

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

2024 NY Slip Op 31635(U)

May 9, 2024

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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In the Matter of
SHANGHAI TANIDA GARMENTS CO., LTD.,
Petitioner,

INDEX NO. 152759/2023

MOTION DATE 05/08/2024

MOTION SEQ. NO. 002

- v -

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

**DECISION, ORDER, AND
JUDGMENT OF CONTEMPT**

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 22, 23, 24, 25, 26, 27

were read on this motion to/for CONTEMPT.

This is a proceeding pursuant to CPLR 2308, 3124 and 3125 to compel the respondents, Jin G. Sprizzo and Up Town Sport, Inc., to comply with an information subpoena duces tecum and ad testificandum served upon them on February 21, 2023, which had commanded Sprizzo to appear on March 9, 2023 at the offices of the petitioner’s attorneys to give testimony concerning the location of custody of assets held by the respondent and judgment debtor Up Town Sport, Inc. (Up Town), and directed her to deliver, to that office, completed, executed, and notarized responses to the questions set forth in the questionnaires annexed to the subpoenas, as well as all documents requested in those subpoenas. Although, in response to the subpoenas, Sprizzo appeared at the offices of the petitioner’s attorneys on March 9, 2023, she neither completed nor delivered a notarized response to the questionnaire, nor delivered nor brought any documents responsive to the subpoenas, and the petitioner thus could not conduct her deposition. In a decision, order, and judgment dated August 31, 2023, this court granted the petition, and directed Sprizzo to appear in person at the petitioner’s attorney’s offices on October 5, 2023, at 10:00 a.m., or at any adjourned date agreed upon by the parties, and

directed the respondents fully to comply with the subpoenas at that time. Neither Sprizzo nor anyone on behalf of Up Town appeared on that date, and the respondents have neither provided a completed, signed, and notarized response to the questionnaire nor the documents requested in the subpoenas. Hence, the respondents not only disobeyed the February 21, 2023 subpoena, but they also failed or refused to comply with this court's order.

The petitioner now moves pursuant to Judiciary Law § 753(A)(5) and CPLR 2308(a) to hold the respondents in civil contempt of court for their refusal to comply with this court's August 31, 2023 decision, order, and judgment. The petitioner provided notice to the respondents of the instant motion, as directed in the initiatory order to show cause, and personally contacted Sprizzo to ascertain whether she would appear at the oral argument of the motion on May 8, 2024. Sprizzo expressly informed the petitioner's attorney that she would not be appearing. The motion is granted, and the respondents are adjudged and held to be in civil contempt, with the opportunity to purge the contempt as set forth herein.

A "contempt sanction is viewed as civil if it is 'remedial,' and for the benefit of the complainant, but is criminal if its purpose is punitive, and to "vindicate the authority of the court"" (*New York City Tr. Auth. v Transportation Workers Union of Am., AFL-CIO*, 35 AD3d 73, 86 [2d Dept 2006], quoting *International Union, United Mine Workers of America, v Bagwell*, 512 US 821, 827-828 [1994]). "Coercive penalties designed to modify the contemnor's behavior, generally speaking, are civil in nature, while penalties meant to punish the contemnor for past acts of disobedience are criminal" (*New York City Tr. Auth. v Transportation Workers Union of Am., AFL-CIO*, 35 AD3d at 86). Inasmuch as the petitioner is not attempting to vindicate the authority of the court, and is primarily seeking to modify the respondents' future behavior so that they comply with the subpoena and this court's prior order, civil contempt is appropriately sought here.

To prevail on an application to punish a party for civil contempt, the moving party must establish that the party to be held in contempt violated a clear and unequivocal court order,

known to the parties (see Judiciary Law § 753[A][3]; see also *McCormick v Axelrod*, 59 NY2d 574 [1983], *amended* 60 NY2d 652 [1983]). The applicant must also establish that the party to be held in contempt engaged in conduct that was calculated to and actually did defeat, impair, impede, and prejudice the rights of the applicant (see *450 West 14th St. Corp. v 40-56 Tenth Avenue, LLC*, 15 AD3d 166 [1st Dept 2005]; *Lipstick, Ltd. v Grupo Tribasa, S.A. de C.V.*, 304 AD2d 482 [1st Dept 2003]). “[W]ilfulness is not an element of civil contempt” (*El-Dehdan v El-Dehdan*, 26 NY3d 19, 35 [2015]). A civil contempt must be proven by clear and convincing evidence (see *Classe v Silverberg*, 168 AD3d 603, 604 [1st Dept 2019]). A lawful order of this court was rendered and in effect as of August 31, 2023, directing the respondents to appear for a deposition on a date certain, to deliver a completed, signed, and notarized questionnaire, and to produce requested documents on that date as well. By failing to appear, or to produce that questionnaire and those documents, the respondents not only disobeyed a court order, but also engaged in conduct that was meant to impede and prejudice the petitioner’s rights. Hence, clear and convincing evidence supports the petitioner’s motion.

In her response to the inquiry of the petitioner’s attorney as to whether she would appear in court on May 8, 2024, Sprizzo asserted that she had “no reason to pay personal liability for a company that has ceased operations.” Sprizzo evinced a complete misunderstanding of the nature of the judgment against Up Town and the nature of these supplementary proceedings to obtain information about Up Town’s assets. The petitioner is not requesting that Sprizzo be held personally responsible for any portion of the \$159,056.85 judgment entered on January 17, 2023 against Up Town in the action entitled *Shanghai Tanida Garments Co., Ltd. v Up Town Sport, Inc.* [Sup Ct, N.Y. County, Index Number 654447/2022]). Rather, the petitioner only has sought the remedy of post-judgment discovery from her to ascertain the existence, extent, location, and custody of any assets belonging to Up Town, so that it can enforce the judgment against Up Town. It also seeks to ascertain whether those assets were transferred to her or another person or entity to avoid paying the judgment. Sprizzo’s compliance with the subpoena

or this court's August 31, 2023 order would have been easy to effectuate, and would not, of itself, have subjected her to personal liability or responsibility for Up Town's judgment debt.

Where, as here, a complainant's rights may be prejudiced, but an actual loss or injury has not been caused or established, the imposition of a fine is an appropriate punishment (see *King v King*, 124 Misc 2d 946, 950 [Sup Ct, N.Y. County 1984]). The "unambiguous" language of the Judiciary Law provides that such a fine may not exceed the amount of the complainant's costs and expenses in making the contempt motion, plus \$250 (Judiciary Law § 773; see *State v Unique Ideas, Inc.*, 44 NY2d 345, 349 [1978]; *King v King*, 124 Misc 2d at 950). Inasmuch as the petitioner's attorneys did not submit an invoice, bill, or affirmation of attorneys' services establishing how much the petitioner incurred in prosecuting this motion, the court cannot award such costs and expenses at this juncture. Hence, the court directs the petitioner to submit such an invoice, bill, and affirmation of attorneys' services supporting its application for an award of costs to compensate it for the respondents' civil contempt, upon which the court will issue a supplemental order making the appropriate award.

In light of the foregoing, it is,

ORDERED that the petitioner's motion is granted, without opposition, the respondents are held in civil contempt, and they are directed to pay a fine of \$250.00, plus the petitioner's costs and expenses incurred in making this motion as a consequence thereof; and it is,

ADJUDGED that the respondents, Jin G. Sprizzo and Up Town Sport, Inc., are held in civil contempt; and it is further,

ORDERED that, on or before June 28, 2024, the respondents, Jin G. Sprizzo and Up Town Sport, Inc., shall purge their contempt by appearing for and giving a deposition, providing a completed, signed, and notarized response to the questionnaire attached to the subpoenas, and producing the documents identified in the subpoenas served upon them; and it is further,

ORDERED that, if, on or before June 28, 2024, the respondents, Jin G. Sprizzo and Up Town Sport, Inc., do not purge their contempt by appearing for and giving a deposition,


providing a completed, signed, and notarized response to the questionnaire attached to the subpoenas, and producing the documents identified in the subpoenas served upon them, the respondent Jin G. Sprizzo shall, upon motion by the petitioner, be subject to seizure by New York City Sheriff to compel her appearance and compliance with this order; and it is further,

ORDERED that, on or before May 17, 2024, the petitioner shall serve a copy of this decision, order, and judgment upon the respondents by regular mail and certified mail, return receipt requested; and it is further,

ORDERED that, within 30 days of the entry of this decision, order, and judgment, the petitioner shall submit a bill or invoice, and an affirmation of attorneys' services, to establish the amount to which it is entitled to recover from the respondents as a consequence of their civil contempt.

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

5/9/2024
DATE



JOHN J. KELLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: