

Riskin v Cumberbatch

2023 NY Slip Op 33286(U)

July 20, 2023

Supreme Court, Kings County

Docket Number: Index No. 504200/2020

Judge: Richard Velasquez

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 20th day of JULY, 2023

P R E S E N T:
HON. RICHARD VELASQUEZ
Justice.

-----X
RISKIN,

Plaintiff,
-against-

Index No.: 504200/2020
Decision and Order
Mot. Seq. No. 2 & 5

CUMBERBATCH ET AL,
Defendants,

-----X
The following papers NYSCEF Doc #'s to read on this motion:

<u>Papers</u>	<u>NYSCEF DOC NO.'s</u>
Notice of Motion/Order to Show Cause	
Affidavits (Affirmations) Annexed _____	130-145, 157: 293-316
Opposing Affidavits (Affirmations) _____	170
Reply Affidavits _____	

After having come before the Court and the court having heard oral argument on APRIL 26, 2023 the court finds as follows:

Plaintiff's moves for contempt Punish Defendant/Judgment-Debtor Nicole Cumberbatch, by fine and imprisonment or both, pursuant to Judiciary Law §§ 750(a)(3),(4), 751, 756 and CPLR 5251, for criminal contempt of court and/or pursuant to Judiciary Law §§ 753(a)(3), 756, CPLR 5251, and the institutional interests of justice, for civil contempt of court for her continued failure to comply with the provisions of: i. the stipulation, personally signed by Defendant/Judgment Debtor Nicole Cumberbatch before a notary public on July 21, 2020 and "So Ordered" by the Court (NYSCEF Doc. 91); ii. the July 25, 2020 Settlement Stipulation # 1 and Judgment, personally signed by

Defendant/Judgment-Debtor Nicole Cumberbatch before a notary public on July 25, 2020, "So Ordered" by the Court, entered July 27, 2020, with Notice of Entry served and filed on July 27, 2020 (NYSCEF Docs. 92-95); iii. the Order and Amended Judgment, dated and entered October 13, 2020, with Notice of Entry served October 21, 2020 (NYSCEF Docs. 102-106); and, iv. the Order and Amended Judgment, dated November 30, 2020, entered December 7, 2020, with Notice of Entry served December 7, 2020 (NYSCEF Docs. and punishing Cumberbatch by: i. for her criminal contempt, directing that defendant/judgment debtor Nicole Cumberbatch be arrested and committed to jail, there to remain for thirty (30) days; and, ii for her civil contempt, directing that defendant/judgment-debtor Nicole Cumberbatch be arrested and committed to jail, there to remain for six (6) months, or until she performs each and every act required of her pursuant to her stipulations and the Court's Orders (NYSCEF Docs. 91-95, 102-106, 108, 110), so as to purge herself of her contempt, 2. Issue an Order pursuant to CPLR 2221(a), CPLR 5015(a)(3),(4), and the Court's general jurisdiction and inherent authority vacating the Order procured by fraud upon the court by defendant/judgment-debtor Cumberbatch's attorney Robert Rambadadt, Esq., dated November 30, 2020 and entered December 7, 2020 (NYSCEF Doc. 109); 3. Issue an Order pursuant to 22 NYCRR 130-1.1, imposing financial sanctions on Robert Rambadadt, Esq., attorney for defendant/judgment-debtor Cumberbatch for his misconduct, admitted to during the conference call with the Court held on Wednesday, December 9, 2020, and despite such admission, still failing to take any steps to cure;4. Issue an Order pursuant to Judiciary Law § 487(a), imposing a forfeiture of treble damages on Robert Rambadadt, Esq., attorney for defendant/judgment-debtor Cumberbatch;

Accordingly, Plaintiff's motion sequence number two (2) is hereby denied in its entirety. As to the second request to vacate the order November 30, 2020 this court does not have the jurisdiction to vacate an order it did not sign, Justice Velasquez did not sign the said order. Moreover, Contempt motions are solely within the discretion of the court. "A motion to punish a party for civil contempt is addressed to the sound discretion of the court, and the movant bears the burden of proving the contempt by clear and convincing evidence (see *Chambers v. Old Stone Hill Rd. Assoc.*, 66 AD3d 944, 946, 889 NYS2d 598; *Rienzi v. Rienzi*, 23 AD3d 447, 449, 808 NYS2d 113), quoting *Hughes v. Kameneva*, 96 AD3d 845, 846, 946 NYS2d 211, 212 (2012.)" This court declines to find the defendants in civil and criminal contempt and impose such penalties by ordering the arrest and imprisonment of the defendants.

Plaintiff moves for an Order pursuant to 22 NYCRR 130-1.1, 130-1.1a, 130-1.2, imposing sanctions in the form of an award to plaintiffs of costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct by defendant/judgment-creditor Nicole Cumberbatch and Non-Party Filer Bryan "BJ" Cumberbatch; 2. An Order pursuant to, CPLR 5011; 5016(a),(c), (e); and 5018(a), directing the Clerk of the Court to enter money judgment in the amount of \$630,000.00, plus pre and post-judgment interest, in favor of plaintiffs and against Bryan "BJ" Cumberbatch and Ife Cumberbatch, consistent with the stipulated-to Order dated April 20, 2022 and entered August 29, 2022, granting plaintiffs' cross-motion, in toto; or, alternatively, an Order pursuant to CPLR 2221(a) resettling the Order entered April 29, 2022, to include provision directing the Clerk to enter judgment the amount of \$630,000.00, plus pre and post-judgment interest, in favor of plaintiffs

and against Bryan "BJ" Cumberbatch and Ife Cumberbatch, consistent with the stipulated-to Order dated April 20, 2022 and entered August 29, 2022, granting plaintiffs' cross-motion, in toto; and 3. An Order pursuant to, inter alia, CPLR 2214(b),(c), 22 NYCRR 202.8(d) and 202.8-c, striking defendant Nicole Cumberbatch and non-party filer Bryan "BJ" Cumberbatch's improper additional opposition/sur-sur-reply papers (NYSCEF-Docs 262- 275, 278-281, 284-287) (MS#5).

Accordingly, Plaintiff's motion sequence number five (5) is decided as follows; as to the first request for relief said request is denied. As to the second request for relief, is hereby deemed MOOT as the court has already signed the judgment requested in the amount of \$630,000.00, plus pre and post-judgment interest, in favor of plaintiffs and against Bryan "BJ" Cumberbatch and Ife Cumberbatch, consistent with the stipulated-to Order dated April 20, 2022 and entered August 29, 2022. As to the third request for an Order pursuant to, inter alia, CPLR 2214(b)(c), 22 NYCRR 202.8(d) and 202.8-c, striking defendant Nicole Cumberbatch and non-party filer Bryan "BJ" Cumberbatch's improper additional opposition/sur-sur-reply papers (NYSCEF-Docs 262- 275, 278-281, 284-287 is hereby granted to the extent that such oppositions and sur reply's are improper and the court did not and will not consider them. (MS#5). Any reliefs not specifically addressed are denied.

This constitutes the Decision/Order of the court.

Dated: Brooklyn, New York
July 20, 2023

ENTER FORTHWITH:


HON. RICHARD VELASQUEZ
Hon. Richard Velasquez, JSC

JUL 20 2023

FILED
KINGS COUNTY CLERK
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