

**Atalaya Asset Income Fund II LLP v Ringel**

2023 NY Slip Op 30971(U)

March 28, 2023

Supreme Court, New York County

Docket Number: Index No. 654299/2019

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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ATALAYA ASSET INCOME FUND II LLP,

INDEX NO. 654299/2019

Plaintiff,

MOTION DATE 12/12/2022

- v -

MOTION SEQ. NO. 010

BENJAMIN RINGEL, YAEL RINGEL, BCR REALTY  
INVESTMENT II, LLC, SAGG MAIN INV LLC

**DECISION + ORDER ON  
MOTION**

Defendants.

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 010) 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 228, 229, 230, 231, 232, 233, 234, 235, 253, 254, 272, 273, 274, 275, 276, 281, 282, 283, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 306

were read on this motion for CONTEMPT.

Plaintiff Atalaya Asset Income Fund II LLP’s (“Atalaya”) motion for contempt against Defendant Benjamin Ringel is GRANTED IN PART to the extent specified below.

Defendants Benjamin and Yael Ringel were held in civil contempt in an order dated August 18, 2022 and entered August 19, 2022 (NYSCEF 165 [the “Contempt Order”]). Among other things, the Contempt Order enjoined the Ringels and their entities from dissipating assets; required the Ringels to provide sworn answers to Atalaya’s information subpoenas by August 13, 2022; required the Ringels and their entities to respond to Atalaya’s post-judgment discovery requests by August 26, 2022; required the production of an accounting by September 9, 2022; and imposed monetary penalties for failing to comply with Atalaya’s subpoenas. The Contempt Order expressly warned that “Defendants’ failure to comply with this order may result in additional sanctions including but not limited to the assessment of daily monetary penalties and/or incarceration. . .”

On September 8, 2022, the Court entered an order (NYSCEF 174) awarding costs and fees, including reasonable attorney's fees, to Atalaya for its efforts in securing the Contempt Order. On September 29, 2022, counsel for Atalaya submitted a letter to the Court indicating that the Ringels had not complied with the Contempt Order (NYSCEF 176). Shortly thereafter, on October 7, 2022, Jonathan Stein, Esq., moved to withdraw as counsel for the Ringels (NYSCEF 182). Mr. Stein's motion to withdraw was granted on October 27, 2022 (NYSCEF 202) and included a thirty-day stay of further proceedings against the Ringels.

Following the expiration of the stay, on December 5, 2022, counsel for Atalaya submitted another letter (NYSCEF 204) indicating that the Ringels were violating the Contempt Order by failing to produce discovery and that Benjamin was hiding significant asset based upon an October 20, 2022 decision of the Superior Court of New Jersey Appellate Division in *Chana Ringel v. BR Lakewood, LLC et. al.* (Docket No. A-0370-21). Atalaya requested that the Court schedule a hearing and the Court granted Atalaya leave to submit a motion by order to Show Cause (NYSCEF 208).

On December 12, 2022, Atalaya moved (NYSCEF 210) pursuant to Section 770 of the Judiciary Law for a warrant of commitment against Mr. Ringel and other relief. The Court scheduled a hearing for December 23, 2022 (NYSCEF 226). At Mr. Ringel's request, the Court rescheduled the hearing until January 17, 2023 (NYSCEF 234) "to permit Mr. Ringel a FINAL opportunity to cure the alleged contempt or to retain counsel in advance of the hearing."

On January 10, 2023, Oved & Oved appeared on behalf of the Ringels (NYSCEF 253) and requested an adjournment of the January 17, 2023 contempt hearing. The request to adjourn the hearing was denied (NYCEF 254). However, the Court did grant an extension of time to file papers in opposition (*id.*). The Ringels terminated Oved & Oved on January 11, 2023 (NYSCEF

263) which moved to withdraw that same day (NYSCEF 264). Oved & Oved's motion to withdraw was granted following the January 17, 2023 hearing (NYSCEF 277).

Mr. Ringel, a former lawyer, appeared *pro se* at the January 17, 2023 hearing (NYSCEF 306 [Transcript]). Despite the clear evidence presented by Atalaya of the Ringels' failure to comply with the Contempt Order and ongoing efforts to evade the judgment (Tr. 6:17-15:23), the Court accepted Mr. Ringel's representation that "I will look for everything in the next two and a half weeks. That's all. I'll just get it done by the end of February, the ending of February" (Tr. 42:15-17), directed the parties to submit proposed orders granting the motion insofar as it sought the production of discovery as well as financial penalties (Tr. 60:6-16), and denied "incarceration, at this point anyway. . ." (Tr. 65:3-13).

Atalaya submitted a proposed order on January 30, 2023 (NYSCEF 282). On February 6, 2023, Berg & David appeared on behalf of Defendants (NYSCEF 284). On February 7, 2023, Berg & David submitted a proposed counterorder (NYSCEF 286). The parties continued to negotiate and submit another round of proposed orders (NYSCEF 287-297). On March 3, 2023, the January 17, 2023 hearing transcript was provided to the Court (NYSCEF 306).

Having reviewed the transcript, the Court finds that Atalaya's revised proposed order submitted on February 17, 2023 (NYSCEF 290) more accurately reflects the Court's determination on the record.

Accordingly, it is

**ORDERED** that Atalaya's motion for contempt is **GRANTED IN PART** to the extent specified herein and otherwise **DENIED WITHOUT PREJUDICE**; it is further

**ORDERED** that Mr. Ringel may purge his contempt by complying with the terms of this decision and order; it is further

**ORDERED** that Mr. Ringel shall, to the extent he has not already done so or as otherwise agreed by the parties, produce a sworn affidavit supplying the following information and documents (or explaining to the best of his abilities where the information may be obtained if not accessible or no longer available to him) to Atalaya within twenty-one (21) days of the issuance of this decision order:

**Identification of Trusts and Entities**

1. Mr. Ringel shall identify all entities (including limited liability companies, joint ventures, corporations or any other entities) (hereinafter called the “Entities”) in which he, Yael or their children had or have a direct, indirect or beneficial interest from January 1, 2015 through the present. Mr. Ringel shall specifically describe the interest (which shall include any and all ownership interests, security interests, pledges of ownership interests or assets, loans, and any other interest, whether held directly or indirectly and whether currently in the possession of the Ringels, including the right to control the disposition of assets or distribution of funds, all of which together are referred to as the “Interests”). Mr. Ringel shall describe each Interest specifically, including when any such Interest was acquired, and (if applicable) when such Interest was transferred, sold, terminated or modified in any way. Ringel shall specifically describe the type of Interest, and, if an ownership interest, the percent ownership.
2. Mr. Ringel shall identify all trusts (hereinafter called the “Trusts”) (i) with respect to which he, Yael or their children (or any of them) are settlors, trustees, fiduciaries, beneficiaries, protectors, administrators, or asset or investment managers, or (ii) that hold any assets in which Mr. Ringel, Yael or their children, or any Entity, had previously held an Interest. Ringel shall describe his role and Interest and the roles and Interests of Yael or any of their children in such Trusts.
3. Mr. Ringel shall identify all current and former beneficiaries of the Estate of Klara Ringel, and all current and former executors, trustees, and administrators, lawyers, law firms, accountants, asset or investment managers or other third parties that provide services to or were engaged by the of the Estate of Klara Ringel.
4. Mr. Ringel shall identify all entities and trusts associated or affiliated with the Estate of Klara Ringel or the Estate of David Ringel (the “Parents’ Trusts and Entities”), whether owned directly or through other trusts and entities.
5. Mr. Ringel shall identify all (i) directors, officers or trustees, as applicable, of each such Entity or Trust, and (ii) lawyers, accountants, tax preparers, asset or investment managers, valuation consultants, or other third parties that provide services to or were

engaged by him, Yael, their children, their Entities and Trusts, or the Parents' Trusts and Entities, from January 2015 through the present.

6. Mr. Ringel shall produce to Atalaya (i) all governing corporate documents (such as operating agreements, bylaws and certificates of incorporation, amendments and initial formation documents) relating to each and every Entity, (ii) all documents showing the ownership interests in each and every Entity, (iii) all governing trust documents (such as the trust agreement and all amendments to any trust agreement) relating to each and every Trust, (iv) all documents showing all beneficial interests in each such Trust and the trustees of such Trust, (v) the operative documents governing the Estate of David Ringel and the Estate of Klara Ringel (together, the "Estates"), and all related amendments and other documents showing the beneficiaries of each Estate, (vi) documentation relating to each Interest (including an Interest in an Entity, a Trust or the Parents' Trusts and Entities), and (v) all documents relating to the transfer, assignment, sale, termination or modification in any way of any Interest. Each of the foregoing shall be provided with respect to January 2015 to the present. The documents shall specifically show the dates of such transactions and the parties to such transactions.

