

Valley Natl. Bank v Tarzan Cab Corp.
2025 NY Slip Op 32602(U)
July 1, 2025
Supreme Court, New York County
Docket Number: Index No. 655249/2020
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M-----X
VALLEY NATIONAL BANK,

Plaintiff,

- v -

TARZAN CAB CORP., SAMI ITSHAIK, 412 EXPRESS
MANAGEMENT CORP.Defendants.
-----XINDEX NO. 655249/2020MOTION DATE 06/14/2024MOTION SEQ. NO. 003**DECISION + ORDER ON
MOTION**

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 71, 72, 73, 74, 75, 76, 77, 78, 80, 82, 83, 84, 85, 90, 91, 92, 93, 94, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 110

were read on this motion for CONTEMPT.

Defendant Sami Itshaik (“Defendant”) seeks to purge himself of criminal contempt pursuant to the Court’s March 21, 2025 Decision and Order. For the reasons set forth below, the Court finds that Defendant has purged himself of criminal contempt.

BACKGROUND

In a Decision and Order dated March 21, 2025, the Court granted Plaintiff’s motion for civil contempt and provisionally granted the portion of the motion for criminal contempt (NYSCEF 94). The Court provided Defendant leave to purge himself of criminal contempt by making a filing that complies with the Court’s prior order dated November 29, 2024 (NYSCEF 85 [“Mr. Itshaik (or, if he is incapacitated, a guardian or representative) is directed to file an affidavit explaining why he has not appeared on the two contempt motions in this matter, with reference to medical records if necessary”])).

On April 10, 2025, Mr. Eytan M. Goldschein, the counsel of record in this matter, submitted on Defendant's behalf an affidavit "by and through his son Amit Itshaik"—along with medical records—requesting that the Court purge the criminal contempt portion of the Court's prior orders. Mr. Amit Itshaik claims that Defendant failed to appear on the two contempt motions in this matter because (1) he was in poor medical health; (2) service of the contempt motions was effectuated at a New York home address where he resided before he permanently moved to Florida in 2023; and (3) that the attorney of record in this matter, Mr. Eytan M. Goldschein, and Mr. R. Ariel Poltielov, Defendants' counsel in other matters, were confused as to who represented Defendants in this matter and thus, failed to inform Defendant about the two contempt motions.¹

Amit Itshaik provided Defendant's medical records—dated August 28, 2024 and February 25, 2025—from a Florida-based medical provider (NYSCEF 99-101). Defendant's primary care provider noted that Defendant suffers from "amnesia" and a "moderate decline in his physical and cognitive function" (NYSCEF 101). The records included entries that noted that Defendant had "grossly normal memory" but that he was "forgetful" (NYSCEF 100). Citing those records, Mr. Amit Itshaik stated that Defendant is unable to appear for a deposition pursuant to Plaintiff's post-judgment subpoena because of his poor medical condition.

¹ According to Mr. Amit Itshaik's affidavit, Mr. Goldschein was retained to represent Defendants solely to interpose an Answer in this action to ensure that Defendants would not default and would be replaced by another attorney (NYSCEF 98). He was not aware that he was still attorney of record and was mistakenly under the impression that Mr. Poltielov represented Defendants in this matter (*id.*). Mr. Goldschein has sought to withdraw as counsel of record for Defendants (NYSCEF 87). He claims that he has not been authorized to appear on behalf of Defendants since April 2021 (*id.*).

DISCUSSION

Unlike civil contempt, which “is established, regardless of the contemnor's motive, when disobedience of the court's order ‘defeats, impairs, impedes, or prejudices the rights or remedies of a party’” (*El-Dehdan v El-Dehdan*, 26 NY3d 19, 35, 41 NE3d 340, 350 [2015]), criminal contempt “requires a finding of willful disobedience” of “a court’s lawful mandate” (*Zodkevitch v Feibush*, 17 Misc 3d 1106(A), 851 NYS2d 62 [Sup Ct 2007]). “Knowingly failing to comply with a court order gives rise to an inference of willfulness” (*Dallessio v Kressler*, 6 AD3d 57, 66, 773 NYS2d 434, 440 [2d Dept 2004]).

Here, Amit Itshaik has provided sufficient evidence to show why Defendant did not appear in this action in response to Court orders. The record provides evidence that Defendant did not know about the contempt motions against him because (1) he had relocated to Florida by the time service of the Orders to Show cause for Contempt was effectuated at his former New York residential address; (2) the two attorneys who received notice of the Orders to Show Cause did not inform him about them; and (3) he has been experiencing a cognitive decline in recent years. These facts do not support a finding of “willful disobedience” of this Court’s orders sufficient to warrant a finding of criminal contempt.

Nevertheless, Defendant is not relieved of his obligation to respond to Plaintiff’s subpoena requests. “CPLR 1201 mandates that an adult incapable of adequately prosecuting or defending his or her rights shall appear by his or her guardian ad litem” (*Brewster v John Hancock Mut. Life Ins. Co.*, 280 AD2d 300, 300 [1st Dept 2001]). The court may appoint a guardian ad litem “on its own initiative” pursuant to CPLR 1202 (*id.*). However, counsel is obligated to seek the appointment of a guardian ad litem pursuant to CPLR 1202(a)(3) to protect a client’s interest once he becomes aware of the client’s apparent incompetence (*Rada v*

Fielding, M.D. [N.Y. Sup Ct, New York County 2017]). Therefore, Mr. Goldschein, as Defendant's counsel of record in this matter at this time, is directed to move pursuant to CPLR 1202(a)(3) within 30 days of this order.²

Accordingly, it is

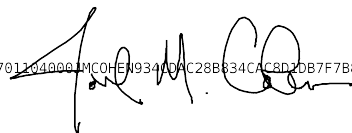
ORDERED that Defendant Sami Itshaik has purged himself of criminal contempt by complying with the Court's March 21, 2025 Order; it is further

ORDERED that Defendant's counsel of record identify an individual—who may be one of Defendant's family member—to serve guardian ad litem and move pursuant to CPLR 1202(a)(3) for an order appointing such individual as guardian ad litem within 30 days of this order; it is further

ORDERED that Plaintiff shall, as a courtesy, serve this Decision and Order on Mr. Amit Itshaik by email within three (3) days of this order; and it is further

ORDERED that the parties provide a letter update to the Court by July 15, 2025.

This constitutes the Decision and Order of the Court.

<u>7/1/2025</u>			
DATE		JOEL M. COHEN, J.S.C.	
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

² The Court notes that Defendant's counsel has filed a motion to withdraw. The Court will turn to that motion after a guardian has been appointed.