

Lettire v SD Second Ave. Mgr. LLC

2023 NY Slip Op 30639(U)

March 6, 2023

Supreme Court New York County

Docket Number: Index No. 157834/2020

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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NICK LETTIRE,

Plaintiff,

- v -

SD SECOND AVENUE MANAGER LLC, JOSH
SCHUSTER

Defendant.

INDEX NO. 157834/2020

MOTION DATE 01/06/2023

MOTION SEQ. NO. 006

**DECISION + ORDER ON
MOTION**

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 006) 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 118, 119, 120, 121, 122, 124, 125, 126, 127

were read on this motion to/for CONTEMPT.

Upon the foregoing documents, Nick Lettire’s motion (Mtn. Seq. No. 006) for an order holding Josh Schuster in contempt is granted as set forth below.

At a status conference on December 9, 2022 (NYSCEF Doc. No. 94), Mr. Schuster represented that he would accept the plaintiff’s subpoena, produce certain documents by December 12, 2022 and appear for a deposition by December 21, 2022. Based on these representations, the Court ordered Mr. Schuster to accept the subpoena, produce the documents and appear for a deposition. Mr. Schuster failed to comply with the order.

At a subsequent conference on December 13, 2022 (NYSCEF Doc. No. 95), Mr. Schuster again represented that he would produce the documents by December 15, 2022. Based on this representation, the Court entered another order requiring Mr. Schuster to produce the documents and appear for a deposition. Mr. Schuster again failed to comply.

Based on Mr. Schuster's multiple violations of these Court orders, the plaintiff brought this motion seeking, among other things, to hold Mr. Schuster in contempt. In his opposition papers, Mr. Schuster claims that the motion is premature because he did produce some of the documents sought by the plaintiff in January, February and March 2023. The arguments fail. The production was and continues to be deficient. Among other things, Mr. Schuster has failed to produce his bank records and tax returns for 2020 and 2021.

To make a finding of civil contempt, the Court must determine that (i) a lawful order of the court clearly expressing an unequivocal mandate was in effect, (ii) it appears with reasonably certainty that the order has been disobeyed, (iii) the party to be held in contempt had knowledge of the court's order, and (iv) the right of a party to the litigation is prejudiced (*El-Dehdan v El-Dehdan*, 26 NY3d 19, 29 [2015]). Civil contempt must be demonstrated by clear and convincing evidence (*Classe v Silverberg*, 168 AD3d 603, 604 [1st Dept 2019]). To make a finding of criminal contempt, the Court must find that the party to be held in contempt willfully disobeyed the court's order (*Madigan v Berkeley Capital, LLC*, 205 AD3d 900, 905-906 [2d Dept 2022]). Criminal contempt must be proven beyond a reasonable doubt (*Simens v Darwish*, 100 AD3d 527, 527 [1st Dept 2012]). Upon a finding of civil contempt, the Court may levy a fine of \$250 where such contempt has not cause actual loss or injury (Judiciary Law § 773) and upon a finding of criminal contempt, \$1,000 (Judiciary Law § 751).

As discussed above, Mr. Schuster knowingly, willfully and contumaciously violated numerous Court's orders. It is beyond cavil that the plaintiffs rights have been severely prejudiced in its

collection efforts and that the willful violation of a number of court orders has been proved beyond a reasonable doubt. As such, a finding of both civil and criminal contempt is warranted. In respect of the civil contempt finding, Mr. Schuster shall pay the reasonable attorneys fees in connection with the plaintiff bringing this motion. In respect of the criminal contempt finding, a fine is levied in the amount of \$1,000 which fine shall be paid by April 10, 2023 unless Mr. Schuster purges his criminal contempt as set forth below.

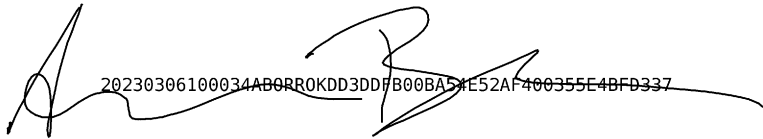
Mr. Schuster may purge his criminal contempt and need not pay the \$1,000 fine (but will still be required to pay for the cost of the plaintiff's reasonable attorneys fees in bringing this motion) if he (i) produces all of his banking records and tax returns for 2020 and 2021, and an appropriate Jackson affidavit by March 8, 2023, and (ii) appears for a deposition by April 7, 2023. If Mr. Schuster fails to comply with the foregoing, Plaintiff is given leave to move for additional relief and Mr. Schuster's obligation to pay the \$1,000 fine in respect of his criminal contempt shall not be subject to any further potential purge.

The plaintiff shall submit a bill for its reasonable attorneys' fees. If Mr. Schuster objects, the attorneys' fee will be referred to a JHO for inquest.

It is hereby ORDERED that the plaintiff's motion to hold Josh Schuster in civil and criminal contempt of court is granted; and it is further

ORDERED that Mr. Schuster may purge this contempt as provided for above; and it is further

ORDERED that, in the event that Mr. Schuster fails to timely do so as set forth above, the plaintiff shall notify the court by email to SFC-Part53@nycourts.gov.



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3/6/2023
DATE

ANDREW BORROK, 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