

Dougenis v Peter Marcelle Project
2021 NY Slip Op 31830(U)
May 26, 2021
Supreme Court, New York County
Docket Number: 652133/2018
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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MIRIAM DOUGENIS,

Plaintiff,

- v -

PETER MARCELLE PROJECT A/K/A, HAMPTON ROAD
GALLERY, INC., PETER MARCELLE

Defendant.

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INDEX NO. 652133/2018
MOTION DATE 01/14/2021
MOTION SEQ. NO. 011

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 011) 230, 231, 232, 233, 234, 235, 236, 237

were read on this motion to/for CONTEMPT

Upon the foregoing documents, plaintiff's motion for contempt is granted on default.

The court entered judgment against defendant Peter Marcelle on July 9, 2020, in the amount of \$30,130.53, of which \$30,130.53, together with interest from the date of entry of judgment, remains due and unpaid (NYSCEF Doc. No. 226; NYSCEF Doc. No. 231). On July 10, 2020, Mr. Marcelle was served with the Restraining Notice and Information Subpoena (the Subpoena) by certified mail, return receipt requested (NYSCEF Doc. No. 233). Plaintiff has filed proof of service of this Subpoena and the return receipt (id.). The Subpoena made clear that "failure to comply with this subpoena is punishable as a contempt of court" (id.). Mr. Marcelle never timely responded to the Subpoena (NYSCEF Doc. No. 231, ¶¶ 4-7). Mr. Marcelle has also made no payments to satisfy the judgment against him.

On January 14, 2021, plaintiff served Mr. Marcelle with notice of the instant motion and the accompanying papers on which it is based (NYSCEF Doc. No. 237). The motion papers contain the required warning that Mr. Marcelle's failure to appear in court to oppose the motion might result in imprisonment or arrest for contempt of court (NYSCEF Doc. No. 230). Mr. Marcelle has not responded or even objected the subpoena.

Pursuant to CPLR § 5251, “[r]efusal or willful neglect of any person to obey a subpoena or restraining notice issued ... shall [] be punishable as a contempt of court.” Pursuant to CPLR § 5253, a judgment creditor like plaintiff has the right to obtain financial disclosure to aid it in the recovery of the money it is due and in its collection efforts (CPLR § 5253 [“ At any time before a judgment is satisfied or vacated, the judgment creditor may compel disclosure of all matter relevant to the satisfaction of the judgement... ”]). Failure to comply with a duly served subpoena under CPLR § 5253 is also “punishable as a contempt of court” (*id.*).

Accordingly, it is

ORDERED that the motion for contempt is granted; and it is further

ADJUDGED that Peter Marcelle is guilty of a contempt of court in having willfully disobeyed the Subpoena by his failure to answer in writing under oath certain written questions

accompanying the Subpoena and thus impairing, impeding and prejudicing the plaintiff's rights and remedies; and it is further

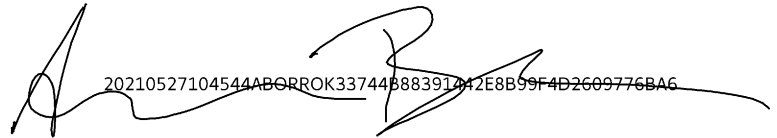
ORDERED that for the contempt of this court, Peter Marcelle is hereby fined the sum of \$150.00, to be paid to Jordan Greenberger, Esq., attorney for the Judgment Creditor, within ten (10) days after service by certified mail of a copy of this order with notice of entry; and it is further

ORDERED that upon payment of the said sum of \$150, that amount shall be credited to and applied in reduction of the judgment; and it is further

ORDERED that Peter Marcelle may purge himself of his contempt and the fine herein imposed will be remitted upon his compliance with the Subpoena within 20 days of being served with a copy of this Order; and it is further

ORDERED that upon proof by affidavit (or affirmation) of the service of a copy of this order with notice of entry thereof upon Peter Marcelle, and of the failure of Peter Marcelle to pay the fine as aforesaid and answer in writing under oath the questions annexed to the information subpoena heretofore served upon him by the date fixed by the court herein to purge the contempt, an application may be made for a warrant directing the sheriff of any county of the State of New York where Peter Marcelle may be found, to seize and arrest him forthwith and bring him before this court to be committed or for such further disposition as the court shall direct; and it is further

ORDERED that within 5 days of the entry of this order on the NYSCEF system, plaintiff shall serve a copy of this order with notice of entry upon Peter Marcelle by overnight mail and any other means reasonably calculated to give Mr. Marcelle notice of this decision and order.


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5/26/2021
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