

Satterfield v VStock Transfer, LLC
2022 NY Slip Op 31446(U)
April 30, 2022
Supreme Court, New York County
Docket Number: Index No. 650311/2019
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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BRENT SATTERFIELD,

Plaintiff,

- v -

VSTOCK TRANSFER, LLC, AMERICA 2030 CAPITAL,
 LLC (A/K/A BENTLEY ROTHSCHILD CAPITAL LTD
 CORP.), BENTLEY ROTHSCHILD CAPITAL LTD CORP.,
 AMERICA 2030 CAPITAL, LIMITED, BENTLEY
 ROTHSCHILD FINANCIAL, LLC, BENTLEY ROTHSCHILD
 INVESTMENTS, XYZ CORPORATION 1 - 10, and VAL
 SKLAROV,

Defendants.

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INDEX NO. 650311/2019

MOTION DATE N/A

MOTION SEQ. NO. 020

**DECISION + ORDER ON
 MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 020) 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 564, 565, 566, 567, 568, 569, 570, 610, 611, 612, 613, 614, 615, 616, 617, 627, 630, 640, 641, 642, 643, 649, 650, 655

were read on this motion to/for ENFORCEMENT.

Upon the foregoing documents, it is

In motion sequence number 020, plaintiff Brent Satterfield moves, by order to show cause, for enforcement of this court's November 12, 2021 Decision and Order (Prior Order) (NYSCEF Doc. Nos. [NYSCEF] 449 and 450, Decision and Order [mot. seq. nos. 010 and 011]), and for an order of contempt and sanctions against defendants Val Sklarov, Bentley Rothschild Financial LLC (Rothschild), Bentley Rothschild Capital Limited Corp. (BRCLC), and America 2030 Capital, LLC (A2030C). Specifically, plaintiff seeks an order directing defendants to:

1. Immediately pay to plaintiff the \$15,327.58 in interest accrued since the January 3, 2022 Judgment;

2. Immediately pay to Brent Satterfield \$39,000 in reimbursement of plaintiff's post-Judgment attorneys' fees;¹
3. Immediately pay to plaintiff \$1,000,000 in damages incurred by plaintiff as a result of the judgment defendants' contempt;
4. Immediately return to plaintiff all of the Shares of CoDiagnostics (NASDAQ: CODX) (the Shares) in the possession, custody, or control, directly or indirectly, of the judgment defendants, including any such shares held at Dolfin Financial (Dolfin) in London (Dolfin Shares) or wherever else they may be, including Shares held at defendant VStock Transfer, LLC (VStock) (VStock Shares);
5. Immediately facilitate, expedite, and, as necessary, execute any paperwork that may be necessary or expedient to effectuate the return of the shares to plaintiff including but not limited to changing the ownership of the shares held at Dolfin from the A2030C U.K entity (or whatever name is holding CODX shares) to plaintiff, instructing the appropriate officials at Dolfin or the Special Administrators in charge of the Dolfin liquidation to transfer the CODX shares to plaintiff's personal account at Stifel, New York; and
6. Immediately provide irrevocable transfer instructions to Dolfin to effect the transfer of ownership and accounts to Brent Satterfield.

(NYSCEF 559, Order to Show Cause [mot. seq. no. 020].)

Background

The background of this case is set forth in this court's decision of motion sequence number 004 and will not be repeated here except as relevant to this decision finding defendants in contempt of court. (NYSCEF 200, Decision and Order [mot. seq. no. 004].) Sklarov is the principal of and controls all of the defendants. (NYSCEF 418, Final Arbitration Award at 58².) The court's reference to Sklarov encompasses all of the defendants.

¹ At the time of this application, "Plaintiff's February bill ha[d] not been finalized, but Plaintiff incurred over \$39,000 in attorneys' fees between January 3, 2022 and February 10, 2022. January's final bill was \$22,000 . . . and so far in February, Plaintiff has incurred another \$19,000." (NYSCEF 550, Salisbury affirmation ¶ 18 [Feb. 11, 2022].) Plaintiff has since submitted additional invoices. (NYSCEF 659, Invoices.)

