

ORIGINAL

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. TIMOTHY J. DUFFICY
Justice

PART 35

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Petition for the Dissolution of
47th Road, LLC, a New York
Liability Company

Index No.: 705060/16
Motion Date: 3/7/18

Mot. Seq. No.: 5

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The following numbered papers were read on this motion by order to show cause by petitioner Vincent Cortazar for an order, pursuant to Judiciary Law §753(a)(3) and/or Judiciary Law §750(a)(3), holding respondent James Cortazar in contempt of Court for his wilful disobedience of the Court's Order, dated February 16, 2017, and for an order, pursuant to Judiciary Law §774 and Judiciary Law §773, imprisoning and/or fining James Cortazar until such time as he delivers the documents and other materials required by the Order of this Court and fining James Cortazar an amount equal to petitioner's costs in the making of this motion plus \$250.

PAPERS
NUMBERED

Order to Show Cause - Affidavits - Exhibits.....	EF 140-147; 149
Receiver Affidavit in Support.....	EF 151
Answering Affidavits - Exhibits.....	EF 157-161
Memorandum of Law in Opposition.....	EF 162
Reply Affidavits of Receiver.....	EF 171
Replying Affidavits-Exhibits.....	EF 165-170

Upon the foregoing papers, it is ordered that the motion is granted solely to the following extent:

Under Judiciary Law § 753(A)(3), disobedience of a lawful mandate of the court is grounds for civil contempt. To prove civil contempt, petitioner must demonstrate that a lawful judicial order expressing an unequivocal mandate was in effect, that respondent knew of and disobeyed the order, and said disobedience resulted in prejudice to petitioner's rights (*McCain v Dinkins*, 84 NY2d 216 [1994]; *Matter of McCormack v*

Axelrod, 59 NY2d 274 [1983]). The mere act of disobedience is sufficient if it impairs, defeats, impedes or prejudices petitioner's rights (*Doors v Greenberg*, 151 AD2d 550 [2d Dept 1989]; see also, *Italian American Civil Ass'n of Mineola, N.Y., Inc. v Cataldo*, 225 AD2d 733 [2d Dept 1996]; *Prisco v Community School Bd. 31*, 226 AD2d 467 [2d Dept 1996]). The aim of civil contempt is to vindicate a private party to litigation and any sanction imposed is designed to compensate the injured party for the loss or interference with the benefits of the court mandate (*Id.*).

Petitioner demonstrated that respondent James Cortazar disobeyed the Court Order, dated February 16, 2017, resulting in prejudice to petitioner (see *Garbitelli v Broyles*, 257 AD2d 621 [2d Dept 1999]; *Baralan Intern, S.P.A. v Avent Industries, Ltd.*, 242 AD2d 226 [1st Dept 1997]). Respondent has offered an unreasonable excuse for his failure to comply with said Order.

Here, the Court finds that the contemptuous conduct by the respondent was calculated to actually defeat, impair or prejudice the rights of the petitioner and court appointed receiver Joseph Mattone.

Respondent must purge the contempt by providing the said requested documents and other material by July 30, 2018. If the respondent does not provide this material, he will be fined \$250 per day until they are delivered to the petitioner from the date of his receiving a copy of this Order.

Accordingly, it is

ORDERED, that James Cortazar is found in contempt for failure to provide documents and other materials to the petitioner, pursuant to this Court's Order, dated February 16, 2017 ; and it is further

ORDERED, that respondent must purge the contempt by providing the said requested documents and other material by July 30, 2018. If the respondent does not provide this material, he will be fined \$250 per day until they are delivered to the petitioner from the date of his receiving a copy of this Order; and it is further

ORDERED, that in the event James Cortazar fails to comply, the petitioner may enter judgment against him for the sums due and owing; and it is further

ORDERED, that the petitioner shall serve a copy of this Order with Notice of Entry, upon respondent James Cortazar, within twenty days (20) of the date of this Order.

ORDERED, that any applications not specifically addressed are denied.

This constitutes the decision, order and judgment of this Court.

Dated: June 11, 2018


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TIMOTHY J. DUFFICY, J.S.C.

FILED
JUN 18 2018
COUNTY CLERK
QUEENS COUNTY