

**Bulai v Sippel**

2025 NY Slip Op 34859(U)

December 11, 2025

Supreme Court, New York County

Docket Number: Index No. 805416/2021

Judge: John J. Kelley

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. JOHN J. KELLEY PART 56M**

*Justice*

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ANKA BULAI,

Plaintiff,

- v -

KIMBERLY SIPPEL, M.D., KIRA SEGAL, M.D., VAN ANN  
TRAN, M.D., ANDREA TOOLEY, M.D., CORNELL  
UNIVERSITY, and THE NEW YORK AND PRESBYTERIAN  
HOSPITAL,

Defendants.

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INDEX NO. 805416/2021  
MOTION DATE 12/09/2025  
MOTION SEQ. NO. 004

**DECISION + ORDER ON  
MOTION AND JUDGMENT OF  
CONTEMPT**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 104, 105, 106, 107, 108, 118, 119, 120

were read on this motion to/for CONTEMPT.

In this action to recover damages for medical malpractice, the plaintiff moves pursuant to Judiciary Law § 753(A)(3) to hold nonparty Jack Resnick M.D., in civil contempt for his failure to comply with a judicial subpoena ad testificandum and duces tecum that had been duly served upon him, and to impose an appropriate sanction. Resnick does not oppose the motion. The motion is granted, Resnick is adjudged to be in civil contempt, and, if he fails to purge his contempt within 30 days after being served with a copy of this decision and order with notice of entry, a warrant shall be issued for his arrest, upon which he shall be produced before this court for the purpose of affording him an additional opportunity to purge his contempt, or, if this court is unavailable on the date that he is arrested, before any other Justice of this court who may be available on that date.

Resnick, an ophthalmologist, had treated the plaintiff for various conditions referable to her eyes and eyesight. Either prior to, or during the course of, this litigation, the plaintiff was able to obtain uncertified copies of 18 pages of medical records that Resnick had generated in connection with her treatment. In addition, the plaintiff had provided the defendants with

authorizations permitting them to obtain the records of her treatment with Resnick. After Resnick's office processed those authorizations, it had provided the defendants with uncertified copies of approximately 80 pages of records relevant to his treatment of the plaintiff, but the defendants have yet to provide their copies to the plaintiff. Resnick apparently retired from the practice of medicine on or about September 29, 2023. On May 8, 2025, the defendants Van Ann Tran, M.D., and Andrea Tooley, M.D., moved for summary judgment dismissing the complaint insofar as asserted against them (MOT SEQ 001). On May 9, 2025, the defendant Kimberly Sippel, M.D., Kira Segal, M.D., Cornell University, and The New York and Presbyterian Hospital moved for the same relief as to them (MOT SEQ 002). Neither set of defendants submitted their copy of Resnick's records in support of their respective motions.

"While hospital records can be certified, other medical records require an affirmation from a physician to authenticate them" (*De La Cruz v Martinez*, 2023 NY Slip Op 33052(U), \*4, 2023 NY Misc LEXIS 5340, \*5 [Sup Ct, Kings County, Aug. 16, 2023]; see CPLR 4518[c]). Generally, uncertified or unauthenticated medical records are inadmissible in evidence either in support of or opposition to a summary judgment motion, or at trial (see *Sherrod v Mount Sinai St. Luke's*, 204 AD3d 1053, 1057 [2d Dept 2022]; *McLoud v Reyes*, 82 AD3d 848 [2d Dept 2011]; *Zhen Yun Zhang v Mejia*, 2024 NY Slip Op 32911[U] 2024, \*4, NY Misc LEXIS 5196, \*4-5 [Sup Ct, Kings County, Jul. 18, 2024]). Although the Appellate Division, First Department, has held that, when submitted by a defendant on a motion for summary judgment, a "[p]laintiff's uncertified medical records may be considered" where the "plaintiff does not dispute their accuracy or veracity" (*Ward v Lincoln Elec. Co.*, 116 AD3d 558, 559 [1st Dept 2016]; see *Carlton v St. Barnabas Hosp.*, 91 AD3d 561, 562 [1st Dept 2012]; *De Pepin v Berik Mgt., Inc.*, 2020 NY Slip Op 30509[U], \*3, 2020 NY Misc LEXIS 888, \*3-4 [Sup Ct, N.Y. County, Feb. 21, 2020] [Tisch, J.]), research has revealed no authority for permitting a plaintiff affirmatively to rely on favorable uncertified records where the defendants have elected not to rely upon them.

The plaintiff's attorney indicated to the court that he wished to submit Resnick's records in opposition to the pending summary judgment motions, and, if summary judgment were denied, to employ them at trial. Thus, on September 17, 2025, he caused a subpoena to be personally delivered to a doorman in the lobby Resnick's apartment building at 531 Main Street, New York, New York 10044, which is located on Roosevelt Island. Since the doorman prohibited the process server from accessing Resnick's apartment, the doorman was a person of suitable age and discretion within the meaning of CPLR 308(2) (*see F.I. duPont, Glore Forgan & Co. v Chen*, 41 NY2d 794, 797 [1977]; *2110-2118 ACBP, LLC v Holland-Harden*, 118 AD3d 461, 461 [1st Dept 2014]). The plaintiff's process server followed up that delivery with a mailing to Resnick at Apartment 921 of that building, which is the unit in which he resides. The plaintiff thus complied with the service requirements of CPLR 2303(a), applicable to subpoenas. The subpoena directed Resnick to "appear" at the attorney's office on October 15, 2025 "with knowledge and/or access to records indicating the existence and/or disposition of the emails exchanged between the plaintiff and defendant during her course of treatment," and to attend remotely "to give testimony." The subpoena cautioned Resnick that his failure to appear on that date, or on any adjourned date, would subject him to punishment for contempt. Resnick neither appeared nor contacted the plaintiff's attorney. The plaintiff thus made the instant motion. On November 7, 2025, the plaintiff caused a copy of this court's November 5, 2025 order to show cause that had initiated this motion, along with the papers on which it was based, to be personally delivered to doorman O'Brian Rivera in the lobby of the plaintiff's apartment building, and caused a separate copy of those papers to be mailed to Resnick on November 10, 2025 at his residential apartment address, thus subjecting Resnick to the jurisdiction of this court for the purpose of determining the instant application (*see AMK Capital Corp. v Plotch*, 230 AD3d 26, 31 [1st Dept 2024]; *Tulino v Hiller, P.C.*, 202 AD3d 1132, 1136-1137 [2d Dept 2022]). A proceeding to hold a nonparty in contempt must be initiated in the county in which that nonparty resides (*see Long Is. Trust Co. v Rosenberg*, 82 AD2d 591, 597 [2d Dept 1981]). Since

Resnick resides in the same county in which this action is pending, the fact that the plaintiff moved to hold him in contempt in this action, rather than commencing a separate special proceeding for that relief, is not a ground for denial of the application, since, by failing to oppose the motion, Resnick has waived any contention that commencement of a special proceeding was required (*see Benson Park Assoc. LLC v Herman*, 93 AD3d 609, 609 [1st Dept 2012]).

Resnick did not contact the plaintiff's attorney upon his receipt of the order to show cause and supporting papers, did not oppose the motion in writing, and did not appear in court on the initial return date, which had been scheduled for November 25, 2025. In an interim order issued on that date, the court directed counsel for the defendants to appear on December 9, 2025 for a conference if they declined to stipulate to the admissibility of the uncertified records. At the conference, although the defendants indicated that they would stipulate to the admissibility of the records solely in connection with the summary judgment motions, they declined to stipulate to their admissibility at trial. The plaintiff would only stipulate if the defendants agreed to the admissibility of the records both for the purposes of the summary judgment motions and at trial. Since the parties could not fully agree as to the extent of any stipulation, the court must now determine this motion.

The definition of a "judicial subpoena" includes subpoenas that are made returnable before the court (*see Irizarry v New York City Police Dept.*, 260 AD2d 269, 271 [1st Dept 1999]; *Matter of Cambridge Packing Co, Inc. v LaJaunie*, 2019 NY Slip Op 30689[U], \*3, 2019 NY Misc LEXIS 1210, \*3-4 [Sup Ct, N.Y. County, Mar. 18, 2019] [Kelley, J.]; *4720 15th Ave., LLC v Jacobson*, 2017 NY Slip Op 30318[U], \*3-4, 2017 NY Misc LEXIS 615, \*4 [Sup Ct, N.Y County, Feb. 17, 2017]; *Lyon Financial Services v Pinto Trading Co.*, 2009 NY Slip Op 51783[U], \*2-3, 24 Misc 3d 1237[A], 2009 NY Misc LEXIS 2164, \*5-6 [Sup Ct., Kings County, Aug. 17, 2009]). Although the subject subpoena was not made returnable in court, it nonetheless must be characterized as a judicial subpoena, inasmuch as the subpoena was issued by an attorney, and the definition of the term "judicial subpoena" also "embraces subpoenas issued by an officer

of the court (such as an attorney) at any stage of a judicial proceeding, regardless of whether the subpoena was specifically returnable in court” (*Cadlerock Joint Venture, L.P. v Patterson*, 199 AD3d 557, 558 [1st Dept 2021]; see *Douglas Elliman, LLC v TWP Real Estate, LLC*, 189 AD3d 614, 614 [1st Dept 2020]; see also *Matter of Ling v Sans Souci Owners Corp.*, 187 AD3d 755 [2d Dept 2020]). “Failure to comply with a subpoena issued by a judge, clerk or officer of the court shall be punishable as a contempt of court” (*Matter of Bobby D. Assoc. v Park*, 97 AD3d 815, 816 [2d Dept 2012], quoting CPLR 2308[a] [emphasis added]).

A “contempt sanction is viewed as civil if it is ‘remedial,’ and for the benefit of the complainant, but is criminal if its purpose is punitive, and to “vindicate the authority of the court”” (*New York City Tr. Auth. v Transportation Workers Union of Am., AFL-CIO*, 35 AD3d 73, 86 [2d Dept 2006], quoting *International Union, United Mine Workers of America, v Bagwell*, 512 US 821, 827-828 [1994]). “Coercive penalties designed to modify the contemnor’s behavior, generally speaking, are civil in nature, while penalties meant to punish the contemnor for past acts of disobedience are criminal” (*New York City Tr. Auth. v Transportation Workers Union of Am., AFL-CIO*, 35 AD3d at 86). “In order to find that contempt has occurred in a given case, it must be determined that a lawful order of the court, clearly expressing an unequivocal mandate, was in effect. It must appear, with reasonable certainty, that the order has been disobeyed” (*Matter of McCormick v Axelrod*, 59 NY2d 574, 583 [1983]; see Judiciary Law § 753[A][3]). The applicant must also establish that the party to be held in contempt engaged in conduct that was calculated to and actually did defeat, impair, impede, and prejudice the rights of the applicant (see *450 West 14th St. Corp. v 40-56 Tenth Avenue, LLC*, 15 AD3d 166, 167 [1st Dept 2005]; see also *Dietrich v Michii*, 57 AD3d 1527, 1527 [4th Dept 2008] [applying rule to judgment debtor who refused to comply with prior order]). “[W]ilfulness is not an element of civil contempt” (*El-Dehdan v El-Dehdan*, 26 NY3d 19, 35 [2015]). A civil contempt must be proven by clear and convincing evidence (see *Classe v Silverberg*, 168 AD3d 603, 604 [1st Dept 2019]). In the instant matter, a lawful judicial subpoena is in effect, Resnick disobeyed what is,

in effect, a clear mandate of the court, thus impeding the plaintiff's rights, and the plaintiff seeks to modify Resnick's behavior by compelling him to comply with that mandate. Hence, Resnick must be held in civil contempt.

The court further concludes that the appropriate sanction to be imposed upon Resnick is to afford him 30 days within which to purge his contempt by appearing either in person at the offices of the plaintiff's attorney, or remotely, either to give deposition testimony authenticating the records that he had previously provided to the defendants, or provide a written certification that those records are authentic. To this end, the court is directing all of the defendants immediately to provide the plaintiff's attorney with their copies of the approximately 80 pages of uncertified records that they had received from Resnick pursuant to authorization, and to provide the court with a hard copy of those records as well. The plaintiff shall also be required to provide both the court and the defendants' attorneys with the 18-pages of uncertified records presently in her possession. Should Resnick fail to purge his contempt within 30 days of the date upon which he is served a copy of this decision and order on motion and judgment of contempt, with notice of entry, the court shall, upon the submission of an affirmation from the plaintiff's attorney that Resnick's contempt has not been purged, issue a warrant for Resnick's arrest and concomitant appearance in court.

Accordingly, it is,

ORDERED that the plaintiff's motion to hold nonparty Jack Resnick, M.D., in civil contempt of court is granted, without opposition; and it is,

ADJUDGED that Jack Resnick, M.D., in held civil contempt of court for his failure to comply with a judicial subpoena served upon him on September 17, 2025 and September 19, 2025; and it is further,

ORDERED that, should Jack Resnick, M.D., fail to purge his contempt on or before 30 days after he is served with a copy of this decision and order on motion and judgment of contempt, with notice of entry, either by appearing in person at the offices of the plaintiff's

attorney, or by appearing remotely should the plaintiff's attorney agree thereto, to give deposition testimony authenticating the records that he had previously provided to the plaintiff and to the defendants pursuant to authorization, or to provide a written certification that those records are authentic, the court shall, upon submission of an affirmation from the plaintiff's attorney, issue a warrant addressed to the Sheriff of the City of New York for the arrest of Jack Resnick, M.D., and the production of Jack Resnick, M.D., before this court, or, if this court is unavailable, before any other Justice of the Supreme Court who may then be available, to purge his contempt by providing such testimony or written certification to the court; and it is further,

ORDERED that, on or before December 17, 2025, the plaintiff shall serve a copy of this decision and order on motion and judgment of contempt upon Jack Resnick, M.D., by dispatching it by overnight delivery to his last known address; and it is further,

ORDERED that, on or before December 17, 2025, the defendants shall provide both the court and the plaintiff with a hard copy of the uncertified records of the plaintiff's treatment with Jack Resnick, M.D., that they had obtained from Jack Resnick, M.D., pursuant to authorization; and it is further,

ORDERED that, on or before December 17, 2025, the plaintiff shall provide both the court and the defendants with a hard copy of the uncertified records of her treatment with Jack Resnick, M.D., that she had obtained from Jack Resnick, M.D.

This constitutes the Decision and Order on Motion and Judgment of Contempt of the court.

12/11/2025

DATE



JOHN J. KELLEY, 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