

<b>1641 Park Ave. Assoc. v Parker</b>
2022 NY Slip Op 30363(U)
February 2, 2022
Supreme Court, New York County
Docket Number: Index No. 159106/2020
Judge: John J. Kelley
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JOHN J. KELLEY PART 56M

Justice

-----X

1641 PARK AVENUE ASSOCIATES

Plaintiff,

- v -

JUSTIN PARKER,

Defendant.

-----X

INDEX NO. 159106/2020

MOTION DATE 01/27/2022

MOTION SEQ. NO. 004

DECISION, ORDER, and JUDGMENT OF CONTEMPT

The following e-filed documents, listed by NYSCEF document number (Motion 004) 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 78, 79

were read on this motion to/for CONTEMPT.

In this action, inter alia, for ejectment, declaratory relief, and injunctive relief, the plaintiff landlord moves pursuant to Judiciary Law § 753(A)(3) to hold the defendant, an occupant of one of its apartments, in civil contempt for violating a preliminary injunction order issued by this court on March 24, 2021. The plaintiff does not submit any papers in opposition. At the oral argument of the motion on January 27, 2022, the court granted the motion from the bench, but permitted the defendant to purge himself of his contempt by making an apology to the plaintiff's attorney on the record, and promising, on the record, to cease all conduct violative of the preliminary injunction order. The defendant did so, thus purging his contempt.

To prevail on an application to punish a party for civil contempt, a party must establish that the party to be held in contempt violated a clear and unequivocal court order, known to the parties (see Judiciary Law § 753[A][3]; see also McCormick v Axelrod, 59 NY2d 574 [1983], amended 60 NY2d 652 [1983]). The applicant must also establish that the party to be held in contempt engaged in conduct that was calculated to and actually did defeat, impair, impede, and prejudice the rights of the applicant (see 450 West 14th St. Corp. v 40-56 Tenth Avenue, LLC, 15 AD3d 166 [1st Dept 2005]; Lipstick, Ltd. v Grupo Tribasa, S.A. de C.V., 304 AD2d 482

[1st Dept 2003]). “[W]ilfulness is not an element of civil contempt” (*El-Dehdan v El-Dehdan*, 26 NY3d 19, 35 [2015]). A civil contempt must be proven by clear and convincing evidence (see *Classe v Silverberg*, 168 AD3d 603, 604 [1st Dept 2019]). The plaintiff’s evidence sufficiently established, by clear and convincing evidence, that the defendant violated the March 24, 2021 preliminary injunction order and thereby prejudiced its rights.

In its March 24, 2021 order, this court preliminarily enjoined the defendant from

“harassing, threatening, or being abusive to the plaintiff, its agents, employees, and attorneys, from physically accosting or assaulting the plaintiff’s employees, or threatening to accost or assault them, from interfering with the plaintiff’s business by, among other things, deluging it and its attorney with unsolicited emails and communications, and, with respect to other communicative acts, from threatening the plaintiff and its attorneys, employees, or agents with harm to their reputations or businesses and from publicly stating that the plaintiff or its attorneys, employees, or agents are engaged in criminal or fraudulent conduct, except to the extent that such statements are made directly to law enforcement officers for the purposes of investigation or law enforcement, or in the course of a legal proceeding commenced before a duly constituted administrative tribunal or court.”

The court further directed the defendant, to the extent feasible, to

“delete or remove from Instagram and all social media any postings that characterize the conduct of the plaintiff, its agents, employees, and attorney as criminal or fraudulent and any threats to harm the reputation of the plaintiff or its attorneys; and the motion is otherwise denied.”

On this motion, the plaintiff established that the defendant violated that injunction on numerous occasions. By failing to submit opposition papers, the defendant failed to rebut the plaintiff’s evidence in this regard. Hence, the defendant must be held in civil contempt.

Nonetheless, “whether a contempt should go unpunished, and, if so, on what conditions, is a matter entirely within the discretion of the court” (*People v Williamson*, 136 AD2d 497, 498 [1st Dept 1988]). While a contemnor cannot avoid a punishment for contempt based solely on his or her unilateral act of apologizing for the contempt (see *Matter of Davidson v Visitación-Lewis*, 131 AD3d 888, 889 [1st Dept 2015]), the court, in its discretion, may conclude that an apology is a sufficient condition for purging the contempt, and direct the contemnor to make

such an apology (*Getty Prop. Corp. v Getty Petroleum Mkt., Inc.*, 2013 NY Slip Op 33138[U], \*12, 2013 NY Misc LEXIS 5861, \*16 [Sup Ct, N.Y. County, Dec. 9, 2013]).

Accordingly, it is

ORDERED that the plaintiff's motion is granted, and it is

ADJUDGED that the defendant is held in civil contempt for violating the court's March 24, 2021 order; and it is further,

ORDERED that the defendant has purged his contempt by apologizing to the plaintiff's counsel on the record, and promising, on the record, to cease and refrain from engaging in any further conduct that is violative of the court's March 24, 2021 order; and it is further,

ORDERED that neither party shall contact the court, or copy the court with any emails, with the sole exception of emails that only pertain to scheduling, and nothing else, and the court will not accept, read, or respond to any other emails or communications; and it is further,

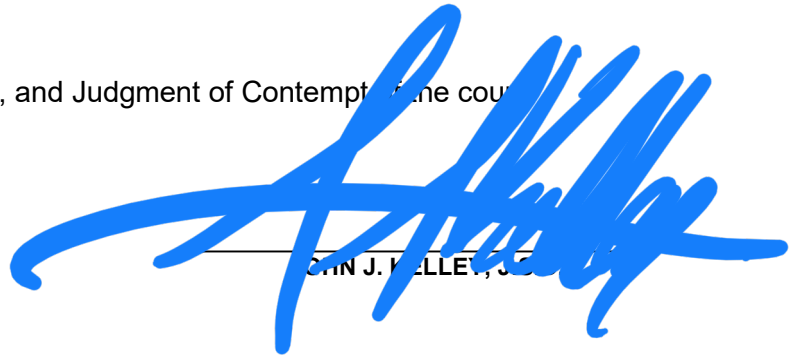
ORDERED that, should the defendant require logistical or procedural assistance in defending the action, he is directed to the Supreme Court Help Center at 60 Centre Street, Room 116, New York, New York 10007, for any and all logistical and procedural questions; and it is further,

ORDERED that the defendant is cautioned that the court will not consider any material that is not submitted in proper form to the proper Clerk pursuant to the Civil Practice Law and Rules, and that his failure to do so may result in the striking of his answer and holding him in default; and it is further,

ORDERED that, with the exception of communications with regard to scheduling, all intervention requested of the court shall be by electronically filed motion, on notice to all other parties, unless the Civil Practice Law and Rules require otherwise, or the court requests otherwise.

This constitutes the Decision, Order, and Judgment of Contempt of the court.

2/2/2022  
DATE



CHRISTOPHER J. KELLEY, J.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT

APPLICATION:

CHECK IF APPROPRIATE:

<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
<input type="checkbox"/>		<input type="checkbox"/>	REFERENCE