

Khan v Garg
2025 NY Slip Op 32563(U)
July 10, 2025
Supreme Court, New York County
Docket Number: Index No. 652334/2013
Judge: Andrea Masley
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
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 48-----X
RAZA KHAN,

Plaintiff,

- v -

VISHAL GARG, EDUCATION INVESTMENT FINANCE
CORPORATION, 1/0 CAPITAL LLC, and EMBARK
HOLDCO I, LLC,Defendants.
-----XINDEX NO. 652334/2013MOTION DATE --MOTION SEQ. NO. 045**DECISION + ORDER ON
MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 045) 1848, 1849, 1850, 1851, 1852, 1853, 1860, 1889, 1890, 1891, 1893, 1894, 1895, 1900, 1902

were read on this motion to/for

CONTEMPT.

In motion sequence 045, defendants Vishal Garg, Education Investment Finance Corporation (EIFC), 1/0 Capital, LLC, and Embark Holdco I, LLC move for an order of civil contempt against plaintiff Raza Khan for his failure to comply with the court's April 30, 2024 decision and order (Order).

Background

Upon order granting motion for summary judgment on defendants' conversion counterclaim (NYSCEF Doc. No. [NYSCEF] 1357, Decision and Order at 13 [mot. seq. no. 026]), a judgment was entered on May 12, 2023 in favor of defendants and against plaintiff in the amount of \$54,205.53. (NYSCEF 1362, Judgment.) It is undisputed that plaintiff failed to pay the judgment, which plaintiff is allegedly unable to pay because he is cash poor. (See NSYCEF 1828, Order at 1 [mot. seq. no. 044].) The parties were unable to come to an agreement as to the amount of the judgment owed to Garg and

EIFC. (*Id.* at 2.) The court stated that that “[t]he issue of correcting the ... judgment is adjourned until the accounting and dissolution proceeding of [EIFC] concludes at which time the court will determine how much of the judgment is to be paid by the plaintiff to Garg and how much to EIFC.” (*Id.* at 2.) The court also ordered, however, that “plaintiff shall deliver to his attorney Blank Rome \$54,205.53 within 10 days of this order [i.e. by May 10, 2024] which the firm shall hold in escrow until further order of this court.” (*Id.* at 3.)¹ Plaintiff failed to deliver the funds to his attorney. (NYSCEF 1852, May 12, 2024 email from Blank Rome.)²

Defendants filed this motion for contempt for plaintiff’s failure to deliver \$54,205.53 to his attorney. As for penalty, defendants request that the court “require[] [plaintiff] to pay applicable fees and costs” (NYSCEF 1853, MOL at 10/12); defendants thus appear to seek attorneys’ fees and costs incurred in making this motion.³

Discussion

The necessary elements to support a finding of civil contempt are (1) “a lawful order of the court, clearly expressing an unequivocal mandate, was in effect,” (2) the order was disobeyed, (3) “the party to be held in contempt must have had knowledge of the court’s order, although it is not necessary that the order actually have been served upon the party,” and (4) “prejudice to the right of a party to the litigation must be

¹ Blank Rome subsequently withdrew its representation of plaintiff. (See NYSCEF 1999, Decision and Order [mot. seq. no. 052].)

² The Appellate Division, First Department denied plaintiff’s motions to stay enforcement of the order to deliver \$54,205.53 to his attorney. (NYSCEF 1902, Aug. 8. 2024 Order [1st Dept].)

³ At the oral argument, the court asked whether defendants are seeking imprisonment; defendants’ counsel stated “[i]f the Court finds it appropriate ... we’ll leave that to the Court’s discretion.” (NYSCEF 1900, tr at 25:22-26:2.)

demonstrated.” (*El-Dehdan v El-Dehdan*, 26 NY3d 19, 29 [2015] [internal quotation marks and citations omitted].) Civil contempt must be established “by clear and convincing evidence.” (*Id.*)

First, the Order clearly and unequivocally mandated plaintiff to deliver \$54,205.53 to his attorney within 10 days, i.e. by May 10, 2024. (NYSCEF 1828, Order at 3 [mot. seq. no. 044].) Second, the funds were not delivered, which is undisputed. (NYSCEF 1852, May 12, 2024 email from Blank Rome; NYSCEF 1890, Khan suppl aff ¶ 2.) Third, plaintiff’s application for stay and his affidavit establish that he knew of the Order. (NYSCEF 6, May 6, 2024 Application for Interim Relief [Index. No. 2024-02934]; NYSCEF 1890, Khan suppl aff ¶ 2.) Finally, defendants are suffering prejudice: the funds to which they are entitled are not being safeguarded in attorney escrow.

The verdict following jury trial sets EIFC’s claims against Garg (see NYSCEF 1859, Verdict Sheet) and thus cannot offset the \$54,205.53 judgment against plaintiff at issue. A mere possibility of future distribution to Khan from EIFC following accounting and dissolution of EIFC does not extinguish prejudice.⁴

“Once the movant establishes a knowing failure to comply with a clear and unequivocal mandate, the burden shifts to the alleged contemnor to refute the movant’s showing, or to offer evidence of a defense, such as an inability to comply with the order.” (*El-Dehdan v El-Dehdan*, 114 AD3d 4, 17 [2d Dept 2013] [citation omitted], *affd* 26 NY3d 19 [2015].) Here, plaintiff’s May 15, 2024 eight-page affidavit raises an issue of fact that plaintiff had no liquid funds to deliver the judgment amount to his attorney. (See NYSCEF 1890, Khan suppl aff.) Accordingly, a hearing is required. (*El-Dehdan*,

⁴ Plaintiff is a 50% owner of EIFC. (NYSCEF 1890, Khan suppl aff ¶ 7.)

114 AD3d at 17 [“A hearing is required ... if the papers in opposition raise a factual dispute as to the elements of civil contempt, or the existence of a defense” (citations omitted)].⁵

Although this court noted in the April 30, 2024 Order that as of August 2023, plaintiff or his corporation had funds sufficient to satisfy the judgment, this finding does not preclude plaintiff’s renewed indigence defense advanced *following* the Order in defense of this contempt application.

Accordingly, it is

ORDERED that a Judicial Hearing Officer (JHO) or Special Referee shall be designated to hear and report to this court on the following individual issue of fact, which are hereby submitted to the JHO/Special Referee for such purpose:

- (1) the issue of whether plaintiff was and remains unable to comply with the court’s April 30, 2024 Order directing that plaintiff deliver to his attorney \$54,205.53 to be held in escrow within 10 days of the April 30, 2024 Order (NYSCEF 1828)

except that, in the event of and upon the filing of a stipulation of the parties, as permitted by CPLR 4317, the Special Referee, or another person designated by the parties to serve as Referee, shall determine the aforesaid issue; and it is further

ORDERED that the JHO/Special Referee is authorized to order pre-hearing discovery, if requested by the parties and as appropriate; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; and it is further

⁵ The appearance on April 29, 2024 was an oral argument on motions sequence 043 and 044 and a conference, and thus it is not a substitute for a hearing on the alleged indigence defense asserted on this motion.

ORDERED that this matter is hereby referred to the Special Referee Clerk for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court), shall assign this matter at the initial appearance to an available JHO/Special Referee to hear and report as specified above; and it is further

ORDERED that parties shall immediately consult one another and defendants shall, within 15 days from the date of this Order, submit to the Special Referee an Information Sheet (accessible at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

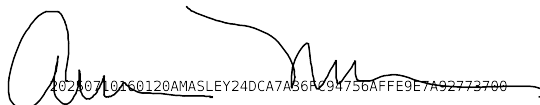
ORDERED that on the initial appearance in the Special Referees Part the parties shall appear for a pre-hearing conference before the assigned JHO/Special Referee and the date for the hearing shall be fixed at that conference; the parties need not appear at the conference with all witnesses and evidence; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue(s) specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the "References" link on the

court's website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules); and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts.



<u>7/10/2025</u>		<u>ANDREA MASLEY, J.S.C.</u>	
DATE			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART	<input checked="" type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE