

5 Beekman Prop. Owner, LLC v Henick-Lane, Inc.
2025 NY Slip Op 34183(U)
October 29, 2025
Supreme Court, New York County
Docket Number: Index No. 657290/2019
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. ANDREW BORROK

PART

53

Justice

-----X

5 BEEKMAN PROPERTY OWNER, LLC, BROADWAY
CONSTRUCTION GROUP, LLC,

Plaintiff,

- v -

HENICK-LANE, INC., BROADWAY CONSTRUCTION
GROUP LLC, 5 BEEKMAN PROPERTY OWNER LLC, JOHN
DOE NUMBERS ONE THROUGH TEN

Defendant.

INDEX NO. 657290/2019MOTION DATE 03/14/2025,
05/09/2025MOTION SEQ. NO. 005 006

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 131, 132, 133, 134, 135, 136, 137, 170, 171, 172

were read on this motion to/for

PRECLUDE

The following e-filed documents, listed by NYSCEF document number (Motion 006) 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169

were read on this motion to/for

CONTEMPT

The Plaintiffs in this case were ordered approximately 1 year ago to return “\$850,000 in funds, plus interest, mistakenly sent to 5 Beekman as part of a settlement agreement prior to settlement terms being agreed to or any settlement agreement ever executed” (the **Prior Order**; NYSCEF Doc. No. 111). They still have not done so. They have been given multiple opportunities to do so (*see*, NYSCEF Doc. Nos. 138 and 139). In fact, following granting Henick-Lane’s motion for the aforementioned Prior Order and when the Plaintiff had not returned the money in accordance with the Prior Order, some five months later, the Court ordered that “these funds must be immediately returned pursuant to the Prior Order” (NYSCEF Doc. No. 138). Lest there be any

confusion, pursuant to a subsequent order, dated May 6, 2025 (NYSCEF Doc. No. 139), the Court again ordered the return of the funds indicating:

- By Decision and Order (the Prior Order; NYSCEF Doc. No. 111), dated November 1, 2024 (approximately six months ago), the Court ordered the return of approximately \$850,000 in funds, plus interest, mistakenly sent to 5 Beekman Property Owner, LLC (5 Beekman) as part of a settlement agreement prior to settlement terms being agreed to or any settlement agreement ever executed.
- To address any ambiguity, the Court reaffirmed the Prior Order and subsequently again directed in a case management order, dated April 29, 2025, that “[f]or the avoidance of doubt, these funds must be immediately returned pursuant to the Prior Order” (NYSCEF Doc. No. 138).
- As of a conference held on May 5, 2025, the parties indicated that the funds have not been returned.
- The defendants may move by order to show cause to hold the defendants in contempt for disobeying a lawful order of the Court clearly expressing an unequivocal mandate that was in effect (*El-Dehdan v El-Dehdan*, 26 NY3d 19, 29 [2015]).

(NYSCEF Doc. No. 139). Worse, counsel confirmed that they will not do so even if they were given additional time (*tr.* 10.29.25). Unquestionably, on the record before the Court, Henick-Lane has established by clear and convincing evidence (i) a lawful order of the court clearly expressing an unequivocal mandate was in effect, (ii) it appears with reasonable 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]); *Classe v Silverberg*, 168 AD3d 603, 604 [1st Dept 2019]). As such, the motion seeking to hold the Plaintiffs in contempt is GRANTED.

Although a close call, Henick-Lane is not entitled to preclude the Plaintiffs from offering any evidence at trial **at this time**. Preclusion of evidence is a “drastic remedy[,]...there must be a

clear showing that the failure to comply with court-ordered discovery was willful and contumacious” (*Zakhidov v Boulevard Tenants Corp*, 96 AD3d 737, 739 [2d Dept 2012]).

Approximately 11 months ago, the Court issued a Case Management Order (the **November CMO**; NYSCEF Doc. No. 113), dated November 7, 2024, ordering that “[t]he parties shall populate the evidence room by February 14, 2025. Indisputably, the Plaintiffs have failed to comply with the November CMO. In the interim (i.e., on February 25, 2025 approximately 8 months ago [NYSCEF Doc. No. 130]), however, the Plaintiffs have retained new counsel. In an abundance of causation and given the apparent lack of prejudice to Henick-Lane, the motion is denied without prejudice.

The Plaintiffs shall populate the evidence room *solely with documents that it intends to use at trial* no later than December 31, 2025 (i.e., approximately 60 days from now and approximately 13 months after the evidence room was initially opened).¹ The parties may file any appropriate motion in limine on or before January 31, 2026. Opposition to any motions in limine shall be filed as of February 14, 2026 together with all other pretrial submissions as set forth in the Part Rules.

The Court has considered the Henick-Lane’s remaining arguments and has found them to be unavailing.²

Accordingly, it is hereby

¹ Counsel to the Plaintiffs suggested that he might want to upload some 11,000 documents to the virtual evidence room. This would be patently improper and under such circumstances, Henick-Lane may file an order to show cause seeking reargument of its preclusion motion.

² The unauthorized reply (NYSCEF Doc. No. 171) was not considered.

ORDERED that Henick-Lane's motion for contempt (Mtn. Seq. No. 006) is granted; and it is further

ORDERED that 5 Beekman and BCG are to immediately return the wrongfully and willfully deposited and retained funds of \$850,000 with interest; and it is further

ORDERED that Henick-Lane is awarded its attorneys' fees and costs incurred in this contempt motion (Mtn. Seq. No. 006) and its efforts to recover the wrongfully retained funds; and it is further

ORDERED that Henick-Lane's motion in limine to preclude (Mtn. Seq. No. 005) is denied; and it is further

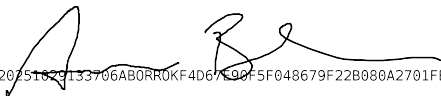
ORDERED that this Court shall reopen the evidence room until December 31, 2025; and it is further

ORDERED that the Defendants may file any appropriate motion in limine on or before January 31, 2026; and it is further

ORDERED that Opposition to any motions in limine shall be due as of February 14, 2026 together with all other pretrial submissions as set forth in the Part Rules; and it is further

ORDERED that the parties shall email part 53 (sfc-part53@nycourts.gov) when the motions in limine are fully submitted; and it is further

ORDERED that the parties shall appear for a status conference on February 27, 2026 at 11:30am.



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<u>10/29/2025</u>		<u>ANDREW BORROK, J.S.C.</u>	
DATE			
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