

Revka LLC v Levy

2025 NY Slip Op 31186(U)

April 2, 2025

Supreme Court, New York County

Docket Number: Index No. 655547/2023

Judge: Shahabuddeen A. Ally

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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. SHAHABUDDEEN A. ALLY

PART 16M

Justice

REVKA LLC, in its own capacity and as a member of
PRINCIPESSA SOHO LLC and in the right of and on
behalf of PRINCIPESSA SOHO LLC,

INDEX NO. 655547/2023

MOTION DATE 12/7/2023

MOTION SEQ. NOS. 004

Plaintiff,

-against-

COBI LEVY and ACT 2 HOSPITALITY RG GROUP, LLC,

DECISION & ORDER

Defendants.

The following e-filed documents, listed by NYSCEF document number, were read on this motion (Seq. No. 4) to/for **CONTEMPT**: 48-55, 57-65, 67

Currently before the Court for decision is Motion Sequence No. 4. By this motion, brought by proposed order to show cause filed on November 22, 2023, plaintiff REVKA LLC ("Revka") seeks an order holding defendant COBI LEVY ("Levy") in contempt for his alleged failure to comply with the Court's November 13, 2023 Order (the "11/13/23 Order"), which contains a temporary restraining order ("TRO") enjoining Levy from making, or causing to be made, any payments or disbursements from the bank accounts of Principessa Soho LLC ("Soho") without Revka's written approval. (*Id.* Docs. 48, 52) As directed therein, Revka served the 11/13/23 Order upon Levy and ACT 2 HOSPITALITY RG GROUP LLC ("Act 2 Group"; and, together with Levy, the "Levy Parties") by overnight mail service with delivery completed on November 14, 2023. (*See id.* Doc. 28)

On November 20, 2023, Levy moved by proposed order to show cause to vacate the TRO in the 11/13/23 Order. (*Id.* Doc. 29) By Decision and Order dated December 7, 2023, and entered in NYSCEF on December 13, 2023, the Court granted the motion to vacate to the extent only of modifying the TRO to enjoin Levy from making, or causing to be made, any payments or disbursements from Soho's bank accounts without Revka's written approval, *other than* "ordinary

business transactions for the operation of the business” with subsequent proof of payment to Revka. (*Id.* Doc. 89)

Revka moves for an order of contempt against Levy pursuant to Judiciary Law § 753, which provides that “[a] court of record has power to punish, by fine and imprisonment, or either, a neglect or violation of duty, or other misconduct, by which a right or remedy of a party to a civil action or special proceeding, pending in the court may be defeated, impaired, impeded, or prejudiced.”

To support a finding of civil contempt, a movant must demonstrate, by clear and convincing evidence, the following four elements: (1) a lawful order of the court, clearly expressing an unequivocal mandate, in effect when the alleged contemptuous conduct occurred; (2) failure to obey the order; (3) knowledge of the order by the party to be held in contempt (regardless of whether the order was actually served on that party); and (4) prejudice to the movant resulting from the violation. *El-Dehdan v. El-Dehdan*, 26 N.Y.3d 19, 28-29 (2015) (quoting *McCormick v. Axelrod*, 59 N.Y.2d 574, 583 (1983)); *Town of Southampton v. R.K.B. Realty, LLC*, 91 A.D.3d 628, 629 (1st Dep’t 2012).

The fourth factor of prejudice to the movant need not be demonstrated for criminal contempt, however, because “the right of the private parties to the litigation is not the controlling factor.” *Town of Southampton*, 91 A.D.3d at 629 (quoting *Dep’t of Envtl. Prot. of City of N.Y. v. Dep’t of Envtl. Conservation of State of N.Y.*, 70 N.Y.2d 233, 240 (1987)). “A key distinguishing element between civil and criminal contempt is the degree of willfulness of the subject conduct. To be found guilty of criminal contempt, the contemnor usually must be shown to have violated the order with a higher degree of willfulness than is required in a civil contempt proceeding.” *Id.* (quoting *Dep’t of Envtl. Prot. of City of N.Y.*, 70 N.Y.2d at 240). Unlike civil contempt, “criminal contempt must be proven beyond a reasonable doubt.” *Id.*; *Rockland Cnty. v. Civil Serv. Emp. Ass’n, Inc.*, 62 N.Y.2d 11, 16 (1984).

“[C]ourts rarely hold litigants in contempt and the requirements for a finding of contempt are quite onerous.” *Zervos v. Trump*, 171 A.D.3d 110, 127 (1st Dep’t 2019) (citing *McCormick*, 59 N.Y.2d at 583).

Here, to demonstrate Levy’s contemptuous violation of the 11/13/23 Order, Revka relies on Levy’s alleged failure to contact Salim Assa, Revka’s manager, or his attorney to discuss

compliance with the TRO and on eight payments that Levy allegedly caused Soho to make between November 16 and 20, 2023, without first seeking Revka's approval. (*See* Affirm. in Supp. of Pl.'s Mot. to Hold Def. Cobi Levy in Contempt, dated Nov. 22, 2023 ("Assa Affirm.") (NYSCEF Doc. 51), ¶¶ 8-10) In response, Levy submits an affidavit from himself and Eric Messrie, the Director of Finance for Soho's business, the Little Prince restaurant, explaining Levy's efforts to comply with the TRO and the eight payments to which Revka takes exception. (*See* Aff. of Cobi Levy, sworn to on Dec. 4, 2023 ("Levy Aff.") (NYSCEF Doc. 60); Aff. of Eric Messrie, sworn to on Dec. 4, 2023 ("Messrie Aff.") (NYSCEF Doc. 62)) Levy and Messrie explain that the payments were for ordinary business expenses necessary to run Little Prince, including payments to vendors for supplies like meat, fish, and bread and services such as linen cleaning and legal, as well as a legally required monthly payment of sales tax to New York State. (*See* Levy Aff. ¶¶ 15-16; Messrie Aff. ¶¶ 20-28)

Revka has failed to demonstrate that it suffered any prejudice as a result of the subject payments. Furthermore, the Court has since modified the TRO in the 11/13/23 Order in such a manner that Levy would no longer be enjoined from causing Soho to make payments of the kind in dispute. Therefore, Revka's motion to hold Levy in contempt for violating the 11/13/23 Order must be denied.

Accordingly, it is hereby:

ORDERED that Revka's motion (Seq. No. 4) for contempt is **DENIED**; and it is further

ORDERED that Revka shall serve a copy of this Decision and Order upon the Levy Parties and upon the Clerk of the General Clerk's Office with notice of entry within twenty (20) days thereof; and it is further

ORDERED that service upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (Revised August 15, 2019);¹ and it is further

¹ The protocols are available at <https://www.nycourts.gov/LegacyPDFS/courts/ljd/supctmanh/Efil-protocol.pdf>.

ORDERED that any requested relief not expressly addressed herein has been considered and is denied; and it is further

ORDERED that the Clerk shall mark Motion Sequence No. 4 decided in all court records.

This constitutes the decision and order of the Court.

April 2, 2025
DATE

SHARABUDDEEN A. ALLY, A.J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
MOTION (SEQ. 5):	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	STAY CASE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	