

**Matter of Shanghai Tanida Garments Co., Ltd. v  
Sprizzo**

2023 NY Slip Op 33019(U)

August 31, 2023

Supreme Court, New York County

Docket Number: Index No. 152759/2023

Judge: John J. Kelley

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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. JOHN J. KELLEY PART 56M**

*Justice*

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**INDEX NO. 152759/2023**

In the Matter of

**MOTION DATE 05/05/2023**

SHANGHAI TANIDA GARMENTS CO., LTD.,

**MOTION SEQ. NO. 001**

Petitioner,

- v -

**DECISION, ORDER, and  
JUDGMENT**

JIN G. SPRIZZO and UP TOWN SPORT, INC.,

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18

were read on this motion to/for COMPEL COMPLIANCE WITH SUBPOENA.

The petitioner seeks relief pursuant to CPLR 5223 and 2308(b) to compel the respondents to comply with post-judgment information subpoenas dated January 26, 2023, and served upon them on February 21, 2023. The respondents oppose the petition. The petition is granted. The respondents are directed, on or before on October 5, 2023, at 10:00 a.m., or at any adjourned date agreed upon by the parties, to deliver, to the offices of the petitioner’s attorneys, executed and notarized responses to the questions set forth in the questionnaires annexed to the subpoenas and all documents requested in the subpoenas. In addition, the respondent Jin G. Sprizzo, as a principal of the respondent Up Town Sport, Inc. (Up Town), is directed to appear at the offices of the petitioner’s attorneys on October 5, 2023, at 10:00 a.m., or at any adjourned date agreed upon by the parties, to give testimony relevant to the nature, extent, and whereabouts of Up Town’s assets. Furthermore, the petitioners are awarded the sums of \$50 as a penalty and \$50 for actual costs incurred.

In an order dated January 9, 2023, and entered January 11, 2023 in a breach of contract action entitled *Shanghai Tanida Garments Co., Ltd. v Up Town Sport, Inc.*, commenced in the

Supreme Court, New York County, under Index Number 654447/2022, the court (Adams, J.) awarded summary judgment on the complaint to the plaintiff, Shanghai Tanida Garments Co., Ltd. (Shanghai), and directed the Clerk to enter judgment in favor of Shanghai, and against the defendant, Up Town Sport, Inc. (Up Town), in the principal sum of \$150,000, plus statutory interest from June 1, 2022. On January 17, 2023, a judgment was entered in favor of Shanghai and against Up Town in the total sum of \$159,056.85. That judgment has yet to be satisfied.

On February 21, 2023, the petitioner's attorney issued information subpoenas, and served them upon both Up Town and Sprizzo. The subpoenas directed to both of the respondents to provide written, notarized answers to written questions involving the nature, extent, and whereabouts of Up Town's assets. The subpoena addressed to Sprizzo also directed him to appear at the petitioner's attorney's offices on March 9, 2023 at 10:00 a.m. to give a deposition with respect to that issue, and to bring with him all documents relevant thereto. Neither respondent served notarized answers to the questionnaires, Sprizzo failed to appear for a deposition, and the respondents provided no relevant documents to the petitioner. This proceeding ensued.

CPLR 5223 provides that “[a]t any time before a judgment is satisfied or vacated, the judgment creditor may compel the disclosure of all matter relevant to the satisfaction of the judgment, by serving upon any person a subpoena.” That is, “[a] judgment debtor is entitled to discovery from either the judgment debtor or a third party in order ‘to determine whether the judgment debtor[ ] concealed any assets or transferred any assets so as to defraud the judgment creditor or improperly prevented the collection of the underlying judgment’ [*Young v Torelli*, 135 AD2d 813, 815 (1987)]” (*Technology Multi Sources, S.A. v Stack Global Holdings, Inc.*, 44 AD3d 931 [2d Dept 2007]). CPLR 5223 further provides that “failure to comply with the subpoena is punishable as a contempt of court.” The disclosure provisions of CPLR 5223 articulate “a generous standard which permits the creditor a broad range of inquiry through either the judgment debtor or any third person with knowledge of the debtor's property [see

generally, Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C5223:2, at 214" (*ICD Group v Israel Foreign Trade Co. (USA)*, 224 AD2d 293, 293-294 [1st Dept 1996]; see *Berisha v Tosca Cafe*, 202 AD3d 531, 532 [1st Dept 2022]; *Pratt v Greiner*, 122 AD2d 786 [2d Dept 1986]).

The definition of a "judicial subpoena" includes subpoenas that are made returnable before the court (see *Irizarry v New York City Police Dept.*, 260 AD2d 269, 271 [1st Dept 1999]; *Matter of Cambridge Packing Co, Inc. v LaJaunie*, 2019 NY Slip Op 30689[U], \*3, 2019 NY Misc LEXIS 1210, \*3-4 [Sup Ct, N.Y. County, Mar. 18, 2019] [Kelley, J.]; *4720 15th Ave., LLC v Jacobson*, 2017 NY Slip Op 30318[U], \*3-4, 2017 NY Misc LEXIS 615, \*4 [Sup Ct, N.Y. County, Feb. 17, 2017]; *Lyon Financial Services v Pinto Trading Co.*, 2009 NY Slip Op 51783[U], \*2-3, 24 Misc 3d 1237[A], 2009 NY Misc LEXIS 2164, \*5-6 [Sup Ct., Kings County, Aug. 17, 2009]). Although the subject subpoena was not made returnable in court, it nonetheless must be characterized as a judicial subpoena, inasmuch as (a) the subpoena was issued by an attorney licensed to practice law in New York, (b) the definition of the term "judicial subpoena" also "embraces subpoenas issued by an officer of the court (such as an attorney) at any stage of a judicial proceeding, regardless of whether the subpoena was specifically returnable in court" (*Cadlerock Joint Venture, L.P. v Patterson*, 199 AD3d 557, 558 [1st Dept 2021]; see *Douglas Elliman, LLC v TWP Real Estate, LLC*, 189 AD3d 614, 614 [1st Dept 2020]; see also *Matter of Ling v Sans Souci Owners Corp.*, 187 AD3d 755 [2d Dept 2020]), and (c) a "[f]ailure to comply with a subpoena issued by a judge, clerk or officer of the court shall be punishable as a contempt of court" (*Matter of Bobby D. Assoc. v Park*, 97 AD3d 815, 816 [2d Dept 2012], quoting CPLR 2308[a] [emphasis added]).

CPLR 2308(b)(1) permits a party to move to compel compliance with a subpoena. Although, by its terms, CPLR 2308(b)(1) applies only to nonjudicial subpoenas, and thus need not be invoked prior to seeking a contempt ruling against a person who has failed to comply with a judicial subpoena (see *Cadlerock Joint Venture, L.P. v Patterson*, 199 AD3d at 558; *Douglas*

*Elliman, LLC v TWP Real Estate, LLC*, 189 AD3d at 614; *cf. Reuters, Ltd. v Dow Jones Telerate, Inc.*, 231 AD2d 337, 341 [1st Dept 1997] [applying CPLR 2308(b)(1) to enforcement of nonjudicial subpoena]; *Dias v Consolidated Edison Co. of New York, Inc.*, 116 AD2d 453, 454 [1st Dept 1986] [same]), there is nothing prohibiting the petitioners from seeking an order of compliance prior to seeking a judgment of contempt (see *Matter of Cambridge Packing Co, Inc. v LaJaunie*, 2019 NY Slip Op 30689[U], \*3, 2019 NY Misc LEXIS 1210, \*3-4 [Sup Ct, N.Y. County, Mar. 18, 2019] [Kelley, J.]; *4720 15th Ave., LLC v Jacobson*, 2017 NY Slip Op 30318[U], \*3-4, 2017 NY Misc LEXIS 615, \*4 [Sup Ct, N.Y. County, Feb. 17, 2017]; *Lyon Financial Services v Pinto Trading Co.*, 2009 NY Slip Op 51783[U], \*2-3, 24 Misc 3d 1237[A], 2009 NY Misc LEXIS 2164, \*5-6 [Sup Ct., Kings County, Aug. 17, 2009]).

Shanghai established that it a judgment creditor of Up Town, that both Up Town and Sprizzo possess knowledge, information, and documentation concerning the nature, extent, and whereabouts of Up Town's assets that are necessary for Shanghai to discover in order to collect on its judgment, that it properly served information subpoenas upon both of the respondents, and that the respondents have yet to comply with those subpoenas. In opposition to the petition, Sprizzo improperly attempts to relitigate the propriety of the judgment in the underlying breach of contract action by asserting that there "are doubts about the qualification of the creditor" and that Shanghai either provided it with defective goods or delayed in making deliveries of those goods. These issues cannot be addressed in this proceeding, but only in the context of the underlying breach of contract action. Since Up Town neither sought to vacate the order awarding Shanghai summary judgment in that action, which was entered upon Up Town's default, and took no further steps to litigate that action, the judgment against it is final. Inasmuch as Sprizzo makes no argument as to why he and his company should not have to comply with the subpoenas, the petition must be granted.

Upon granting relief pursuant CPLR 2308, the petitioner is entitled to recover the maximum allowable sum of \$50 in actual costs that it incurred in litigating this proceeding and a

\$50 penalty (see *Gyeltzen v Vogel & Rosenberg*, 75 Misc 3d 1211[A], 2022 NY Slip Op 50467[U], \*1-2, 2022 NY Misc LEXIS 2440, \*11-12 [Sup Ct, N.Y. County, Jun. 1, 2022]).

Accordingly, it is

ORDERED and ADJUDGED that the petition is granted; and it is further,

ORDERED that, on or before on October 5, 2023, at 10:00 a.m., or at any adjourned date agreed upon by the parties, the respondents are directed to deliver, to the offices of the petitioner’s attorneys, executed and notarized responses to the questions set forth in the questionnaires annexed to the subpoenas and all documents requested in the subpoenas; and it is further,

ORDERED that the respondent Jin G. Sprizzo, as a principal of the respondent Up Town Sport, Inc. (Up Town), is directed to appear at the offices of the petitioner’s attorneys on October 5, 2023, at 10:00 a.m., or at any adjourned date agreed upon by the parties, to give testimony relevant to the nature, extent, and whereabouts of Up Town’s assets; and it is further,

ORDERED that the petitioner is awarded the sums of \$50 as a penalty and \$50 for actual costs incurred in prosecuting this proceeding, for a total of \$100, and the respondents shall pay that sum to the petitioner on or before October 5, 2023; and it is further,

ORDERED that the respondents’ failure to comply with the terms of this order may subject them to penalties for civil contempt of court.

This constitutes the Decision, Order, and Judgment of the court.

8/31/2023

DATE



JOHN J. KELLEY, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
<input type="checkbox"/>		<input type="checkbox"/>	
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APPLICATION:

CHECK IF APPROPRIATE: