

**Donnelly v Deiacco**

2024 NY Slip Op 32507(U)

July 15, 2024

Supreme Court, New York County

Docket Number: Index No. 651737/2023

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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DANIEL DONNELLY,	INDEX NO. <u>651737/2023</u>
Plaintiff,	MOTION DATE <u>03/29/2024</u>
- v -	MOTION SEQ. NO. <u>004</u>
GISELLE DEIACO, ROBERT DEIACO, KOGV, LLC	
Defendants.	<b>DECISION + ORDER ON MOTION</b>
-----X	

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 49, 50, 51, 52, 53, 54

were read on this motion to MODIFY CONTEMPT ORDER.

Plaintiff Daniel Donnelly's ("Plaintiff") motion to increase the daily coercive fines payable by Defendants Giselle Deiacco and Roberto Deiacco (collectively, "Defendants" or the "Deiacos") for their continuing civil contempt of Court is **granted** to the extent set forth below.

By order dated October 6, 2023, the Court granted Plaintiff's motion for a default judgment and directed the Deiacos to produce the books and records of Defendant KOGV, LLC, (NSYCEF 21). The order was served on the Deiacos via email and Certified Mail (NYSCEF 23). The Deiacos have not sought to vacate their default.

The Deiacos failed to comply with the Court's order directing the production of KOGV's books and records and Plaintiff moved for contempt. The Deiacos did not submit any opposition, nor did they appear for oral argument on January 12, 2024, as directed in the Court's Order to Show Cause, which was served on the Deiacos (NYSCEF 32, 33).

Following oral argument, by order dated January 12, 2024, the Court granted Plaintiff's motion for contempt (NYSCEF 34, 36 [Transcript]). The Court provided the Deiacos with a week to purge their contempt (Tr. at 11). The Court's order provides that, unless the Deiacos purged their contempt, they would be fined \$1,000 per day. The Court also directed that:

along with providing Notice of Entry of this order, provide a copy of the transcript so that the defendants can at least hear from me directly that, you know, I'm willing to listen to a reasonable excuse for failure to comply with the Court's order, but continued silence and disobeying of the order is going to be met with increasing levels of penalties. And so, there should be no misimpression on that front going forward.

(Tr. at 12-23).

Plaintiff served a copy of the Court's January 12, 2024, order with notice of its entry and a copy of the transcript on January 19, 2024 (NYSCEF 37). The Deiacos neither appeared nor complied with the contempt order. On March 29, 2024, the Plaintiff moved to increase the contempt penalties.

During oral argument on January 12, 2024, counsel for Plaintiff represented that the Deiacos were parties to other pending litigations in New York County in which they are represented by counsel (Tr. at 10). The Deiacos have apparently ignored the Court's orders, as they have ignored orders issued in other cases. To compound matters, the default judgment only provides that Plaintiff has the right to inspect KOGV's corporate records – a right he should have without the need to seek a court order.

Clearly, a more persuasive sanction is warranted (*Jewish Press, Inc. v New York City Police Dept.*, 225 AD3d 493, 494 [1st Dept 2024], *lv to appeal denied*, 2024 NY Slip Op 69370 [Ct App June 13, 2024] [civil contempt was warranted where respondent waited several months for produce records as ordered]). That said, “fines must be remedial in nature and effect. The award should be formulated not to punish an offender, but solely to compensate or indemnify

private complainants” (*State v Unique Ideas, Inc.*, 44 NY2d 345, 349 [1978] [citation omitted]). Further, “parties should be afforded an opportunity to purge their contempt before significant sanctions, including incarceration, are awarded” (*Dankner v Steefel*, 41 AD3d 526, 528 [2d Dept 2007] [modifying order of contempt]).

In this instance, given the Deiacos’ decision to ignore multiple Court orders, an increased daily penalty is warranted. Accordingly, the Court directs that Plaintiff serve a copy of this order via email, overnight delivery and, if possible, by personal service on the Deiacos. The Court also directs that Plaintiff serve by email a copy of this order on any attorney(s) currently representing the Deiacos in any matter pending in New York County.

Should the Deiacos not comply with the Court’s order directing the production of KOGV’s records within seven (7) days of service, the daily fine shall increase to five thousand dollars (\$5,000). **Additionally, Plaintiff may move for an order seeking imprisonment of the Deiacos until their contempt is purged pursuant to Jud. Law §753.** Plaintiffs are also awarded their costs and fees, including reasonable attorney’s fees, incurred in connection with this motion and shall apply for costs within ten (10) days.

Accordingly, it is

**ORDERED** that Plaintiff’s motion to increase contempt sanctions is **GRANTED** to the extent stated above; it is further

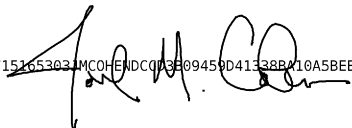
**ORDERED** that Plaintiff promptly serve a copy of this order with notice of its entry on the Deiacos via email, overnight delivery and, if possible, by personal service and file proof of service; it is further

**ORDERED** that Plaintiff additionally serve a copy of this order by email on any attorney(s) currently representing the Deiacos in any matter pending in New York County; it is further

**ORDERED** that the Deiacos shall comply with the Court’s orders within ten (10) days of the service of this order; it is further

**ORDERED** that Plaintiff apply for costs and fees within ten (10) days.

This constitutes the decision and order of the Court.

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JOEL M. COHEN, J.S.C.

7/15/2024  
DATE

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