

City of Almaty v. Ablyazov

Decided Aug 19, 2022

15-CV-5345 (JGK) (KHP)

08-19-2022

CITY OF ALMATY, KAZAKHSTAN and BTA BANK JSC, Plaintiffs, v. MUKHTAR ABLYAZOV, VIKTOR KHRAPUNOV, ILYAS KHRAPUNOV, and TRIADOU SPV S.A., Defendants.

KATHARINE H. PARKER United States Magistrate Judge

TO: THE HONORABLE JOHN G. KOELTL,
UNITED STATES DISTRICT JUDGE FROM:
KATHARINE H. PARKER, UNITED STATES
MAGISTRATE JUDGE

REPORT AND RECOMMENDATION

KATHARINE H. PARKER United States Magistrate Judge

Under [28 U.S.C. 636\(e\)\(6\)](#), a federal Magistrate Judge may certify facts constituting contempt to a district judge and issue an order to show cause why that person should not be adjudged in contempt of court by the facts so certified. The Magistrate Judge's role is "to determine whether the moving party can adduce sufficient evidence to establish a prima facie case of contempt." *Hunter TBA, Inc. v. Triple VSales*, [250 F.R.D. 116, 118](#) (E.D.N.Y. 2008). Upon certification of the facts supporting a finding of contempt, the District Judge is then required to conduct a de novo hearing at which issues of fact and credibility determinations are to be made. *Id.*

The party moving for contempt must demonstrate that the contemnor failed to comply with a clear and unambiguous order of the Court by clear and convincing evidence and that the contemnor has not attempted to comply in a reasonable and diligent manner. *Paramedics Electromedicina Comercial, Ltda. V. GE Med. Sys. Info. Techs., Inc.*, [369 F.3d 645, 655](#) (2d Cir. 2004). *1

CERTIFIED FACTS

The Court hereby certifies that Plaintiffs have set forth a prima facie case for contempt based on the following facts:

1. On February 7, 2020, this Court issued an order requiring Ablyazov to pay Plaintiffs \$140,115.60 in fees to compensate them for egregious misconduct in discovery within three months of the order. (ECF No. 1216.) On October 18, 2021, the Honorable Alison J. Nathan overruled Ablyazov's objections to this Court's order and ordered that he pay the fees by January 18, 2022. (ECF No. 1461.)
2. Ablyazov failed to pay the amount ordered.
3. On July 20, 2022, this Court issued an Order to Show cause requiring Ablyazov to appear on August 16, 2022 for a hearing on Plaintiffs' motion.

4. Ablyazov filed a letter with the Court dated August 12, 2022 raising two grounds for his non-compliance with the court's order. First, he asserts an inability to pay. Second, he asserts that Plaintiffs are politically motivated and pursuing him solely for this reason.

5. Ablyazov appeared at the hearing via telephone along with his son, Aldiyar Ablyazov, who served as his translator.

ANALYSIS

Turning to the three elements that must be established before an Order of contempt issues, this Court finds that the order requiring Mr. Ablyazov to pay Plaintiffs \$140,115.60 in fees based on his discovery misconduct was “clear and unambiguous” as this Court stated “Plaintiffs are awarded a total of \$140,115.60 in attorneys' fees . . . Ablyazov shall pay this amount to Plaintiffs by no later than three months from the date of this Opinion and Order. *2 Ablyazov's failure to pay the amounts ordered may result in further sanctions.” (Order, ECF No. 1216.) Furthermore, Judge Nathan unambiguously reiterated that Ablyazov was to comply with this Court's order when overruling his objections when she stated, “[a]s ordered in Judge Parker's Opinion and Order dated February 7, 2020, Ablyazov shall pay the Kazakh Entities in the amount of \$140,115.60 within three months of the date of this Memorandum Opinion and Order.” (Order, ECF No. 1461.) Thus, the Court finds that the first element necessary to certify a contempt has been established.

With respect to the proof of non-compliance, it must be “clear and convincing.” Here, Mr. Ablyazov admitted to his non-compliance in his August 12, 2022 letter and again at the hearing. Plaintiffs have also submitted a declaration confirming Mr. Ablyazov's noncompliance. (Decl. of M. Schwartz, ECF No. 1497.) The Court finds that Plaintiffs have met this element.

Finally, with respect to the third element necessary for civil contempt-whether the alleged contemnor has been diligent in attempting to comply with the court's order-Mr. Ablyazov has made no effort whatsoever to comply. In his August 12, 2022 letter, Mr. Ablyazov argues that he is unable to pay the fees and that Plaintiff's motion is politically motivated. As to Mr. Ablyazov's assertion that the present application is politically motivated, it is without merit insofar as it does not excuse the blatant disregard of his discovery obligations in this action and is irrelevant to his compliance with this Court's Orders.

As to his inability to pay, Mr. Ablyazov did not submit any financial affidavits or disclosure of assets to support his contention. Indeed, the sanctions initially imposed were because of his failure to disclose embezzled assets from BTA Bank. Nevertheless, it is *3 undisputed that Mr. Ablyazov is residing in France on asylum (or pending final asylum status). It is also undisputed Mr. Ablyazov cannot transact through banks using his own name due to a Worldwide Freezing Order issued by a court in the United Kingdom freezing all of his assets. Ablyazov states that he lives off the generosity of his son and friends and a small benefits amount provided by the government of France. Plaintiffs contend that Ablyazov controls vast sums through shell corporations controlled by him through nominees and that he has been able to hire counsel in New York for a state court action against him.

By September 30, 2022, Ablyazov shall provide credible and competent evidence indicating his inability to pay the amounts due, which shall include all sources of income and assets controlled directly or indirectly by him. Absent competent proof provided by that date, I recommend that commencing November 1, 2022, a judgment be entered for \$140,115.60 against Mr. Ablyazov and that he be fined \$1,000 per day until he pays the judgment. However, if Ablyazov submits appropriate proof on September 30, 2022, I recommend that a judgment entered for

\$140,115.60 against him and that he be ordered to pay 1/12 of the judgment on the 15th day of each month commencing in November 2022 and ending upon full payment of the total amount of the judgment.

The Clerk of Court is directed to mail a copy of this Report and Recommendation to Mr.

4 **Ablyazov.** *4

NOTICE

Mr. Ablyazov shall have seventeen days, and Plaintiffs shall have fourteen days, from service of this Report and Recommendation to file written objections pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure. See also Fed.R.Civ.P. 6(a), (d) (adding three additional days only when service is made under Fed.R.Civ.P. 5(b)(2)(C) (mail), (D) (leaving with the clerk), or (F) (other means consented to by the parties)). A party may respond to another party's objections after being served with a copy. Fed.R.Civ.P. 72(b)(2).

Mr. Ablyazov shall have seventeen days to serve and file any response. Plaintiffs shall have fourteen days to serve and file any response. Any objections and any responses to such objections shall be filed with the Clerk of the Court, with courtesy copies delivered to the chambers of the Honorable John G. Koeltl at the United States Courthouse, 500 Pearl Street, New York, New York 10007, and served on the other parties. See 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 6(a), 6(d), 72(b). Any requests for an extension of time for filing objections must be addressed to Judge Koeltl. The failure to file timely objections shall result in a waiver of those objections for purposes of appeal. See 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 6(a), 6(d), 72(b); *Thomas v. Arn*, 474 U.S. 140 (1985). *5

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