

Khan v Garg

2025 NY Slip Op 32564(U)

July 11, 2025

Supreme Court, New York County

Docket Number: Index No. 652334/2013

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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RAZA KHAN,	INDEX NO. <u>652334/2013</u>
Plaintiff,	MOTION DATE <u>--</u>
- v -	MOTION SEQ. NO. <u>043</u>
VISHAL GARG, EDUCATION INVESTMENT FINANCE CORPORATION, 1/0 CAPITAL LLC, and EMBARK HOLDCO I, LLC,	DECISION + ORDER ON MOTION
Defendant.	
-----X	

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 043) 1719, 1720, 1721, 1722, 1723, 1724, 1725, 1726, 1727, 1728, 1729, 1730, 1731, 1732, 1733, 1734, 1735, 1736, 1737, 1738, 1739, 1740, 1741, 1742, 1743, 1744, 1745, 1746, 1747, 1748, 1749, 1750, 1751, 1754, 1755, 1767, 1768, 1769, 1770, 1771, 1772, 1773, 1774, 1775, 1776, 1778, 1810, 1811, 1842, 1854 were read on this motion to/for CONTEMPT.

In motion sequence 043, defendants Vishal Garg, Education Investment Finance Corporation, 1/0 Capital, LLC, and Embark Holdco I, LLC move pursuant to CPLR 2308, 5223, 5210, 5224, 5251, and/or 8303, and Judiciary Law §§ 753 and 773 for an order of civil contempt against plaintiff Raza Khan for violation of the order made on the record on August 15, 2023 (Order on the Record) and subsequent January 3, 2024 decision and order (Written Order) and to issue sanctions and compel plaintiff to appear for a deposition.

Background

Upon order granting motion for summary judgment on defendants' conversion counterclaim (NYSCEF Doc. No. [NYSCEF] 1357, Decision and Order at 13 [mot. seq. no. 026]), a judgment was entered on May 12, 2023 in favor of defendants and against plaintiff in the amount of \$54,205.53. (NYSCEF 1362, Judgment.) It is undisputed that

plaintiff failed to pay the judgment, which plaintiff is allegedly unable to pay because he is cash poor. (See NSYCEF 1828, Decision and Order at 1 [mot. seq. no. 044].) In an effort to enforce the judgment, defendants served information and deposition subpoenas on plaintiff. (NYSCEF 1447, Information Subpoena; NYSCEF 1450, Deposition Subpoena.) Plaintiff allegedly provided insufficient responses to the information subpoena. (See NYSCEF 1722, May 25, 2023 Responses at 5-10/10.) Plaintiff subsequently moved to quash the deposition subpoena and prohibit any further post-judgment discovery from plaintiff. (See NSYCEF 1445, OSC at 2 ¶¶ 2-3 [mot. seq. no. 038].)

At the August 15, 2023 oral argument on the motion to quash, the court denied the motion, in part, and ordered that plaintiff provide bank statements, personal and pertaining to his corporations or entities, for the last three years, and that upon review of such production, defendants have the right take a deposition of plaintiff. (NYSCEF 1650, So-Ordered Tr at 19:2-18 [mot. seq. nos. 034, 036, 037, 038].) The Written Order memorialized the Order on the Record, stating that “[p]laintiff shall produce three years of bank statements and may be deposed after defendants’ review.” (NYSCEF 1648, Decision and Order at 2 [mot. seq. nos. 034, 036, 037, 038].)

Plaintiff produced his personal bank statements on November 15, 2023¹ but plaintiff’s counsel refused to proceed with the scheduled January 16, 2024 deposition, stating that “the order is a ‘may’ not ‘shall’” and requesting that “boundaries” for a

¹ Although defendants complain about plaintiff’s production of his personal bank statements, e.g. that the documents were presented in a view-only form with no download option (NYSCEF 1748, Shruti Panchavati aff ¶ 4 [counsel to EIFC]), this motion does not seek contempt in connection with plaintiff’s defective production of his personal bank statements.

deposition be “set” first. (NYSCEF 1690, emails as 2/8.) Plaintiff produced no corporate bank statements (NYSCEF 1748, Panchavati aff ¶ 6), but through a third-party subpoena served on Chase, defendants obtained bank statements for Be Group LLC (NYSCEF 1692, Be Group LLC Bank Statements), an entity controlled by plaintiff, in October 2023. Defendants maintain that other entities controlled by plaintiff exist, but plaintiff produced no bank statements for such entities. After this motion was fully briefed, plaintiff produced the Be Group LLC bank statements and averred that “[t]hese are the only corporate bank accounts responsive to the Court’s order.” (NYSCEF 1842, Khan aff ¶ 3.)

Defendants request that plaintiff be found in civil contempt for violating the Written Order and the Order on the Record by failing to sit for a deposition and produce corporate bank statements and be compelled to sit for a deposition by a certain date.

Discussion

Compelling Deposition

Defendants are entitled to take a deposition of plaintiff, as clearly stated in the Written Order and the Order on the Record. (NYSCEF 1650, So-Ordered Tr at 19:15-16 [mot. seq. nos. 034, 036, 037, 038] [stating that defendants “have the right to take” deposition of plaintiff]; NYSCEF 1648, Decision and Order at 2 [mot. seq. nos. 034, 036, 037, 038] [stating that “[p]laintiff shall produce three years of bank statements and may be deposed after defendants’ review”].) The use of word “may” in the Written Order means that defendants are permitted to depose plaintiff; it does not mean that plaintiff’s participation in a deposition is optional. (See Black’s Law Dictionary [12th ed 2014],

may [“may ... [means] To be permitted In dozens of cases, courts have held *may* to be synonymous with *shall* or *must*”].)

Defendants shall provide the court with their proposed date(s) for plaintiff’s deposition and clarify whether defendants will be present²; a court order will be issued setting a deposition date. Within 10 days of the date of this decision and order, the parties shall notify the court if they agree on a time limit, as discussed on the record (NYSCEF 1650, So-Ordered Tr at 19:19-21 [mot. seq. nos. 034, 036, 037, 038]); if no agreement can be reached, the parties shall instead provide their competing proposals to the court.

Contempt

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 marks and citations omitted].)

While the court is troubled with plaintiff’s disregard for this court’s orders, a finding of civil contempt is inappropriate. To the extent defendants seek a finding of contempt based on plaintiff’s failure to sit for a deposition and produce corporate bank

² As discussed on the record, given plaintiff’s claims of harassment by Garg, the deposition will be conducted at the courthouse at 60 Centre St, New York, NY 10007 if Garg wishes to be present. (NYSCEF 1650, So-Ordered Tr at 17:19-23, 18:15-25 [mot. seq. nos. 034, 036, 037, 038].)

statements, both the Written Order and Order on Record do not provide a deadline for compliance thus do not constitute a clear and unequivocal mandate. (See e.g. *Monaco v Monaco*, 116 AD3d 452, 453 [1st Dept 2014] [“while plaintiff was to provide his credit card to certain medical providers, the provision setting forth this requirement did not provide a deadline for this obligation, and thus did not constitute a clear and unequivocal mandate” [citation omitted]; *Rienzi v Rienzi*, 23 AD3d 447, 449 [2d Dept 2005] [“The language in the judgment of divorce ... and the stipulation ... did not provide any time for payment and therefore, did not constitute a clear and unequivocal mandate”].)

To the extent defendants argue that misrepresentations to the court constitute another basis for contempt, such misrepresentations were allegedly made by plaintiff’s counsel, not plaintiff.³

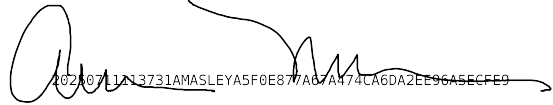
Accordingly, it is

ORDERED that the motion is granted, in part, to the extent that plaintiff shall appear for a deposition on a date to be specified in a subsequent court order; and it is further

ORDERED that within 10 days of the date of this decision and order, the parties shall notify the court if they agree on a time limit; if no agreement can be reached, the parties shall instead provide their competing proposals to the court; and it is further

³ Plaintiff made duplicative requests for sanctions in a cross-motion and via a separate motion (seq. no. 044). Plaintiff’s motion for sanctions was denied. (NYSCEF 1828, Decision and Order at [mot. seq. no. 044].) The cross-motion is likewise denied.

ORDERED that plaintiff shall have a final opportunity to produce bank statements for any and all entities (LLCs, corporations, partnerships, AKAs, etc.) he controls within 20 days of this order; and it is further


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7/11/2025

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