

21 N.Y. Jur. 2d Contempt § 36

New York Jurisprudence, Second Edition | April 2024 Update

Contempt

Elizabeth M. Bosek, J.D.; Caralyn M. Ross J.D. and Kenneth B. Sills, J.D.

III. Acts Constituting Contempt

C. Disobedience or Violation of Court Orders or Judgments Punishable by Civil or Criminal Contempt

§ 36. Elements of contempt for violation of mandate of court, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contempt](#)  [19](#) to [26](#)

Forms

[Am. Jur. Pleading and Practice Forms, Contempt §§ 37 to 48](#) (Particular Contemptuous Acts—Violation of Court Orders—General Forms)

[West's McKinney's Forms, Civil Practice Law and Rules §§ 8:211 to 8:216](#) (Enforcement of Judgments and Orders Generally—Contempt—Forms)

To sustain a finding of either civil or criminal contempt based on an alleged violation of a court order, it is necessary to establish that a lawful order of the court, clearly expressing an unequivocal mandate, is in effect, and it must appear with reasonable certainty that the order has been disobeyed.¹ The party charged must also have had knowledge of the court order.²

Orders must be obeyed even though it seems certain that, in granting them, the court has acted under misapprehension or mistake.³ For the purpose of fending off a contempt adjudication, partial or even substantial compliance with a court order is not obedience to it; only by making all reasonable efforts to comply can a person stave off a finding of contempt.⁴

Observation:

Where the violation of a court order is both willful and prejudicial to the rights of a party, both civil and criminal contempt can be found.⁵

CUMULATIVE SUPPLEMENT

Cases:

To sustain a finding of civil contempt for a violation of a court order, the proponent of a violation petition must establish, by clear and convincing evidence, that there was a lawful court order in effect with a clear and unequivocal mandate, that the person who allegedly violated the order had actual knowledge of the order's terms, that the alleged violator's actions or failure to act defeated, impaired, impeded or prejudiced a right of the proponent and that the alleged violation was willful. *Carl KK. v. Michelle JJ.*, 175 A.D.3d 1627, 110 N.Y.S.3d 66 (3d Dep't 2019).

[END OF SUPPLEMENT]

Westlaw. © 2024 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 Department of Environmental Protection of City of New York v. Department of Environmental Conservation of State of N.Y., 70 N.Y.2d 233, 519 N.Y.S.2d 539, 513 N.E.2d 706 (1987); Commissioners of State Ins. Fund v. Kernell, 91 A.D.3d 811, 938 N.Y.S.2d 104 (2d Dep't 2012); Town of Southampton v. R.K.B. Realty, LLC, 91 A.D.3d 628, 936 N.Y.S.2d 228 (2d Dep't 2012); Board of Educ. of City School Dist. of City of New York v. Mills, 25 A.D.3d 952, 809 N.Y.S.2d 244 (3d Dep't 2006); Plattsburgh City Retirees' Ass'n v. City of Plattsburgh, 52 Misc. 3d 1224(A), 46 N.Y.S.3d 476 (Sup 2016).

The Business Integrity Commission (BIC) did not act in contempt of a court order staying a hearing on an application for an exemption from licensing requirements for trade waste removal businesses by investigating the accuracy of information provided by the applicants; the BIC did not violate a clear mandate of the court because it stayed administrative proceedings as ordered, and the BIC's recommendation that the application be denied was based upon information gathered prior to the stayed hearing. *Attonito v. Maldonado*, 3 A.D.3d 415, 771 N.Y.S.2d 97 (1st Dep't 2004).

As to the requirement of a mandate for enforcement by contempt, see §§ 38 to 43.

2 Department of Environmental Protection of City of New York v. Department of Environmental Conservation of State of N.Y., 70 N.Y.2d 233, 519 N.Y.S.2d 539, 513 N.E.2d 706 (1987); Town of Southampton v. R.K.B. Realty, LLC, 91 A.D.3d 628, 936 N.Y.S.2d 228 (2d Dep't 2012); Board of Educ. of City School Dist. of City of New York v. Mills, 25 A.D.3d 952, 809 N.Y.S.2d 244 (3d Dep't 2006).

As to notice or knowledge of the court order, generally, see § 42.

3 § 43.

4 *Vacco v. Consalvo*, 176 Misc. 2d 107, 670 N.Y.S.2d 703 (Sup 1998).

5 [Bayamon Steel Processors, Inc. v. Platt, 191 A.D.2d 249, 595 N.Y.S.2d 8 \(1st Dep't 1993\).](#)

For discussion of prejudice to party as element of civil contempt, see § 14.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.