

Bank of Baroda, N.Y. Branch v Dani II Inc.
2022 NY Slip Op 32190(U)
July 8, 2022
Supreme Court, New York County
Docket Number: Index No. 655727/2019
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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BANK OF BARODA, NEW YORK BRANCH,	INDEX NO.	<u>655727/2019</u>
Plaintiff,	MOTION DATE	<u>05/13/2022,</u> <u>05/13/2022</u>
- v -	MOTION SEQ. NO.	<u>004 005</u>
DANI II INC., PRABKIRAT S. ANAND, A/K/A KIRAT S. ANAND		
Defendant.	DECISION + ORDER ON MOTION	

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 120, 123, 124, 125, 126, 127, 128, 129, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148

were read on this motion and cross-motion for CONTEMPT.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 130, 131, 132, 133

were read on this motion to/for EXTEND TIME TO FILE OPPOSTION.

Plaintiff Bank of Baroda, New York Branch (“Bank of Baroda” or “Plaintiff”), moves (NYSCEF 98) to hold Defendants Dani II Inc. and Prabkirat S. Anand, a/k/a Kirat S. Anand (“Defendants”) in contempt of court for failing to comply with the order dated July 8, 2021(NYSCEF 103) compelling compliance with post-judgment subpoenas (the “Subpoenas”) (NYSCEF 100). Defendants oppose and cross-move (NYSCEF 123) for an order granting sanctions on the grounds that Bank of Baroda filed certain of Defendant Prabkirat S. Anand’s (“Anand”) Confidential Personal information (“CPI”) in violation of 22 NYCRR 202.5(e). Bank

of Baroda's unopposed motion to extend the time to respond to the Cross-Motion and Opposition filed by Defendants from May 6, 2022, to May 12, 2022, is GRANTED pursuant to CPLR 2004 and the papers filed on May 12, 2022 (NYSCEF 134-146) have been considered. Bank of Baroda's motion for contempt is DENIED without prejudice to renew if Defendants do not respond to the Subpoenas' document requests as clarified in Bank of Baroda's April 11, 2022, correspondence and appear for a deposition as set forth below. Defendants' cross-motion is DENIED.

BACKGROUND

On July 28, 2020, a judgment in the amount of \$1,049,052.58 ("Judgment") (NYSCEF 53) was entered in favor of Plaintiff and against Defendants. Notice of entry was served (NYSCEF 54-55) and no appeal was taken.

Plaintiff sought to enforce the Judgment and moved on February 23, 2021 (NYSCEF 58) to compel Defendants to comply with the Subpoenas") and for contempt for violating a restraining notice. By order dated July 8, 2021 (NYSCEF 92), the Court granted that branch of Plaintiff's motion seeking to compel responses to the Subpoenas and directed responses to document requests within thirty days and a deposition of Anand within fifty days. The Court denied without prejudice that branch of the motion seeking contempt with leave to renew based upon the discovery provided. The Court found that "Defendants have not provided a valid excuse for failing to respond to the Subpoenas." (NYSCEF 92) (*Bank of Baroda v Dani II Inc.* 2021 WL 2856744 *2 [N.Y. Sup Ct, New York County 2021]).

Following the entry of the Judgment, Defendants made settlement overtures, but no settlement was consummated. (NYSCEF 125, 135, 136). On August 18, 2021, Bank of Baroda sent a notice to Defendants claiming they were in violation of the July 8, 2021, Order (NYSCEF

139). Plaintiff's motion, filed on November 12, 2021, after Defendants' settlement terms had been rejected, alleges that, despite the Court's directive, that Defendants "never produced any responsive documents to the Subpoenas and further never appeared for testimony." (NYSCEF 99 [Emery Affirmation ¶7]).

Following the filing of the Plaintiff's motion, multiple adjournments were stipulated to and "So Ordered" by the Court (NYSCEF 108-117, 120). Among other things, representations were made to the Court that "defendants have provided all the documents they have in response to [Plaintiff's] requests" (NYSCEF 111) and that negotiations to resolve this case persisted through at least March of 2022 (NYSCEF 120).

Additionally, the parties stipulated on December 10, 2021, that Bank of Baroda would redact certain of Anand's confidential personal information ("CPI") from the record (NYSCEF 108). The record shows that counsel for Plaintiffs contacted the Clerk's e-filing office and requested that CPI be sealed and, further, that Defendant Anand filed certain of his own CPI while he was representing himself *pro se*. (NYSCEF 145).

In response to the deficiencies claimed by Bank of Baroda, Anand provided affidavits sworn to on February 3, 2022, and March 3, 2022, to Bank of Baroda indicating that documents had been or were being provided, did not exist or were inaccessible by him. (NYSCEF 126-127). On March 3, 2022, counsel for Defendants offered in writing to produce Anand for a deposition. (NYSCEF 128). Following additional exchanges between counsel, by letter dated April 11, 2022, Bank of Baroda specified the information it claims remains outstanding as follows:

1. Bank Records and Statements for every Bank account of Anand from 2017 to the present including but not limited to the accounts he held at HSBC, Bank of America, and Citibank. Anand has only provided Bank Records and Statements from 2019 onward.
2. Bank Records and Statements relating to the bank account he holds or held at Bank of America.
3. Bank Records and Statements relating to the bank account he holds or held at Citibank. If Anand cannot turn these documents over, without his wife's consent, the Bank will ultimately subpoena his wife.
4. Any and all Documents reflecting the sale, transfer, and/or disposition of inventory of Dani II.
5. The Financial Statement of Net Worth filed by Anand in the divorce proceedings under Index Number 365082/2021 in New County Supreme Court (NYSCEF Doc. Nos. 32 and 33) and records relating to payments made to Pryor Cashman to represent him in that divorce proceeding.

(NYSCEF 143).

On April 29, 2022 – more than five months after Plaintiff filed its motion and more than four months after entering the stipulation– Defendants filed an opposition cross-motion for sanctions against Plaintiff for filing confidential personal information in violation of 22 NYCRR 202.5(e)(1) (NYSCEF 123). On May 12, 2022, Bank of Baroda replied claiming that Defendants' productions were incomplete, and that a restraining notice was violated because, among other things, banks statements were not provided before June of 2019, Defendant Dani II Inc. was dissolved and because several thousand dollars in payments were made by Defendants to American Express and Soho House. (NYSCEF 138).

DISUCSSION

A. The Motion for Contempt is Denied with Leave to Renew After Deposition

CPLR 5251 provides:

Refusal or willful neglect of any person to obey a subpoena or restraining notice issued, or order granted, pursuant to this title; false swearing upon an examination or in answering written questions; and willful defacing or removal of a posted notice of sale before the time fixed for the sale, shall each be punishable as a contempt of court.

The authority to punish for civil contempt is codified in Judiciary Law § 753. (*In re Wimbledon Fin. Master Fund, Ltd. v Bergstein*, 173 AD3d 401, 402 [1st Dept 2019]). Under that section, “the Court must expressly find that the person's actions were calculated to or actually did defeat, impair, impede, or prejudice the rights or remedies of a party to a civil proceeding.” (*Oppenheimer v Oscar Shoes, Inc.*, 111 AD2d 28, 29 [1st Dept 1985]). As explained by the Second Department:

A party seeking to hold another party in civil contempt has the burden of proving the contemptuous conduct by clear and convincing evidence. In order to punish a judgment debtor for contemptuous conduct in reference to a CPLR article 52 money judgment enforcement device, the judgment creditor must establish the judgment debtor's “refusal or willful neglect”. A subpoenaed witness must be shown to be in possession of or have reasonable access to the information sought in order for the subpoenaed witness to be held in civil contempt.

(*Gray v Giarrizzo*, 47 AD3d 765, 766 [2d Dept 2008][citations omitted]).

Considering the parties’ prolonged attempts to address Bank of Baroda’s discovery concerns and reach a resolution of this case, resulting in multiple stipulations and orders of adjournment, the Court does not believe that a finding of civil contempt is warranted at this time. The Court instead directs that Defendant Anand reply to the five requests made in Bank of Baroda’s April 11, 2022, letter as set forth above within twenty (20) days of the service of this order with notice of entry and appear for a deposition within thirty (30) days of the service of this order with notice of entry. The parties shall work in good faith vis-à-vis any post-deposition requests for information.

B. The Cross-Motion for Sanctions is Denied

22 NYCRR 202.5(e)(2) provides:

The court sua sponte or on motion by any person may order a party to remove CPI from papers or to resubmit a paper with such information redacted; order the clerk to seal the papers or a portion thereof containing CPI in accordance with the requirement of 22

NYCRR § 216.1 that any sealing be no broader than necessary to protect the CPI; for good cause permit the inclusion of CPI in papers; order a party to file an unredacted copy under seal for in camera review; or determine that information in a particular action is not confidential. The court shall consider the pro se status of any party in granting relief pursuant to this provision.

Anand acknowledges that the documents containing CPI have been redacted or removed from the NYSCEF record (NYSCEF 124 (Anand Affidavit ¶3)) pursuant to the parties' stipulation and any relief under 22 NYCRR 202.5 would be moot.

Defendants agree that any monetary sanction may only be imposed pursuant to 22 NYCRR 130-1.1. (NYSCEF 129 [Defendants' Memorandum] at 7). However, Defendants offer no authority to support their contention that sanctions are warranted here. The record shows that Bank of Baroda's counsel took steps to remove CPI from the record pursuant to the stipulation and that defendant Anand entered CPI into the record. The cross-motion for sanctions is denied. (*Breest v Haggis*, 67 Misc 3d 1218(A) [Sup Ct New York County 2020] denying sanctions where confidentiality order was breached but there was no proof that the conduct was "undertaken primarily to . . . harass or maliciously injure" as required by Section 130-1.1).

* * * *

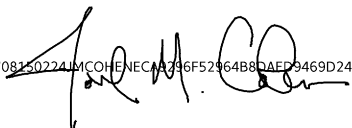
Accordingly, it is

ORDERED that Plaintiff's motion for contempt is DENIED without prejudice and Defendants are directed to reply to the five requests made in Bank of Baroda's April 11, 2022, letter within twenty (20) days of the service of this order with notice of entry and appear for a deposition within thirty (30) days of the service of this order with notice of entry; it is further

ORDERED that Defendants' cross-motion for sanctions is DENIED; it is further

ORDERED that Plaintiff's motion to extend the time to file its opposition to Defendants' cross-motion is GRANTED.

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

7/8/2022
DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: