

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

NYSCEF E-file Case

1090 ST. NICHOLAS INVESTORS LLC,

Index No. 153243/2021

Plaintiff,

(Motion Seq. 2)

Hon. Barbara Jaffe, J.S.C.

-against-

**ORDER OF CONTEMPT
AND ARREST**

MATEO HERNANDEZ, HUMBERTO ZAPATA,
PATRICK WILLIAMS, VICTOR GRULLON, JOSE DOE
(LAST NAME UNKNOWN), JOHN DOE, and JANE DOE,

Defendants.

The following e-filed documents, listed by NYSCEF document number (Motion 002) (23-32, 45) were read on this motion for CONTEMPT

By order to show cause, submitted on default, plaintiff 1090 ST. NICHOLAS INVESTORS LLC (“Plaintiff”) moves for an order of civil and criminal contempt against defendants HUMBERTO ZAPATA a/k/a HERIBERTO ZAPATA, PATRICK WILLIAMS, VICTOR GRULLON, JOSE DOE (LAST NAME UNKNOWN) a/k/a JOSE CABRERA a/k/a JOSE CABRERA, JOHN DOE, and JANE DOE (“Defendants”), punishing Defendants for civil and criminal contempt pursuant to Judiciary Law Sections 750, et seq., based upon Defendants’ violation of the Temporary Restraining Order of this Court dated April 8, 2021 (“TRO”).

Upon the foregoing papers and after a hearing on the record on June 16, 2021, at which none of the Defendants appeared, and none of the Defendants having submitted opposition to the motion despite being served with the motion, the motion to hold Defendants in civil and criminal contempt is granted as the Court finds, based on the unopposed submissions of Plaintiff, that Defendants willfully violated the TRO, which is an unequivocal mandate of this Court and Defendants’ disobedience actually did defeat, impair, impede, or prejudice the rights and remedies of Plaintiff. Accordingly, it is

ORDERED that the motion (Motion 002) to hold Defendants in civil and criminal contempt is granted; and it is further

ORDERED that each of the Defendants is hereby fined in the sum of \$250.00; and it is further

ORDERED that the Sheriff of the County of New York be and hereby is directed, upon delivery to him/her of a duly certified copy of this order, to collect the fines hereby imposed upon said Defendants, and pay the same over to the Plaintiff herein; and it is further

~~ORDERED, that the Defendants by reason of their misconduct and disobedience and neglect and refusal to comply with said TRO be and hereby are committed and directed to be imprisoned in the jail of the City of New York in which they shall be found there to remain charged with contempt until they shall have paid to the Sheriff their respective fine; and it is further~~

ORDERED that the Sheriff of the County of New York upon delivery of a copy of this order certified by the Clerk of the Court, shall forthwith on receipt thereof, and without further process, take the bodies of Defendants and deliver such to the Commissioner of Corrections of the City of New York to be detained in close custody until Defendants pay the fine of \$250.00 each together with Sheriff's fees, or until Defendants shall otherwise be discharged by law; and it is further

ORDERED that Defendants may purge said contempt by each paying the fines of \$250.00 to Plaintiff.

ENTER:

8/17/2021
Date

J. S. C.
BARBARA JAFFE
J.S.C.

agency governed by title IV-D of the social security act, such office or district is authorized to impose a penalty against the subpoenaed person. The amount of the penalty shall be determined by the commissioner of the office of temporary and disability assistance and set forth in regulation, and shall not exceed fifty dollars. Payment of the penalty shall not be required, however, if in response to notification of the imposition of the penalty the subpoenaed person complies immediately with the subpoena.

(c) Review of proceedings. Within ninety days after the offender shall have been committed to jail he shall, if not then discharged by law, be brought, by the sheriff, or other officer, as a matter of course personally before the court issuing the warrant of commitment and a review of the proceedings shall then be held to determine whether the offender shall be discharged from commitment. At periodic intervals of not more than ninety days following such review, the offender, if not then discharged by law from such commitment, shall be brought, by the sheriff, or other officer, personally before the court issuing the warrant of commitment and further reviews of the proceedings shall then be held to determine whether he shall be discharged from commitment. The clerk of the court before which such review of the proceedings shall be held, or the judge or justice of such court in case there be no clerk, shall give reasonable notice in writing of the date, time and place of each such review to each party or his attorney who shall have appeared of record in the proceeding resulting in the issuance of the warrant of commitment, at their last known address.

Credits

(L.1962, c. 308. Amended L.1965, c. 231, § 3; L.1977, c. 25, § 1; L.1997, c. 398, § 59, eff. Jan. 1, 1998; L.2007, c. 205, § 1, eff. Jan. 1, 2008; L.2007, c. 601, § 9, eff. Aug. 15, 2007.)

Editors' Notes

SUPPLEMENTARY PRACTICE COMMENTARIES

by Professor Patrick M. Connors

2017

C2308:1 Disobedience of Judicial Subpoena, Generally.

Issuance of Warrant Directing Sheriff to Bring Witness Into Court Discretionary

As we note in the main practice commentary, CPLR 2308(a) lists the penalties applicable to the disobedience of a judicial subpoena. One of the penalties listed is the issuance of “a warrant directing a sheriff to bring the witness into court.” CPLR 2308(a). In *Cadlerock Joint Venture, L.P. v. Forde*, 152 A.D.3d 483, 54 N.Y.S.3d 878 (2d Dep't 2017), the Second Department emphasized that the imposition of this penalty is within the discretion of the court. In *Cadlerock*, the supreme court denied the plaintiff's motion under CPLR 2308(a) for the issuance of a warrant of arrest to bring the defendant before the court based on his alleged failure to comply with a postjudgment judicial subpoena duces tecum and a prior order of contempt. The Second Department ruled that the denial of this relief was within the court's discretion, and affirmed the order of the supreme court, which declined to issue the warrant “finding that the plaintiff could avail itself of ‘all other remedies pursuant to the CPLR to collect’ a judgment in favor of the plaintiff and against the defendant.” *Id.*

Examining the language of the statute, it appears that a finding of contempt is required if a witness fails to comply with a judicial subpoena. That penalty was apparently imposed in *Cadlerock*. Furthermore, CPLR 2308(a) requires the court to impose a penalty on a witness who has failed to comply with a judicial subpoena on behalf of the person who issued the subpoena “not exceeding one hundred fifty dollars and damages sustained by reason of the failure to comply.” As noted in the main practice commentary, the damages award in this context can be substantial. See Commentary C2308:5 (“Action for Penalty and

[Back to top](#)