#### **Identification of Assets, Including Real Estate**

7. Mr. Ringel shall identify all assets in which he, Yael or any of their children have or had any Interest from January 1, 2015 through the present, whether the Interest is direct or indirect or held through an entity or trust or several entities or trusts, including all real property or real estate, stocks, bonds, shares in a cooperative apartment, Interests in any LLC, corporation or any other entity, money, automobiles, art, jewelry, loans, intellectual property, or any item of value whatsoever (hereafter called "Assets"). Mr. Ringel shall describe when such Assets were acquired, and if applicable when such Assets were transferred or sold during this period (including the details of any such transfer, and the consideration paid or received), and if still held, where such Assets are located.
8. Mr. Ringel shall identify all Assets in which each and every Entity or Trust holds or held an Interest, whether directly or indirectly, at any time from January 1, 2015 to the present. Mr. Ringel shall describe when such Assets were acquired, and if applicable when such Assets were transferred or sold during this period (including the details of any such transfer, and the consideration paid or received), and if still held, where such Assets are located.
9. Mr. Ringel shall identify all Assets in which the Estates held or hold an Interest, whether directly or indirectly, at any time from January 1, 2015 to the present. Ringel shall describe the disposition of such Assets after the deaths of David and Klara, including any transfer of such Assets, how such Assets are held today, and identify Assets specifically held by the Parents' Trusts and Entities. Mr. Ringel shall describe when such Assets were acquired, and if applicable when such Assets were transferred

or sold during this period (including the details of any such transfer, and the consideration paid or received), and if still held, where such Assets are located.

10. Mr. Ringel shall identify any Assets held by or in the name of any third person (including family members) in which the Ringels or their children have an Interest.
11. Mr. Ringel shall produce for each and every Asset (i) documents showing the valuation of such Asset from January 1, 2015 through the present, (ii) documents relating to the acquisition, transfer, or sale of each and every Asset, including the consideration received or paid, (iii) all distributions and payments from each and every Asset, regardless of whether such distributions were received by the Ringels or their children, and (iv) all records showing the receipt or transfer of funds with respect to each and every Asset, and every subsequent transfer of such Assets.
12. Mr. Ringel shall identify any outstanding loans that he, Yael, or any of his children have made to any Entity, Trust or any third party.
13. Mr. Ringel shall identify any litigation in which he, Yael, their children or any Entity or Trust is or was a party (whether plaintiff/petitioner, defendant/respondent, or otherwise) or otherwise has or had an interest, and describe the basis of the interest, from January 1, 2015 to the present.
14. Mr. Ringel shall identify all distributions, debts or payments owed to the Ringels or their children from any Entity, Trust or third party.
15. Mr. Ringel shall identify all vehicles owned, used or leased by him, Yael, or any of their children, and identify the source of any payments made with respect to such vehicles. Ringel shall produce documents showing the ownership/title of each such vehicle, including but not limited to the Land Rover Defender.
16. Mr. Ringel shall produce all documents pertaining to Sunset Hill Oakridge Plaza LLC's purchase of Oakridge Plaza in foreclosure and the source of funds used to purchase Oakridge Plaza; the distributions, payments or transfers of funds relating to that property from January 1, 2015 to the present; the account or accounts into which such distributions are made; and any distributions, payments or transfers of funds to him, Yael, or any of their children. Mr. Ringel shall also produce documents located at Oakridge Plaza, and all documents relating to any foreclosure proceedings or actions taken by the lender with respect to its loan, including any agreement with the lender. If Mr. Ringel does not have access to the documents located at Oakridge Plaza, Mr. Ringel shall explain why he cannot access them and identify who controls the documents. Mr. Ringel shall identify the property manager of Oakridge Plaza.
17. Mr. Ringel shall produce all documents pertaining to AC I Southwest Broadway, LLC's purchase of the commercial condominium unit located at 250 West 90th Street, New York, NY; the distributions, payments or transfers of funds relating to that property from January 1, 2015 to the present; the account or accounts into which

such distributions are made; and any distributions, payments or transfers of funds to him, Yael, or any of their children. Mr. Ringel shall produce all documents relating to any foreclosure proceedings or actions taken by the lender with respect to its loan, including any agreement with the lender. Mr. Ringel shall identify the property manager of that property.

**Accounts, Distributions and Fund Transfers**

18. Mr. Ringel shall identify the revenues for each and every Entity, including the BCR Lakewood LLC subsidiary entities.
19. Mr. Ringel shall identify every bank account, securities account, brokerage account or any other account (“Account”) opened in the name of or used by Mr. Ringel, Yael, their children, and each and every Entity or Trust from January 1, 2015 through the present. Mr. Ringel shall provide the nature of the account, the bank, the dates that each Account was opened or closed, whether the Account has been used in the past year, and the current balance in the Account.
20. Mr. Ringel shall identify (or alternatively produce documents showing) all distributions, payments or transfers of funds to each and every Entity or Trust from January 1, 2015 through the present, including the date, amount, sender, direct recipient, and ultimate recipient for each.
21. Mr. Ringel shall identify the source of income or payments, distributions or transfers of funds received by him, Yael, or any of their children, whether directly or indirectly, and shall produce documents or evidence showing all such income, payments, distributions or transfers, including tax documents such as Form K-1, W-2 or 1099, from October 2020 to the present. This includes any distributions from any Entity to any Trust, or any third party.
22. Mr. Ringel shall produce all account statements, check copies and wire transfer records for every Account opened in the name of, or used by, Mr. Ringel, Yael, their children, and each and every Entity or Trust from January 1, 2015 to the present, including any Accounts that were closed during the specified time frame.

**Financial Information (Including Assets and Liabilities) and Documentation**

23. Mr. Ringel shall produce current financial statements, including cash flow statements, income statements and balance sheets for the Estates. Mr. Ringel shall produce, or authorize his lawyer to produce, documents and court filings in the probate proceeding showing the assets held by the Estate of Klara Ringel, the value of such assets, the beneficiaries of the Estate, and any assertion as to the modification of such beneficiaries’ interests.
24. Mr. Ringel shall produce current financial statements, including cash flow statements, income statements and balance sheets for himself, Yael, and each of their children, and every Entity and Trust, from 2015 to the present.

25. Mr. Ringel shall produce each and every complete and full tax return or other tax documents filed with the federal government, any state, or any other governmental entity, by, for or on behalf of Mr. Ringel, Yael, their children, every Entity and Trust, and each of the Estates, for each year from 2015 to the present, including Schedule K-1s and all other related forms and schedules. To the extent tax returns have not been filed on behalf of Mr. Ringel, Yael, their children, or any Entity or Trust, then Mr. Ringel shall provide (a) a reasonably detailed explanation for the failure to file such taxes and (b) any correspondence (by email, letter or otherwise) between any applicable taxing authority, on the one hand, and Mr. Ringel, Yael, their children or any Entity or Trust, or their respective advisors, on the other hand.
26. Mr. Ringel shall identify all mortgages, loans, extensions of credit, or other indebtedness with respect to himself, Yael, any of their children, or any Trust or Entity, or any interest in property held by any of them, including but not limited to mortgages on any real property owned by BCR Lakewood LLC or its subsidiaries, AC I Southwest Broadway LLC and Sunset Hill Oakridge Plaza LLC.
27. Mr. Ringel shall identify all judgments against him, Yael, any of their children, and/or any of the Entities or Trusts from January 2015 through the present, and shall describe the amount of the judgment, when and how any of the judgment was paid, each judgment creditor's name, and the jurisdiction and docket number of the judgment. Ringel shall produce copies of all such Judgments.
28. Mr. Ringel shall identify the sources of all funds used to pay living expenses including vacations, car payments, gas, food, clothing, and medical care and others.
29. Copies of any loan applications submitted by the Ringels, or any of their Entities and Trusts, from January 1, 2015 to the present, including but not limited to the loan application submitted to LaSalle Investment Management in connection with the Pinewood property.
30. Mr. Ringel shall identify all members of Pine Hill Associates, L.L.C. ("Pine Hill") and Fifth Street Associates, L.L.C. ("Fifth Street") and the percentage interests owned by each member, and shall identify all real property and other assets in which Pine Hill and Fifth Street hold an interest.
31. Mr. Ringel shall not be required to produce duplicate copies of documents he already has produced to Atalaya;

It is further

**ORDERED** that Benjamin Ringel shall appear at a second deposition if noticed by Atalaya and respond to any supplemental discovery requests; it is further

ORDERED that, within ten (10) days of the entry of this decision and order, Mr. Ringel shall comply with the Court’s Order dated September 8, 2022 (NYSCEF 174) which ordered Defendants to pay Atalaya a total sum of \$57,442.03 in penalties, costs, disbursements, expenses and attorneys’ fees in connection with Atalaya’s Motion for Civil Contempt on or before September 22, 2022; it is further

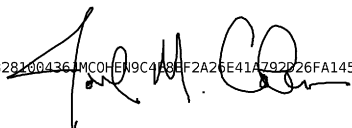
ORDERED that the time for Mr. Ringel to comply with this decision and order may be extended on consent by stipulation filed on NYSCEF for a period of no longer than sixty (60) days; it is further

ORDERED that if Mr. Ringel fails to purge his contempt as specified in this decision order, Benjamin Ringel and each Entity shall be required pay a combined daily monetary penalty of \$10,000 until the contempt has been purged; and it is further

ORDERED that if Mr. Ringel fails to purge his contempt as specified in this decision and order that Atalaya may move by order to show cause for appropriate relief including but not limited to a warrant of commitment.

This constitutes the decision and order of the Court.

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JOEL M. COHEN, J.S.C.

3/28/2023  
DATE

CHECK ONE:  CASE DISPOSED  DENIED  NON-FINAL DISPOSITION

APPLICATION:  GRANTED  SETTLE ORDER  SUBMIT ORDER  OTHER

CHECK IF APPROPRIATE:  INCLUDES TRANSFER/REASSIGN  FIDUCIARY APPOINTMENT  REFERENCE