² Pages refer to NYSCEF generated pagination.

In January 2021, Dolfin informed A2030C, Sklarov's U.K. entity holding the Dolfin Shares, that since it was no longer registered with the U.K. corporate registrar, the shares could be forfeited. (See NYSCEF 656, Plaintiff's Exhibit 7, Anne Salisbury Email to all defendants [Jan. 4, 2022] at 21-22.³)

On February 4, 2021, the American Arbitration Association (AAA) Panel directed the parties to put the Shares in escrow at Stifel Trust Company, N.A. (Stifel) to which the parties stipulated on May 20, 2021. (NYSCEF 285, Stipulation.) The stipulation was so ordered by the court on June 8, 2021. (NYSCEF 286, So Ordered Stipulation.) The shares were never transferred.

On July 9, 2021, the AAA Panel issued its award directing defendants: (1) to pay plaintiff within 30 days \$1,152,538.70 for the improper sale of 905,926 Shares; (2) to return to plaintiff the Shares held at VStock; and (3) to return to plaintiff the Dolfin Shares. (NYSCEF 418, Final Award at 70.) Defendants failed to comply.

Dolfin went into insolvency, freezing defendants' account. (NYSCEF 550, Salisbury aff ¶ 8.) On January 4, 2021, plaintiff provided defendants with the paperwork necessary to restore A2030C UK. (*Id.* ¶ 10.) There is no evidence before the court that defendants paid the franchise tax to avoid forfeiture before or after Dolfin went into insolvency or took any steps to release the Dolfin Shares to plaintiff.

On November 21, 2021, the court ordered defendants to

"immediately return to Plaintiff Brent Satterfield all of the First Tranche of shares in the possession, custody, or control, directly or indirectly, of [the Judgment Defendants] including such shares held at Dolfin Financial in London or wherever

³ Plaintiff is reminded to file each exhibit separately in NYSCEF, as by doing so, each of plaintiff's exhibits are assigned their own electronic docket number. Plaintiff must also identify the internal exhibit number and describe the exhibit when uploading each exhibit separately. Failure to do so will result in delay.

else they may be and to immediately facilitate, expedite, and, as necessary, execute any paperwork that may be necessary or expedient to effectuate the return of said shares to said plaintiff.”

(NYSCEF 449, Prior Order [mot. seq. no. 010].)

On February 14, 2022, the VStock Shares were returned to plaintiff as a result of plaintiff’s efforts to get a court order. (NYSCEF 536, So Ordered Stipulation [mot. seq. no. 015].)

On February 25, 2022, Jaitegh Singh, Esq., filed a notice of appearance as counsel to defendants when all other counsel to defendants asked to be relieved.

(NYSCEF 581.)

On February 26, 2022, Singh received Sklarov’s subpoena. (NYSCEF 592.) While there were motions to quash other subpoenas, including a subpoena on Singh, defendants failed to make such a motion. (*CVL Real Estate Holding Co., LLC v Weinstein*, 74 AD3d 565, 566 [1st Dept 2010] [when defendant refused to appear in court in response to plaintiff’s motion to hold defendant in contempt, the court found proper service where defendant failed to move to quash the subpoena].)

On March 2, 2022, Singh, executed a stipulation with plaintiff, so ordered on March 21, 2022, reiterating the court’s Prior Order that plaintiff is the rightful owner of the Dolfin Shares and agreeing that the Shares should be returned to plaintiff. (NYSCEF 640, So Ordered Stipulation.) To date, the Dolfin Shares have not been returned to plaintiff.

Contempt Hearing

On February 14, 2022, the court directed the parties to appear for argument on this motion for contempt on February 17, 2022 and scheduled an in-person hearing on

contempt for March 4, 2022. (NYSCEF 560, Order to Show Cause.) On March 2, 2022, at 4:11 p.m., Sklarov's counsel filed an affirmation saying that his client could not appear for the contempt hearing against him. (NYSCEF 599, Singh aff ¶ 4.) The court rejected counsel's affirmation as counsel failed to disclose the whereabouts of his client and had no personal knowledge of any factual assertions in his affirmation. On March 3, 2022, at 9:11 am, Sklarov filed an affidavit allegedly notarized by a notary in Butler County, Pennsylvania on March 3, 2022. (NYSCEF 609, Sklarov affidavit [Mar. 3, 2022].) Again, without disclosing his whereabouts, Sklarov claimed to be too busy to appear because of the war in Ukraine. (*Id.*) In his affidavit, Sklarov additionally represented to the court that "[i]n an effort not to prolong this matter indefinitely, I am willing to appear via video conference at any future date and time which this Court determines is acceptable with the exception of this Friday, March 4, 2022." (*Id.*)

On March 3, 2022, the court granted Sklarov's request, noted the Pennsylvania notarization, and adjourned the in-person contempt hearing to April 1, 2022 at 10:00 a.m. (NYSCEF 620, Order.) Next, the court was informed that Sklarov was not in Pennsylvania and his attorney had no idea where he was located. (See NYSCEF 621, Order.) The court then immediately ordered Sklarov to disclose his location so the court could determine if his affidavit was valid. (*Id.*)

Pursuant to court's order, in a March 4, 2022 affidavit, Sklarov claimed to be in the Maldives. (NYSCEF 622, Sklarov aff [Mar. 4, 2022].) His affidavit was again notarized in Pennsylvania with no indication that the notary knew where Sklarov was or whether the notarization complies with the law where Sklarov was purportedly located. Pennsylvania notary law allows Pennsylvania notaries to notarize individuals even if the

individual is not presently in Pennsylvania. (57 Pa Stat Ann § 306.1 [b] [4] [ii].)

However, the Pennsylvania law is contingent on the law where the individual is located; the notarization must be consistent with the law in that jurisdiction. (See *id.*) There is no evidence before this court that the Pennsylvania notary complied with the law of the Maldives, if that is actually where Sklarov was located. Indeed, there is no indication that the notary knew where Sklarov was at the time of the notarization to comply with the strictures of Pennsylvania law; this is accentuated by the admission that Sklarov's own attorney had no idea where he was. Further, Sklarov has failed to provide the court with any proof demonstrating that the notarization is consistent with the law of the Maldives or proof that Sklarov was actually located there. Accordingly, the court finds the documents (NYSCEF 609 and 622), to be unsworn and unreliable.

In a March 23, 2022 email to the court, Sklarov's counsel informed the court that Sklarov would not be appearing at the contempt hearing against him on April 1, 2022 either because he had allegedly complied with the court's Prior Order and returned the shares, which was not true, or because his family was in Ukraine, though Sklarov's whereabouts were again undisclosed.⁴ On March 25, 2022, the court agreed to Sklarov's virtual appearance on April 1, 2022. At the hearing, Sklarov failed to appear virtually; this failure to appear not only constituted his default, but also another instance of contempt of court.

⁴ Counsel is directed to file all emails with the court in NYSCEF, including emails sent to the court on March 3, 2022 and on April 4, 2022.

After the court found Sklarov in default, and on April 4, 2022 at 1:45 p.m., Sklarov contacted the court by email to object to any penalty for the default and finding of contempt. Again, Sklarov failed to offer any proof as to his whereabouts.

Legal Standard

Under the Judiciary Law, the court has the power to punish a party for contempt by fine, imprisonment, or both. (Judiciary Law § 753 [A][3].) Under CPLR 5104, any “final judgment or order . . . may be enforced by serving a certified copy of the judgment or order upon the . . . person required . . . to obey it and, if he refuses or wilfully neglects to obey it, by punishing him for a contempt of the court.” The purpose of civil contempt is “the vindication of a private right of a party to litigation and any penalty imposed upon the contemnor is designed to compensate the injured private party for the loss of or interference with that right.” (*McCormick v Axelrod*, 59 NY2d 574, 583 [1983].) Judiciary Law § 773 authorizes the Court to impose a fine on the contemnor for the civil contempt for an amount that is sufficient to indemnify the aggrieved party. (*Id.*) The contemnor is entitled to an opportunity to purge himself of the contempt within ten days after service of the order. (*Id.*; *Davidowitz v Hamroff*, 196 Misc 209 [Sup Ct, Kings County 1949] [service on attorney for a party suffices; personal service is required for a nonparty].) The contemnor may be committed to prison until the fine, plus costs and expenses, is paid or until he is discharged according to law. (Judiciary Law § 773.) When the contemnor willfully refuses to make a court-ordered payment, incarceration as a coercive remedy is justified. (*Melanie C. v Carlo B.*, 192 AD3d 624, 624 [1st Dept 2021] [father who willfully violated his child support obligations could be incarcerated up to six months or suspension of commitment].) The imprisonment ends with the

performance of the act and the payment of the fine. (Judiciary Law § 774 [1]; *N.A. Dev. Co. Ltd. v Jones*, 99 AD2d 238, 240 [1st Dept 1984].) “Where it is in the power of the offender to perform the act directed, it is immaterial that he may be imprisoned for a long time, for he has it in his power to perform the act ordered.” (*Id.*) If the imprisonment is indefinite or for more than three months, the imprisoned contemnor must be brought before the sentencing judge at least once every 90 days to determine whether the offender should be discharged from prison. (Judiciary Law § 774 [2].) Finally, “subsequent obedience does not discharge liability for previous disobedience” or the damage caused by each contempt. (*Root v Conkling*, 108 Misc 234, 235 [Sup Ct, Otsego County 1919], *aff’d* 199 AD 90 [3d Dept 1921].)

Discussion

At the hearing on April 1, 2022, plaintiff established by clear and convincing evidence the elements necessary for a finding of civil contempt under Judiciary Law § 753(A)(3). “First, ‘it must be determined that a lawful order of the court, clearly expressing an unequivocal mandate, was in effect.’” (*El-Dehdan v El-Dehdan*, 26 NY3d 19, 29 [2015] [citation omitted].) This is an action for fraud in which plaintiff has, since 2018, sought return of the Shares he pledged for an alleged loan. (See NYSCEF 130, Complaint.) Since February 4, 2021, defendants have been ordered to transfer the shares either to escrow or to plaintiff; the orders are all simple and could not be clearer. (See NYSCEF 286, Stipulation; NYSCEF 418, Final Award; NYSCEF 449, Decision and Order [mot. seq. no. 010; NYSCEF 450, Decision and Order [mot. seq. no. 010].)

“Second, ‘[i]t must appear, with reasonable certainty, that the order has been disobeyed.’” (*El-Dehdan v El-Dehdan*, 26 NY3d 19, 29 [2015]) [citation omitted].) The

VStock Shares were not transferred to plaintiff until February 14, 2022, in excess of three months from issuance of the court's Prior Order, while the Dolfin Shares have never been returned to plaintiff. Likewise, the damage award of \$1,152,538.70 remains unpaid and there is no claim of indigence. Indeed, there is some evidence that defendants have upwards of \$80 million and a line of credit for \$150 million. (NYSCEF 454, Salisbury tr at 29:6, 30:18 [mot. seq. nos. 010 and 011] [referencing defendants' testimony at the arbitration].)

Defendants made it crystal clear that they had the ability to comply with the court's order but chose not to after plaintiff refused to capitulate to defendants' demand cloaked as a "confidential settlement offer." On January 6, 2022, counsel to defendants emailed plaintiff threatening to file for bankruptcy and offered to comply with the court's Prior Order by transferring the VStock Shares "without delay" to plaintiff in exchange for defendants keeping the Dolfin Shares. (NYSCEF 656, Plaintiff's exhibit 24 at 63.) CPLR 4547, the provision governing the admissibility of compromise and offers to compromise, states that "[e]vidence of (a) furnishing, or offering or promising to furnish, or (b) accepting, or offering or promising to accept, any valuable consideration in compromising or attempting to compromise a claim *which is disputed as to either validity or amount of damages*, shall be inadmissible as proof of liability for or invalidity of the claim or the amount of damages." (Emphasis added.) Critically, the language of CPLR 4547 imposes the requirement that the claim must be in dispute, as to validity or amount of damages. A settlement negotiation or offer to settle a claim that is not disputed, either as to its validity or amount of damages, is thus admissible. (*Java Enters. v Loeb, Block & Partners LLP*, 48 AD3d 383, 384 [1st Dept 2008].) Here, the

