

Bruderman Bros., LLC v Goldberg
2022 NY Slip Op 32283(U)
July 13, 2022
Supreme Court, New York County
Docket Number: Index No. 656979/2019
Judge: Louis L. Nock
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LOUIS L. NOCK PART 38M

Justice

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BRUDERMAN BROTHERS, LLC, and BRUDERMAN ASSET MANAGEMENT, LLC,			10/29/2020, 11/25/2020, 01/13/2021, 02/04/2021, 03/10/2021,
Plaintiffs,		MOTION DATE	<u>10/25/2021</u>
- v -			
GARY GOLDBERG,		MOTION SEQ. NO.	<u>004 005 006 007 008 009</u>
Defendant.			

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 90, 91, 92, 96, 97, 98, 99, 100, 101, 103, 104, 143, 144, 152, 165, and 166

were read on this motion for CONTEMPT.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 105, 106, 107, 108, 109, 110, 112, 113, 114, and 115

were read on this motion to STRIKE PLEADINGS.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, and 145

were read on this motion for CONTEMPT.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, and 139

were read on this motion to QUASH SUBPOENA.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 140, 141, 142, 146, 147, and 149

were read on this motion to QUASH SUBPOENA.

The following e-filed documents, listed by NYSCEF document number (Motion 009) 87, 88, 89, 93, 94, and 95

were read on this motion to AMEND ORDER.

LOUIS L. NOCK, J.

The foregoing motions are consolidated herein for disposition.

Brief Procedural Note:

The facts and key holdings of this action (“This Action”), and of the related action (the “Related Action”) titled *Goldberg v Bruderman Brothers, LLC* (index No. 159280/2019 [Sup Ct NY County] [Nock, J.]), are set forth in the court’s decision and order dated October 20, 2020 (NYSCEF Doc. No. 71 in This Action) (the “Decision & Order”). Familiarity with the Decision & Order, and all its contents, will be presumed.

The Decision & Order compelled a JAMS arbitration of the parties’ dispute, and also preliminarily enjoined Mr. Goldberg from taking any actions adverse to the business interests of the Bruderman companies pending the arbitration as specified in the Decision & Order. On May 20, 2022, the JAMS arbitrator, Hon. Shirley Werner Kornreich, Arbitrator, issued her “Final Award” (NYSCEF Doc. No. 166 in This Action) finding, *inter alia*, that Mr. Goldberg breached various obligations owed to the Bruderman companies and awarding the Bruderman companies \$13,900,000 in damages plus other categories of monetary relief in substantial measure. Currently pending, and just argued on July 1, 2022, is a motion by the Bruderman companies to confirm that award, and a cross-motion by Mr. Goldberg to reject it (motion seq. no. 009 in the Related Action). That motion is not the subject of this decision; but *will* be the subject of a separate decision and order to be issued in the Related Action.

The Decision & Order preserved the parties’ ability to access this court’s judiciary processes in aid of the JAMS arbitration. The motions that are the subject of this decision will now be addressed, as follows.

The Instant Motions:**Motion Seq. No. 004:**

The Bruderman companies have moved for an order of contempt against Mr. Goldberg for alleged violation of the Decision & Order's preliminary injunction. In view of the substantial award issued in the JAMS arbitration, which is presently awaiting confirmation or rejection on motion and cross-motion of the parties in the Related Action, this court declines at this time to determine this motion for contempt, and holds it in abeyance pending disposition of said motion and cross-motion. This motion is, therefore, provisionally denied.

Motion Seq. No. 005:

In connection with the aforesaid motion for contempt, the Bruderman companies have moved to strike an opposition filing by Mr. Goldberg on grounds of lack of authenticity and other grounds. As with the aforesaid motion for contempt, this court declines at this time to determine this motion to strike, and holds it in abeyance pending disposition of the parties' pending motion and cross-motion in the Related Action. This motion is, therefore, provisionally denied.

Motion Seq. No. 006:

The Bruderman companies moved, yet again, for an order of contempt against Mr. Goldberg for alleged continued violation of the Decision & Order's preliminary injunction. Again – in view of the substantial award issued in the JAMS arbitration, which is presently awaiting confirmation or rejection on motion and cross-motion of the parties in the Related Action, this court declines at this time to determine this second motion for contempt, and holds it in abeyance pending disposition of said motion and cross-motion. This motion is, therefore, provisionally denied.

Motion Seq. No. 007:

Mr. Goldberg moved to quash a subpoena served on a non-party, Squarespace, Inc., seeking discovery in connection with the JAMS arbitration. The court considers the motion moot by virtue of the Final Award issued at the conclusion of the JAMS arbitration (NYSCEF Doc. No. 71 in This Action). Therefore, the motion is denied as moot.

Motion Seq. No. 008:

Mr. Goldberg moved to quash a subpoena served on a non-party, Mercury Public Affairs, LLC, seeking discovery in connection with the JAMS arbitration. The court considers the motion moot by virtue of the Final Award issued at the conclusion of the JAMS arbitration (NYSCEF Doc. No. 71 in This Action). Therefore, the motion is denied as moot.

Motion Seq. No. 009:

The Bruderman companies moved for amendment of certain dicta within the Decision & Order insofar as it suggested that January 2, 2021, might be selected as an end date for non-competition by Mr. Goldberg (*see*, Decision & Order at 13). The Bruderman companies have posited that the correct date should have been October 21, 2021 (*see*, NYSCEF Doc. No. 89 in This Action).

However, Mr. Goldberg's counsel is correct in pointing out that no tangible effect adverse to the Bruderman companies results from the court's foregoing dictum in light of the fact that the decretal paragraphs of the Decision & Order explicitly prohibited Mr. Goldberg from competing with the Bruderman companies for the entire pendency of the JAMS arbitration (*see*, Decision & Order at 16; *see also*, Opposition Memorandum of Mr. Goldberg's Counsel [NYSCEF Doc. No. 93] at 1). As said counsel further points out, given the lack of any tangible adverse effect occasioned by the asserted inaccuracy in dicta, the only thing that the requested

amendment could possibly achieve would be to derail the timeframe of Mr. Goldberg’s perfected appeal of the Decision & Order (*see*, NYSCEF Doc. No. 93 at 1). The balance of equities here militates against the requested amendment. Therefore, this motion is denied.

Accordingly, it is

ORDERED that the motions for contempt (seq. nos. 004 and 006) are provisionally denied; and it is further

ORDERED that the motion to strike (seq. no. 005) is provisionally denied; and it is further

ORDERED that the motions to quash (seq. nos. 007 and 008) are denied as moot; and it is further

ORDERED that the motion to amend (seq. no. 009) is denied.

This will constitute the decision and order of the court.

ENTER:



<u>7/13/2022</u>			<u>LOUIS L. NOCK, J.S.C.</u>	
DATE				
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE