

**Board of Mgrs. of the Alfred Condominium v Miller**

2026 NY Slip Op 31567(U)

April 15, 2026

Supreme Court, New York County

Docket Number: Index No. 653433/2020

Judge: Phaedra F. Perry-Bond

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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. PHAEDRA F. PERRY-BOND PART 35

Justice

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INDEX NO. 653433/2020

THE BOARD OF MANAGERS OF THE ALFRED
CONDOMINIUM

MOTION DATE 09/10/2025

Plaintiff,

MOTION SEQ. NO. 005

- v -

JAMES MILLER,

DECISION + ORDER ON
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265

were read on this motion to/for CONTEMPT

Upon the foregoing documents and considering the evidence and testimony adduced at a three-day contempt hearing, Plaintiff's motion for contempt is granted. The branch of Plaintiff's motion seeking sanctions is moot, and the branch of Plaintiff's motion seeking an injunction barring Defendant from filing further legal proceedings against Plaintiff is denied, without prejudice.

The aim of civil contempt is to vindicate a private right of a party to litigation by penalizing contemnor as compensation to the injured party for the loss of or interference with that right (see McCormick v Axelrod, 59 NY2d 674 [1983]). To be found in civil contempt, there must be a lawful order of the court, clearly expressing an unequivocal mandate which was in effect, and it must appear reasonably certain that the order was disobeyed by a party with knowledge of the court's order. The final element of civil contempt is a showing of prejudice to a right of a party to litigation (see Anthony Partners LLC v Mici, 245 AD3d 402, 402-03 [1st Dept 2026]).

Importantly, and as held by the Court of Appeals, willfulness is not an element of civil contempt, and civil contempt may be established regardless of the contemnor's motive where disobedience of the court's order defeats, impairs, impedes, or prejudices the rights or remedies of a party (*see El-Dehdan v El-Dehdan*, 26 NY3d 19, 35 [2015]). Once the movant makes the required showing, the burden shifts to the accused to refute that showing by offering evidence of a defense, such as inability to comply with the order (*see El-Dehdan* at 36).

The Court finds the record reflects numerous orders that Defendant disobeyed, despite his knowledge of those orders. On July 12, 2024, Justice Nancy Bannon directed Defendant to "correct, repair, and remedy all unauthorized alternations and illegal conditions created in his unit at the Alfred Condominium within 90 days and in accordance with all specifications of the plaintiff as previously provided or to be provided, and subject to final approval by plaintiff." After Justice Bannon issued her Decision and Order, Defendant took absolutely no steps towards complying with that order. Defendant eventually obtained a stay of Justice Bannon's order from the First Department, on September 23, 2024, but that stay was vacated on June 17, 2025 when the First Department unanimously affirmed Justice Bannon's Decision and Order.<sup>1</sup> During the pendency of that stay, instead of preserving the status quo, Defendant moved a tenant into his unit for a lease term running from March 1, 2025 through May 31, 2026.

After the First Department's decision and order dated June 17, 2025, Defendant continued to disobey Justice Bannon's order and took no steps for at least a month, until Plaintiff's attorney tried to negotiate, in good faith, Defendant's compliance with Justice Bannon's order to avoid a motion for contempt. By this time, even excluding the time the order was stayed by the First

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<sup>1</sup> On the last day of the hearing, and after multiple conferences and rounds of briefing, Defendant raised for the first time, in an oral application, that the stay was never vacated pursuant to CPLR 5519(e). Besides Defendant's interpretation of CPLR 5519(e) being contrary to case law and the commentaries, that objection was waived based on Defendant's failure to bring it up during the briefing, numerous conferences, or any other days of the hearing.

Department, over 90 days had passed since Justice Bannon's order was issued, and Defendant was in clear disobedience. Plaintiff was prejudiced as dangerous alterations made to Defendant's unit were posing a threat to the rest of the Condominium, and defendant's inaction, and intentional action of moving a tenant in, was preventing Plaintiff from exercising its right to remediate the unit. This alone warrants a finding of civil contempt. However, Defendant's disobedience continued.

On September 10, 2025, the instant contempt motion was filed in response to Defendant's letter dated August 25, 2025. That letter, in essence, stated that Defendant would not allow remediation to take place until the Spring of 2026 after the tenant's lease was over. This, again, reflects clear disobedience with Justice Bannon's order and demonstrates prejudice to Plaintiff's property rights.

On November 12, 2025, this Court issued an interim order on the contempt motion in a further good-faith effort to resolve the motion in a way that would benefit all parties. Clear deadlines were set for Defendant's architect to provide Plaintiff with descriptions of all remediations that were to be handled and to submit a final drawing of the remediations to the apartment at issue.

However, as admitted by Defendant in a so-ordered stipulation dated December 19, 2025, Defendant's architect failed to abide by this Court's November 12, 2025 interim order. Defendant's architect failed to address and correct all the unauthorized alterations which Justice Bannon, the First Department, and now this Court, have ordered remediated. The December 19, 2025 so-ordered stipulation, set forth further deadlines into 2026 for Defendant's contractor to execute an indemnity agreement in the form provided by the board, for Defendant to execute a new alteration agreement governing remediation work, and for Defendant to cause all tenants in

his unit to vacate on or before February 1, 2026, amongst other things. Once again, these orders, stipulated to by the Defendant, were disobeyed.

Despite knowledge of the interim orders from November and December of 2025, on January 8, 2026, Defendant texted Karen Manolo, the President of the Board's wife, bribing her with a six-figure commission on the sale of his Unit "on the condition that it is left alone."

At a status conference on January 20, 2026, it was determined Defendant still had failed to execute a new alteration agreement and failed to cause his contractor to execute an indemnity agreement in favor of the board. He also failed to deliver written assurances that tenants would vacate the unit, and Defendant's architect had failed to submit plans that complied with Plaintiff's comments. The Court issued another order on January 20, 2026 requiring the parties to finalize the architectural plans by February 18, 2026, required alteration and indemnification agreements to be executed by February 18, 2026, and required Defendant to either compel his tenants to provide access to the unit or to institute legal action against them on or before February 18, 2026.

Defendant disobeyed the January 20, 2026 order. The parties submitted another stipulation, which was so-ordered on February 26, 2026. In that stipulation, Defendant admits that he failed to remediate the unauthorized alterations and illegal conditions in his unit, that as of February 9, 2026, Defendant's architect's plans still failed to address all of Plaintiff's architect's comments, and that as of February 19, 2026 the architectural plans were still not finalized.

As a result, another interim order was issued on February 26, 2026 which required, amongst other things, for Defendant to again deliver a surrender agreement to the board executed by every tenant and occupant residing in the unit or, if a surrender agreement cannot be obtained, to move by order to show cause seeking to gain access to the unit. Defendant was further ordered to file an amended complaint in the legal proceedings against the tenant naming Barrie Sueskind, an

occupant of the unit, as a defendant. This was to take place by March 6, 2026. The interim order further required that on or before March 4, 2026, Defendant was also required to provide Plaintiff with an executed indemnity agreement, shall advise Plaintiff which contractor he has retained, and shall advise Plaintiff how many weeks the contractor will take to remediate.

Defendant again failed to abide by this interim order. Defendant did not amend the complaint in his action against the tenant until April 10, 2026, 8 days after the contempt hearing started. Defendant still had not procured an indemnification agreement at the time the contempt hearing began, and although Defendant purportedly sent an indemnification agreement on April 10, 2026, it was not the Board's required form.

Despite almost two years passing since Justice Bannon's original order, the hazardous conditions have not been remediated. Defendant has likewise disobeyed numerous interim orders from this Court, and Defendant has even disobeyed his own stipulated to deadlines. Plaintiff continues to be damaged by incurring legal fees and architect fees, and Plaintiff's property rights continue to be prejudiced by Defendant's disobedience. Based on this record, Plaintiff has easily satisfied the required elements of civil contempt. In opposition, Defendant has failed to refute Plaintiff's showing. The Court finds Defendant's witness testimony to be non-credible. Ms. Lobo testified she did not believe industry standards were required to follow DOB guidelines and the Court credits Mr. Zeinrich's testimony that it should not have taken any competent architect multiple plan revisions to properly address the unauthorized alterations. Moreover, Ms. Lobo's testimony does nothing to address Defendant's gross failure to abide by Justice Bannon's order in the months after it was issued.

Defendant's own testimony was likewise not credible, and he admitted that he did not even tell his tenants that remediation had to be done to the Unit until December 24, 2025, months after

the contempt motion was already filed. Defendant admitted on the stand he had a legal obligation to inform his tenants about the ongoing lawsuit, but after further prodding from his counsel, incredibly changed course and decided he did not have a legal obligation to inform the tenants about Court orders requiring remediation of the unit they are residing in. Defendant likewise failed to provide any efforts he took to comply with Justice Bannon's order after it was issued and in the months following affirmance from the First Department. He also made absolutely no contingencies during the pendency of the stay in the event he lost the appeal and was required to comply with Justice Bannon's order.

Therefore, the Court grants Plaintiff's motion for civil contempt and orders Defendant to pay Plaintiff's attorneys fees and architect fees associated with this motion and the remediations to date. The Court finds imprisonment appropriate but will hold imprisonment in abeyance for sixty days to allow Plaintiff the opportunity to purge his contempt. The contempt will be purged upon a showing that Plaintiff has procured a properly executed indemnification agreement in favor of the Board, has complied with the terms of settlement with Defendant's tenants to ensure their timely vacatur, and to show that contractors have been paid and remediations of the unauthorized alterations are scheduled to commence in a timely manner.

Because Plaintiff is entitled to fees, the branch of the motion for sanctions is denied as moot. Plaintiff's motion for an injunction barring Defendant from filing further legal actions against the Board is denied, without prejudice.

Accordingly, it is hereby,

ORDERED that Plaintiff's motion to hold Defendant in civil contempt is granted, and as penalty Defendant is ordered to pay Plaintiff's legal fees associated with the contempt motion and associated with all further remediation efforts, and is required to pay Plaintiff's architect fees

associated with the contempt motion and all further remediation efforts. Imprisonment and the issuance of a warrant for Defendant’s arrest is held in abeyance for sixty days to allow Defendant to purge his contempt by procuring a properly executed indemnification agreement in favor of the Plaintiff, complying with the terms of settlement with Defendant’s tenants to ensure their timely vacatur from the subject unit, and through a demonstration that Defendant’s retained contractor for the remediation has been paid and remediations of the unauthorized alterations are scheduled to commence in a timely manner; and it is further

ORDERED that the branch of the motion seeking sanctions is denied as moot in lieu of Plaintiff being awarded legal fees and costs associated with the motion; and it is further

ORDERED that the branch of the motion seeking a preliminary injunction barring Defendant from filing further legal proceedings against Plaintiff is denied, without prejudice, and with leave to renew in the event of any allegedly vexatious legal process being served; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on Defendant via NYSCEF.

This constitutes the Decision and Order of the Court.

4/15/26  
DATE

  
HON. PHAEDRA F. PERRY-BOND, J.S.C.

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