

Weintraub v Currie

2023 NY Slip Op 33650(U)

October 18, 2023

Supreme Court, New York County

Docket Number: Index No. 156406/2022

Judge: Gerald Lebovits

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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. GERALD LEBOVITS PART 07

Justice

-----X

INDEX NO. 156406/2022

YOSEF Y. WEINTRAUB

MOTION SEQ. NO. 002 003 004

Plaintiff,

- v -

**DECISION + ORDER ON
MOTION**

ROBERT J. CURRIE,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 13, 14, 15, 16, 17, 18, 19, 20, 21

were read on this motion for CONTEMPT.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36

were read on this motion for CONTEMPT.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50

were read on this motion for CONTEMPT.

This action arises out of a dispute about the nonpayment of a promissory note. This court granted plaintiff summary judgment in lieu of complaint against defendant in an order dated December 15, 2022. (NYSCEF No. 7.) The Clerk entered judgment on April 25, 2023. (NYSCEF No. 11.)

Plaintiff served defendant with a post-judgment enforcement subpoena ad testificandum and duces tecum (along with a restraining notice) to appear for deposition and produce documents in connection with satisfying the judgment. (NYSCEF No. 16.) Defendant did not comply. (NYSCEF No. 14 at 2.) Plaintiff subpoenaed defendant’s wife, Ms. Kathleen Sztropkalyi, with a subpoena ad testificandum and duces tecum with restraining notice to appear for deposition and produce pertinent documents. (NYSCEF No. 25.) Sztropkalyi did not comply. (NYSCEF No. 23 at 2.) And plaintiff subpoenaed nonparty KSJDLH LLC, a limited-liability company of which plaintiff and Sztropkalyi are members. (NYSCEF No. 38 at 2; NYSCEF No. 40.) The company did not comply. (NYSCEF No. 38 at 3.)

Plaintiff now moves to hold defendant, Sztropkalyi, and KSJDLH in contempt, to compel them to comply with the subpoenas, and award attorney fees associated with making the motion.¹ Plaintiff also asks the court to appoint a referee to supervise disclosure. Motion sequence 002 seeks these forms of relief against defendant; motion sequence 003 seeks them against Sztropkalyi; and motion sequence 004 seeks them against KSJDLH. The three motions are consolidated here for decision.

Under CPLR 2308 (a), a person may be punished for contempt of court for failing to comply with a subpoena. To hold a person in civil contempt, a “lawful judicial order expressing an unequivocal mandate must have been in effect and disobeyed. Moreover, the party to be held in contempt must have had knowledge of the order . . . [and] prejudice to the rights of a party to the litigation must be demonstrated.” (*Aristy-Farer v State of New York*, 29 NY3d 501, 514 [2017], quoting *McCain v Dinkins*, 84 NY2d 216, 226 [1994].) If the movant makes this showing, then the alleged contemnor must rebut it or provide a defense. (*See El-Dehdan v El-Dehdan*, 114 AD3d 4, 17 [2d Dept 2013].)

Here, the subpoenas unequivocally required defendant, Sztropkalyi, and KSJDLH to appear for deposition and to bring any documents containing information on defendant’s income or other means to satisfy the judgment.² (NYSCEF Nos. 16, 25, 40.) And plaintiff has shown that defendant, Sztropkalyi, and KSJDLH were each served with a subpoena. (*See* NYSCEF Nos. 17, 26, 41.) Thus, they knew about the subpoenas’ terms. Finally, plaintiff has shown that he has been prejudiced because he was unable to obtain defendant and Sztropkalyi’s responses, which he needs to satisfy the judgment. (NYSCEF Nos. 14 at 3, 23 at 3, 38 at 3.) Neither defendant nor Sztropkalyi nor KSJDLH seeks to rebut this showing.

Under CPLR 3124, the moving party must comply with the procedural requirements of 22 NYCRR 202.7, which require the moving party to submit an affirmation of good faith. (*Cashbamba v 1056 Bedford LLC*, 172 AD3d 415, 416 [1st Dept 2019].) The affirmation should note any communication between the parties showing that the moving party tried to resolve the discovery dispute. (*Deutsch v Grunwald*, 110 AD3d 949, 950 [2d Dept 2013].)

Here, although plaintiff did not submit a separate affirmation, his papers note how plaintiff served defendant, Sztropkalyi, and KSJDLH with subpoenas to appear and produce documents. (NYSCEF Nos. 16, 25, 40.) Plaintiff sent defendant an email to remind him of these obligations. (NYSCEF No. 18.) He plaintiff mailed Sztropkalyi a letter to the same effect.

¹ Plaintiff also requests that defendant pay attorney fees incurred more broadly as part of his efforts to obtain post-judgment disclosure.

² Sztropkalyi was subpoenaed by plaintiff because plaintiff believed that, based on her relationship with defendant, she would have information, knowledge, and documents that would help in satisfying the judgment. According to plaintiff, Sztropkalyi is defendant’s wife, cohabits with defendant, and is a member of KSJDLH with defendant. (*See* NYSCEF No. 23 at 2.) Plaintiff represents that he subpoenaed KSJDLH because, in light of defendant and Sztropkalyi’s membership in that company, KSJDLH is also likely to have information and documents that would aid enforcement of the judgment.

(NYSCEF No. 27.) And he sent a similar email to KSJDLH. (NYSCEF No. 42.) But none of them responded to plaintiff's communication attempts.

As to the substance of the motion to compel compliance with the subpoenas, CPLR 3124 allows for a party to move to compel another's compliance with disclosure when they fail to do so. The moving party must establish the other person's failure to comply. (*Rodriguez v Clarke Worley Goodman, M.D.*, 2015 NY Slip Op 31412[U], *7 [Sup Ct, NY County 2015].) Then the other person must defend the failure to comply. (*Id.*) Plaintiff has shown that defendant, Sztropkalyi, and KSJDLH have not complied with the subpoenas directing them to appear for examination and to produce pertinent documents. (*See* NYSCEF Nos. 14, 23, 38.) Nor have they submitted any papers on these motions, let alone offered an excuse for their failure to comply with the subpoenas. Plaintiff's motion to compel is granted.³

Finally, although plaintiff did not move expressly for relief under CPLR 3126, he did include a prayer for costs and attorney fees along with a general prayer for relief. (*See Dvortsov v Levy*, 2022 NY Slip Op 50253[U], *3 [Sup Ct, NY County, Apr. 8, 2022].) Plaintiff is awarded \$500 for attorney fees incurred in making these motions.

Accordingly, it is

ORDERED that the branch of plaintiff's motion seeking to hold defendant in contempt (mot seq 002) is granted; and it is further

ORDERED that the branch of plaintiff's motion seeking to hold Sztropkalyi in contempt (mot seq 003) is granted; and it is further

ORDERED that the branch of plaintiff's motion seeking to hold KSJDLH LLC in contempt (mot seq 004) is granted; and it is further

ORDERED that defendant, Sztropkalyi, and KSJDLH shall, within 30 days of entry of this order respond fully to plaintiff's discovery request, including producing responsive documents, and shall, within 45 days of entry of this order, appear for depositionS; and it is further

ORDERED that defendant shall, within 30 days of entry of this order, pay \$500 to plaintiff for the attorney fees and costs incurred in making these motions; and it is further

ORDERED that the branch of plaintiff's motion seeking appointment of a referee to supervise disclosure is denied; and it is further

³ Plaintiff also requests a referee to supervise disclosure. (NYSCEF No. 14 at 2, 23 at 2.) This court is not persuaded that appointment of a discovery referee is warranted in this case.

ORDERED that plaintiff shall serve a copy of this order with notice of its entry on defendant, Sztropkalyi, and KSJDLH, by email and by certified mail, return receipt requested, directed to their respective last-known addresses.

10/18/2023

DATE


HON. GERALD LEBOVITZ
J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE