

325 Mgt. Corp. v Statuto

2024 NY Slip Op 30232(U)

January 18, 2024

Supreme Court, New York County

Docket Number: Index No. 157359/2021

Judge: Paul A. Goetz

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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. PAUL A. GOETZ PART 47

Justice

-----X

325 MANAGEMENT CORP.,

Plaintiff,

- v -

DANIELLE STATUTO, ALANNA FAITH BLAGOJEVIC,
JOHN DOE, JANE DOE

Defendants.

-----X

INDEX NO. 157359/2021

MOTION DATE 09/25/2023

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 72

were read on this motion to/for CONTEMPT.

In this ejectment action plaintiff moves unopposed to hold defendant Danielle Statuto and her attorney, Daphna Zekaria, Esq. and the attorney’s law firm Sokolski & Zekaria, P.C. in contempt of court pursuant to CPLR § 5104 and Judiciary Law § 753 (A)(3) for their failure to comply with the Appellate Division, First Department’s August 31, 2023 order directing defendant to release escrowed funds to plaintiff in the amount of \$45,687.50. Plaintiff also seeks sanctions against defendant Statuto and her attorneys pursuant to 22 NYCRR § 130-1.1(a) and professional and attorneys’ fees incurred by plaintiff on the appeal brought by the proposed contemnors in the First Department.

Pursuant to Judiciary Law § 753 (A) (3), a party may be held in civil contempt for disobedience of a lawful mandate of court. In order to prevail on a motion for contempt, the moving party must demonstrate: (1) a lawful order of the court clearly expressing an unequivocal mandate was in effect; (2) with reasonable certainty that the order has been disobeyed; (3) the party to be held in contempt had knowledge of the court’s order; and (4) prejudice to the right of

a party to the litigation (*El-Dehdan v El-Dehdan*, 26 NY3d 19, 29 [2015]). The movant has the burden to establish contempt by clear and convincing evidence (*id.* at 19).

Here, plaintiff has met its burden. As to the first element, the August 31, 2023 First Department order “directing the immediate release of the escrowed funds held by defendant-appellant’s counsel to plaintiff-respondent” is clear and unequivocal (NYSCEF Doc No 56). As to the second element, plaintiff has established that attorney Zekaria disobeyed the August 31, 2023 First Department order by submitting plaintiff’s counsel’s affirmation detailing his attempts to obtain the escrowed funds from attorney Zekaria but to no avail (NYSCEF Doc No 54, ¶¶ 12 – 19). Plaintiff established the third element, the proposed contemnors’ knowledge of the August 31, 2023 order, by serving Sokolski & Zekaria, P.C. with notice of entry of the order (NYSCEF Doc No 60). Finally, as to the fourth element, plaintiff has established prejudice because it has not received the sum determined by the First Department that it should receive from Statuto’s counsel.

Accordingly, that part of plaintiff’s motion seeking to hold the proposed contemnors in civil contempt for disobeying the August 31, 2023 First Department order will be granted.

In light of this civil contempt determination, the court is required to impose a penalty that is remedial in nature and effect and that is the least possible exercise of the court’s power to achieve the proposed end of compliance with its orders (*McCain v Dinkins*, 84 NY2d 216, 229 [1994]). An appropriate penalty under the circumstance is awarding plaintiff its professional and attorneys’ fees and costs incurred by plaintiff on the appeal in the First Department and in bringing this motion (*People ex rel. Stearns v Marr*, 181 NY 463, 470 [1905] [the imposition of costs in a proceeding to punish for a civil contempt is authorized]).

Rule 130-1 sanctions against attorney Zekaria are also warranted because there is no non-frivolous reason her failure to comply with the August 31, 2023 First Department order. Attorney Zekaria signed a stipulation agreeing to deposit \$45,687.50 in an interest-bearing attorney escrow account (NYSCEF Doc No 57) and after the First Department order was issued failed to release the escrowed funds to plaintiff's counsel as directed. Therefore, a judgment will be issued as against attorney Zekaria in the amount of \$1,000 to be deposited with the Lawyers' Fund for Client Protection (22 NYCRR § 130-1.3) as appropriate to deter such conduct in the future.

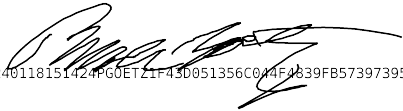
Accordingly, based on the foregoing, it is

ORDERED that plaintiff is awarded a money judgment as against defendant Statuto in the amount of \$195,045.85 (\$57,190.85 in attorneys' fees and costs incurred in this court, \$25,939.00 in professional fees, \$96,083.25 attorneys' fees and costs incurred in the Appellate Division, First Department, \$15,832.75 attorneys' fees and costs incurred in bringing the instant motion) and the Clerk shall enter judgment accordingly; and it is further

ORDERED that plaintiff is awarded a money judgment as against defendant Statuto and her attorneys Sokolski & Zekaria, P.C. jointly and severally in the amount of \$45,687.50 (the escrowed funds amount) plus interest from December 8, 2022 and the Clerk shall enter judgment accordingly; and it is further

ORDERED that pursuant to 22 NYCRR § 130-1.2 the clerk is directed to enter a money judgment as against Daphna Zekaria, Esq. in the amount of \$1,000.00 to be paid to the Lawyers'

Fund for Client Protection.


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1/18/2024
DATE

PAUL A. GOETZ, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: