

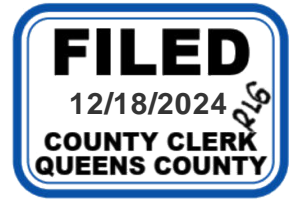
Business Backer, LLC v Polo Soap Supplies, Inc.
2024 NY Slip Op 35065(U)
December 18, 2024
Supreme Court, Queens County
Docket Number: Index No. 716693/21
Judge: Timothy J. Dufficy
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. TIMOTHY J. DUFFICY
Justice

PART 35



-----X
THE BUSINESS BACKER, LLC

Index No.: 716693/21

Plaintiff,

Mot. Date: 10/22/24

Mot. Seq. 3

-against-

**POLO SOAP SUPPLIES, INC. and CHRISTOS
K. DRES,**

Defendants,

-----X
The following papers were read on this motion by plaintiff for an order, pursuant to Judiciary Law § 753(a)(3), holding defendant Christos K. Dres in contempt of court for his willful disobedience in failing to comply with the terms of the So-Ordered Stipulation of this Court, dated and entered on May 28, 2024

PAPERS
NUMBERED

Notice of Motion-Affidavit-Exhibits.....	EF 38-49
Answering Affidavit.....	EF 50
Replying Affidavit.....	EF 51

Upon the foregoing papers, it is ordered that this motion is granted to the extent indicated below.

This is an action for breach of contract action arising out of a commercial debt owed by the defendants to the plaintiff. On or about January 24, 2022, the plaintiff entered a Judgment, in the Queens County Clerk's office, against the defendants, jointly and severally, in the amount of \$52,265.76 (NYSCEF Doc. No. 20).

Thereafter, the plaintiff served a subpoena and subpoena duces tecum, upon defendant Christos K. Dres (Dres), on July 11 , 2023, requesting:

All personal and corporate books, papers and records in your control or possession which have or may contain information concerning you and Polo Soap Supplies, Inc., and all property, income, or other means

relevant to the satisfaction of the judgment described above, which you have now or heretofore owned, received, or disposed of, including, but not limited to, all information regarding all business equipment, personal and business bank checking and savings statements, investment statements, utility bills, credit card bills, motor vehicle titles, insurance certificates, bills of sale, liens, judgments, deeds, personal and business loan payments, personal and business tax returns for the years 2021 through present, all client invoices issued within the past six months, and all evidence of ownership of personal or business assets.

When Dres did not appear for a deposition or respond to the subpoena duces tecum, the plaintiff moved to compel, pursuant to CPLR 5523 and CPLR 2308(b). Dres opposed the motion to compel compliance with the subpoena duces tecum and cross moved to quash the subpoena. The motion and cross-motion were returnable before this Court, on May 21, 2024, at which time, both sides were represented by counsel. After conferencing the matter with the Court, counsel for both sides entered into a Stipulation which was “So-Ordered” by this Court (NYSCEF Doc. No. 38).

The Stipulation, provides, in sum and substance, that the defendants are to provide the following, within twenty (20) days:

- Profit and loss statements for Polo Soap Supplies, Inc for the years 2021 through the present;
- A personal financial statement for defendant Dres for the years 2021 through the present;
- Bank statements for defendants' bank accounts from 2021 through the present; and
- Tax returns for defendants for the tax years 2021 through the present.

The So-Ordered Stipulation also provided that the defendants would appear for a virtual examination before trial (EBT), on July 12, 2024, but that the EBT would not go forward until the above documents had been received by the defendants.

The record reflects that, on June 28, 2024, counsel for defendant Dres provided business banking statements for Polo Soap Supplies, Inc., dated from 2020, and, by email dated July 12, 2024, defendants' counsel provided business tax returns for Polo Soap Supplies, Inc. for the years 2021 and 2022. That email further advised that there were no business tax returns for the tax year 2023, and that there were no profit and loss

statements available. Finally, counsel for plaintiff advised that Dres was unwilling to provide his personal tax returns.

In response, counsel for plaintiff sent an email advising, *inter alia*, that defendant Dres has not completed and provided the personal financial statement despite a form being provided and that Dres still had not provided individual bank statements and tax returns. When no response was received, the plaintiff brought the instant motion, which is opposed by the defendants. Counsel for defendant Dres claims that he has provided responses “except to those documents which are not available to him, or which do not exist. Dres also objects to providing copies of the tax returns (despite his counsel having agreed to provide them), claiming that they are joint tax returns and Dres’ wife does not consent to providing them. Significantly, there is no affidavit from Dres or his wife submitted.

Under Judiciary Law § 753(A)(3), disobedience of a lawful mandate of the court is grounds for civil contempt. To prove civil contempt, the petitioner must demonstrate that a lawful judicial order expressing an unequivocal mandate was in effect, that respondent knew of and disobeyed the order, and said disobedience resulted in prejudice to petitioner’s rights (*McCain v Dinkins*, 84 NY2d 216 [1994]; *Matter of McCormack v Axelrod*, 59 NY2d 274 [1983]). The mere act of disobedience is sufficient if it impairs, defeats, impedes or prejudices petitioner’s rights (*Doors v Greenberg*, 151 AD2d 550 [2d Dept 1989]; *see also Italian American Civil Ass’n of Mineola, N.Y., Inc. v Cataldo*, 225 AD2d 733 [2d Dept 1996]; *Prisco v Community School Bd. 31*, 226 AD2d 467 [2d Dept 1996]). The aim of civil contempt is to vindicate a private party to litigation and any sanction imposed is designed to compensate the injured party for the loss or interference with the benefits of the court mandate (*Id.*).

Plaintiff has demonstrated that the defendants have disobeyed the So-Ordered Stipulation of this Court, resulting in prejudice to the plaintiff (*see Garbitelli v Broyles*, 257 AD2d 621 [2d Dept 1999]; *Baralan Intern, S.P.A. v Avent Industries, Ltd.*, 242 AD2d 226 [1st Dept 1997]). Defendants have not offered a reasonable excuse for failing to comply with the terms of the So-Ordered Stipulation. The argument regarding the tax returns is unavailing, as it is clear that a “stipulation made by [an] attorney may bind a client even where it exceeds the attorney’s actual authority if the attorney had apparent authority to enter into the stipulation” (*Chae Shin Oh v Jeannot*, 160 AD3d 701, 703

[2d Dept 2018] [internal citations omitted]; *see also Davidson v Metro. Tr. Auth.*, 44 AD3d 819, 819 [2d Dept 2007]). There is no sworn affidavit submitted by Dres that he did not do any banking or have any bank statements from 2021 through the present. There is no excuse offered as to why Dres did not complete the personal financial statement that was sent to him.

The Court finds that the conduct by defendant Dres was calculated to actually defeat, impair or prejudice the rights of the plaintiff. Thus, it is ordered that Dres is held to be in contempt of court.

Dres may purge the contempt by providing the plaintiff with copies of his tax returns for the tax years 2021 through the present, copies of statements from his bank accounts from 2021 through the present and the personal financial statement from that was provided to him by January 31, 2025. If defendant Dres does not provide these items by that date, he will be fined \$150 per day until these items are delivered to the plaintiff from the date of the defendants receiving a copy of this Order.

Accordingly, it is

ORDERED that the application by plaintiff for an order, pursuant to Judiciary Law §753(a)(3), holding defendant Christos K. Dres in contempt of court for his willful disobedience of this Court's Order, dated May 24, 2024, is granted, to the extent indicated above and directed below; in that: it is

ORDERED that defendant Christos K. Dres is found in contempt for failure to provide the plaintiff with copies of his tax returns for the tax years 2021 through the present, copies of statements from his bank accounts from 2021 through the present and the personal financial statement from that was provided to him, pursuant to this Court's Order, dated May 24, 2024; and it is further

ORDERED that defendants Christos K. Dres may purge the contempt by providing the plaintiff with copies of his tax returns for the tax years 2021 through the present, copies of statements from his bank accounts from 2021 through the present and

the personal financial statement from that was provided to him by January 31, 2025; and it is further

ORDERED that if defendant Dres does not provide these items by January 31, 2025 date, he will be fined \$150 per day until these items are delivered to the plaintiff from the date of the defendants receiving a copy of this Order; and it is further

ORDERED that in the event the defendant fails to comply, the plaintiff may enter judgment against Christos K. Dres for the sums due and owing; and it is further

ORDERED that, within twenty (20) days of receipt of these items, counsel for plaintiff is to notice defendant Dres for a virtual examination before trial (EBT) and that defendant Dres is to appear for the virtual EBT within forty-five (45) days of designation; and it is further

ORDERED that any arguments or requests for relief not specifically addressed herein have been considered by the Court and are denied; and it is further

ORDERED that the plaintiff shall serve a copy of this Order with Notice of Entry, upon the defendant. within ten (10) days of the date that this Order appears in the Queens County Clerk-NYSCEF system.

Dated: December 18, 2024



TIMOTHY J. DUFFICY, J.S.C.

