

X06 CV 08 4018262 S : SUPERIOR COURT
GINA MCCARTHY, COMMISSIONER
OF ENVIRONMENTAL PROTECTION : COMPLEX LITIGATION DOCKET
V. : JUDICIAL DISTRICT OF WATERBURY
THE SERGY COMPANY, LLC,
MAGNETEK, INC., and
BRUCE H. SERGY : January 24, 2013

MEMORANDUM OF DECISION
Re: MOTION FOR CONTEMPT (#193)

The commissioner of the department of environmental protection (plaintiff), The Sergy Company, LLC, and Bruce H. Sergy (the Sergy defendants), entered into a stipulation for judgment which, upon motion to the court, was granted by this court on August 19, 2011. (See #191.50 of the court file.)

The stipulation included the following provision:

"2. A permanent injunction shall be entered requiring The Sergy Company, LLC to take adequate and reasonable steps to provide for security at the Property."

"The Property" (hereinafter the property) is described in the stipulation "as 902 Crescent Avenue, and also known as 1564 and 1554-56 Seaview Avenue, in Bridgeport, Connecticut."

COMPLEX LITIGATION
400 GRAND ST
WATERBURY CT 06702
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The plaintiff filed a motion for contempt on December 5, 2012 against the Sergy defendants. The basis for the motion for contempt is that these defendants have failed to provide security to the property as required by the stipulated judgment. A hearing on the motion for contempt was held before this court on January 7, 2013.

At the hearing, the plaintiff requested that the court take judicial notice of the stipulated judgment and the defendants' answer to the amended complaint contained in the court file (#173). The court heard evidence from Lori Salvy (Salvy), who is employed by the plaintiff as supervisor of PCB storage tank oversight. Salvy testified that she has been assigned to oversee compliance with respect to environmental issues at the property since the mid-1980s.

The plaintiff confirmed the lack of security on the property by having its employees perform an inspection of the property on October 2, 2012. Salvy testified that she was made aware of the lack of security at the property by a letter forwarded to her from counsel for Magnetek, Inc. (Magnetek). Magnetek was responsible for the remediation of the environmental concerns at the property. Pursuant to the stipulated

judgment, Magnetek was to be provided with reasonable access and security to the property by the Sergy defendants so that it could continue its remediation activities. The stipulated judgment governing the plaintiff and the Sergy defendants (#191.50) references the stipulated judgment governing the plaintiff and the co-defendant Magnetek entered by this court on November 2, 2010 (#176).

The letter from Magnetek's attorney to Salvy attached a copy of a letter from the Sergy defendants to Magnetek dated August 1, 2012. That August 1, 2012 letter was admitted at the hearing as plaintiff's exhibit 1. It advises Magnetek that the Sergy defendants were no longer owners of the property, having had their ownership foreclosed by the passing of a law date of June 26, 2012 in a strict foreclosure action captioned *American Tax Funding v. The Sergy Company, LLC, et al.*, FBT-CV07-5009627-S. The letter also advises Magnetek that the Sergy defendants were ceasing to provide security to the property as of the end of August.

Salvy testified that on October 2, 2012, she and staff members from her office, along with officials from the city of Bridgeport fire department, inspected the property. This

inspection was prompted by an emergency response to an alert of a spill of epoxy on the property. Salvy testified to the condition of the property from that day's inspection. Salvy confirmed that the spill of epoxy had taken place. Salvy also testified about additional damage that had been done to the property. Salvy testified about damage to the ground water system which was being maintained by Magnetek, damage to the elevator system, ripped out plumbing and electrical systems, a pulled down ceiling, and vandalism throughout the property.

The defendants did not provide any evidence at the hearing held on January 7, 2013.

The court was provided with post-hearing briefs from the parties.

The plaintiff moves the court to hold the Sergy defendants in contempt of the stipulated judgment (#191.50) for their violation of the permanent injunction due to their failure to maintain security on the property as required by the stipulated judgment.

The Sergy defendants counter that the court cannot find them in contempt for the following reasons: 1) The Sergy Company, LLC was no longer the owner of the property after the

passing of the law days in the foreclosure action and, therefore, could not have access to the property to continue to provide the security; 2) The Sergy Company, LLC was voluntarily dissolved as an entity in December 2012, and therefore it no longer exists to be held accountable; 3) Bruce H. Sergy, individually, is not in contempt of the stipulated judgment because he was not responsible for providing the security to the property; and 4) Bruce H. Sergy, individually, as managing member of The Sergy Company, LLC, cannot be held in contempt of the court order because his conduct is not tortious.

The court in *Przekopski v. Zoning Board of Appeals*, 131 Conn. App. 178, 26 A.3d 657 (2011) set forth the standard for the court to follow when making a finding of contempt:

"Contempt is a disobedience to the rules and orders of a court which has power to punish for such an offense. . . . Nonetheless, [n]oncompliance alone will not support a judgment of contempt. . . . [A] court may not find a person in contempt without considering the circumstances surrounding the violation to determine whether such a violation was wilful. . . . A judgment of civil contempt is improper if the contemnor, *through no fault of his own*, was unable to obey the court's order."

(Citations omitted; emphasis in original; internal quotation marks omitted.) Id., 192.

A trial court is charged with employing its discretion when adjudicating a motion for contempt; appellate review of its order on a motion for contempt is subject to "an abuse of discretion standard." Id. "In determining whether a trial court abused its discretion, the unquestioned rule is that great weight is due to the action of the trial court and every reasonable presumption should be given in favor of its correctness. . . . In determining whether there has been an abuse of discretion, the ultimate issue is whether the court could reasonably conclude as it did. . . . The trial court's discretion imports something more than leeway in decision making and should be exercised in conformity with the spirit of the law and should not impede or defeat the ends of substantial justice." (Citations omitted; internal quotation marks omitted.) Id., 192-93.

"The interests of orderly government demand that respect and compliance be given to orders issued by courts possessed of jurisdiction of persons and subject matter. One who defies the public authority and willfully refuses his obedience, does so at

his peril. *United States v. United Mine Workers*, 330 U.S. 258, 303, 67 S.Ct. 677, 91 L.Ed. 884 (1947). [A]n order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings. *Id.*, 293; see also *W.R. Grace & Co. v. Local Union 759, International Union of United Rubber, Cork, Linoleum & Plastic Workers of America*, 461 U.S. 757, 766, 103 S.Ct. 2177, 76 L.Ed.2d 298 (1983); *DeMartino v. Monroe Little League, Inc.*, 19 Conn. 271, 276-77, 471 A.2d 638 (1984).” (Internal quotation marks omitted.) *Rocque v. Design Land Developers of Milford, Inc.*, 82 Conn. App. 361, 366, 844 A.2d 882 (2004).

“The inability of a party to obey an order of the court, without fault on his part, is a good defense to the charge of contempt. . . . The contemnor must establish that he cannot comply, or was unable to do so.” (Citations omitted.) *Eldridge v. Eldridge*, 244 Conn. 523, 532, 710 A.2d 757 (1998).

“A stipulated judgment has been defined by our Supreme Court as a contract of the parties acknowledged in open court and ordered to be recorded by a court of competent jurisdiction. . . . The essence of the judgment is that the parties to the

litigation have voluntarily entered into an agreement setting their dispute at rest and that, upon this agreement, the court has entered judgment conforming to the terms of the agreement." (Citations omitted; internal quotation marks omitted.) *Przekopski v. Zoning Board of Appeals*, supra, 131 Conn. App. 186.

"Thus, as a result of choosing the terms by which to resolve the controversy, [t]he parties [thereby] waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation." (Citation omitted; emphasis in original; internal quotation marks omitted.) *Id.*, 187.

Based upon this precedent, the court makes the following findings:

1. The court finds the testimony of Lori Salvy credible and persuasive.
2. The court finds the additional evidence submitted by the plaintiff credible and persuasive.
3. The stipulated judgment entered by the court at #191.50 is clear and unambiguous.

4. The stipulated judgment does not reference or contemplate that the defendant The Sergy Company, LLC, would be discharged of its obligation under the permanent injunction to continue to provide security to the property if it no longer owned the property.

5. The Sergy defendants did not seek to return to this court to modify the stipulated judgment due to any change in circumstances.

6. The Sergy defendants did not present any evidence at the hearing held by the court on this motion for contempt regarding why or how they could not comply with this court's order.

7. The defendant The Sergy Company, LLC, was voluntarily dissolved by its managing member, Bruce H. Sergy, as referenced by the Sergy defendants' pleading filed January 7, 2013 (#197).

8. The defendant Bruce H. Sergy, as the managing member of The Sergy Company, LLC, is personally liable pursuant to *Ventres v. Goodspeed Airport, LLC*, 275 Conn. 105, 143-146, 881 A.2d 937 (2005), for the defendants' failure to comply with the stipulated judgment. In *Ventres*, the Supreme Court extended the

responsible corporate officer doctrine to members or managers of limited liability companies.

Based upon the court's findings and precedent cited, the court orders the following:

1. The defendants The Sergy Company, LLC, and Bruce H. Sergy, are in contempt of the stipulated judgment entered by this court on August 19, 2011.

2. The court directs the defendants The Sergy Company, LLC, and Bruce H. Sergy, to perform the following conditions:

a. Take all necessary measures to secure all points of entry at the building and property located at 902 Crescent Avenue (also known as 1564 and 1554-56 Seaview Avenue, in Bridgeport, Connecticut) including, but not limited to, securing all windows and doors.

b. Install an audible, electronic security system with sufficient wireless sensors to protect the groundwater treatment system in the building on the property, which will notify a private security company or the Bridgeport police department to respond if an unauthorized person enters the building on the property.

c. Interface the groundwater treatment system in the building on the property with the electronic alarm system.

d. Arrange for the 24 hour per day monitoring of the electronic security system.

e. Pay all expenses for the 24 hour per day monitoring of the electronic security system.

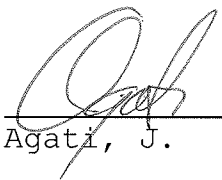
f. Take all measures necessary to properly remove the epoxy material spilled inside of the building on the property and to properly dispose of that material.

g. Replace and install all missing parts of the PCB groundwater treatment system in the building on the Property in order to make said system operational.

These conditions shall be complied with within thirty (30) days from the date of this order. Failure by the Sergy defendants to so comply will result in a fine assessed against the defendants, jointly and severally, in the amount of one hundred dollars per day (\$100/day) until proof of compliance is provided to the court.

The court shall continue to retain jurisdiction to monitor compliance with the provisions of this order, until further order of the court.

So ordered this 24th day of January 2013.



Agati, J.