

McKeon v Highrise Safety Sys. Inc.

2024 NY Slip Op 32785(U)

August 5, 2024

Supreme Court, New York County

Docket Number: Index No. 153564/2024

Judge: Lynn R. Kotler

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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. LYNN R. KOTLER PART 08

Justice

-----X

JUSTIN MCKEON

Plaintiff,

- v -

HIGHRISE SAFETY SYSTEMS INC.,

Defendant.

-----X

INDEX NO. 153564/2024

MOTION DATE 04/16/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 10, 11 were read on this motion to/for CONTEMPT

Upon the foregoing documents, it is

In this special proceeding, petitioner Justin McKeon moves for an order holding respondent Highrise Safety Systems Inc. ("Highrise") in contempt of Court for failing to comply with Petitioner's Subpoena Duces Tecum, dated September 29, 2023, which was personally served on Highrise on October 9, 2023. Petitioner has provided proof of service of the order to show cause which commenced this proceeding. Despite such service, respondent has not appeared or otherwise taken a position with respect to the application. For the reasons that follow, the motion is granted.

To prevail on a motion to punish a party for civil contempt, the movant must demonstrate that the alleged contemnor has violated a clear and unequivocal court order known to the parties (Judiciary Law § 753 [A] [5]; NY City Civ. Ct. Act § 210; see also Matter of McCormick v. Axelrod, 59 N.Y.2d 574, 583 amended 69 N.Y.2d 652 [1983]; Puro v. Puro, 39 AD2d 873 [1st Dept 1972]). The actions of the alleged contemnor must have been calculated to, or actually

defeated, impaired, impeded or prejudiced the rights or remedies of the other side (*Matter of County of Orange v. Rodriguez*, 283 AD2d 494 [2d Dept 2001]). A party seeking contempt must show that there are no alternative effective remedies available (*Farkas v. Farkas*, 201 A.D.2d 440 [1st Dept 1994]).

Petitioner has proven that this motion was properly served upon Highrise (Judiciary Law § 761; *Minzer v. Heffner Agency Inc.*, 214 A.D.2d 547 [2d Dept 1994]); *Hampton v. Annal Mgt. Co.*, 168 Misc.2d 138 [Sup Ct NY Co 1996]). The notice provisions of the motion warn Highrise that it may be punished by the imposition of a fine, or imprisonment, or both, thus complying with the requirements of Judiciary Law § 756. Petitioner has also established that the testimony and documents sought in the Subpoena will aid in petitioner's prosecution of an underlying action and petitioner's claim for lost wages (CPLR § 5251; *Matter of Gabor v. Renaissance Assoc.*, 170 A.D.2d 390 [1st Dept 1991]). Further, although Highrise had actual knowledge of the Subpoena and its terms as evidenced by service of same, Highrise disregarded the Subpoena and failed to produce documents (*Ottomanelli v. Ottomanelli*, 17 A.D.3d 647 (2d Dept 2005)). The failure to comply with a subpoena issued by an officer of the court shall be punishable as a contempt of court (CPLR § 2308 [a]).

Petitioner has also established that Highrise's disobedience of the subpoena has defeated impaired, impeded or prejudiced plaintiff's right to prosecute this action (Judiciary Law § 753 [a]; *Farkas v. Farkas*, *supra*; *Great Neck Pennysaver v. Central Nassau Publications*, 65 A.D.2d 616 [2d Dept 1978]). Finally, petitioner has shown that there are no alternative effective

remedies available. Petitioner's motion, to hold Highrise in contempt for failing to comply with the Subpoena, is granted.

Highrise is therefore in civil contempt. The Court will, however, give Highrise one **FINAL** opportunity to **PURGE** the contempt. Petitioner is directed to personally serve a copy of this decision/order along with the Subpoena on Highrise. Within 10 days from the date of service, Highrise can purge the contempt by appearing and satisfying the Court that it is unable to pay the fine or respond to the subpoena. If Highrise fails to comply with this **PURGE**, the Clerk shall enter a money judgment against Highrise and in favor of petitioner in the sum of \$500 as punishment for its contempt of court upon petitioner's attorney filing a sworn affidavit attesting to such compliance, without the need for further order from the court (Judiciary Law § 773).

Conclusion

In accordance herewith, it is hereby

ORDERED that petitioner's motion for an order adjudicating respondent Highrise Safety Systems Inc. in contempt is hereby **GRANTED** without opposition; and it is further


ORDERED that respondent Highrise Safety Systems Inc.'s disobedience of the subpoena has defeated, impaired, impeded or prejudiced petitioner's right to prosecute the underlying action; and it further

ORDERED that respondent Highrise Safety Systems Inc. is held in civil contempt. Petitioner is directed to personally serve a copy of this decision/order along with the subpoena on respondent Highrise Safety Systems Inc.. Within 10 days from the date of service, respondent Highrise Safety Systems Inc. can purge the contempt by appearing and satisfying the Court that it is unable to pay the fine or respond to the subpoena. This is a FINAL opportunity to PURGE the contempt; and it is further

ORDERED that if respondent Highrise Safety Systems Inc. fails to comply with this PURGE, as punishment, the Clerk shall enter a money judgment against respondent Highrise Safety Systems Inc. and in favor of petitioner Justin McKeon in the sum of \$500 upon petitioner's attorney filing a sworn affidavit attesting to such non-compliance, without the need for further order from the court.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly denied and this constitutes the Decision and Order of the court.

8/5/2024
DATE


LYNN R. KOTLER, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE