

Vandergrand Props. Co., L.P. v Warnock
2022 NY Slip Op 31698(U)
May 26, 2022
Supreme Court, New York County
Docket Number: Index No. 150336/2020
Judge: Arlene Bluth
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
 NEW YORK COUNTY**

PRESENT: HON. ARLENE BLUTH PART 14

Justice

-----X

VANDERGRAND PROPERTIES CO., L.P.,
 Plaintiff,

- v -

SUSAN WARNOCK, ROBERT BECKER
 Defendant.

-----X

INDEX NO. 150336/2020
MOTION DATE N/A
MOTION SEQ. NO. 009

**DECISION + ORDER ON
 MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 009) 255, 256, 257, 258, 259, 260, 261, 262, 268, 269, 270, 280, 281
 were read on this motion to/for CONTEMPT.

The motion by plaintiff to hold defendant/judgment debtor Susan Warnock in contempt is granted in part as described below.

Background

In the post-judgment stage of this litigation, plaintiff seeks *inter alia* to hold defendant in contempt for failure to produce documents and appear for a deposition. Previously, the Court issued deadlines for Warnock to produce documents by April 8, 2022 and to appear for a deposition by April 22, 2022 (NYSCEF Doc. No. 240 at 2). The Court noted that defendant Warnock, an attorney admitted to practice in this Court, is on e-filing and assuredly had knowledge of the Court’s order (*id.*).

In opposition, Warnock does not deny that she disobeyed this Court order. Rather, she makes representations in her affidavit in opposition that she will never possess the assets to satisfy the judgment entered against her in this case and that she “does not own any real property, nor do I maintain savings accounts and investment accounts, nor do I own a stock portfolio,

treasury bills or any other assets which could be sold or levied to satisfy the \$1,000,000 + judgment” (NYSCEF Doc. No. 280, ¶ 2).

Warnock also claims that she told counsel for plaintiff that she had to devote a lot of time in April to prepare one of her clients for a series of court-ordered depositions and this interfered with her ability to sit for a deposition. She also contends that there was a leak in her apartment that damaged the computer where most of her financial documents are stored. Warnock explains that she will need more than the eight days the Court provided in the previous order to retrieve documents from a flash drive she characterizes as a back-up.

Discussion

“The goal of civil contempt is to vindicate a party's right to the benefits of a judicial mandate or to compensate that party for the interference by the contemnor. In order to adjudicate a party in civil contempt, a court must find: (1) that a lawful order of the court, clearly expressing an unequivocal mandate, was in effect, (2) that the party against whom contempt is sought disobeyed the order, (3) that the party who disobeyed the order had knowledge of its terms, and (4) that the movant was prejudiced by the offending conduct” (*Spencer v Spencer*, 159 AD3d 174, 177, 71 NYS3d 154 [2d Dept 2018]).

The Court finds that Warnock clearly violated the Court's previous order and grants the branch of plaintiff's motion to hold her in civil contempt. The Court's order was very clear: Warnock had to respond to the information subpoena by April 8, 2022 and to show up for a deposition by April 22, 2022 and she admits she did not comply with either directive. There is no question Warnock had knowledge of the order and that it prejudiced plaintiff's efforts to recover its judgment.

The Court is baffled by Warnock's opposition. The previous decision by the Court was plaintiff's second motion for contempt arising out of post-judgment subpoenas (this is the third application). The subpoenas are from December 2021, and so Warnock had plenty of time to prepare her responses so they would be ready when her attempts to delay came to an end. In what world could Warnock think that she could simply ignore the eventual Court order to comply with the subpoenas?

That she now writes a general and vague statement about her inability to satisfy the judgment is wholly unsatisfactory, irrelevant, and internally inconsistent. While she claims to have no money, she also swears that she was busy working with a client (which she was presumably not doing for free) and claims that her financial records were damaged due to a leak (despite providing no information about the leak). And that she may not have assets sufficient to pay the judgment does not absolve her of her obligation to respond. Warnock's vague statement does not excuse her willful decision to thumb her nose at plaintiff and this Court.

Warnock is an experienced attorney who knows, or should know, that writing a single paragraph claiming she does not have assets is not a proper response to an information subpoena. And she should also know that a Court-ordered deadlines, issued after months of being chased by the plaintiff, is not a suggestion to be ignored at her option.

Her excuse that she had a leak in her apartment is equally underwhelming. There are no details provided about when the leak happened, the extent of the damage or any records (such as repair records) to support this excuse. Even if she did not prepare her response despite having many months' notice, Warnock could have obtained documents directly from third parties (such as online copies of statements for bank accounts or retirement accounts). If she took the Court-ordered deadline seriously and was trying to comply, she could have brought an order to show

cause for an extension of time due to the alleged leak. Warnock could have, at the very least, turned over what she had and used best efforts to procure the rest of the documents. Instead, Warnock submits an affidavit dated May 24, 2022 explaining that she has still done nothing and there is no indication when she will actually do something.

Warnock's claim that she did not comply with this Court's order because she was working with a client is ridiculous especially because she was well aware of her obligations for many months; the contempt motions only came after she ignored her obligations pursuant to the subpoena. Obviously, this Court's clear and direct order and deadline meant nothing to her and so she made the calculated decision to ignore it and she failed to produce a single document or show up for her court-ordered deposition. What is particularly appalling for this Court is that Warnock did not even bother to attach a response to the information subpoena to her affidavit in opposition or propose dates when she can appear for a deposition. Her profound disregard of Court orders and of her obligation as a sworn officer of the court are most concerning.

Pursuant to Judiciary Law § 773, the Court imposes a fine of \$250 plus sanctions in the amount of reasonable attorneys' fees, costs and disbursements incurred by plaintiff in connection with this motion. Plaintiff shall upload a proposed order along with appropriate documentation supporting its desired amount (plaintiff did not attach any bills or invoices to this motion) on or before June 2, 2022. The Court will then consider whether or not to approve the requested amount.

The Court declines to imprison Warnock or hold her in criminal contempt at this time.

The Court also observes that this motion does not absolve Warnock of her obligation to respond. Therefore, she must respond, formally (her opposition to this motion does not suffice), to the information subpoena by June 2, 2022 and must appear for a deposition by June 23, 2022.


Plaintiff may, of course, make another appropriate application should Warnock ignore this Court again.

Accordingly, it is hereby

ORDERED that the motion to *inter alia* to hold Warnock in contempt is granted to the extent that Warnock is in civil contempt of this Court’s order dated March 31, 2022, the Court imposes a fine of \$250 plus sanctions in the amount of reasonable attorneys’ fees, costs and disbursements incurred by plaintiff in connection with this motion; and it is further

ORDERED that Warnock shall respond to the information subpoena by June 2, 2022 and appear for a deposition by June 23, 2022; and it is further

ORDERED that plaintiff shall upload a proposed order in accordance with this decision detailing its claimed legal fees, costs and disbursements along with sufficient exhibits to support the requested amounts by June 2, 2022.

<u>5/26/2022</u> DATE					 ARLENE BLUTH, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION			
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input checked="" type="checkbox"/>	SUBMIT ORDER		<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT		<input type="checkbox"/>	REFERENCE