

Cipriani v Wiseman
2022 NY Slip Op 31678(U)
May 11, 2022
Supreme Court, Kings County
Docket Number: Index No. 519963/2020
Judge: Francois A. Rivera
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- contempt plus (without limitation) the legal costs, and directing the clerk to enter judgment accordingly (altogether, the “Civil Contempt Judgment”);
- (D) assessing a criminal sanction and monetary fine against Defendants sufficient to vindicate the authority of the Court including, without limitation, a statutory fine in the amount of \$1,000 for each act of criminal contempt (altogether with the Civil Contempt Judgment, the “Contempt Judgment”);
 - (E) directing the Defendants to immediately (a) satisfy the Contempt Judgment and (b) purge themselves of contempt by, among other things, turning over to Plaintiff all financial and organizational records of Sea Wolf Services that were used and can be used to prepare, verify, and audit the payroll protection program loan applications and the financial statements of Sea Wolf Services LLC for the calendar years 2017, 2018, 2019, and 2020, and through the present;
 - (F) ordering the issuance of a warrant for the arrest, commitment and/or imprisonment of Defendants until such time as they, their employees, agents, independent contractors, representatives, and all others acting on their behalf or under their direction satisfy the Contempt Judgment and purge themselves of the contempt by complying with the items set forth immediately above; and

NOW, upon reading and filing the Motion and all related papers, including the: (1) Proposed Order to Show Cause for an Order Holding Defendants in Contempt of Court [NYSCEF No. 147], (2) Affidavit of Daniel L. Cipriani in Support of Plaintiff's Application, By Order to Show Cause, for an Order Holding Defendants in Contempt [NYSCEF No. 148], (3) Affirmation of John P. Amato in Support of Plaintiff's Application, By Order to Show Cause, for an Order Holding Defendants in Contempt [NYSCEF No. 149], (4) Memorandum of Law in Support of Plaintiff's Application, By Order to Show Cause, for an Order Holding Defendants in Contempt [NYSCEF No. 150], (5) Good Faith Affirmation of John P. Amato in Support of Plaintiff's Application, By Order to Show Cause, for an Order Holding Defendants in Contempt [NYSCEF No. 151], (6) the Executed Order to Show Cause for an Order Holding Defendants in Contempt of Court [NYSCEF No. 154], (7) Defendants' Memorandum of Law in Opposition to Plaintiff's Application to Hold Defendants in Contempt [NYSCEF No. 158], (8) the Affirmation of Carolyn E. Kruk in Opposition to Plaintiff's Motion for Contempt and related Exhibit [NYSCEF Nos. 159-

160], (9) the Affidavit of Jacob L. Sacks in Opposition to Plaintiff's Motion for Contempt [NYSCEF No. 161], and (10) upon all the pleadings, filings and proceedings in this case to date; and

UPON this Court conducting a pre-evidentiary conference on March 29, 2022, and an evidentiary hearing on April 19, 2022, and May 2, 2022 (collectively, the "Conference and Hearings"); and

UPON finding that it was undisputed that Defendants did not produce documents in compliance with the Accounting Order before February 9, 2022; and

UPON this Court concluding on the record that the evidence presented by the Plaintiff, clearly and convincingly, established that the Defendants violated a clear and unequivocal mandate of this Court of which they had knowledge, and thereby prejudiced the rights of the Plaintiff (*see Pierot v Marom*, 172 AD3d 930, 931 [2nd Dept 2019]). Although the Defendants had moved for reargument of the Plaintiff's motion for summary judgement and also sought a stay of the Accounting Order, they did not obtain a temporary restraining order and thus were compelled to comply with the terms of the Accounting Order as set forth therein. The Defendants did not do so until February 9, 2022.

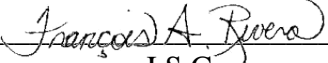
ORDERED, that Defendants James P. Wiseman, Jacob L. Sacks, and Sea Wolf Services LLC pay a fine in the amount of \$250 to the Lawyer's Fund for Client Protection and pay to Plaintiff reasonable attorney's fees, costs and disbursements ("Legal Costs") incurred by Plaintiff, up to and including May 2, 2022, from making the Motion and both preparing for, and participating in, the Conference and Hearings, pursuant to Judiciary Law §§ 753, 773 and CPLR 5104; and it is further

ORDERED, that Plaintiff's counsel submit to this Court, by May 23, 2022, an Affirmation describing the Legal Costs; and it is further

ORDERED, that Defendants James P. Wiseman, Jacob L. Sacks, and Sea Wolf Services LLC shall submit any response to the Affirmation on or before May 31, 2022.

The foregoing constitutes the decision and order of the Court.

ENTER:



J.S.C.