

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION**

TRENT MOTEL ASSOCIATES, L.P.,	:	September Term 2009
Plaintiff,	:	
v.	:	No. 794
STADIUM HOTEL RESTAURANT GROUP,	:	
INC. and BRET LEVY d/b/a BENNY THE BUM'S	:	COMMERCE PROGRAM
INC.,	:	
Defendants.	:	Control Number 10033526

**ORDER**

**AND NOW**, this 28<sup>th</sup> day of May 2010, upon consideration of Plaintiff Trent Motel Associates, L.P.'s Petition for Contempt, all responses in opposition and after a hearing, it hereby is **ORDERED** and **DECREED** that the Petition for Contempt is **Granted** as to this court's order dated February 16, 2010. Defendant Bret Levy d/b/a Benny the Bum's Inc. is ordered to return the property identified in paragraph 3 of the February 16, 2010 order within five (5) days of this order or in the alternative pay plaintiff the sum of \$119,026.50 within five (5) days of this order. In the event the property is not returned or in the alternative the \$119,026.50 is not paid, Defendant is ordered to pay plaintiff \$100.00 per day until the property is returned or \$119,026.20 is paid.

The Petition is **denied** as to the February 22, 2010 order.

**BY THE COURT,**

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**ARNOLD L. NEW, J.**

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**OPINION**

Presently before the court is Plaintiff Trent Motel Associates, L.P.'s ("Trent") renewed motion for contempt against Bret Levy d/b/a Benny the Bum's Inc. ("Levy") for failing to comply with this court's orders dated February 16<sup>th</sup> and 22<sup>nd</sup>, 2010. Levy and defendant Stadium Hotel Restaurant Group, Inc. ("Stadium") are members of a joint venture formed to operate a Benny the Bum's restaurant at the Holiday Inn-Stadium Philadelphia. Trent is the owner of the Hotel and the landlord of the Hotel Restaurant. In addition to being a member of the joint venture, Levy was also the manager of the restaurant and controlled the operation and finances of the restaurant.

In September 2009, Stadium allegedly discovered that Levy failed to pay the liquor taxes due to the City of Philadelphia and allegedly misappropriated the restaurants assets. On September 11, 2009, Trent instituted suit seeking equitable relief based on Levy's failure to abide by the obligations under the lease. On September 17, 2009, Trent filed a petition for preliminary injunction. On September 29, 2009, the parties entered into a court approved stipulation placed on the record resolving the injunction.

On October 5, 2009, Trent filed a contempt petition since Levy failed to comply with the conditions of the September 29, 2009 stipulation.<sup>1</sup> On October 29, 2009, after a hearing, the court entered an order compelling Levy to comply with the September 29, 2009 stipulation.

On November 3, 2009, Stadium filed an answer to the complaint and a cross claim against Levy. The cross claim asserted that Levy in his operation of the restaurant diverted assets of the joint venture to himself, including cash receipts of the restaurant to deprive Stadium of its share of the profits and assets.

On February 1, 2010, Trent filed a petition for an injunction against Levy seeking to temporarily take over the operation of the restaurant and to enjoin Levy from removing any furniture, equipment or fixtures from the restaurant. On February 4, 2010, the court issued a rule to show cause upon Levy as to why an injunction should not be granted and scheduled an injunction hearing for February 16, 2010.

During the early morning hours of February 9, 2010, Levy began removing and selling restaurant equipment to Kearney and other third parties who were also present. Kearney testified that one and one half tractor trailers were filled with equipment and sold to him for \$5,000.00. The equipment included tables, chairs, stools and kitchen equipment.<sup>2</sup> Kearney, a close family friend of the Levy family, purchased the equipment under 5% of value.

On February 16, 2010, the rule returnable date, Trent presented evidence that everything taken from the hotel restaurant was property of the Hotel or the Joint Venture.<sup>3</sup> Levy argued, without presenting any evidence or testimony that the property taken belonged to him. Although

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<sup>1</sup> On October 26, 2009, Trent also filed a Motion to Disqualify Levy's counsel, George Bochetto, Esquire. The motion was denied by the court.

<sup>2</sup> April 19, 2010 Hearing N.T. pp. 56, 57).

<sup>3</sup> Lease provision .

Kearney was present in the courtroom for the hearing, he was never called as a witness by Levy. Moreover, no testimony was elicited or evidence presented by either party as to where the property was and whether it was still in Levy's possession or if it had been sold. As such a presumption existed that the equipment removed was still in the possession of Levy.

At the conclusion of the hearing, the court entered an order, dated February 16, 2010 granting immediate possession of the hotel restaurant to Trent<sup>4</sup>, enjoining Levy from removing any furniture, fixtures, equipment or any other tangible property from the hotel restaurant and ordering Levy to return the property removed from the hotel restaurant during the early morning hours of February 9, 2010 to the hotel restaurant within five (5) days of February 16, 2010.<sup>5</sup> Prior to the expiration of the deadline set forth in the February 16, 2010 order for Levy to return the equipment to the hotel restaurant, Levy's counsel informed the court that the equipment removed during the early morning hours of February 9, 2010 had been sold to Kearney on the morning of February 9, 2010.

On February 22, 2010, the court after having been notified that Levy sold all equipment to Kearney on February 9, 2010, entered Trent's proposed order enjoining Levy, Kearney and/or any other third party from selling or transferring any equipment or property identified in the February 16, 2010 order. The court also issued a rule upon Levy to show cause why he should not be held in contempt of the February 16, 2010 order and scheduled a contempt hearing for February 25, 2010.

On February 25, 2010, Levy's counsel requested permission to withdraw as counsel claiming fundamental differences between the firm and Levy over the conduct of litigation.

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<sup>4</sup> The parties consented to this aspect of the order.

<sup>5</sup> The court also found Levy in contempt of this court's September 29, 2009 order for failing to provide plaintiff with micros reports.

Trent did not object to the request and the court issued an order permitting counsel to withdraw. The court rescheduled the contempt hearing for March 15, 2010 so that Levy could obtain new counsel. On the same day, Levy appealed this court's February 16 and February 22, 2010 orders with the Superior Court and also filed an application for emergency stay.<sup>6</sup> On March 9, 2010, the Superior Court issued a temporary stay for Trent to file a response to the stay application. On March 26, 2010, the Superior Court issued an order lifting the temporary stay and denying Levy's stay application.

On March 29, 2010, Trent filed a petition to reschedule the contempt hearing. A hearing was held on April 19, 2010 on the renewed contempt petition. At the time of the hearing, although Levy was given an opportunity to retain counsel, Levy was unrepresented. As of the filing of this Order and Opinion, Levy has retained counsel.

### **DISCUSSION**

The objective of a civil contempt proceeding is remedial and judicial sanctions are employed to coerce the defendant into compliance with the court's order, and in some instances to compensate the complainant for loss sustained. In civil contempt cases, the complaining party has the burden of proving non-compliance with the court order by a preponderance of the evidence. To be punished for civil contempt, a party must have violated a court order. The order that forms the basis for the contempt process in civil proceedings must be definitely and strictly construed. Any ambiguity or omission in the order forming the basis for the civil contempt proceeding must be construed in favor of the defendant.<sup>7</sup>

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<sup>6</sup> A review of the pleadings creates the impression that the documents filed by Levy were prepared by counsel.

<sup>7</sup> Wood v. Geisenhemer-Shaulis, 827 A.2d 1204(Pa. Super. 2003).

Generally, "in order to hold one in civil contempt, a five-step process must be followed: (1) a rule to show cause why an attachment should not issue, (2) an answer and hearing, (3) a rule absolute, (4) a hearing on the contempt citation, and (5) an adjudication."<sup>8</sup> Fulfillment of all five factors is not mandated, however. "When the contempt proceedings are predicated on a violation of a court order that followed a full hearing, due process requires no more than notice of the violations alleged and an opportunity for explanation and defense."<sup>9</sup> The court, after finding civil contempt, may impose sanctions.

To sustain a finding of civil contempt, the complainant must prove certain distinct elements: (1) that the contemnor had notice of the specific order or decree which he is alleged to have disobeyed; (2) that the act constituting the contemnor's violation was volitional; and (3) that the contemnor acted with wrongful intent.<sup>10</sup>

At issue is whether Levy is in contempt of this court's orders dated February 16 and 22, 2010. The February 16, 2010 order compelled Levy to return all equipment and property removed from the hotel restaurant during the early morning hours of February 9, 2010. As of the filing of this opinion, Levy has not returned the equipment. Evidence was presented at the hearing that the property at issue was sold to Kearney and that Kearney sold the equipment to a third party. Evidence was also presented as to the fair market value of the equipment removed. Since the property has not been returned, the court finds that Levy is in contempt of this court's order dated February 16, 2010 and is required to return the property or in the alternative pay Trent the fair market value of the property removed.

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<sup>8</sup> Schnabel Assocs. v. Bldg. & Constr. Trades Council, Inc., 487 A.2d 1327, 1333 (Pa. Super. 1985).

<sup>9</sup> Diamond v. Diamond, 792 A.2d 597, 601 (Pa. Super. 2002).

<sup>10</sup> In re Cullen, 894 A.2d 1207 (Pa. Super. 2004).

The remaining order at issue is the February 22, 2010 order. The February 22, 2010 order enjoined Levy, Kearney and or any other third party from selling or transferring any of the property taken on February 9, 2010. The evidence presented demonstrates that the property was already sold to a third party at the time the February 22, 2010 order was entered. Based on the foregoing, the court can not find Levy in contempt of the February 22, 2010 order.

### **CONCLUSION**

Based on the foregoing, this court finds that Defendant Bret Levy d/b/a Benny the Bum's, Inc. is in contempt of this court's order dated February 16, 2010. Defendant is ordered to return the property identified in paragraph 3 of the February 16, 2010 order within five (5) days of this order or in the alternative pay plaintiff the sum of \$119,026.50<sup>11</sup> within five (5) days of this order. In the event the property or the amount of \$119, 026.50 is not paid within five (5) days of this order, Defendant is ordered to pay \$100.00 per day until the property is returned or the amount is paid.

**BY THE COURT,**

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**ARNOLD L. NEW, J.**

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<sup>11</sup> Although Trent submitted testimony and evidence of a different sum, the court upon review made adjustments based on the evidence and testimony presented. As such, the court's figure represents \$83, 685.50 for the actual cash value of the equipment, \$19,328 for video equipment and \$16,013.00 for surveillance equipment.