

PJSC Natl. Bank. Trust v Pirogova

2024 NY Slip Op 32676(U)

July 22, 2024

Supreme Court, New York County

Docket Number: Index No. 656519/2020

Judge: Andrew Borrok

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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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| | | |
|--------------------------|------------------------|---|
| PJSC NATIONAL BANK TRUST | INDEX NO. | <u>656519/2020</u> |
| Plaintiff, | | 04/08/2024, |
| - v - | MOTION DATE | <u>04/08/2024,</u> <u>04/26/2024</u> |
| NATALIA PIROGOVA, | MOTION SEQ. NO. | <u>008 009 010</u> |
| Defendant. | | |

**DECISION + ORDER ON
 MOTION**

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 008) 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 231, 232
 were read on this motion to/for PUNISH FOR CONTEMPT.

The following e-filed documents, listed by NYSCEF document number (Motion 009) 229, 230, 233, 254, 255, 256, 257, 258, 259, 260, 261
 were read on this motion to/for ATTORNEY -
 DISQUALIFY/RELIEVE/SUBSTITUTE/WITHDRAW.

The following e-filed documents, listed by NYSCEF document number (Motion 010) 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 252, 253
 were read on this motion to/for POST JUDGMENT OTHER.

Upon the foregoing documents and for the reasons set forth below, PJSC National Bank Trust (the **Judgment Creditor**)’s motion (Mtn. Seq. No. 008) to hold defendant Natalia Pirogova in civil and criminal contempt is granted (*El-Dehdan v El-Dehdan*, 26 NY3d 19, 29 [2015]; *Simens v Darwish*, 100 AD3d 527, 527 [1st Dept 2012]; *Madigan v Berkeley Capital, LLC*, 205 AD3d 900, 905-906 [2d Dept 2022]). The record before the Court establishes beyond a reasonable doubt that Mr. Pirogova has willfully and contumaciously violated numerous lawful orders of the Court (despite interim orders giving her additional opportunity to correct her non-compliance) with the clear intent of frustrating the legitimate rights of the Judgment Creditor to frustrate and

preventing the Judgment Creditor from enforcing and levying upon its Judgment (hereinafter defined). It is beyond dispute that the Judgment Creditor has been prejudiced by her conduct and that Mr. Pirogova's continued attempts at evasion and willful disregard of the Court's orders are designed to "impede[] or prejudices the rights of" the Judgment Creditor (*Commr. of Labor v Hinman*, 103 AD2d 886, 887 [3d Dept 1984]; *El-Dehdan*, 26 NY3d, at 29; *Siemens*, 100 AD3d, at 527; *Madigan*, 205 AD3d at 905-906).

Victor Worms' order to show (the OSC; Mtn. Seq. No. 009) to withdraw as Ms. Pirogova's attorney is denied. As discussed below, Mr. Worms fails to meet his burden that withdrawal is appropriate at this time because both the Judgment Creditor and Ms. Pirogova herself would be substantially prejudiced by Mr. Worms' withdrawal four years into this lawsuit where he has engaged in substantial motion practice (*Haskell v Haskell*, 185 AD2d 333 [2d Dept 1992]). His motion in this case is particularly puzzling particularly given that he has not sought to withdraw in any of the at least four other cases where he also serves as Ms. Pirogova's lawyer.¹

The Judgment Creditor's motion (Mtn. Seq. No. 010) to compel Mr. Worms to comply with a Post-Judgment Information Subpoena and a Post-Judgment Subpoena Duces Tecum is granted because the subpoenas seek non-privileged non-confidential information relevant to the Plaintiff's legitimate efforts to enforce that judgment. As discussed below, Mr. Worms' previous response was inadequate and facially purposefully avoids disclosure of non-privileged non-

¹ See *PJSC National Bank TRUST v. Natalia Pirogova, et al.*, Index No. 160130/2020; *Pirogova v. Madison YT, LLC et al.*, Index No. 652764/2020; *Denis Goldberg, et al. v. Cole Schotz P.C., et al.*, 653357/2019; *FGP 1, LLC, et al. v. Luiza Dubrovsky, et al.*, Index No. 650479/2016.

confidential facts. Indeed, as discussed below, it is hard to square what he says in his affidavit response with papers filed in this and the other lawsuits in which he represents Ms. Pirogova.

The Relevant Facts and Circumstances

This case has been pending before this Court for over four years and has been the subject of substantial motion practice *after* a \$43,663,096.81 judgment (the **Judgment**; NYSCEF Doc. No. 119) was entered in favor of the Judgment Creditor and against Ms. Pirogova. At all times, her attorney has been Victor Worms. The Court refers to certain prior decisions of this Court, dated November 1, 2021, March 6, 2023, and September 1, 2023 (NYSCEF Doc. Nos. 104, 163, and 209, respectively). The facts of this case are set forth in such prior decisions. Familiarity is presumed and all such decisions are incorporated in their entirety by reference.

Briefly, however, as relevant to the instant motions, on May 24, 2022, a \$43 million Judgment was entered against Ms. Pirogova. The Judgment remains unsatisfied. In an effort to collect the money owed, the Judgment Creditor served a Post Judgment Information Subpoena and Restraining Notice (the **Quashed Subpoena**; NYSCEF Doc. No. 176) at what they believed to be Ms. Pirogova's last known address. By her attorney, Mr. Worms, Ms. Pirogova moved to quash the subpoena because, according to Mr. Worms, the address was not proper. The Judgment Creditor both opposed the motion and cross-moved for alternative service, seeking permission to serve Ms. Pirogova by serving her attorney, Mr. Worms. For his part, at that time, Mr. Worms represented to the Court that the Judgment Creditor's purported service on Ms. Pirogova was improper because it was not at her address (although he did not indicate a proper address for her [*see* CPLR 3118] or otherwise provide any non-privileged non-confidential facts

about Ms. Pirogova or her whereabouts, including without limitation, by way of example, where he sends bills or meets with her) and only instead informed the Court that “I do have a way of speaking to [Ms. Pirogova] when I need to speak to her;” he did not explain how he does that either (NYSCEF Doc. Nos. 169:19-22, 270). For the Judgment Creditor’s part, it demonstrated that it had engaged in diligent efforts to otherwise locate Ms. Pirogova but were left with only Mr. Worms, her lawyer, who knew how to contact her. Thus, the Court granted both the motion to quash for improper service and the cross-motion for alternative service (the **Prior Decision**; NYSCEF Doc. No. 163).²

Subsequently, as authorized by the Prior Decision, on March 6, 2023, the Judgment Creditor served a Post Judgment Information Subpoena and Restraining Notice on Ms. Pirogova by effecting alternative service on Mr. Worms (the **Pirogova Subpoena**; NYSCEF Doc. No. 181). At the hearing held to consider the Contempt Order, Mr. Worms represented to the Court that the Pirogova Subpoena was not served upon him at his office but rather at his home, which Mr. Worms contended was improper. The record demonstrated, however, that the Judgment Creditor did attempt service upon Mr. Worms at his office, but was unable to do so because the address

² Indeed, the Court notes that it would appear that Mr. Worms has permitted Ms. Pirogova to use his office address in certain substantive agreements involving her interest. To wit, in a certain Reassignment of Interest and Termination of Nominee Agreement, dated March ___, 2019 between Natalia Pirogova and Luiza Dubrovsky, filed by Mr. Worms in the lawsuit captioned *FGP 1, LLC, et al. v. Luiza Dubrovsky, et al.*, Index No. 650479/2016. The agreement provides:

This REASSIGNMENT OF INTEREST AND TERMINATION OF NOMINEE AGREEMENT is made as of March ___, 2019, between Natalia Pirogova, having an address of c/o Law Offices of Victor A. Worms, 48 Wall Street, Suite 1100, New York, New York 10005 (hereafter “Pirogova”) and Luiza Dubrovsky, having an address of c/o Woods and Lonergan PLLC, 280 Madison Avenue, Suite 300, New York, New York 10016 (hereafter “Dubrovsky”).

(NYSCEF Doc. No. 221 in Index No. 650479/2016). Thus, Mr. Worms has held himself out as a point of contact for Ms. Pirogova since at least 2019.

that Mr. Worms had on file with the bar association is apparently not correct; according to Mr. Worms, he left that address years earlier (NYSCEF Doc. No. 200). Thus, the Court held that serving Mr. Worms at his home was proper and necessary (NYSCEF Doc. No. 212, at 9-12).³

Ms. Pirogova failed to respond to the Pirogova Subpoena. The Judgment Creditor then moved by order to show cause to hold Ms. Pirogova in civil contempt (NYSCEF Doc. No. 195). By an Interim Order dated August 23, 2023 (the **Interim Order**; NYSCEF Doc. No. 203), this Court found that (i) the Pirogova Subpoena was lawfully issued and expressed an unequivocal mandate, (ii) the Pirogova Subpoena was properly served, (iii) that Ms. Pirogova has failed to comply with the Pirogova Subpoena and (iv) the Judgment Creditor's ability to collect the monies owed had been completely stymied by Ms. Pirogova's refusal to comply with the Pirogova Subpoena, and ordered Ms. Pirogova to respond to the Pirogova Subpoena by August 29, 2023, or be held in contempt of court.

In response, Ms. Pirogova then filed a purported "response" to the Pirogova Subpoena (the **Response**; NYSCEF Doc. No. 208). In her purported Response, she refused to provide the most basic of information -- a telephone number (home or cell phone), her social security number, tax information or returns, or any information whatsoever about any amounts she pays in expenses. In fact, although the questions asked broadly as to any income received and expenses incurred, she unilaterally refused to answer and purported to limit the questions so that she could avoid

³ The Court notes that, pursuant to Section 468-A of the Judiciary Law and Part 118 of the Rules of the Chief Administrator of the Courts, each attorney admitted to practice in New York is obligated to file a biennial registration statement with the Chief Administrator of the Courts, including both a home and office address, and is obligated to file an amended statement within 30 days of a change in either the attorney's home or office address (*see* Judiciary Law § 468-A; 22 NYCRR 118.1).

response. For example, to avoid explaining where she **actually** resides she indicated only that she “maintains a physical address in New York” and to avoid explaining how she pays her expenses generally, she indicated that she pays no expenses “in New York.” She did not answer either where she actually resides or where she actually incurs expenses as the questions called for:

- 6. Q. Where do you reside? (Provide physical residence address).
 A. I *maintain* a physical residence at 271 Garderville Road, New Hampton, New York 10958
- 7. Q. With whom do you reside? (Provide names of each such person)?
 A. Willy Cancel

...

- 79. Q. State the amount you pay each month for each of the following types of expense by inserting the amount on the line next to the type of expense.

| AMOUNT** | DESCRIPTION |
|----------|---|
| \$ -0- | Mortgage or rent |
| \$ -0- | Electricity and heating fuel |
| \$ -0- | Water and sewer |
| \$ -0- | Telephone (land line) |
| \$ -0- | Telephone (cell) |
| \$ -0- | Cable TV/streaming Services |
| \$ -0- | Auto insurance |
| \$ -0- | Auto maintenance and fuel |
| \$ -0- | Life insurance premium |
| \$ -0- | Health insurance premium |
| \$ -0- | Homeowners' property insurance premium |
| \$ -0- | Other type of insurance premium (identify) |
| \$ -0- | Property tax not included in mortgage payment |
| \$ -0- | Home maintenance and repair |
| \$ -0- | Food |
| \$ -0- | Clothing |
| \$ -0- | Laundry and dry cleaning |
| \$ -0- | Medical/dental expenses |
| \$ -0- | Recreation/clubs/newspapers/magazines |
| \$ -0- | Charitable contributions |

| | |
|--------|---|
| \$ -0- | Other installment payments |
| \$ -0- | Alimony, maintenance and support payments |
| \$ -0- | Other (explain) |

**** I incur no amounts in such expenses as a resident of the State of New York**

(NYSCEF Doc. No. 208, at ¶¶ 6-7, 79 [emphasis added]).⁴

By a subsequent Decision and Order dated September 1, 2023 (the **Contempt Order**; NYSCEF Doc. No. 209), this Court held that Ms. Pirogova's Response was insufficient and constituted a willful and contumacious disobedience of the Court's Interim Order and that she continued to seek to "impede[] or prejudice[] the rights of" the Judgment Creditor (*Commr. of Labor v Hinman*, 103 AD2d 886, 887 [3d Dept 1984]). Thus, the Court granted the Judgment Creditor's motion to hold Ms. Pirogova in civil contempt, and (i) ordered Ms. Pirogova to furnish the Judgment Creditor with complete responses to the questions posed in the Pirogova Subpoena within two weeks (*i.e.*, by September 15, 2023), (ii) sanctioned Ms. Pirogova in the amount of \$250, (iii) awarded the Judgment Creditor reasonable attorneys' fees in connection with bringing its motion for contempt, and (iv) granted the Judgment Creditor leave to move by order to show cause to hold Ms. Pirogova in criminal contempt if she failed to do so:

For the reasons set forth on the record (8.31.23), PJSC National Bank Trust's (the Judgment Creditor) motion to hold Natalia Pirogova in civil contempt is granted because Ms. Pirogova has willfully and contumaciously failed to comply with this Court's Interim Order dated August 23, 2023 (the Order; NYSCEF Doc. No. 203), where this Court unequivocally directed Ms. Pirogova to respond to the Judgment Creditor's Post

⁴ In point of fact, on April 20, 2023, in response to an order from the court (Schechter, J.) in a case captioned *PJSC National Bank Trust v. Natalia Pirogova, et al.*, Index 160130-2020, Mr. Worms filed a CPLR 3118 response indicating "Natalia Pirogova, 271 Garderville Road, New Hampton, New York 10958." (NYSCEF Doc. No. 255). This response and filing by Mr. Worms does not appear to be consistent with Mr. Worms' response to questions about Ms. Pirogova's last known address and when she was last there in response to his own subpoena (discussed below). However, the Court notes that in her Verification to the CPLR 3118 response, Ms. Pirogova indicated "I am physically outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States." Her signature on the Verification does not appear to have been before a consulate and does not appear to be notarized.

Judgment Information Subpoena (the Subpoena; NYSCEF Doc. No. 203) or she would be held in civil contempt. Ms. Pirogova's "response" (NYSCEF Doc. No. 208) is insufficient, misleading, and on its face constitutes a blatant attempt to frustrate the Judgment Creditor's rights in that the "response" does not provide even the most basic of information to which the Judgment Creditor is entitled so that it can satisfy its more than \$43 million judgment. Her "response" demonstrates a disobedience of, and a complete disregard for, the directive of this Court requiring her to appropriately respond to the Subpoena that was properly served. As such, she is in contempt of court, is sanctioned in the amount of \$250, to be deposited with the County Clerk for transmittal to the New York State Commissioner of Taxation, and shall pay Plaintiff's reasonable attorneys' fees in bringing this motion. If Ms. Pirogova does not appropriately respond to the Subpoena within two weeks from the date of this Decision and Order, the Judgment Creditor shall be entitled to move by order to show cause to hold Ms. Pirogova in criminal contempt.

(NYSCEF Doc. No. 209, at 1-2).

Ms. Pirogova never served any further response to the Pirogova Subpoena, nor did she file proof of having paid the \$250 sanction. The Judgment Creditor then brought this motion seeking to hold Ms. Pirogova in civil and criminal contempt, including seeking coercive confinement.

The Judgment Creditor also served Mr. Worms with a Post-Judgment Information Subpoena dated June 16, 2022 (the **Information Subpoena**; NYSCEF Doc. No. 236) and a Post-Judgment Subpoena Duces Tecum dated August 2, 2023 (the **Subpoena Duces Tecum**, and collectively with the Information Subpoena, the **Worms Subpoenas**; NYSCEF Doc. No. 245). Mr. Worms moved to quash the Information Subpoena (Mtn. Seq. No. 005), and this Court denied that request, holding the Information Subpoena was "properly served and the questions posed are relevant to the legitimate debt collection efforts of the Judgment Creditor" (NYSCEF Doc. No. 164). Subsequently, Mr. Worms purported to respond to the Information Subpoena on May 23, 2023 (NYSCEF Doc. No. 256). As discussed below, Mr. Worms responses are inadequate.

Among other things, he indicates in his response that he does not know the judgment debtor's last location:

2. Q. Where is the last known location of the judgment debtor, and when was the judgment debtor last at that location? (Provide physical address and date.)
 - A. I have no personal knowledge of the Debtor's last known location, and when the Debtor was last at that location.

(NYSCEF Doc. No. 237). As discussed above, this appears to be at odds with the papers he filed in the case captioned *PJSC National Bank Trust v. Natalia Pirogova, et al.*, Index No. 160130/2020, when he filed a CPLR 3118 response indicating “Natalia Pirogova, 271 Garderville Road, New Hampton, New York 10958.” (NYSCEF Doc. No. 255). Having filed those papers in that action, he must have had a good faith basis for doing so and now can not simply whisk this away and avoid explaining his basis for doing so under the feigned guise that he “lacks personal knowledge.” At best, the response is incomplete and misleading. As discussed below, he also fails to indicate the full legal name of the entity from which he receives payments for his legal bills, fails to disclose all actions in which he has represented Ms. Pirogova, fails to indicate all entities in which Ms. Pirogova has an economic interest, and fails to indicate any other person who may have knowledge relevant to the satisfaction of the Judgment. Mr. Worms has not yet provided any response to the Subpoena Duces Tecum. The Judgment Creditor thus brought its motion (Mtn. Seq. No. 010) to compel Mr. Worms' compliance with the Worms Subpoenas.

On April 8, 2024, Mr. Worms brought the OSC seeking to withdraw in the case (Mtn. Seq. No. 009). When the Court signed his OSC, the Court indicated that personal service of Ms. Pirogova

was required. Remarkably, Mr. Worms did not serve and file an affidavit of service until the day of oral argument (NYSCEF Doc. No. 279) such that the Judgment Creditor would have no opportunity to comment on it. Given Mr. Worms' subpoena response where he indicates that he does not know Ms. Pirogova's last known location and when she was last there, the affidavit of service filed is insufficient to demonstrate personal service in accordance with the CPLR. The Affidavit indicates only that it was served on a "Jane Doe" at 271 Garderville Road, New Hampton, New York 10958. Mr. Worms himself does not provide **in this lawsuit** any basis whatsoever for the Court to conclude that this is in fact Ms. Pirogova's address or that Jane Doe is in fact Ms. Pirogova or a suitable person at Ms. Pirogova's address. In fact, as discussed above, in his own responses to the Worms Subpoena, he indicated that "no personal knowledge of the Debtor's dwelling place or usual place of abode" (NYSCEF Doc. No. 270). Mr. Worms also does not offer an affidavit indicating, among other things, where he has met with Ms. Pirogova (which may or may not include this address or another address) or even an attestation of the physical description of the "Jane Doe" and whether it matches Ms. Pirogova's description attaching a driver's license or other form of public non-privilege identification for Ms. Pirogova identifying this as her address or otherwise.⁵ And, as discussed above, although Mr. Worms seeks to withdraw in this case, he has not sought to withdraw in the four other matters where he represents Ms. Pirogova. In point of fact, according to the Judgment Creditor, in the other four lawsuits, it is clear that he has had recent and substantial contact with Ms. Pirogova:

| Date | Type of Communication | Case No |
|------|-----------------------|---------|
|------|-----------------------|---------|

⁵ For the avoidance of doubt, it is also clear Mr. Worms has in fact met with Ms. Pirogova and knows what she looks like as he has personally notarized documents for her (*see, e.g.*, NYSCEF Doc. No. 291, at 19 in Index No. 650479/2016).

| | | |
|-------------------|---|-------------|
| April 1, 2024 | Consent to joint status report | 160130/2020 |
| March 20, 2024 | Consent to ADR | 653357/2019 |
| February 5, 2024 | Consent to joint status report | 160130/2020 |
| February 2, 2024 | Correspondence on joint status update for the court | 160130/2020 |
| December 18, 2023 | Consent to joint status report | 160130/2020 |
| December 15, 2023 | Correspondence on joint status update for the court | 160130/2020 |
| October 30, 2023 | Consent to joint status report | 160130/2020 |
| October 30, 2023 | Correspondence on joint status update for the court | 160130/2020 |

(NYSCEF Doc. No. 254, at ¶ 40).

Discussion

I. Ms. Pirogova is Held in Civil and Criminal Contempt

To make a finding of civil contempt, the Court must determine that (i) a lawful order of the court clearly expressing an unequivocal mandate was in effect, (ii) it appears with reasonably certainty that the order has been disobeyed, (iii) the party to be held in contempt had knowledge of the court's order, and (iv) the right of a party to the litigation is prejudiced (*El-Dehdan v El-Dehdan*, 26 NY3d 19, 29 [2015]). Civil contempt must be demonstrated by clear and convincing evidence (*Classe v Silverberg*, 168 AD3d 603, 604 [1st Dept 2019]). To make a finding of criminal contempt, the Court need not determine that the right of a party to the litigation has been prejudiced but must find that the party to be held in contempt willfully disobeyed the court's order (*Madigan v Berkeley Capital, LLC*, 205 AD3d 900, 905-906 [2d Dept 2022]). Criminal contempt requires a showing of a higher degree of willfulness than required for civil contempt

(*Digital Warehouse USA Inc. v Hasan*, 2019 WL 6840407, at * 2 [Sup Ct, NY County 2019], citing *Dept. of Env'tl. Protection v Dept. of Env'tl. Conservation*, 70 NY2d 233, 240 [1987]). Criminal contempt must be proven beyond a reasonable doubt (*Simens v Darwish*, 100 AD3d 527, 527 [1st Dept 2012]). Upon a finding of civil contempt, the Court may levy a fine of \$250 where such contempt has not cause actual loss or injury (Judiciary Law § 773) and upon a finding of criminal contempt, \$1,000 (Judiciary Law § 751). A motion for criminal contempt must be personally served “with equal dignity to that required of a summons” (*Clinton Corner H.D.F.C. v Lavergne*, 279 AD2d 339, 341 [1st Dept 2001], citing *In re Grand Jury Subpoena Duces Tecum served upon Morano’s of Fifth Ave., Inc.*, 144 AD2d 252, 256 [1st Dept 1988]).

As discussed above, the Court previously found in the Interim Order that (i) the Pirogova Subpoena was lawfully issued and expressed an unequivocal mandate, (ii) the Pirogova Subpoena was properly served, (iii) that Ms. Pirogova has failed to comply with the Pirogova Subpoena and (iv) the Judgment Creditor’s ability to collect the monies owed has been completely stymied by Ms. Pirogova’s refusal to comply with the Subpoena, warranting civil contempt. In the Contempt Order, the Court held Ms. Pirogova in civil contempt and ordered her to provide complete and accurate answers to the Pirogova Subpoena and pay a \$250 sanction, providing written proof of payment (NYSCEF Doc. No. 209). As discussed above, to avoid a finding of criminal contempt, the Court gave Ms. Pirogova the opportunity to file an appropriate response to the Pirogova Subpoena. She has both failed to pay \$250 and she has failed to provide complete and accurate answers to the Pirogova Subpoena. Thus, the record before the Court is now clear beyond any reasonable doubt whatsoever that Ms. Pirogova, who offers no opposition to this motion, has willfully and contumaciously disobeyed several of this Court’s

orders and repeatedly refused to answer the questions posed to her in the Pirogova Subpoena, despite being given numerous opportunities to do so, all in an effort to stymie the Judgment Creditor's lawful efforts to collect on its substantial Judgment of some \$43 million and such that she seeks to undermine the legitimate judicial process for debt collection.

Mr. Worms' argument (raised for the first time at oral argument [*tr.* 7.12.24]) as he submitted no opposition papers to the Judgment Creditor's motion, that a motion for criminal contempt can never be served upon a party's attorney is not correct. In *Clinton Corner* and *In re Grand Jury Subpoena Duces Tecum served upon Morano's of Fifth Ave., Inc.*, 144 AD2d 252, 256 [1st Dept 1988]), the Appellate Division held that a motion for criminal contempt must be personally served "with equal dignity to that required of a summons." In *Kozel v Kozel*, 161 AD3d 700, 701 (1st Dept 2018), the Appellate Division clarified that this means that such service must comply with the terms of CPLR 308, and that "[w]hile a criminal contempt proceeding requires personal service on the contemnor (*see Matter of Grand Jury Subpoena Duces Tecum*, 144 A.D.2d 252, 255–256, 533 N.Y.S.2d 869 [1st Dept. 1988]), CPLR 308(5) permits a court to direct another manner of service if the methods set forth in the statute prove impracticable." Thus, in that case, the Appellate Division upheld the order of the trial court permitting service of a criminal contempt motion via email (*id.*).

In this case and pursuant to the Judgment Creditor's cross-motion, the court previously authorized service on Mr. Worms (NYSCEF Doc. No. 163). Resolution of the prior contempt motion contemplated the Judgment Creditor bringing this motion for criminal contempt if Ms. Pirogova continued to flout this Court's clear mandates. Mr. Worms is registered on NYSCEF.

The Court authorized service of this motion (which in some regards amounts to a renewed motion for criminal contempt) via NYSCEF. This was appropriate given that the developed record established that service upon Ms. Pirogova pursuant to the methods set forth in CPLR 308(1), (2), and (4) was (and is) impracticable, because “the extensive motion practice in this case demonstrates that service of process on her attorney will be adequate to apprise her of the action,” and because Mr. Worms has admitted on the record in this lawsuit that he is in contact with Ms. Pirogova (*Born To Build, LLC v Saleh*, 139 AD3d 654, 656 [2d Dept 2016]; NYSCEF Doc. No. 169:19-22), and it is apparent in the other four actions given his recent activity in those cases (where he does not seek withdrawal) that he is taking direction from her.

Thus, service of this motion was proper, and Ms. Pirogova is held in both civil and criminal contempt. Ms. Pirogova shall be required to pay the statutory maximum for civil contempt of \$250 and the statutory maximum for criminal contempt of \$1,000, in addition to the Judgment Creditor’s costs and reasonable attorneys’ fees in connection with bringing this motion. It would appear however that coercive confinement is also appropriate to ensure adequate response to the Pirogova Subpeona.

As a final opportunity before ordering coercive confinement with respect to her civil contempt, the Court will extend Ms. Pirogova 30 final days after the issuance of this decision and order to file accurate and complete responses to the Pirogova Subpoena. If she does not provide adequate responses within that time (including a CPLR 3118 statement with her signature notarized), the Court will issue a supplemental order permitting the Judgment Creditor to serve a proposed order

providing for Ms. Pirogova's coercive confinement until she appropriately responds to the Pirogova Subpeona (Judiciary Law § 753).

II. Mr. Worms' Motion to Withdraw as Counsel to Ms. Pirogova is Denied

Mr. Worms' motion to withdraw as counsel to Ms. Pirogova (Mtn. Seq. No. 009) is denied. The decision to grant or deny a motion to be relieved as counsel lies within the sound discretion of the trial court (*Cashdan v Cashdan*, 243 AD2d 598 [2d Dept 1997]). Simply put, Mr. Worms fails to meet his burden that withdrawal is appropriate at this time. As discussed below, for starters, Mr. Worms does not establish that he personally served the OSC as required by the OSC or otherwise even notified Ms. Pirogova of his intention to withdraw and how he did that. He does not explain in his moving papers what he has known Ms. Pirogova's physical address to be, where he sends his bills, where he has physically met with Ms. Pirogova, or any other steps he has taken to ensure that replacement counsel will be up to speed and ready to take over the case at this late stage to avoid prejudice to the Judgment Creditor.

As discussed above, on April 8, 2024, Mr. Worms brought the OSC seeking to withdraw in the case. When the Court signed his OSC, the Court indicated that personal service of Ms. Pirogova **was required**. Remarkably, Mr. Worms did not serve and file an affidavit of service until the day of oral argument (NYSCEF Doc. No. 279) such that the Judgment Creditor would not have an opportunity to comment on it. Putting aside what appears under the most favorable light to be sharp practice, the affidavit of service filed is insufficient to demonstrate personal service in accordance with the CPLR. The affidavit of service indicates only that it was served on a "Jane Doe" at 271 Garderville Road, New Hampton, New York 10958. But, Mr. Worms has not

provided any basis in this lawsuit for his understanding that this is in fact Mr. Pirogova's residence (CPLR 308). Indeed, in this lawsuit, Mr. Worms' indicated in his response to the subpoena served on him (discussed below) that he has "no personal knowledge of the Debtor's dwelling place or usual place of abode" (NYSCEF Doc. No. 270). Mr. Worms does not file an affidavit or otherwise indicate why *he* believes this to be Ms. Pirogova's dwelling place or usual place of abode, what the good faith basis for filing the CPLR 3118 notice was in the related action, or that he has spoken with Ms. Pirogova and told her that he intends to withdraw and indicated to her that she must either retain new counsel or come to Court herself and proceed *pro se*. Thus, Mr. Worms' fails to demonstrate that he complied with the Court's requirement that Ms. Pirogova receive personal service or that she in fact has any notice whatsoever that Mr. Worms' seeks to withdraw in this case.

Equally importantly, withdrawal of Mr. Worms under the circumstances would substantially prejudice both the Judgment Creditor and also Ms. Pirogova herself. As noted above, this Court permitted alternative service on Ms. Pirogova by serving Mr. Worms himself as her attorney (NYSCEF Doc. No. 163). He is her agent and sole point of contact in this lawsuit. This is the law of this case. Ms. Pirogova's whereabouts are unknown. She has deliberately concealed them and the Judgment Creditor has been attempting to obtain relevant and appropriate information to enforce its judgment. Unquestionably under the circumstances, Mr. Worms' withdrawal would be highly prejudicial to both the Judgment Creditor and Ms. Pirogova (*Haskell v Haskell*, 185 AD2d 333 [2d Dept 1992]; *Torres v Torres*, 169 AD2d 829 [2d Dept 1991]).

Mr. Worms' bare assertion of an unspecified "deterioration" of the attorney-client relationship also does not suffice under the circumstances given that Mr. Worms continues to represent Ms. Pirogova in four other actions in which he has not moved to withdraw and which he has recently substantially participated in on Ms. Pirogova's behalf.

In his reply papers, Mr. Worms' argues relying on a New York county case from 1982 that it is "well settled" that the Judgment Creditor does not have standing to oppose his motion to seek withdrawal (*id.*, at ¶ 6); *Charles Weiner Corp. v D. Jack Davis Corp.*, 113 Misc 2d 263, 266 [Civ Ct 1982] ["Generally, a party has no right to object to the withdrawal of their opponent's counsel because their rights would not be affected by the withdrawal."]). This case does not stand for the proposition that the Court cannot consider whether the Judgment Creditor shall be prejudiced by the withdrawal (*see Holmes v Y.J.A. Realty Corp.*, 128 AD2d 482, 483 [1st Dept 1987] ["Nor will plaintiff be visibly prejudiced by any delay in trial attributable to this withdrawal."]). Clearly, as discussed above, in this case at the time, it will.⁶ Thus, the motion is denied.

III. Mr. Worms Must Comply with the Judgment Creditor's Subpoenas

The Judgment Creditor's motion to compel Mr. Worms' compliance with the Worms Subpoenas pursuant to CPLR 5224(a)(3)(iv) and 2308(b) is granted. Mr. Worms' motion to quash the Information Subpoena was previously denied by this Court (NYSCEF Doc. No. 164) because,

⁶ The Court further notes that Mr. Worms' reply papers appear to be at odds with his ethical obligations under Rule 3.3 of the Rules of Professional Conduct requiring him to avoid discourteous conduct:

3. Once again, the lack of familiarity with basic principles of New York law in this action is truly mind-boggling and so this reply will be brief.

(NYSCEF Doc. No. 275, at ¶ 3).

among other things, it was properly served and the questions posed are relevant to the Judgment Creditor's legitimate debt collection efforts (*Kapon v Koch*, 23 NY3d 32, 38–39 [2014]).

Mr. Worms' responses to the information subpoena are woefully inadequate and seemingly at odds with papers that he has filed in other matters (*see* NYSCEF Doc. No. 250, at 3-6). For example, as discussed above, he filed a CPLR 3118 response indicating an address for Ms. Pirogova in a related action in front of another Justice of this court and yet indicated in his response:

2. Q. Where is the last known location of the judgment debtor, and when was the judgment debtor last at that location? (Provide physical address and date.)
 - A. I have no personal knowledge of the Debtor's last known location, and when the Debtor was last at that location.
3. Q. Where does the judgment debtor have a dwelling place or usual place of abode? (Provide physical residence address.)
 - A. I have no personal knowledge of the Debtor's dwelling place or usual place of abode.
4. Q. Where does the judgment debtor have an actual place of business? (Provide physical business address.)
 - A. I have no personal knowledge where the Debtor has an actual place of business.

(NYSCEF Doc. No. 237).

At the very least, Mr. Worms' response to question number 2 is incomplete and at best misleading. Mr. Worms is an officer of the court and must have had a good faith basis for filing the papers that he filed. As such, he must have satisfied himself that the information in the

CPLR 3118 notice that he filed in the related action was not false or frivolous. Under the circumstances, the response that he has “no personal knowledge” of her address is simply insufficient. In the lawsuit captioned *Pirogova v. Madison YT, LLC et al.*, Index No. 652764/2020, Mr. Worms filed a complaint where he represented to the court that Ms. Pirogova is a resident of Westchester county:

1. Plaintiff, Natalia Pirogova, is a resident of the State of New York, County of Westchester.

(NYSCEF Doc. No. 1, in Index No. 652764/2020).

In the lawsuit captioned *Denis Goldberg, et al. v. Cole Schotz P.C., et al.*, 653357/2019, in which Mr. Worms also represents Ms. Pirogova, it would appear that service was made upon Ms. Pirogova at 7454 Fischer Island Drive, Miami Beach FL 33109-0074 (Index No. 653357/2019 NYSCEF Doc. No. 3). It would appear based on a review of the docket in that lawsuit that Mr. Worms did not contest service at this Florida address for Ms. Pirogova. Notably, he has not included this address in his subpoena response either.

In the lawsuit captioned *PJSC National Bank TRUST v. Natalia Pirogova, et al.*, Index No. 160130/2020, in which Mr. Worms also represents Ms. Pirogova, it would appear that service was made upon Ms. Pirogova at 106 Church Street, Pleasantville, NY 10570, by delivering a copy of the summons in that case to a Vladimir Tesylin. Although Mr. Worms moved to dismiss, he did not indicate that service was improper.

As discussed above, Mr. Worms has also permitted Ms. Pirogova to his use office address as an address for her in certain substantive agreements. All of this information as to these addresses and any other addresses for Ms. Pirogova known to Mr. Worms should have been disclosed in Mr. Worms' response.⁷

In addition, he fails to indicate the extent of her economic interests, yet in the action captioned *FGP 1, LLC, et al. v. Luiza Dubrovsky, et al.*, Index No. 650479/2016 he filed detailed papers discussing Ms. Pirogova's economic interests in real estate via various LLCs, including Madison 33 Owner, LLC, NMP Group, LLC, and 172 Madison NP Member, LLC, and defended her in a deposition in which she admitted to at one time accepting other valuable assets, including luxury watches and real estate in Russia (NYSCEF Doc. Nos. 221, 446, in Index No. 650479/2016; NYSCEF Doc. Nos. 240). While Mr. Worms may contest the extent of Ms. Pirogova's interests in these or other assets, it is misleading to entirely omit this information from his subpoena responses, as he did:

10. Q. Identify and describe in detail any property in which you know or reasonably suspect the judgment debtor has and identify the disposition of the property. For property that has been transferred, identify the date of transfer, the transferee, the transferor, the consideration due and paid, the disposition of the consideration, and all persons in possession, custody, or control of such property.
- A. I have no knowledge of any property which the Debtor has other than the 40% membership interest in Madison 172 NP Holdings, LLC.

...

⁷ Rule 3.4 of the Rules of Professional Conduct prohibits a lawyer from concealing or knowingly failing to disclose that which the lawyer is required by law to reveal.

13. Q. Identify and describe in detail all communications concerning the location and description of any property of, debts owed to, or financial information about the judgment debtor, or any entities in which she has an interest.
- A. I have no knowledge of any communications concerning the location and description of any property of, Debts owed to, all financial information about the Debtor or any entity in which she has an interest.

(Id.).

As another example, Mr. Worms fails disclose the full legal name of the entity from which he receives payments for his legal bills, and fails to indicate any other person who may have knowledge relevant to the satisfaction of the Judgment:

6. Q. Did you receive any payment from or for the benefit of judgment debtor in the last six years? If so, explain in detail, including the payees, payment methods used, date of payments, and account/card numbers (including routing and account numbers appearing on checks).
- A. Yes. I have received payments of legal fees for the benefit of the Debtor and the payments were made by the Fiskin Group and the method of payments were by wire transfers. The payments started in 2018 and have continued to the present.

...

14. Q. Identify all persons who you know or reasonably suspect may have knowledge concerning any matter relevant to the satisfaction of the judgment, including knowledge of the location and description of any property of, debts owed to, or financial information about the judgment debtor and for each person, his or her affiliation with the judgment debtor (if any) including when the affiliation began and ended, the subjects of the information he or she possesses, and a summary of his or her knowledge.
- A. I have no knowledge of any person who may have knowledge concerning any matter relevant to the satisfaction of the judgment.

(*Id.*).

Like the information subpoena, the Subpoena Duces Tecum was also properly served, and seeks information relevant to the Judgment Creditor's legitimate efforts to collect on its Judgment. Thus, the Judgment Creditor's motion to compel Mr. Worms' compliance with the Worms Subpoenas is granted and Mr. Worms shall respond to the Worms Subpoenas properly with all relevant non-privileged non-confidential facts within 30 days of this decision and order, including his full knowledge of Ms. Pirogova's current and prior addresses, describing how he was retained, whether he has met Ms. Pirogova physically in person and if so where, the last time Mr. Worms physically met with Ms. Pirogova, what in fact she looks like, and what Ms. Pirogova's relationship is with the Fiskin Group and what in fact the "Fiskin Group" is and why it is appropriate for him to accept payment from them for Ms. Pirogova's bills.

Accordingly, it is hereby

ORDERED that the Judgment Creditor's motion (Mtn. Seq. No. 008) to hold Ms. Pirogova in civil and criminal contempt of court is granted; and it is further

ORDERED that Ms. Pirogova shall have 30 days from the date of this Decision and Order to furnish complete and accurate answers in connection with the Pirogova Subpoena or this Court shall issue a supplemental order permitting the Judgment Creditor to submit an order for her coercive confinement; and it is further

ORDERED Ms. Pirogova is ordered to pay the Judgment Creditor's reasonable costs and attorneys' fees in connection with this motion; and it is further

ORDERED that the Judgment Creditor will, within 30 days of the date of this order, provide Ms. Pirogova with an itemized invoice of its fees and costs in connection with this motion and if the parties cannot agree on the amount of such reasonable costs and fees within 30 days, the issue will be referred to a JHO or special referee to hear and determine; and it is further

ORDERED that Ms. Pirogova is hereby sanctioned by this Court in the amount of \$1,250 and shall deposit said amount with the County Clerk, together with a copy of this order with notice of entry, for transmittal to the New York State Commissioner of Taxation and Finance; and it is further

ORDERED that written proof of the payment of this sanction shall be provided to the Clerk of Part 53 and opposing counsel within 30 days after service of a copy of this order with notice of entry; and it is further

ORDERED that, in the event that such proof of payment is not provided in a timely manner, the Clerk of the Court, upon service upon him of a copy of this order with notice of entry and an affirmation or affidavit reciting the fact of such non-payment, shall enter a judgment in favor of the Commissioner and against Ms. Pirogova in the aforesaid sum; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the Part shall be made

in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk*

656519/2020 PJSC NATIONAL BANK TRUST vs. PIROGOVA, NATALIA
Motion No. 008 009 010

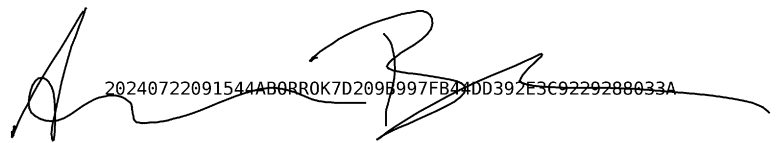
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Procedures for Electronically Filed Cases (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that Mr. Worms’ motion to withdraw as counsel (Mtn. Seq. No. 009) to Ms. Pirogova is denied; and it is further

ORDERED that the Judgment Creditor’s motion to compel Mr. Worms’ compliance with the Worms Subpoenas (Mtn. Seq. No. 010) is granted; and it is further

ORDERED that Mr. Worms shall provide complete and accurate responses to the Worms Subpoenas as to all non-privileged facts within 30 days of the date of this Decision and Order.



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7/22/2024
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: