

Doshi v Besen

2025 NY Slip Op 30898(U)

March 19, 2025

Supreme Court, New York County

Docket Number: Index No. 651696/2019

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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AMIT DOSHI, BEING THE HOLDER OF 50% OF THE
OUTSTANDING SHARES OF BESEN & ASSOCIATES,
INC.,

Plaintiff,

- v -

MICHAEL BESEN,

Defendant.

INDEX NO. 651696/2019

MOTION DATE --

MOTION SEQ. NO. 008

**DECISION + ORDER ON
MOTION**

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 008) 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 169, 170, 171, 172, 173, 174, 175, 178

were read on this motion to/for CONTEMPT.

Plaintiff moves for the following relief: (a) pursuant to Judiciary Law §§ 750 and 753(A), holding defendant Michael Besen in civil and criminal contempt on the ground that Besen willfully disobeyed the court’s Order dated November 2, 2022 (Receivership Order) by commencing an action on behalf of Besen & Associates, Inc. (B&A), captioned *Besen & Associates Inc. v Koepfel and WWK 140 Bay Ridge, LLC*, Index No. 70919/2023 (Sup Ct, Westchester County) (Koepfel Action), when the Receivership Order provides that only the Receiver has the authority to collect B&A’s debts and all other persons are enjoined from interfering with the Receiver’s authority; (b) pursuant to Judiciary Law §773, directing Besen to pay a fine of \$250 for civil contempt plus petitioner’s costs and expenses, including legal fees; (c) pursuant to Judiciary Law §751, directing Besen to pay a fine of \$1,000 for criminal contempt; (d) enjoining Besen, his attorneys, and agents from having any involvement with any lawsuit, arbitration, or

proceeding, including initiating, prosecuting, maintaining, settling such on behalf of B&A to collect any debts owed to B&A including, without limitation, the Koepfel Action; (e) directing Besen to appear for a deposition by petitioner's counsel, upon two weeks' written notice, regarding Besen's violations of the Receivership Order; (f) directing Besen to produce all pleadings and documents regarding the Koepfel Action and any other lawsuit, arbitration or proceeding that B&A has brought after the entry of the Receivership Order; (g) directing Besen to take action at his expense to substitute the Receiver as the plaintiff in the Koepfel Action and any other lawsuit, arbitration, or proceeding that B&A brought after the entry of the Receivership Order, if the Receiver elects to pursue such matters; (h) directing Besen to pay all costs and legal fees incurred by the Receiver arising from all collection activities relating to any claims or potential claims on behalf of B&A, including, without limitation, the Koepfel Action; and (i) directing Besen to pay all costs and legal fees incurred by petitioner arising from Besen's violations of the Receivership Order. Besen cross-moves for sanctions pursuant to 22 NYCRR 130-1.1.

“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] [citation omitted].) There are four “elements necessary to support a finding of civil contempt. First, it must be determined that a lawful order of the court, clearly expressing an unequivocal mandate, was in effect. Second, [i]t must appear, with reasonable certainty, that the order has been disobeyed.

Third, 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. Fourth, 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 marks and citations omitted].) Movant must establish such by “clear and convincing evidence.” (*Id.* [citations omitted].)

“A 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. Unlike civil contempt, the aim in a criminal contempt proceeding is solely to punish the contemnor for disobeying a court order, the penalty imposed being punitive rather than compensatory.” (*Id.* at 239 [citation omitted].) “Criminal contempt must be proven beyond a reasonable doubt.” (*Simens v Darwish*, 100 AD3d 527, 527 [1st Dept 2012] [citations omitted].) There must be a determination whether the disobedience was willful. (*Id.* [citation omitted].)

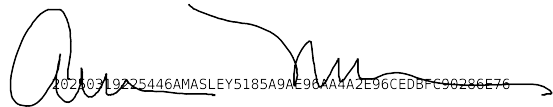
Putting aside the issue of whether Besen authorized or was aware that a former B&A broker filed the Koeppel Action, Doshi has not shown that he was actually prejudiced by such filing. The Receiver sought approval to appoint counsel to prosecute the Koeppel Action, which the court granted. (NYSCEF 168, Amended Appointment Order; see *also* NYSCEF 164, Retainer Agreement.) Doshi’s general assertion that he is prejudiced by Besen’s attempt to cheat him out of monies is speculative and thus not sufficient. There is no injury for which to compensate Doshi.

As to criminal contempt, Doshi has not, by clear and convincing evidence, shown the alleged violation of the Receiver Order was willful. Although Doshi asserts in his

opposition brief that Besen authorized the filing of Koeppel Action, Besen submits the affidavit of Ben Weiss, who affirms that he authorized the Koeppel Action based on prior authorization Besen had given him in 2021. (NYSCEF 172, Weiss aff ¶ 6.) Further, on April 22, 2024 Wood Lonergan, B&A’s counsel in the Koeppel Action, wrote to the parties in this action, stating “[o]ur firm was retained on behalf of Besen & Associates by Mr. Ben Weiss, a now-former broker associated with Besen & Associates, Inc.” (NYSCEF 174, Woods Lonergan Letter at 3.) Considering this evidence, there is no indication there was a willful violation of the Receiver Order by Besen. Thus, the motion for contempt is denied. The remaining requested relief is moot. Finally, Besen’s cross-motion for sanctions is denied as this motion was not frivolous and completely without merit.

Accordingly, it is

ORDERED that plaintiff’s motion and defendant’s cross-motion are denied.



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<u>3/19/2025</u> DATE			<u>ANDREA MASLEY, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE