

**Golden v Nichinson**

2025 NY Slip Op 32538(U)

June 29, 2025

Supreme Court, New York County

Docket Number: Index No. 656284/2023

Judge: Andrea Masley

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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

-----X

DAVID GOLDEN,

Plaintiff,

- v -

JASON NICHINSON, YE OLDE TIMEKEEPERS, INC., and  
THE SIGNATURE WATCH GROUP, INC.,

Defendants.

INDEX NO. 656284/2023

MOTION DATE -

MOTION SEQ. NO. 005 006

**DECISION + ORDER ON  
MOTION**

-----X

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 124, 125, 126

were read on this motion to/for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123

were read on this motion to/for CONTEMPT.

In motion sequence number 005, plaintiff David Golden moves for the following relief:

“(i) pursuant to CPLR 3124, compelling Defendants to comply with Golden’s First Notice for Discovery and Inspection, dated November 7, 2024, and produce documents material and necessary to the prosecution of this action;

(ii) directing Nicholson to appear at deposition within 15 days of this Court’s order on this application;

(iii) pursuant to CPLR [ ] 3126, awarding discovery sanctions against Defendants; [and]

(iv) extending the time to file the Note of Issue.” (NYSCEF Doc. No. [NYSCEF] 124, Order to Show Cause.)

In motion sequence number 006, plaintiff moves for an “[o]rder pursuant to Judiciary Law § 753(a)(3) holding [d]efendants Jason Nicholson, Ye Olde Time

Keepers, Inc., and The Signature Watch Group, Inc in civil contempt of this Court for failure to comply with the Court's orders, dated November 18, 2024, January 30, 2025, and February 12, 2025[.]” (NYSCEF 112, Notice of Motion.)

These motions are unopposed.

### Background

On January 23, 2025, the court's law clerk held a discovery conference with the parties to address defendants' failure to comply with the Preliminary Conference [PC] Order. (NYSCEF 80, January 30, 2025 Compliance Conference at 1; see also NYSCEF 77, PC Order.) The court noted that, as of the date of the conference, defendants had “failed to serve their document demands, respond to plaintiff's demands, or engage in document production.” (NYSCEF 80, January 30, 2025 Compliance Conference at 1.) The court ordered defendants to serve their document demands by January 31, 2025, or waived, and respond to plaintiff's demands and complete document production by February 7, 2025. (*Id.*) Defendants again failed to comply with the January 30, 2025 Compliance Conference Order, and thus, were precluded from serving document demands. (NYSCEF 82, February 12, 2025 Discovery Order.)

### Motion Sequence Number 005

As to motion sequence number 005, defendants' continued noncompliance with court orders warrant the “exercise of this Court's discretion to impose monetary sanctions on them in the amount of defendant's reasonable legal fees incurred in discovery.” (*Maxim Inc. v Gross*, 179 AD3d 536, 537 [1st Dept 2020] [citation omitted].) The issue of the amount of reasonable attorneys' fees incurred in seeking defendants'

compliance with discovery orders, including conferences, motion practice, and time spent communicating deficiencies to defendants, shall be referred to a referee.

Motion Sequence Number 006

As to plaintiff's motion pursuant to Judiciary Law § 753(a)(3) to hold defendants in civil contempt on the ground that they failed to comply with the court's orders dated November 18, 2024, January 30, 2025, and February 12, 2025, the motion is denied without prejudice. (NYSCEF 112, Notice of Motion.)

"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].)

Plaintiff's contempt motion is redundant of the discovery motion (mot. seq. 005) as it essentially seeks the same relief sought in the discovery motion. Specifically, in

the discovery motion, plaintiff seeks monetary sanctions and attorneys' fees against defendants pursuant to CPLR 3126 for failing to comply with court orders. (NYSCEF 124, Order to Show Cause.) In the contempt motion, although plaintiff does not specifically state the remedy he seeks in holding defendants in civil contempt, as previously stated, "[a]ny 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*, 70 NY2d at 239 [citation omitted].) Plaintiff does not ask for a daily fine, for example, for civil contempt. Thus, the penalty for civil contempt for a failure to comply with the court orders would be monetary in nature to compensate plaintiff, which plaintiff was awarded in motion seq. no. 005.

Defendants will be given one last opportunity to engage in discovery. If defendants fail to respond to plaintiff's demands by producing documents by June 30, 2025, plaintiff may seek further relief including but not limited to striking defendants' answer. The remaining discovery deadlines (e.g. depositions, note of issue deadline) are held in abeyance.

Accordingly, it is

ORDERED that motion sequence 005 is granted and plaintiff is awarded reasonable attorneys' fees incurred in discovery; and it is further

ORDERED that a Judicial Hearing Officer or Special Referee shall be designated to hear and report on the following issue: the amount of reasonable attorneys' fees incurred in seeking defendants' compliance with discovery orders, including time spent at conferences, motion practice, and time spent communicating deficiencies to defendants; and it is further

ORDERED that in the event of and upon the filing of a stipulation of the parties, as permitted by CPLR 4317, the Special Referee, or another person designated by the parties to serve as Referee, shall determine the attorneys' fees issue; and it is further

ORDERED that this matter is referred to the Special Referee Clerk (Room 119, 646-386-3028 or [spref@nycourts.gov](mailto:spref@nycourts.gov)) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SPR), which, in accordance with the Rules of that Part, shall assign this matter at the initial appearance to an available JHO/Referee to hear and report as specified above; and it is further

ORDERED that counsel shall immediately consult one another and plaintiff's counsel shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail ([spref@nycourts.gov](mailto:spref@nycourts.gov)) an Information Sheet (accessible at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar in the Special Referees Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Referee for good cause shown, the trial of the issues specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses; accordingly, and it is further

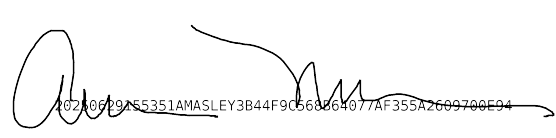
ORDERED that counsel shall file memoranda or other documents directed to the assigned JHO/Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and Special Referees and by filing the same with NYSCEF; and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts; and it is further

ORDERED that motion sequence number 006 is denied without prejudice; and it is further

ORDERED that defendants shall respond to plaintiff's November 7, 2024 Notice for Discovery and Inspection and produce documents on or before 5:00pm on June 30, 2025; and it is further

ORDERED that plaintiff shall update the court as to whether defendants complied by July 1, 2025.



6/29/2025  
DATE

\_\_\_\_\_  
ANDREA MASLEY, J.S.C.

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