

**Baum v Suzuki**

2023 NY Slip Op 30700(U)

March 8, 2023

Supreme Court, New York County

Docket Number: Index No. 654981/2018

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DEBRA A. JAMES

PART 59

Justice

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MARK BAUM

Plaintiff,

- v -

SAMMY I. SUZUKI,

Defendant.

-----X

INDEX NO. 654981/2018

MOTION DATE 10/21/2020

MOTION SEQ. NO. 005

ORDER - AMENDED INTERIM (MOTION RELATED)

The following e-filed documents, listed by NYSCEF document number (Motion 005) 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 91, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 122, 124, 126, 128

were read on this motion to/for CONTEMPT

Upon the foregoing documents, it is

ORDERED that the Order of October 21, 2020 resolving motion sequence 004 and motion sequence 005 in this action is VACATED, RESETTLED AND CORRECTED AS PURSUANT TO CPLR 5019 [see Kiker v Nassau County, 85 NY2d 879 (1995)]; and it is further

ORDERED that such ORDER dated October 21, 2020 is reissued as an INTERIM ORDER; and it is further

ORDERED that defendant's motion to vacate the warrant and commitment order filed on June 4, 2020, effective upon "resumption of in person operations of courthouses in New York County" (which in court operations with respect to civil contempt warrants for arrest have not resumed to date) (Mot. Seq. Nos. 004 and 005) is GRANTED and such warrant and commitment order are VACATED, on

condition that, within 20 days of receipt of proposed authorizations, prepared and delivered to defense counsel by plaintiff's counsel, defendant sign and return such authorizations to plaintiff that direct

- (1) Citibank to release to plaintiff copies of defendant's statements of account pertaining to his Citi Card account ending 9674, for the period January 1, 2016 through August 21, 2018, and for the period after March 19, 2020 to date; records pertaining to any Citibank personal checking or saving account(s) belonging to defendant, for the period January 2016 to date to, or a statement that there are no such personal checking or saving accounts belonging to defendant for such period;

and

- (2) Macy's to release to plaintiff copies of statements of account pertaining to defendant's credit card account ending 2991 for the period July 2019 through November 2019;

and

- (3) Schwab to release to plaintiff copies of statements of account pertaining to investment account ending (Individual) 817 for the period June 4, 2019 to date;

and it is further

ORDERED that to the extent that plaintiff cross moves to modify the foregoing warrant (mistakenly filed under Motion Seq. No. 005 instead of Motion Sequence No. 004), such motion is DENIED; and it is further

ORDERED that the order to show cause of plaintiff seeking to compel defendant to comply with an information subpoena issued to him on April 29, 2020, and to compel non-party Bob Delidimitrious to comply with the information subpoena, issued to them on June 1, 2020 (Motion Seq. No. 005), is granted to the

extent that, within thirty days of service of a copy of this order with notice of entry, non-party Bob Delidimitrious shall respond to the information subpoena issued to him on June 1, 2020; and it is further

ORDERED that to the extent that plaintiff seeks to compel non-party Delidimitrious to comply with the information subpoena, such motion is held in abeyance for further oral argument upon the review by plaintiff of the information and/or records disclosed pursuant to the information subpoenas; and it is further

ORDERED that to the extent that plaintiff seeks to hold non-parties Delidimitrious, Regenstein and Darius Toraby Architects PC in contempt for failing to comply with the various post judgment enforcement subpoenas issued by plaintiff's counsel (Motion Seq. No. 005), such motion is denied; and it is further; and it is further

ORDERED that non-party Bob Delidimitrious may deliver to counsel an affidavit that set forth his responses to the information subpoena; and it is further

ORDERED that counsel are directed to appear for further argument as to the motion to compel the non-party Bob Delidimitrious to respond to the subject information subpoena, including further papers summarizing whether Bob Delidimitrious

has complied with the foregoing information subpoena, on April 14, 11:00 AM via Microsoft Teams; and it is further

DECISION

Defendant, who plaintiff does not deny has appeared for a post judgment deposition and made substantial payments toward satisfaction of the judgment, has demonstrated that to the extent that he was in violation of the order dated December 13, 2019 holding him in contempt, unless he produced certain records, he has now purged himself of such violation with the Dropbox production of documents and a statement, under oath, that he has no additional responsive documents in his possession. Defendant has also consented to providing a signed authorization to allow plaintiff to subpoena any of statements belonging to him for the periods in question from Citibank, Schwab and Macy's. See Marino v Myers, 64 AD2d 600 (1<sup>st</sup> Dept. 1978).

To the extent that plaintiff seeks to hold the non-parties in contempt for failing to comply with the subpoenas that his counsel issued to them, such relief is unavailable, as

premature, since such subpoenas were non-judicial. See Reuters Limited v Dow Jones Telerate, Inc., 231 AD2d 337 (1<sup>st</sup> Dept. 1997); Citibank, N.A. v Angst, Inc., 61 AD3d 484 (1<sup>st</sup> Dept. 2009).

*Debra A. James*

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3/8/2023  
DATE

DEBRA A. JAMES, 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