasonable legal fees incurred, the matter was to be referred to a Special Referee to hear and determine (*id.*).

Discussion

Pursuant to Judiciary Law § 753(A)(3),

A. 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, in any of the following cases ...

3. A party to the action or special proceeding, an attorney, counsellor, or other person, for the non-payment of a sum of money, ordered or adjudged by the court to be paid, in a case where by law execution can not be awarded for the collection of such sum except as otherwise specifically provided by the civil practice law and rules; or for any other disobedience to a lawful mandate of the court.

A finding of civil contempt requires (1) a lawful order of the court, clearly expressing an unequivocal mandate, was in effect, (2) that it appear with reasonable certainty that the order has been disobeyed, (3) 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, and (4) prejudice to the right of a party to the litigation must be demonstrated (*Dehdan v El-Dehdan*, 26 NY3d 19, 29 [2015], citing *Matter of McCormick v Axelrod*, 59 NY2d 574 at 583 [1983]).

Here, the Prior Decision was a lawful order of the court that expressed an unequivocal mandate directing the Sponsor Defendants to comply with the terms of a certain Settlement Agreement and pay the Board's attorneys' fees related to that prior motion. The Board timely submitted invoices to the Sponsor Defendants for legal fees totaling \$17,226.50 on November 16, 2020 (NYSCEF Doc. No. 418). It is undisputed that the Sponsor Defendants have not made any of the requested payments (NYSCEF Doc. Nos. 419-422, 424). Nor have the Sponsor Defendants otherwise satisfied their obligations under the Prior Decision after receiving notice of the same by the Notice of Entry dated November 18, 2020 (*id.*; NYSEF Doc. No. 397). Finally, the Board

is prejudiced by the Sponsor Defendants' failure to adhere to their settlement obligations, which have been outstanding since their execution of the Stipulation of Settlement dated July 19, 2019 – approximately 1 year and 8 months ago (*see* NYSCEF Doc. No. 400). The Sponsor Defendants offer no plausible excuse for their failure to comply with the Prior Decision in their opposition papers and in fact, propose to impermissibly vary the terms of settlement that were previously agreed upon. Their willful and contumacious utter failure to comply with the order entered in November 2020 and to otherwise comply with the Stipulation of Settlement of 2019 warrants a finding of contempt and appropriate sanctions.

Accordingly, the motion for contempt is granted and the Sponsor Defendants are hereby held in civil contempt. The Sponsor Defendants may purge their contempt in accordance with the Prior Decision and within 20 days from the date of this order by: “(a) paying their portion of the cash payment to plaintiff required to be paid under the Settlement Agreement; (b) executing and delivering the requisite releases contemplated under the Settlement Agreement in the form attached as Exhibit B to the July Agreement; (c) execute and deliver to plaintiff the lease negotiated between plaintiff and the Sponsor Defendants; (d) execute and deliver to plaintiff an assignment of each of the storage cages transferring ownership to plaintiff; and (e) take any such additional action as may be required to effectuate the Settlement Agreement including but not limited to executing a stipulation of discontinuance” (NYSCEF Doc. No. 417 at 4).

Failure to comply with the foregoing will result in a fine of \$1000 a week upon the Sponsor Defendants until their contempt is purged. The Board is also entitled to recover its reasonable attorneys' fees and costs incurred in connection with the instant motion (*see* Judiciary Law §

773), and the issue of reasonable legal fees and costs both with respect to the Prior Decision and the instant motion is referred to a Special Referee to hear and determine.

Accordingly, it is

ORDERED that plaintiff's motion for contempt is granted and the Sponsor Defendants are hereby held in civil contempt; and it is further

ORDERED that the Sponsor Defendants may purge their contempt within 20 days from the date of this order by: (a) paying their portion of the cash payment to plaintiff required to be paid under the Settlement Agreement; (b) executing and delivering the requisite releases contemplated under the Settlement Agreement in the form attached as Exhibit B to the July Agreement; (c) execute and deliver to plaintiff the lease negotiated between plaintiff and the Sponsor Defendants; (d) execute and deliver to plaintiff an assignment of each of the storage cages transferring ownership to plaintiff; and (e) take any such additional action as may be required to effectuate the Settlement Agreement including but not limited to executing a stipulation of discontinuance; and it is further

ORDERED that the Sponsor Defendants' failure to purge their contempt in accordance with the foregoing will result in a fine of \$1000 a week upon the Sponsor Defendants until their contempt is purged; and it is further

ORDERED that the plaintiff shall submit a proposed judgment against the Sponsor Defendants, jointly and severally, regarding the portion of the cash payment due plaintiff under the Settlement Agreement within 7 days from the date of this order; and it is further

ORDERED that that portion of the plaintiff's motion that seeks the recovery of attorneys' fees and costs for Mtn. Seq. Nos. 013 and 014 is severed and the issue of the amount of attorneys' fees and costs that plaintiff may recover against the Sponsor Defendants is referred to a Special Referee to hear and determine; and it is further

ORDERED that counsel for the plaintiff shall, within 30 days from the date of this order, serve a copy of this order with notice of entry, together with a completed Information Sheet,¹ upon the Special Referee Clerk in the General Clerk's Office (Room 119), who is directed to place this matter on the calendar of the Special Referee's Part for the earliest convenient date to hear and determine the amount of reasonable attorneys' fees and costs; and it is further

ORDERED that such service upon the Special Referee Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

3/3/2021

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¹ Available on the Court's website at www.nycourts.gov/supctmanh under the "References" link on the navigation bar.

DATE		ANDREW BORROK, 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