

Matter of On The Move Holdings, LLC v Singh

2025 NY Slip Op 30548(U)

February 9, 2025

Supreme Court, New York County

Docket Number: Index No. 650740/2024

Judge: Andrea Masley

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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 48

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IN THE MATTER OF THE APPLICATION OF ON THE
MOVE HOLDINGS, LLC, and VANDANA JAUHAR,

INDEX NO. 650740/2024

Plaintiffs,

MOTION DATE --

- v -

MOTION SEQ. NO. 002

PARAMDEEP SINGH, VIRENDA LAXMIKANT JHAVERI,
MANMEET SINGH, and KEY HOTELS, LLC,

**DECISION + ORDER ON
MOTION**

Defendants.

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58

were read on this motion to/for CONTEMPT.

This is an action by petitioners On The Move Holdings, LLC (On The Move) and Vandana Jauhar, members and managers of respondent Key Hotels, LLC (Company), against the Company and its three other members and managers, wherein petitioners seek inspection of the Company’s books and records. The petition was granted on May 15, 2024, in the absence of opposition. (NYSCEF Doc. No. [NYSCEF] 19, Decision and Order [mot. seq. no. 001] [Order].)¹

In motion sequence 002, petitioners move pursuant to Judiciary Law §§ 750, 751, 753, and 773 for an order (a) holding individual respondents Paramdeep Singh, Virendra Laxmikant Jhaveri, and Manmeet Singh a/k/a Prem Jyotish the “Astrologer” in civil and criminal contempt on the grounds that they willfully failed to comply with the

¹ Respondents were properly served with the petition but did not appear in this action. (See NYSCEF 13, Order to Show Cause at 3 [mot. seq. no. 001]; NYSCEF 14-18, affs of service.)

court's May 15, 2024 Order by failing and/or refusing to provide petitioners with copies of the Company's books and records as directed therein, (b) directing that if individual respondents fail to comply with the Order by providing the documents set forth on Exhibit B to the affirmation of Gary B. Rosen² on or before the date of an oral argument on this motion, a warrant will issue for the arrest of individual respondents and they will be incarcerated until such time as they do comply with the Order,³ and (c) imposing fines and/or other sanctions against individual respondents for such civil and criminal contempt, including petitioners' costs, expenses and attorneys' fees incurred in bringing this application.

Respondents were timely served with the order to show cause (NYSCEF 55-58, affs of service) but did not appear in the action or oppose the motion.

Discussion

Civil Contempt & Criminal Contempt

Petitioners seek that individual respondent be held in civil and criminal contempt for failure to comply with the Order. As a preliminary matter, this application is properly viewed as one seeking civil contempt.

"Contempts are neither wholly civil nor altogether criminal. And 'it might not always be easy to classify a particular act as belonging to either one of these two classes. It may partake of characteristics of both'.... It is not the fact of punishment, but rather its character and purpose, that often serve to distinguish between the two classes of cases. If it is for civil contempt the punishment is remedial, and for the benefit of the complainant. But if it is for criminal contempt the sentence is punitive, to vindicate the authority of the court.... [I]mprisonment for civil contempt is ordered where the defendant has refused to do an affirmative act required by the provisions of an order which, either in form or substance, was

² Rosen is an expert whom petitioners retained to evaluate and analyze the documents produced by individual respondents. (See NYSCEF 50, Rosen aff ¶ 2.)

³ Relief sought in item (b) is moot. Petitioners did not seek any interim relief in the order to show cause.

mandating in its character. Imprisonment in such cases is not inflicted as a punishment, but is intended to be remedial by coercing the defendant to do what he had refused to do. The decree in such cases is that the defendant stand committed unless and until he performs the affirmative act required by the court's order." (*Crocker C. v Anne R.*, 58 Misc 3d 1221[A], 2018 NY Slip Op 50182[U], *22 [Sup Ct, Kings County 2018], quoting *Gompers v Bucks Stove & Range Co.*, 221 US 418, 441-42 [1911], *affd* 192 AD3d 654 [2nd Dept 2021]; see also *People v Sweat*, 24 NY3d 348, 358 [2014] [discussing different purposes of civil and criminal contempt].)

As stated, the difference between civil and criminal contempt is the character and purpose of the punishment. Here, petitioners do not appear to seek to vindicate noncompliance with the court's authority. Rather, petitioners' papers make clear that they seek remedial punishment, i.e. to coerce individual respondents' full compliance with the Order. Indeed, petitioners state that criminal contempt is necessary because "monetary sanctions may be insufficient to compel the Individual Respondents' compliance with the ... Order, and the harsher sanction of imprisonment may be the only way the Individual Respondents will obey this Court's order." (NYSCEF 53, Brief at 24/27.)⁴ Accordingly, the court analyzes whether civil contempt is warranted.

Civil Contempt: Merits

The necessary elements to support a finding of civil contempt are (1) "a lawful order of the court, clearly expressing an unequivocal mandate, was in effect," (2) the order was disobeyed, (3) "the party to be held in contempt must have had knowledge of the court's order, although it is not necessary that the order actually have been served upon the party," and (4) "prejudice to the right of a party to the litigation must be demonstrated." (*El-Dehdan v El-Dehdan*, 26 NY3d 19, 29 [2015] [internal quotation

⁴ The court reiterates that where appropriate, imprisonment is available for civil contempt. (See Judiciary Law § 753 [A].)

marks and citations omitted].) The movant must meet its burden “by clear and convincing evidence.” (*Id.*)

First, the May 15, 2024 Order clearly and unequivocally mandated that respondents:

“produce for inspection and copying by petitioners and/or their agents (including, without limitation, their accountants and/or attorneys) the following documents and/or information from Key Hotels, LLC (Company) within five days of the order issued by this court:

- (1) The Company’s general ledger, reflecting all payments made to or from the Company for the last five years [i.e. from May 15, 2019], the payor/payee, and the purpose of such payment;
- (2) To the extent not reflected on the Company’s general ledger or bank account records, proof of all payments made to or received from: (i) the Company’s lenders, including but not limited to W Financial, Itria, and the SBA, (ii) the Company’s tenants, DHS and Luxurban, and (iii) the entities responsible for management of the Hotel, Highgate and Rebel, in all events for the last five years;
- (3) Documents and information reflecting the current balance due on any of the Company’s outstanding debts, and all correspondence with the Company’s lenders regarding the Company’s debts;
- (4) All bank account records for the Company for the last five years;
- (5) All of the Company’s financial statements and profit and loss statements for the last five years;
- (6) All Quick Books or other accounting records for the Company for the last five years;
- (7) All federal, state and local tax returns for the Company for the last five years;
- (8) Documents and information reflecting all capital calls made by the Individual respondents after December 1, 2022, including proof that such amounts were deposited in the Company’s bank accounts;
- (9) All documents reflecting any and all funds paid or otherwise distributed by the Company to the Individual Respondents or to any other person on the Individual respondents’ behalf for the last five years;

(10) All documents relating to any loans made by the Company to the Individual respondents; and

(11) A copy of the fully executed contract entered into by and between the Company and Luxurban.” (NYSCEF 19, Order at 1-2.)

Second, petitioners demonstrate that the Order was disobeyed. Specifically, Rosen⁵ points to gaps in production relating to each of the 11 categories of documents specified in the Order. (NYSCEF 50, Rosen aff ¶¶ 5-49, 53; NYSCEF 52, chart of missing documents.) To name a few of such gaps, (1) no general ledgers were provided and instead, individual respondents provided limited transaction details for scattered time periods (NYSCEF 50, Rosen aff ¶ 5), (4) incomplete bank account statements were provided for six bank accounts and no other bank records were provided, e.g. deposit slips with supporting documentation, copies of cancelled checks, and wire confirmations (*id.* ¶¶ 23-26, 28), and (5) no profit and loss statements or statements of cash flows were provided for the following periods: March 2019 through December 2019, January 2020 through December 2020, January 2022 through December 2022, and January 2024 through the date of the most recently prepared financial statements (*id.* ¶¶ 31, 33), no balance sheets as of year-end for each of 2019, 2020, 2022, and 2023, were provided, and no financial statements for 2024 were provided. (*id.* ¶ 32.)

Third, individual respondents were served with the Order. (NYSCEF 27, Notice of Entry and affs of service.) Separately, the record demonstrates that individual

⁵ Rosen is a Managing Director with CBIZ Forensic Consulting Group, LLC and has “over 48 years of financial advisory, consulting, and public accounting experience with extensive background in fraud engagements, real estate, forensic accounting, complex litigation matters, shareholder/partnership disputes and other areas of investigative accounting.” (NYSCEF 50, Rosen aff ¶ 1; see NYSCEF 51, Rosen resume.)

respondents had knowledge of the Order. (NYSCEF 29, petitioners' emails to individual petitioners; NYSCEF 30, Paramdeep Singh's response; NYSCEF 32, email chain; NYSCEF 34, compilation of emails and messages.) Indeed, partial production demonstrates individual respondents' knowledge.

Fourth, petitioners demonstrate that they have been prejudiced by noncompliance. Petitioners have been excluded from the Company's affairs and remain unable to comprehensively analyze the Company's financial condition and the status of their investment. (See NYSCEF 24, Sameet Kaur⁶ aff ¶¶ 15-28.)

Plaintiff asserts that a fine in the amount of attorneys' fees and expenses plus \$250 pursuant to Judiciary Law § 773 is an appropriate punishment. As discussed, "[a] civil contempt is one where the rights of an individual have been harmed by the contemnor's failure to obey a court order.... 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." (*Department of Env'tl. Protection v Dept. of Env'tl. Conservation*, 70 NY2d 233, 239 [1987] [citations omitted].) Further, "[l]egal fees that constitute actual loss or injury as a result of a contempt are routinely awarded as part of the fine.... These may include the legal fees incurred in bringing the contempt motion." (*Gottlieb v Gottlieb*, 137 AD3d 614, 618 [1st Dept 2016] [citations omitted].) The court finds that a fine of \$250 and reasonable attorneys' fees and costs incurred as the result of contempt is appropriate.

⁶ Kaur is the managing member of On The Move Holdings, LLC. (NYSCEF 24, Kaur aff ¶ 1.)

Additionally, the court notes that if individual respondents fail to timely comply with the May 15, 2024 Order following this decision and order, individual respondents may be incarcerated, if appropriate, and remain incarcerated until contempt is purged. (See generally Judiciary Law § 753.)

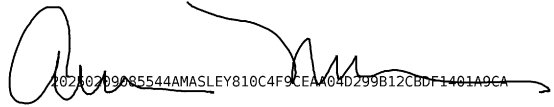
Accordingly, it is

ORDERED that this motion is granted. Individual respondents Paramdeep Singh, Virendra Laxmikant Jhaveri, and Manmeet Singh a/k/a Prem Jyotish the “Astrologer” are in contempt and shall, by February 24, 2025, comply with the May 15, 2024 Decision and Order (NYSCEF 19); and it is further

ORDERED that each of the individual respondents, Paramdeep Singh, Virendra Laxmikant Jhaveri, and Manmeet Singh a/k/a Prem Jyotish the “Astrologer,” shall pay (i) each petitioner, On The Move Holdings, LLC and Vandana Jauhar, \$250.00 by February 24, 2025, (ii) petitioners’ reasonable attorneys’ fees and costs incurred as the result of contempt in the amount agreed upon by the parties or an amount and by the date to be determined in a supplemental decision; and it is further

ORDERED that within 20 days of the date of this decision and order, petitioners submit an affirmation of services, attorney biographies, and invoices via NYSCEF and email (SFC-Part48@nycourts.gov). Paramdeep Singh, Virendra Laxmikant Jhaveri, and Manmeet Singh a/k/a Prem Jyotish the “Astrologer” may file opposition within 10 days thereafter. The court will determine if a hearing is necessary; and it is further

ORDERED that Paramdeep Singh, Virendra Laxmikant Jhaveri, and Manmeet Singh a/k/a Prem Jyotish the "Astrologer" shall refrain from destroying any documents responsive to the May 15, 2024 Decision and Order (NYSCEF 19).



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2/9/2025

DATE

ANDREA MASLEY, J.S.C.

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