claim is unequivocally not in dispute because of the parties' Stipulation, (NYSCEF 286), AAA Panel's Final Award, (NYSCEF 418), and this court's Prior Order (NYSCEF 449; NYSCEF 450). The email is admissible. The mere inclusion of the words "settlement negotiation," or variations thereof, do not make it an offer to compromise barred by CPLR 4547. (*Nineteen Eighty-Nine, LLC v Ichan*, 96 AD3d 603, 607 [1st Dept 2012].) Here, it matters not that defendants' counsel included a disclaimer at the bottom of his email which stated in part: "This correspondence is directly related to settlement negotiations and, as such, any and all information contained herein is protected." The inclusion of this superfluous disclaimer is ineffective and contrary to law.

"Third, 'the party to be held in contempt must have had knowledge of the court's order.'" (*El-Dehdan v El-Dehdan*, 26 NY3d 19, 29 [2015].) Defendants had knowledge of the court's order and the ability to comply; defendants have been represented by counsel throughout this entire proceeding. The court's orders are publicly filed in NYSCEF. As to the VStock Shares, defendants did nothing to comply with the orders despite at least six emails from plaintiff requesting assistance. (NYSCEF 656, Plaintiff's Exhibits at 34, 38-61.) As to Dolfin, the alleged settlement offer confirms that defendants understood the orders. (*Id.* at 63 ["Clients propose that the shares held at V-Stock would be transferred to Mr. Satterfield without delay and my clients will cooperate in any sort of way necessary to help expedite that transfer. In return, Mr. Satterfield relinquishes the right to any of the shares at Dolfin in the UK, which would be retained by clients."]; see *also* NYSCEF 569, Singh email to Salisbury [Feb. 16, 2022] ["I've been able to reach the client for a short period. He's agreed to cooperate on a vstock and dolphin."].) And, for what it is worth, Sklarov's affidavit (NYSCEF 609,

Sklarov aff [Mar. 3, 2022]), demonstrate that he is fully aware of the court's Prior Order and that there was a contempt hearing for his disobedience.

"Fourth, 'prejudice to the right of a party to the litigation must be demonstrated.'" (*El-Dehdan v El-Dehdan*, 26 NY3d 19, 29 [2015] [citation omitted].) Since the order issued, the price of the Shares has plummeted, fluctuating from a \$8.67 (close price on November 22, 2021) to \$4.68 (open price on April 25, 2022). Over the last year, the stock has ranged from a high price of \$11.82 and to a low price of \$4.66.⁵

The court heard testimony from plaintiff and Anne Salisbury, plaintiff's attorney, who both testified credibly. The court directed Sklarov to appear on March 4, 2022, and adjourned the March 4, 2022 proceeding, at Sklarov's request, to April 1, 2022. Again, Sklarov was ordered to appear in person, but failed to do so.⁶ "[A] party may be held in contempt upon his default in appearing at the contempt hearing." (See *Green v Green*, 288 AD2d 436 [2d Dept 2001] [holding failure to appear at a contempt hearing, resulting in a default, also constitutes a waiver of any due process rights].) The facts of this case are analogous to the facts presented in *CVL Real Estate Holding Co. v Weinstein*. (74 AD3d 565, 565 [1st Dept 2010].) There, a judgment debtor was found in contempt and an arrest warrant issued after the judgment debtor failed to comply with prior court orders and failed to appear at his contempt hearing even though his counsel was present. (*Id.* [affirming trial court order granting contempt motion and directing a warrant for arrest and finding no violation of due process].)

⁵ This is publicly available information, available at <https://finance.yahoo.com/quote/CODX/>.

⁶ In addition to the court having personal jurisdiction over the parties, Sklarov and his entities were also served with subpoenas or service was attempted at last known addresses. (NYSCEF 592, Salisbury email [Feb. 26, 2022].)

“The right to arrest in a civil action is a drastic remedy, regarded as penal in nature. Owing to the severity of the relief, the courts do not look with favor upon its pursuit, except where it is necessary to protect the interests of plaintiff.” (*Burns v Newman*, 274 AD301, 302 [1st Dept 1948] [citations omitted].) The court in *Burns* opined that the requisite necessity could be found when the plaintiff has suffered damage by reason of defendant’s false representations in a case involving claims for loss of property by false representation. (*Id.*, citing *Peterson v Kirby*, 192 AD 707 [1st Dept 1920].) Here, Sklarov’s utter disregard and contempt for this court could not be any clearer. Plaintiff has been damaged, maybe even irreparably damaged as evidenced by the difference in share price from November 22, 2021 until today. Sklarov shall have five (5) business days to comply with the Prior Order, or no later than May 3, 2022 at 12 noon EST. If he fails to comply, a warrant will issue. A daily financial penalty would be ineffectual based on this record. Sklarov shall be incarcerated until such time as the Shares are transferred.

Plaintiff’s request for attorneys’ fees and expenses is denied without prejudice for failure to explain the services provided and failure to file an affirmation of services. There was no explanation as to why the court should grant attorneys’ fees related to work performed in connection to opposing motions to withdraw as counsel. (See e.g., NYSCEF 659, Invoices at 3 [“1/25/2022 AWS Prepared and served opposition to counsel withdrawal.”].)

Accordingly, it is

ORDERED that plaintiff's motion for an order adjudicating defendants Val Sklarov, Bentley Rothschild Financial LLC, Bentley Rothschild Capital Limited Corp., and America 2030 Capital, LLC, in civil contempt is granted; and it is further

ORDERED that plaintiff is directed to submit the April 1, 2022 transcript to be so ordered; and it is further

ORDERED that defendants' disobedience has defeated, impaired, impeded and prejudiced plaintiff's rights under the court's Prior Order dated November 12, 2021 and subsequent orders, and the misconduct of the defendants is further found to have consisted of an omission to perform an act or duty which it was within defendants' power to perform and plaintiff has no alternative effective remedies available; and it is further

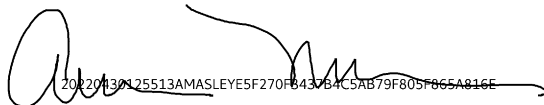
ORDERED that defendants are held in Civil Contempt and are directed within five business days of this order to purge the contempt, such period ending on May 6, 2022 no later than 12 noon EST, by immediately returning to plaintiff all of the CODX shares in the possession, custody, or control, directly or indirectly, of the defendants including such shares held at Dolfin Financial in London or wherever else they may be and to immediately facilitate, expedite, and, as necessary, execute any paperwork that may be necessary or expedient to effectuate the return of said shares to said plaintiff; and it is further

ORDERED in the event defendants fail to comply with this order to purge, within five business days, such period ending on May 6, 2022 no later than 12 noon EST, a civil arrest warrant shall issue for Sklarov's arrest; and it is further

ORDERED that if defendants fail to comply, then plaintiff shall submit an affidavit to the court by email and filed in NYSCEF and a warrant of arrest shall issue; and it is further

ORDERED that any relief not expressly addressed has nonetheless been considered and is denied without prejudice; and it is further

ORDERED that plaintiff shall submit an affirmation detailing the services performed and identifying all timekeepers including brief descriptions of their jobs and level of experience on NYSCEF and by email (SFC-Part48@nycourts.gov) within ten days of this order.



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4/30/2022

DATE

ANDREA MASLEY, 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