

Tao Liu v Sobin Chang

2023 NY Slip Op 33345(U)

September 27, 2023

Supreme Court, New York County

Docket Number: Index No. 656209/2020

Judge: Frank P. Nervo

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This opinion is uncorrected and not selected for official publication.

DECISION AND ORDER OF CONTEMPT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART IV

-----X

TAO LIU,

**DECISION AND ORDER
OF CONTEMPT**

Plaintiff,

-against-

Index No. 656209/2020

SOBIN CHANG

Mot. Seqs. 004 and 007

Defendant.

-----X

HON. FRANK P. NERVO, J.S.C.

Plaintiff moves for an order holding defendant in contempt pursuant to CPLR § 2308(a) and Judiciary Law § 773, and counsel fees associated with the instant motions. The Court directed, via the signed orders to show cause, that counsel appear for oral argument on motion sequences 004 and 007.

Nevertheless, there was no appearance by defendant Chang or non-party Aquavit Pharmaceuticals (hereinafter “Aquavit”).

As relevant here, following inquest, judgment was entered in favor of plaintiff and against defendant in the amount of \$211,516.28 (NYSCEF Doc. Nos. 76 and 80). Following entry of judgment, plaintiff served restraining notices and information subpoenas on defendant and non-party Aquavit, as plaintiff alleges that defendant is the CEO of Aquavit. Neither defendant nor

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Aquavit responded to the restraining notices and information subpoenas.

Plaintiff then filed motion sequence 004, seeking to hold defendant in contempt. Immediately thereafter, defense counsel filed an application to be relieved as counsel, which this Court declined to sign without prejudice to renewal following completion of contempt proceedings (NYSCEF Doc. Nos. 173 and 192). Motion sequence 007 followed, seeking to hold Aquavit in contempt.

Civil Contempt serves to vindicate a party's right, with the penalty intended to compensate the injured party (Judiciary Law § 753; *Matter of McCormick*, 59 NY2d 574). “In order to find that contempt has occurred in a given case, it must be determined that a lawful order of the court, clearly expressing an unequivocal mandate was in effect. It must appear, with reasonable certainty, that the order has been disobeyed. Moreover, the party to be held in contempt must have had knowledge of the court's order... Finally, prejudice to the right of a party to the litigation must be demonstrated” (*Matter of McCormick*, *supra* at 583; *see also El-Dehdan v El-Dehdan*, 114 AD3d 4, 16-17 [2d Dept 2013]). “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” (*El-Dehdan*, *supra* at 10).

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As an initial matter, the Court notes that defendant Chang was, at all times during the pendency of these contempt proceedings, represented by SDK Heilberger. Indeed, defense counsel filed papers opposing contempt; nevertheless, there was no appearance by defendant or defense counsel at oral argument on September 26, 2023, as directed by the Court.

Here, plaintiff has established, by clear and convincing evidence, entitlement to a finding of contempt against defendant Chang. The Court's decision following inquest can only be described as a lawful order of the Court unequivocally expressing a mandate for defendant to remit payment to plaintiff. There is no question that defendant had knowledge of this order, having moved to vacate that determination (NYSCEF Doc. No. 109). Finally, defendant's failure to respond to restraining notices and information subpoenas, which ordinarily follow entry of a money judgment, has prejudiced plaintiff's ability to satisfy its judgment against defendant.

While defendant alleges she complied with the information subpoena and restraining notices, the response is entirely devoid of financial information, answering all financial questions with "NO KNOWLEDGE" (see NYSCEF

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Doc. No. 171). Defendant's response is tantamount to no answer at all.

Consequently, the Court finds defendant Chang in contempt.

As to non-party Aquavit, it has not appeared in opposition to plaintiff's contempt motion. As with defendant Chang, there can be no question that the restraining notice and information subpoena plaintiff issued to Aquavit are proper, given that plaintiff is alleged to be employed as the Chief Executive Officer of Aquavit, and same express an unequivocal mandate to provide financial information. The failure of Aquavit to respond, in any fashion, to the notice and subpoena has hindered plaintiff's ability to satisfy its judgment against defendant Chang. Accordingly, plaintiff has likewise established Aquavit's contempt by clear and convincing evidence.

Had plaintiff sought incarceration of defendant, the Court would have been compelled, under these circumstances, to grant such relief; however, plaintiff's motion does not so seek. Consequently, the Court grants the relief sought by plaintiff: an order directing compliance with the restraining notices and information subpoenas.

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Accordingly, it is

ORDERED that plaintiff's motion is granted and defendant Chang is held in contempt of this Court; and it is further

ORDERED that defendant Chang may purge their contempt by: (1) substantively and truthfully answering all questions served in connection with plaintiff's restraining notice and information subpoena and sitting for a post-judgment financial deposition within 14 days of service of this decision and order or (2) satisfying plaintiff's judgment in full within 14 days of service of this decision and order; and it is further

ORDERED that non-party Aquavit Pharmaceuticals is held in contempt of this Court; and it is further

ORDERED that non-party Aquavit Pharmaceuticals may purge its contempt by substantively and truthfully answering all questions served in connection with plaintiff's restraining notice and information subpoena within 14 days of service of this decision and order; and it is further

ORDERED that defendant Chang and non-party Aquavit

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Pharmaceuticals shall, jointly and severally, be liable to plaintiff for attorney's fees necessitating by their contemptuous conduct; and it is further

ORDERED that plaintiff shall file, within 14 days of this decision and order, a detailed recitation of work performed in furtherance of these contempt motions, including the hours expended, hourly rate, ordinary rate charged by like attorneys for such services sufficient for this Court to determine the reasonableness of the attorney's fees sought by plaintiff; and it is further

ORDERED that papers in opposition to such fees, if any, shall be filed by defendant and/or non-party Aquavit Pharmaceuticals within 7 days of plaintiff's papers in support of such fees; and it is further

ORDERED that should defendant Chang or Aquavit Pharmaceuticals fail to purge their contempt, as discussed above, they may be incarcerated for further contempt of this Court upon further application by plaintiff; and it is further

ORDERED that defense counsel, SDK Heiberger, LLP, shall serve a copy of this Decision and Order upon its client, Sobin Chang, via personal service,

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within 3 days of this Decision and Order and shall file proof of service forthwith.

THIS CONSTITUTES THE DECISION AND ORDER OF CONTEMPT OF THE COURT

Dated: September 27, 2023

ENTER:

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

HON. FRANK P. NERVO
J.S.C.