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Taylor v 122-24 Lexington Ave. Corp.
2022 NY Slip Op 22040
Decided on February 14, 2022
Civil Court Of The City Of New York, New York County
Ortiz, J.
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Decided on February 14, 2022

Civil Court of the City of New York, New York County

**Andrea V. Taylor, and CHARLOTTE TAYLOR, Petitioners,
Tenants**

against

**122-24 Lexington Ave. Corp., 120 LEXINGTON AVE CORP.,
DANIEL DABAKAROFF, ISAAC DABAKAROFF, SKYLAND
MANAGEMENT GROUP LLC, Respondents, Owners and New
York City Department of Housing Preservation and Development,
Co- Respondents.**

Index No. HP 6003/2017

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Frances A. Ortiz, J.

Recitation as required by CPLR 2219(a), of the papers considered in the review of petitioners' motion for civil contempt against respondents for failure to comply with information subpoenas.

Papers Numbered

Order to Show Cause, Affirmation & Exhibits 1/NYSCEF 86-94

Affirmation in Opposition 2/NYSCEF 106

MOTION SEQ No. 15

Upon the foregoing cited papers, the Decision/Order of this Court on this Order to Show Cause is as follows:

Petitioners move pursuant to *CPLR §5524*, *CPLR §5251*, and *CPLR §2308* to direct judgment in their favor for the amount of the fine imposed pursuant to *CPLR §2308* and for their attorney's fees. Additionally, petitioners ask that respondents purge their contempt within fifteen (15) days and upon further application to the Court, the Court issue a warrant for the arrest and commitment of Daniel Dabakaroff and Isaac Dabakaroff.

This is an HP Action that was settled on July 14, 2017 by Stipulation and Consent Order ("Order"). (*NYSCEF 6*). Subsequently, there have been numerous motions for contempt which have either been resolved or are still pending. Nevertheless, on November 6, 2020 the Court entered a judgment in favor of petitioner, Andrea Taylor in the amount of \$245,250

and against all respondent/owners (*NYSCEF 54*) pursuant to the Order. According to counsel for petitioners' in an affirmation dated September 3, 2021, respondents have not paid the judgment. (*Kellner Affir'm 2/NYSCEF 87*). He states that on August 6, 2021, he served in the above matter restraining notices and notices to judgment-debtors and information subpoenas by filing them onto the court's electronic filing system ("NYSCEF"). Additionally, the notices were emailed to counsel for respondents (Noah Levinson), to respondents attorney in Florida (Keith Silverstein) and separately to the respondents (Daniel Dabakaroff, Isaac Dabakaroff and Skyland Management Group LLC) by certified mail, return receipt requested). (*Id 3*) & (*NYSCEF 89, 90, & 91/ Proof of service*).

The information subpoena required that respondents answer the questionnaire attached to it and that respondents were to return the original questionnaire within seven (7) days. According to Mr. Kellner, he did not receive timely responses for those questionnaires from respondents' counsel, so he sent an email to Mr. Levinson and a copy to Mr. Silverstein. However, neither one responded. (*Id 5.*) Ultimately, the judgment was satisfied pursuant to a [*2]Satisfaction of Judgment dated January 12, 2022. (*NYSCEF 120*). Nevertheless, petitioners still wish to pursue their contempt and damages claim against respondents because it is their contention that respondents never responded to the information subpoenas.

Respondent's sole opposition indicates that the petitioners' motion must be denied as premature because the court has not decided their motion to renew and reargue the Decision/Order of Judge Daniele Chinaea dated November 6, 2020. However, per paragraph 4 of a stipulation dated January 11, 2022 in the above matter, the motion to renew and reargue was withdrawn. (*NYSCEF 121*).

DISCUSSION

According to *CPLR § 5223*, a judgment creditor can compel discovery relevant to the collection of a judgment in order to satisfy the judgment. Discovery can be in the form of an information subpoena. The refusal or willful neglect of any person to obey a subpoena or restraining notice issued shall be punishable as a contempt of court. *CPLR § 5251*. Furthermore, *CPLR § 5224 (a) (3)*, details the procedure and service required for an information subpoena. Specifically, the subpoena must be accompanied by a copy and original of written questions and contain a prepaid, addressed return envelope. The information subpoena may be served by registered or certified mail, return receipt requested. The answers shall be returned together with the original of the questions within seven days after receipt. The failure to comply with an information subpoena shall be governed by *CPLR § 2308 (b)* and such motion shall be made in the court that issued the underlying judgment.

CPLR § 5224 (a) (3) (iv). Lastly, if the court finds that the subpoena was authorized, it shall order compliance. The subpoenaed person shall be liable to the person on whose behalf the subpoena was issued for a penalty not exceeding fifty dollars and damages sustained by reason of the failure to comply. *CPLR § 2308 (b)*.

Moreover, the Order, preserved the parties' rights to enforcement by contempt powers and legal fees in the event that a party was compelled to seek relief from the court for non-compliance of the Order.

Here, one of the petitioners was awarded a \$245,250 judgment, and she is entitled to serve an information subpoena to collect the judgment pursuant to *CPLR § 5223*. Petitioners followed the procedures required to serve an information subpoena when they served on August 10, 2021 the respondents, Daniel Dabakaroff, Isaac Dabakaroff and Skyland Management Group LLC by certified mail, return receipt requested with the notice and questionnaire. (*Kellner Affir'm 3*) & (*NYSCEF 89, 90, & 91/ Proof of service*); *CPLR § 5224 (a) (3)*. According to Douglas Kellner, counsel for petitioners, he did not receive timely responses. (*Id 5*).

On the other hand, here, respondents in opposition to the motion have not presented any evidence of a defense for its failure to comply with responses to the information subpoenas. The only defense presented in the affirmation of their attorney is that the court has not decided their motion to renew and reargue the Decision/Order dated November 6, 2020. However, that motion was withdrawn per stipulation dated January 11, 2022. (*NYSCEF 121*).

It is well established that due process does not always mandate a hearing in every instance that contempt is sought. A hearing is only required if the papers in opposition raise a factual dispute as to the elements of civil contempt, or the existence of a defense and cannot be resolved on the papers alone. *Lundgren v. Lundgren*, 127 AD3d 938, 940 (2nd Dep't 2015); *El-Dehdan v El-Dehdan*, 26 NY3d 19, 29 (2015); *Bowie v. Bowie*, 182 AD2d 1049, 1050 (3rd [*3]Dep't 1992). Here, the affirmation in opposition does not raise a factual dispute or a defense. Therefore, a hearing on the contempt claim is not required and the motion may be decided on the papers alone.

Moreover, the refusal or willful neglect of any person to obey a subpoena or restraining notice issued shall be punishable as a contempt of court. *CPLR § 5251*. Accordingly, petitioners moved this Court that issued the money judgment for relief. This Court finds that the subpoena was authorized and can order compliance. However, ordering compliance

would be moot, since the judgment was satisfied, despite respondents' non-compliance with the information subpoenas. The further consequence of non-compliance will be that respondents will be individually liable to petitioners a penalty of \$50 and damages relating to their attorney's fees sustained by reason of their failure to comply. *CPLR § 2308 (b)*.

Petitioners request that respondents purge their contempt within fifteen (15) days and upon further application to the Court, the Court issue a warrant for the arrest and commitment of Daniel Dabakaroff and Isaac Dabakaroff is denied as moot, since the judgment was satisfied.

Accordingly, petitioners' motion for civil contempt is granted to the extent discussed above.

ORDERED: Petitioners' motion for civil contempt against respondents for failure to comply with information subpoenas is granted,

and it is further,

ORDERED: that respondents, Daniel Dabakaroff, Isaac Dabakaroff and Skyland Management Group LLC are individually held in civil contempt and are individually penalized the sum of \$50 to be paid to petitioners within thirty (30) days of service of a copy of this order with notice of entry,

and it is further,

ORDERED: that the matter will be set for a hearing on petitioners' damages/attorney's fees at later date to be determined by the Court and the parties, once all other open motions are decided or resolved.

This is the decision and order of this court. Copies of this decision will be uploaded to NYSCEF.

Date: February 14, 2022

Judge, Civil/Housing Court
Frances Ortiz