

**Board of Mgrs. of 136 W. 17th St. Condominium v
Medeiros**

2021 NY Slip Op 30741(U)

March 12, 2021

Supreme Court, New York County

Docket Number: 161988/2019

Judge: Barbara Jaffe

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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. BARBARA JAFFE **PART** IAS MOTION 12

Justice

-----X

THE BOARD OF MANAGERS OF 136 WEST 17TH STREET CONDOMINIUM, ACTING ON BEHALF OF THE UNIT OWNERS OF 136 WEST 17TH STREET CONDOMINIUM,

Plaintiff,

- v -

GEORGE MEDEIROS, CITIBANK, N.A., INTERNAL REVENUE SERVICE, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, ENVIORNMENTAL CONTROL BOARD OF NEW YORK CITY, PARKING VIOLATION BUREAU OF NEW YORK CITY, JOHN AND JANE DOE #1 THROUGH JOHN AND JANE DOE #20,

Defendants.

-----X

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 77-103, 105-120 were read on this motion for contempt.

By order to show cause, plaintiff moves, as pertinent here:

(1) pursuant to CPLR 5251 for an order finding defendant George Medeiros (defendant) in civil and criminal contempt for violating a court order dated March 16, 2020;

(2) pursuant to Judiciary Law § 756 for the imposition of sanctions against defendant for such contempt;

(3) for an order preliminarily and permanently enjoining defendant from utilizing and accessing the elevator and common areas of the condominium located at 136 West 17th Street, New York, New York based on his continued threats, verbal assaults, battery, harassment, intimidation, disturbance, and harm to building residents and his the refusal to comply with the

condominium's requirements to wear a facial mask when entering and remaining in the elevator and common areas of the building during the COVID-19 pandemic;

(4) pursuant to the condominium's declaration and bylaws of the condominium and the March 16 order and judgment, for a "supplemental" order awarding plaintiff additional costs, disbursements, and additional attorney fees to be incorporated into plaintiff's lien against the premises, and paid at the foreclosure and sale of the premises;

(5) as an alternative request to (4), for leave to amend the judgment and foreclosure and sale dated December 16, 2020 to include an additional provision allowing plaintiff to seek additional attorney fees and costs prior to the foreclosure and sale of the subject premises; and

(6) for attorney fees and costs incurred in making this application.

I. BACKGROUND

By order and judgment dated March 16, 2020, rendered on defendant's default, another justice of this court granted plaintiff a judgment of foreclosure of the lien for common charges against the unit owned by defendant and other relief related thereto, and ordered that defendant pay plaintiff's attorney fees and costs incurred in bringing the action in an amount determined and calculated by the referee and incorporated into the lien. She also permanently enjoined defendant from:

(a) causing unreasonable, disturbing, objectional conduct, noises and nuisances in the common elements of the Condominium, the Building or against any unit owner or resident of the Condominium, (b) causing any damage, loss, expense or harm to any portion of the Condominium or the Building, (c) threatening, verbally harassing, intimidating, disturbing or harming any unit owner or tenant who resides at the Condominium[.]

(NYSCEF 30).

In issuing the injunction, the justice apparently relied on the affidavit of the condominium's president, dated February 13, 2020. (NYSCEF 10). The president also stated that

during pertinent period, defendant had twice been brought to a hospital, had twice been arrested, and had threatened suicide. (*Id.*).

By decision and order dated October 23, 2020, issued on default, the justice granted plaintiff's motion for an order holding defendant in civil contempt of the March 16 order for engaging in seven acts for which she fined defendant \$250 per incident. The justice declined to hold defendant in criminal contempt absent sufficient proof of willfulness, holding that any further motion for criminal contempt must be supported by proof that plaintiff has "sought the intervention of the New York City Human Resources Administration's Adult Protective Services [APS] or of mental health professionals." (NYSCEF 73).

By order and judgment dated December 16, 2020,¹ also issued on default, the justice granted plaintiff's motion for, *inter alia*, a judgment of foreclosure and sale and, having found that defendant was incapable of adequately protecting his rights in this action, she appointed a guardian *ad litem* (GAL). While plaintiff's request for injunctive relief is mentioned in the judgment, no further mention of it appears in either the body of the judgment or the decretal. (NYSCEF 75).

On February 11, 2021, after hearing from the parties on the record, I signed the order to show cause, declined to issue the temporary restraining order on the ground that it was improperly sought post-judgment, and adjourned the motion for defendant to show cause, by Microsoft Teams, on February 25, 2021, as to why the relief sought by plaintiff should be not granted. (NYSCEF 102). On February 25, 2021, counsel for plaintiff, the condominium's president, and the GAL appeared via Microsoft Teams; defendant appeared by telephone, without objection.

¹ The justice's handwritten date of December 26, 2020 is an apparent error as the document was efiled on December 16, 2020.

II. CONTENTIONS

A. Plaintiff

1. Affidavit of condominium unit owner (NYSCEF 78)

By affidavit dated January 28, 2021, a condominium unit owner alleges that from August 20, 2020 to date, defendant continues to engage in conduct similar to that which resulted in the prior injunction and that he does not wear a mask in the common areas of the building. (NYSCEF 84).

2. Affirmation of counsel (NYSCEF 85)

By affirmation dated February 3, 2021, counsel advises that his firm tried several times to contact APS for assistance with defendant. An APS representative contacted him on December 3, 2020 and indicated that she would seek a determination from her office as to whether APS would provide assistance to defendant. (NYSCEF 88, 89). Since then, counsel states, APS has not responded to his calls for further information. Having contacted APS, counsel maintains that he has satisfied the requirement set forth in the previously assigned justice's October 23 order.

Plaintiff also seeks additional costs incurred as a result of defendant's conduct, per two affidavits of the president of the condominium's managing agent, as well as the attorney fees and costs incurred in making this application. (NYSCEF 91-97, 116-119). At the February 25 proceeding, the condominium president described the conduct by which plaintiff alleges defendant violated the March 16 order.

3. Memorandum of law (NYSCEF 100)

Plaintiff argues that defendant's conduct has "escalated to such a level" that it has no choice but to seek a second contempt citation to protect the condominium's property and its unit owners and claims that it satisfies all of the requirements for obtaining injunctive relief pursuant

to CPLR 6301.

B. Defendant (NYSCEF 114)

The GAL argues that as the issuance of the December 16 judgment contemporaneously with the order appointing him as GAL is prohibited by CPLR 1203, the judgment is void. Alternatively, he maintains that the October 23 order merged into the December 16 judgment and is no longer valid, and observes that the long form judgment, based on the proposed judgment submitted by plaintiff's counsel with decretal paragraphs, contains no decretal relating to the October 23 injunction. Moreover, he states, criminal charges based on several of the complaints advanced by plaintiff here presently pend.

According to the GAL, plaintiff fails to support its application to hold defendant in contempt as (1) it cannot meet its heightened burden of proof for civil or criminal contempt, (2) the underlying injunction is jurisdictionally defective as it merged into the judgment and is not valid, and (3) it cannot demonstrate that defendant (a) had knowledge of the order, (b) defied an unequivocal mandate of the order, or (c) acted willfully. He maintains that an additional, post-judgment injunction against defendant is precluded absent the commencement of a new action or entitlement to successive injunctions on the same underlying facts. He also denies that plaintiff can satisfy the requirements for injunctive relief set forth in CPLR 6301. Moreover, given the pendency of the criminal cases against defendant, the GAL asks that no negative inference be drawn from defendant's failure to offer evidence in this case given his fifth amendment right against self-incrimination.

IV. POST-JUDGMENT INJUNCTIVE RELIEF AND CONTEMPT MOTION

The law is well established that “[u]nless there is an underlying action which confers statutory authority on the court to grant a preliminary injunction, the court has no jurisdiction to

award such relief.” (*Hart Island Comm. v Koch*, 150 AD2d 269 [1st Dept 1989], *lv denied* 75 NY2d 705 [1990]; *see also Granelli v Granelli*, 134 AD2d 930 [4th Dept 1987] [injunction may issue only in a pending action]; 12A Carmody-Wait 2d § 78:28; CPLR 6301 [preliminary injunction may be granted in pending action]). Moreover, pursuant to CPLR 6311, “[n]otice of the motion [for a preliminary injunction] may be served with the summons or at any time thereafter and prior to judgment.”

As a final judgment has been rendered in this action and no action presently pends, injunctive relief may not be ordered.

As the instant motion for contempt relies on injunctive relief that was granted in the October 23 interlocutory order, and as that order was superseded by the December 16 final judgment of foreclosure and sale which contains no injunction, there is no basis for finding defendant in contempt.

V. THE VALIDITY OF THE OCTOBER 23 DEFAULT JUDGMENT

Pursuant to CPLR 1203, “[n]o default judgment may be entered against an adult incapable of adequately protecting his rights for whom a guardian ad litem has been appointed unless twenty days have expired since the appointment.”

Absent any dispute that the October 23 default judgment issued contemporaneously with the order appointing the GAL, it may not be enforced.

VI. FEES

As plaintiff fails to show its entitlement to the substantive relief sought, it is not entitled to fees for bringing these applications.

VII. CONCLUSION

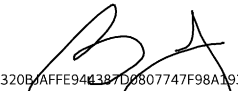
In light of the foregoing, the parties’ remaining contentions are not addressed.

Plaintiff's evidence, if true, reflects that defendant has caused much disturbance in the building and to unit owners. Procedural rules, however, may not be disregarded, especially when the drastic remedy of contempt is sought. Nonetheless, this decision and order may not be read as authorizing any of the conduct alleged.

For all of the foregoing reasons, it is hereby

ORDERED, that the motion of plaintiff The Board Of Managers of 136 West 17th Street Condominium, Acting On Behalf of the Unit Owners of 136 West 17th Street Condominium for an order finding defendant George Medeiros in civil and criminal contempt and related relief is denied.

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3/12/2021
DATE

BARBARA JAFFE, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
 REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: