

Strysower v Oiring

2023 NY Slip Op 33639(U)

September 29, 2023

Civil Court of the City of New York, Queens County

Docket Number: Index No. 303493/23

Judge: Kimon C. Thermos

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This opinion is uncorrected and not selected for official publication.

**CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS HOUSING PART C**

-----X
STEPHEN STRYSOWER,

Petitioner,

INDEX # 303493/23

-against-

DECISION / ORDER

**MORRIS OIRING, MICHAEL OIRING &
BEECH 114 HOLDINGS LLC,**

Respondents

**NYC DEPARTMENT OF HOUSING PRESERVATION &
DEVELOPMENT,**

Respondent

-----X
Present: Kimon C. Thermos, JHC

Recitation, as required by CPLR 2219(a), of the papers considered in the review of the instant moving papers.

Papers	Numbered
Order to Show Cause, Affidavits and exhibits (NYSCEF #18-34).....	1
Order to Show Cause, Affidavits and exhibits ¹ (NYSCEF #36-49).....	2
Reply, and exhibits (NYSCEF 51-57).....	3

Appearing for the Petitioner:	Emilio Paesano, Esq., Mobilization for Justice, Inc.
Appearing for the Respondents:	Jack L. Glasser, Esq., Jack L. Glasser, P.C.
Appearing for HPD:	M. Paul Gdanski, Esq., DHPD

Upon the foregoing cited papers, the Decision/Order on this Order to Show Cause is as follows:

Petitioner initiated this proceeding by filing an order to show cause (“OSC”) on February 24, 2023, seeking, inter alia, an order to correct and a finding of harassment. The OSC was returnable on March 20, 2023. On that date, Petitioner appeared by counsel and Respondent Michael Oiring appeared. The proceeding was adjourned by stipulation to April 24, 2023, for Respondent to retain counsel. On April 24, 2023, Respondents failed to appear and the court issued a Default Order and Notice of Violation (“Order

¹ Pursuant to a stipulation of the parties (NYSCEF #50), Respondent’s OSC will be treated by the court as opposition to Petitioner’s OSC

to Correct” or “OTC”). The OTC stated that Petitioner was withdrawing his harassment claim without prejudice.

Petitioner then filed the instant OSC² on June 15, 2023, seeking civil contempt against Respondents for failure to comply with the April 24, 2023 OTC. This OSC was returnable on July 10, 2023. Respondents again failed to appear and the OSC was marked submitted. Respondents’ counsel filed a notice of appearance on July 10, 2023 indicating that he represents all Respondents in this matter. Respondents then filed an OSC³ seeking to vacate the default on July 10, 2023. That OSC was granted by a stipulation dated August 9, 2023, which: 1) vacated Respondents’ default on July 10, 2023; 2) deemed the papers submitted by Respondents in connection with its OSC to be opposition to Petitioner’s OSC; and 3) gave Petitioner and DHPD until August 21, 2023, to serve and file reply papers. Petitioner did not file any Reply, but HPD submitted an affidavit in reply on August 21, 2023.

Under Judiciary Law § 753, a court of record has the power to punish, by fine and imprisonment, or either, “a neglect or violation of duty, or other misconduct, by which a right or remedy of a party to a civil action or special proceeding, pending in the court may be defeated, impaired, impeded, or prejudiced.” *See generally El-Dehdan v. El-Dehdan*, 26 N.Y.3d 19, 28-29 (2015). A civil contempt is “one where the rights of an individual have been harmed by the contemnor’s failure to obey a court order.” *Dept. of Envtl. Protection v. Dept. of Envtl. Conservation*, 70 NY2d 233, 239 (1987). For civil contempt to lie, the moving party must establish: 1) that a lawful order of the court clearly expressing an unequivocal mandate was in effect; 2) that it appear with reasonable certainty that the order has been disobeyed; 3) that the party charged must have had knowledge of the court’s order; and 4) that the rights of a party to the litigation have been prejudiced. *Id.* The elements of civil contempt must be demonstrated by clear and convincing evidence. *See El-Dehdan*, 26 NY3d at 29.

Respondents’ opposition does not contest the 1st, 3rd or 4th elements of civil contempt. With regard to the second element of civil contempt, Respondents argue that the court’s order was not disobeyed because Respondents “have done everything within our power to remove the violations in the default order of this Court of April 24, 2023 and the violations set forth therein⁴.”

However, “neither substantial compliance nor a good faith effort at compliance is a defense to civil contempt.” *Schlueter v. E. 45th Dev. LLC*, 806 N.Y.S.2d 448 (Civ. Ct., NY Cty. 2005) *citing McCain v. Dinkins*, 84 N.Y.2d 216, 225 (1994); *see also Anumudu v. Bennett*, 2021, N.Y.Misc.LEXIS 4563 at 17-18

² Motion Sequence #1

³ Motion Sequence #2

⁴ Affidavit of Michael Oiring, ¶13 (NYSCEF #37)

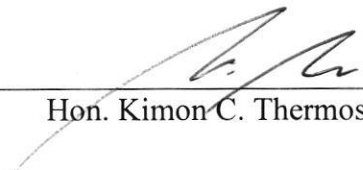
(Civ. Ct., Bronx Cty. 2021). The April 24, 2023 OTC states “The Respondents shall correct the conditions in the vacate order to correct dated 9/14/22 (vacate order #210979) by June 5, 2023, and cause same to be rescinded by June 5, 2023. While Respondents affirm that most of the violations have been corrected, the vacate order was not rescinded on or before June 5, 2023 and has not been rescinded as of the date of this decision/order⁵. Even if substantial compliance were a defense to a contempt finding, Respondents have not substantially complied with this Court’s April 24, 2023 Order because the vacate order has not been lifted.

Based on the above, Petitioner has established all four of the elements of civil contempt. Because Petitioner is still out of possession pursuant to the vacate order, Petitioner cannot show actual damages. As a result, Petitioner seeks a fine in the statutory amount of \$250.00 plus legal fees. NY CLS Jud §773. Petitioner’s counsel previously testified regarding attorneys’ fees on July 10, 2023, but that default has been vacated and Petitioner may have incurred additional legal fees after that date.

Therefore, upon the findings made herein, it is ORDERED that Petitioner’s motion is granted and Respondents Morris Oiring, Michael Oiring, and Beech 114 Holdings LLC are found to be in civil contempt of the court’s April 24, 2023 Order. The court will set the matter down for an attorney’s fees hearing on December 5, 2023 at 9:30am. Upon determination of an amount of reasonable attorney fees, a fine in the amount of \$250.00 (which shall be subject to a judgment in favor of Petitioner as against Respondents Morris Oiring, Michael Oiring, and Beech 114 Holdings LLC) plus the amount of reasonable legal fees will be imposed and an Order Directing Penalty for Contempt will be issued.

This constitutes the Decision and Order of the Court.

Dated: September 29, 2023
Queens, New York



Hon. Kimon C. Thermos, JHC

**Civil Court
of the
City of New York**

OCT 03 2023

**ENTERED
QUEENS COUNTY**

⁵ The Court takes judicial notice of the HPD website which still lists the vacate orders as active