

Nicholson v John

2023 NY Slip Op 30776(U)

March 14, 2023

Supreme Court, New York County

Docket Number: Index No. 652841/2020

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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PATRICIA E. NICHOLSON,	INDEX NO.	<u>652841/2020</u>
Plaintiff,	MOTION DATE	<u>02/06/2023</u>
- v -	MOTION SEQ. NO.	<u>003</u>
KOFI JOHN, MANETSYS, INC.		
Defendant.	DECISION + ORDER ON MOTION	

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74 were read on this motion to/for CONTEMPT.

Upon the foregoing documents, Patricia Nicholson's motion (Mtn. Seq. No. 3) for civil and criminal contempt is granted as unopposed because Kofi John willfully and contumaciously violated the Interim Judgment (hereinafter defined) entered against him and the Court's Civil Contempt Order (hereinafter defined).

Reference is made to (i) an Order and Interim Judgment dated May 26, 2021 (the **Interim Judgment**; NYSCEF Doc. No. 22), pursuant to which the Court ordered Kofi John to (a) issue stock certificates to Ms. Nicholson reflecting that she owns a forty percent interest in Manetsys NY, (b) be surcharged and indebted to Ms. Nicholson in the amount of \$566,000, and (c) conduct an accounting of Manetsys NY, (d) be prohibited from engaging in or causing others to engage in any business or financial transactions pertaining to Manetsys NY, and (e) produce all books and records of Manetsys NY, and (ii) a Decision and Order dated December 1, 2021 (the **Civil Contempt Order**; NYSCEF Doc. No. 42), pursuant to which the Court held Mr. John in

civil contempt for violating the Interim Judgment and further ordered him to, among other things, (x) produce the financial records demanded and provide answers to the questions in the subpoena (NYSCEF Doc. No. 29), and (y) submit to a CPLR 5229 Deposition. Mr. John failed to timely comply with the above.

At the January 26, 2022 deposition, Mr. John acknowledged that that he had received both the Interim Judgment and the Civil Contempt Order but nonetheless failed to (i) issue stock certificates to Ms. Nicholson, (ii) pay any surcharge or debt to Ms. Nicholson, (iii) provide books and records of Manetsys NY, and (iv) cease withdrawing Manetsys NY's corporate funds to pay for his personal expenses. On November 23, 2022, Mr. John appeared for a continued deposition and testified that (x) Manetsys NY continues to receive large amounts of deposits and payments from clients and (y) he continued to use Manetsys NY's corporate funds to pay for his and his family's personal use, including among other things, house rent, car lease, tuitions and travel expenses, totaling well over \$10,000 per month.

To make a finding of criminal contempt, the Court need not determine that the right of a party to the litigation has been prejudiced but 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 requires a showing of a higher degree of willfulness than required for civil contempt (*Digital Warehouse USA Inc. v Hasan*, 2019 WL 6840407, at * 2 [Sup Ct, NY County 2019], citing *Dept. of Env'tl. Protection v Dept. of Env'tl. Conservation*, 70 NY2d 233, 240 [1987]). 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, the Court had previous issued the Civil Contempt Order holding Mr. John in civil contempt for violating the Interim Judgment. However, to this day, Mr. John continues to drain Manetsys NY's corporate funds in clear violation of the Court's order. This he has one openly, willfully, intentionally and contumaciously for more than 20 months. As such, he shall be held in both civil and criminal contempt and shall pay the statutory maximum for civil contempt of \$250 and the statutory maximum for criminal contempt of \$1,000 as well as Ms. Nicholson's costs in connection with bringing this motion.

It is hereby ORDERED that Patricia Nicholson's motion (Mtn. Seq. No. 3) to hold Kofi John in civil and criminal contempt of court is granted; and it is further

ORDERED that the Mr. John is hereby fined by this Court in the amount of \$1,250 and shall deposit said amount with the County Clerk, together with a copy of this order with notice of entry, for transmittal to the New York State Commissioner of Taxation and Finance; and it is further

ORDERED that written proof of the payment of this sanction shall be provided to the Clerk of Part 53 and opposing counsel within 30 days after service of a copy of this order with notice of entry; and it is further

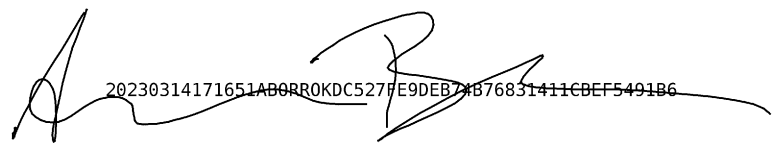
ORDERED that, in the event that such proof of payment is not provided in a timely manner, the Clerk of the Court, upon service upon him of a copy of this order with notice of entry and an affirmation or affidavit reciting the fact of such non-payment, shall enter a judgment in favor of the Commissioner and against Mr. John in the aforesaid sum; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the Part shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that Mr. John shall pay Ms. Nicholson's reasonable costs and attorneys' fees in connection with this motion; and it is further

ORDERED that Ms. Nicholson will, within 14 days of the date of this order, provide Mr. John with an itemized invoice of its fees and costs in connection with this motion and if the parties cannot agree on the amount of such reasonable costs and fees within 30 days, the issue will be referred to a JHO or special referee to hear and determine.

3/14/2023
DATE


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ANDREW BORROK, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE