

BSDT 2012 LLC v H F Z Capital Group LLC

2024 NY Slip Op 34379(U)

December 12, 2024

Supreme Court, New York County

Docket Number: Index No. 650277/2021

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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BSDT 2012 LLC,

Plaintiff,

- v -

H F Z CAPITAL GROUP LLC,ZIEL FELDMAN, NIR MEIR,

Defendant.

INDEX NO. 650277/2021

MOTION DATE 11/14/2024

MOTION SEQ. NO. 006

**DECISION + ORDER ON
MOTION**

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 006) 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177

were read on this motion to/for CONTEMPT.

Upon the foregoing documents, BSDT 2012 LLC (the **Judgment Creditor**)’s motion for contempt (Mtn. Seq. No. 006) is GRANTED.

Reference is made to (i) a Decision and Order of the Court (the **Prior Decision**; NYSCEF Doc. No. 60), dated January 14, 2022, granting the Judgment Creditor’s motion for summary judgment in lieu of complaint against Ziel Feldman, HFZ Capital Group, LLC, and Nir Meir in its entirety and referring the case to a special referee to determine the amount of the Judgment Creditor’s reasonable attorneys’ fees, (ii) the Judgment (the **Judgment**; NYSCEF Doc. No. 64), entered on January 21, 2022, amounting to the sum of \$9,422,796.94 and (iii) an Order (the **Order**; NYSCEF Doc. No. 147), dated September 23, 2024, granting the Judgment Creditor’s unopposed motion to compel and order East 68 PH LLC (the **LLC**) to comply with the Judgment Creditor’s subpoena *duces tecum*, seeking information concerning assets that may be utilized to satisfy the Judgment within 30 days.

As relevant, the Judgment Creditor did not serve Mr. Feldman (a defendant and judgment debtor) individually and move to compel Mr. Feldman personally to comply with a previously served subpoena. Thus, the Court did not previously order Mr. Feldman personally to comply with the subpoena. As discussed above, the Court previously ordered the LLC to comply with the subpoena.

Now, the Judgment Creditor moves, among other things, for an order (i) holding the LLC in contempt for failing to produce responsive documents required by the Order and (ii) holding Mr. Feldman in contempt of court for failing to comply with the Order.

Pursuant to CPLR § 5251, “[r]efusal or willful neglect of any person to obey a subpoena or restraining notice issued ... shall [] be punishable as a contempt of court.” To make a finding of civil contempt, the court must determine that (i) a lawful order of the court clearly expressing an unequivocal mandate was in effect, (ii) it appears with reasonably certainty that the order has been disobeyed, (iii) the party to be held in contempt had knowledge of the court’s order, and (iv) the right of a party to the litigation is prejudiced (*El-Dehdan v El-Dehdan*, 26 NY3d 19, 29 [2015]). Civil contempt must be demonstrated by clear and convincing evidence (*Classe v Silverberg*, 168 AD3d 603, 604 [1st Dept 2019]).

Unquestionably, the Order is a clear and unequivocal mandate of the Court:

ORDERED that East 68 PH LLC shall produce documents responsive to BSDT’s document requests set forth in its demand letter, dated March 8, 2024, and demand email (NYSCEF Doc. No. 144), dated March 22, 2024, within 30 days of this Decision and

Order; and if East 68 PH LLC fails to do so, then BSDT may bring an Order to Show Cause seeking to hold East 68 PH LLC in contempt.

(NYSCEF Doc. No. 147).

In support of its motion, the Judgment Creditor argues that Mr. Feldman, on behalf of the LLC, failed to adequately respond to Demand 2 of the Subpoena which requested:

[a]ny and all documents and correspondence reflecting payments made in relation to the Apartment, including but not limited to the payment of common charges, maintenance or general upkeep and payments made to contractors or any other person and/or entity performing work or services of any kind in the Apartment...

(NYSCEF Doc. No. 143 at 6)

In its opposition papers, the LLC argues that (i) it has fully complied with the Order by producing all documents within its possession, custody or control that are responsive to the subpoena, (ii) the Judgment Creditor has failed to provide clear and convincing evidence of willful noncompliance, and (iii) the LLC has made good faith efforts to comply by searching all relevant repositories for responsive documents and communicating with the Judgment Creditor regarding the non-existence of documents. In his opposition papers, Mr. Feldman also argues that, in any event, the documents sought by the Judgment Creditor are not related to the satisfaction of the Judgment and fall outside the scope of typical post-judgment discovery allowed of a nonparty. They are not correct.

The Judgment Creditor is entitled to seek all relevant and necessary documents as to the satisfaction of its Judgment (*See Kapon v Koch*, 23 NY3d 32, 38–39 [2014]; CPLR 5223). Mr. Feldman and his wife occupy the Apartment. Who pays for and how the maintenance and other

charges of the Apartment are paid for are relevant to the satisfaction of the Judgment. It is simply insufficient for Mr. Feldman to say that the interests in the Apartment that he now occupies were previously assigned to Monroe Capital without explaining or producing the documents relative to how and on what terms he is being permitted to occupy the Apartment (and how the costs associated with the Apartment are being paid, including any and all documents which evidence any arrangement with Monroe Capital as to his continued occupancy). As the corporate representative of the LLC, he is well within its control. The Judgment Creditor thus is entitled to a finding of contempt as to the LLC. Inasmuch as the prior Order did not personally order Mr. Feldman to personally provide this information, a finding of contempt against him is premature (*Parc 56, LLC v Bd. of Managers of Parc Vendome Condominium*, 217 AD3d 416, 419 [1st Dept 2023]). However, and now, and for the avoidance of doubt, Mr. Feldman must provide any and all relevant documents to respond to Demand 2 no than December 20, 2024. If he fails to do so, he shall have violated a clear and unambiguous order of this Court, he will be found to have impaired and impeded the judicial proceeding for the purpose of frustrating the Judgment Creditor's rights and he shall be held in contempt of court (*see El-Dehdan v El-Dehdan*, 26 NY3d 19, 29 [2015]).

The Judgment Creditor may email Part 53 and notify Part 53 of any further non-compliance and the Court shall issue a Supplemental Order which may include coercive confinement.

The Court has considered the parties' remaining arguments and finds them unavailing.

Accordingly, it is hereby

ORDERED that the Judgment Creditor's motion for contempt is GRANTED as set forth above;
and it is further


ORDERED that for the contempt of this court, the LLC is hereby fined the sum of \$1,000.00 per
day; and it is further

ORDERED that the LLC can purge its contempt by causing Mr. Feldman to provide complete
and accurate responses to the subpoena by December 20, 2024; and it is further

ORDERED that Mr. Feldman must provide full and accurate responses to the subpoena on or
before December 20, 2024; and it is further

ORDERED that if Mr. Feldman fails to respond to the subpoena on or before December 20,
2024, the Judgment Creditor may email Part 53 as to such further non-compliance and the Court
shall issue a Supplemental Order which may provide for Mr. Feldman's coercive confinement.

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12/12/2024
DATE

ANDREW BORROK, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE