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| <b>Yonkers Islamic Ctr., Inc. v Coleman</b>                                                                                                                                                                                    |
| 2024 NY Slip Op 35353(U)                                                                                                                                                                                                       |
| July 10, 2024                                                                                                                                                                                                                  |
| Supreme Court, Westchester County                                                                                                                                                                                              |
| Docket Number: Index No. 67438/2018                                                                                                                                                                                            |
| Judge: Charles D. Wood                                                                                                                                                                                                         |
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| This opinion is uncorrected and not selected for official publication.                                                                                                                                                         |

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER**

-----X  
**YONKERS ISLAMIC CENTER, INC.,**

**Plaintiff,**

**-against-**

**BYRON COLEMAN,**

**Defendant.**

-----X  
**HON. CHARLES D. WOOD, J.S.C.**

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

**Index No. 67438/2018**

**Seq No. 6**

Plaintiff filed an Order to Show Cause, which was signed by this court (Keri A. Fiore, J.S.C.) on December 26, 2023 (“the OTSC”), seeking to hold defendant Coleman of both civil and criminal contempt for failure to obey a lawful order of this court, dated July 22, 2022 (“the Order”)<sup>1</sup>. The Order granted plaintiff’s motion to enforce the June 13, 2019 Stipulation of Settlement (“the Stipulation”) entered into by the parties, only to the extent that Coleman, was directed to turn over to plaintiff, Yonkers Islamic Center, Inc., a Quitclaim Deed to the property located at 8 Crown Boulevard, Newburgh, New York (“the premises”), that was purchased and mortgaged in Coleman's name, pursuant to paragraph (3)(b) of the Stipulation.

This matter was stayed due to Coleman’s bankruptcy, until the Bankruptcy Court ordered lifting the automatic stay on December 20, 2023.

In furtherance of the OTSC, this court attempted to hold a contempt hearing on February 14, 2024, via Microsoft Teams, as defendant was in Africa, purportedly caring for his terminally

<sup>1</sup> New York State Courts Electronic Filing (“NYSCEF”) Document Numbers 1-193 were read in connection with seq 6 in consideration of this contempt motion brought by order to show cause, and the parties having appeared before this court, and agreed to a briefing schedule.

ill brother. Instead, a schedule was established for submission of opposition documents by Coleman by March 8, 2024, with any reply by plaintiff due by March 15, 2024.

Coleman uploaded his opposition papers to the contempt proceeding on March 6, 2024 (NYSCEF#188), raising several reasons why the quitclaim deed should not be signed and turned over including that a calculation of what is owed should be determined before signing a deed and the amount is under \$170K, a deed should not be signed, but an agreement to a payment plan should take place. Coleman reasons that if the agreement is not kept, then a deed should be signed, and property turned over. According to Coleman, the order to sign a deed before an amount is determined is an injustice to Coleman, and that an email verifying signing of deed was not to turn over the premises, but rather, as collateral if Coleman did not make payments once an agreed upon amount was established. COVID happened and an agreement was never established, which is another reason Coleman cites as to why the deed should not be signed and house turned over (NYSCEF#188). The court is not persuaded by these unconvincing excuses, as in effect, Coleman is merely attempting to improperly reargue the Order, but at the same time fails to address his flagrant disregard of the Order. Notably, Coleman did not appeal or bring a motion to reargue/renew the Order.

On March 11, 2024, plaintiff uploaded the Notice of Entry of the transcript from February 14, 2024, wherein the court ordered Coleman not to encumber or transfer or otherwise impair title to the property, and its reply on March 15, 2024, that further supports plaintiff's application for both civil and criminal contempt against Coleman. In that regard, plaintiff argues that Coleman has failed to raise any viable defense, but instead, Coleman appears to try and reargue the prior proceedings that led to the Order, but in doing so, Coleman does not challenge any of the elements of contempt. The court agrees.

The Second Department has found that to support a finding of civil contempt, the moving party bears the burden of proving, by clear and convincing evidence, “(1) that a lawful order of the court was in effect, clearly expressing an unequivocal mandate, (2) the appearance, with reasonable certainty, that the order was disobeyed, (3) that the party to be held in contempt had knowledge of the court's order, and (4) prejudice to the right of a party to the litigation” (*Gregg v Chen*, 220 AD3d 695 [2d Dept 2023] [internal citations omitted]). Conversely, the essential element of criminal contempt is ‘willful disobedience’ because the purpose of criminal contempt is to vindicate the authority of the court, no showing of prejudice is required (*Id.*).

The goal of civil contempt is to vindicate the rights of a private party to the litigation, and any penalty imposed is designed not to punish but, rather, “to compensate the injured private party or to coerce compliance with the court's mandate or both” and, criminal contempt “involves an offense against judicial authority and is utilized to protect the integrity of the judicial process and to compel respect for its mandates” (*generally, Madigan v Berkeley Cap., LLC*, 205 AD3d 900, 905 [2d Dept 2022], appeal dismissed, 39 NY3d 927 [2022], and appeal dismissed, 39 NY3d 1056 [2023], reconsideration denied, 39 NY3d 1150 [2023]).

Taking into consideration these legal principles, the court in its discretion, finds Coleman in civil contempt. In so finding, the court has determined that the Order being a lawful order of this court, clearly expressing an unequivocal mandate that has been effect for almost two years; the Order has clearly been disobeyed as Coleman has failed to produce a quitclaim deed even though plaintiff had sent him a proposed one; Coleman has not denied that he had knowledge of the Order; and it is with reasonable certainty, that the Order has been Disobeyed. Plaintiff also establishes prejudice, as Coleman’s alleged actions did “defeat, impair, impede, or prejudice the rights or remedies of a party” (*Matter of Serena W.*, 218 AD3d 597, 599, [2d Dept 2023]). This is

demonstrated by the affidavit of Tariq Tahir, a current board member of plaintiff, who clearly attests to the harsh consequences Coleman's actions has caused plaintiff:

Because of the Defendant's actions, Yonkers Islamic Center has been severely injured. Specifically, Yonkers Islamic Center has encountered problems raising money from donors because potential donors have seen what occurred here and do not want the same thing to happen with their own donations. Furthermore, Yonkers Islamic Center has faced difficulty in paying its employees, including our Imams due to a lack of funds. Similarly, Yonkers Islamic Center has had to cut back on its charitable programs, such as a "soup kitchen" program whereby the Center prepares and serves food to homeless individuals, especially during Ramadan, as the Center does not have the funds to fully fund these programs as a result of Mr. Coleman's actions. Indeed, by [Coleman] taking the funds from the Center, and then evading returning said funds, even after the Court Ordered him to do so, many congregants have become demoralized and left Yonkers Islamic Center. In short, the Defendant's willful and continuing behavior in avoiding returning the funds he stole from Yonkers Islamic Center has caused severe and ongoing harm to the Plaintiff. As such, I ask that the Court hold the Defendant in contempt of court for his willful, flagrant, and continuing violations of this Court's orders (NYSCEF #179).

In light of the foregoing, plaintiff establishes that it is indeed been prejudiced from Coleman's disregard of the Order. Likewise, plaintiff also establishes Coleman's willful disobedience of the Order, as required to support a finding of criminal contempt. The record shows that Coleman knew about the Order, did not appeal the same, and totally disregarded it because he did not agree that it was the proper course. The court finds beyond a reasonable doubt that Coleman lacked respect for the Order, by failing to abide by it for two years, which warrants a finding that Coleman is in criminal contempt (*Town of Southampton v. R.K.B. Realty, LLC*, 91 A.D.3d 628, 629, [2d Dept 2012]). It is also clear that Coleman violated the Order with a higher degree of willfulness than is required in a civil contempt proceeding, by perpetrating an offense against judicial authority (*Town of Southampton v. R.K.B. Realty, LLC*, at 629). Significantly, "an

hearing must be held if issues of fact are raised” However, a hearing is not necessary when there is no factual dispute as to [the party's] conduct unresolvable from the papers on the motion” (*Madigan v Berkeley Cap., LLC*, 205 AD3d at 906. As there is an absence of competent evidence to refute plaintiff’s showing of contempt, no hearing is required and the matter is summarily determined that beyond a reasonable doubt, Coleman is in criminal contempt.

In conclusion, the record is clear that on July 22, 2022, this court ordered Coleman to execute a Quitclaim Deed to 8 Crown Boulevard, Newburgh, New York in favor of plaintiff. That has not happened, almost 2 years later. Therefore, defendant is in both civil and criminal contempt. Nevertheless, in the interest of justice the court makes a final conditional order, giving Coleman one more chance to purge his contempt. Accordingly, it is hereby:

**ORDERED AND ADJUDGED** that plaintiff’s motion (Seq 6) to punish BYRON COLEMAN for contempt is conditionally granted, as follows, **unless BYRON COLEMAN on or before July 22, 2024, executes and delivers a Quitclaim Deed in favor of plaintiff to plaintiff’s counsel, Robert Zerilli, Esq., and does not materially impede, frustrate or prejudice plaintiff’s right to 8 Crown Boulevard, Newburgh, then it is ORDERED, that said BYRON COLEMAN is fined the sum of \$250 per day from July 23 onward, and it is further**

**ORDERED AND ADJUDGED** that a statutory sanction is also conditionally assessed against the defendant, in the amount of the statutory maximum sanction of \$1,000 per offense warranted. Given the length of time that has passed (2 years), the court therefore imposes a total sanction of \$10,000 **unless BYRON COLEMAN on or before July 22, 2024, executes and delivers a Quitclaim Deed in favor of plaintiff to plaintiff’s counsel, Robert Zerilli, Esq., and does not materially impede, frustrate or prejudice plaintiff’s right to 8 Crown Boulevard, Newburgh** (*Madigan v. Berkeley Cap., LLC*, 205 AD3d 900, 907, appeal dismissed, 39 NY3d 927 (2022), and appeal dismissed, 39 NY3d 1056 (2023), reconsideration denied, 39 NY3d 1150 (2023)), and it is further

**ORDERED** that, within 30 days of the entry of this decision, order, and judgment, plaintiff may submit a bill or invoice, and an affirmation of attorneys’ services, to establish the amount to which it is entitled to recover from defendant as a consequence of his civil contempt; and it is further

ORDERED, that within twenty days after this decision and order is uploaded to NYSCEF, counsel for plaintiff shall serve a copy of this decision and order electronically, with notice of entry, upon all parties and file proof of services on NYSCEF within five days of service.

This constitutes the Decision, Conditional Order and Judgment of Contempt of the Court.

Dated: White Plains, New York  
July 10, 2024

  
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HON. CHARLES D. WOOD, J.S.C.

To: All Parties by NYSCEF