

**TH Holdco LLC v Rubin**

2025 NY Slip Op 31117(U)

March 27, 2025

Supreme Court, New York County

Docket Number: Index No. 650955/2023

Judge: Melissa A. Crane

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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. MELISSA A. CRANE PART 60M

Justice

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INDEX NO. 650955/2023

TH HOLDCO LLC,

MOTION DATE 03/05/2025

Plaintiff,

MOTION SEQ. NO. 006

- v -

LIPA RUBIN,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 156, 157, 158, 159, 160, 161, 162

were read on this motion to/for CONTEMPT

On November 14, 2023 the court entered a judgment in the amount of \$58,549,183.67 against defendant Lipa Rubin. The judgment remains unpaid.

Non-party Rifka Rubin is the Defendant's wife. Non-party LRR is a limited liability company controlled by Rifka Rubin. After Plaintiff's motion for summary judgment was fully briefed and argued, Defendant transferred real property to LRR by quitclaim deed, apparently for no consideration. Plaintiff seeks discovery from Rifka Rubin and LRR concerning that transaction as well as other aspects of Defendant's assets and businesses.

Although plaintiff served information subpoenas and subpoenas duces tecum on Ms. Rubin and LRR, they remain unanswered, despite a court order compelling compliance [see EDOC 146]. Plaintiff then moved pursuant to CPLR 5210 and 5251 to punish Ms. Rubin and LRR for contempt. Both failed to oppose this motion.

Pursuant to CPLR 5210, courts with the power to enforce money judgments, shall also have the power to "punish a contempt of court committed with respect to an enforcement procedure." CPLR 5251 further provides that refusal to obey a subpoena pertaining to the

enforcement of money judgments is “punishable as a contempt of court.” Judiciary Law § 773, in turn, authorizes courts to punish “by fine and imprisonment, or either,” individuals subpoenaed as witnesses who fail to appear as mandated and thereby defeat, impair, impede or prejudice a party to a proceeding.

By failing to respond to subpoenas, Ms. Rubin and LRR are in contempt of court, warranting a contempt sanction (*see McCain v. Dinkins*, 84 N.Y.2d 216, 226 [1994]; *Matter of Borgenicht v. Block*, 280 A.D.2d 306, 307 [1st Dep't 2001]).

Moreover, their actions defeated, impaired, impeded and prejudiced plaintiff's rights and remedies as plaintiff has a judgment against defendants that has been impossible to collect due to Ms. Rubin's and LRR's obstructionism. Thus, this Court orders that Ms. Rubin and LRR will be responsible for all of plaintiff's REASONABLE costs associated with this motion including plaintiff's attorneys' fees and costs incurred in connection with the preparation, filing, and prosecution of both this motion and the prior motion to compel. Plaintiff has leave to interpose an affirmation in support of its reasonable fees and costs.

In order to purge herself of the contempt, Ms. Rubin must comply with the subpoenas (*see McNulty v McNulty*, 81 AD2d 581 [2<sup>nd</sup> Dept. 1981]; *H.D. Smith Wholesale Drue Co. v Custom LLC LLC*, 2010 NY Slip Op 30373[U] [Sup. Ct., N.Y. County, Feb. 22. 2010] [Gische, J.]). Otherwise, the court may impose fines and imprisonment upon her.

Likewise, LRR must comply with the subpoenas to purge itself of contempt. Because a corporation cannot be incarcerated, the appropriate punishment for a corporation found to be in civil contempt is generally the imposition of a fine (*see Judiciary Law § 773; State of New York v Unique Ideas, Inc.*, 44 NY2d 345 [1978]; *Schreiber v Garden*, 52 App Div [1<sup>st</sup> Dept. 1912]), which may include an award of attorneys' fees as part of the movant's costs and expenses (*see*

*3855 Broadway Laundromat. Inc. v 600 West 161st Street Corp.*, 156 AD2d 202 [1<sup>st</sup> Dept. 1989]).

Accordingly, unless LRR purges its contempt by complying with the subpoenas the court imposes a fine of \$250.00 upon LRR. In addition, unless Ms. Rubin and LRR answer the information subpoenas and produce all applicable documents by June 16, 2025, plaintiff will be authorized to apply for an order of commitment directing that the Sheriff of the City of New York, or the Sheriff of any County within the State of New York wherein Ms. Rubin may be apprehended, arrest Ms. Rubin and produce her before the justice presiding at Supreme Court, New York County, Part Sixty during the time when such part is in session, to be committed or for such disposition as the court in its discretion shall direct.

Accordingly, it is

ORDERED that the motion of the plaintiff to hold Ms. Rubin and LRR in contempt of court is granted; and it is further,

ADJUDGED, that the conduct of Ms. Rubin and LRR was willfully contemptuous of this court and was calculated to and actually did defeat, impair, impede, or prejudice the rights of the plaintiff inasmuch as Ms. Rubin and LRR failed to comply with the subpoenas served upon them; and it is further,

ORDERED, that Ms. Rubin and LRR are fined for said contempt a sum equaling the reasonable costs of this motion and plaintiff's prior motion to compel Ms. Rubin and LRR to respond to the subpoenas; and it is further,

ORDERED, that Ms. Rubin and LRR may purge their contempt by answering the information subpoenas and subpoenas duces tecum by June 16, 2025; and it is further,

ORDERED, that upon proof by affidavit of personal service of a certified copy of this order upon Ms. Rubin, and an affidavit demonstrating their failure to answer the subpoenas by the court's June 16, 2025 deadline, plaintiff may apply for an order of commitment directing that the Sheriff of the City of New York, or the Sheriff of any County within the State of New York wherein Ms. Rivka Rubin may be apprehended, commanding them forthwith to arrest Ms. Rubin and produce her before the justice presiding at Supreme Court, New York County, Part Sixty during the time when such part is in session, to be committed or for such disposition as the court in its discretion shall direct; and it is further,

ORDERED that, unless LRR purge this contempt by complying with the subpoenas by June 16, 2025, it shall be fined \$250.00; and it is further,

ORDERED that the plaintiff shall serve a copy of this order with notice of entry upon Ms. Rubin and LRR by Federal Express or Overnight Mail within 10 days of the efiled date of this order and proof of service of these Orders must be filed with the County Clerk.

3/27/2025

DATE



MELISSA A. CRANE, J.S.C.

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