

STATE OF MICHIGAN
IN THE COURT OF APPEALS

MICHAEL G. ANTOUN,

Plaintiff /Appellee,

v.

DEEPAK KUMAR,

Defendant/Appellant.

COA No. 317267
LC No. 12-126902-CK

**APPELLEE'S RESPONSE TO DEFENDANT DEEPAK KUMAR'S APPLICATION FOR
LEAVE TO APPEAL**

Date: July 24, 2013

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JURISDICTIONAL STATEMENT

Appellee Michael Antoun agrees that the Court of Appeals has jurisdiction to determine whether it is warranted to grant Mr. Kumar’s leave application.

RESTATEMENT OF ISSUES PRESENTED

I. DID THE TRIAL COURT ABUSE ITS DISCRETION WHEN, CONTEMPORANEOUSLY WITH ENTRY OF JUDGMENT IN FAVOR OF MR. ANTOUN, IT ENTERED THE JUNE 26, 2013 ORDER ENJOINING MR. KUMAR FROM ALIENATING, TRANSFERRING OR DISPOSING OF ASSETS PENDING THE DETERMINATION OF THE MONETARY AMOUNT OF THE JUDGMENT?

The trial court answered: “No”

Appellee answers: “No”

COUNTER-STATEMENT OF FACTS

The underlying opinion comes after the lower court granted Plaintiff’s Motion to Have Plaintiff’s Requests for Admission Deemed Admitted and for Partial Summary Disposition (Mr. Antoun’s “MSD”), entered judgment based upon that motion, and ordered an injunction as to Mr. Kumar’s assets. The MSD pertained to Count One of Mr. Antoun’s First Amended Complaint and Mr. Kumar’s counterclaims.¹ Though the MSD did request that requests for admission be deemed admitted, the motion was based upon the underlying merits of the case, not Mr. Kumar’s failure to provide sufficient answers to requests for admission that were served upon him approximately four months earlier while he was represented by counsel.²

The motion for partial summary disposition was granted due to Mr. Kumar’s failure to file a response,³ despite the fact that he was obligated to establish an email address to receive e-filings,⁴ and a copy was sent to his home⁵ and was confirmed to have been received.⁶ A brief summary of the relevant procedural history follows:

January 2, 2013 Counsel serves Plaintiff’s First Requests for Admission and Interrogatories Regarding Requests for Admission to Defendant

¹ (Exhibit 1 - Mr. Antoun’s MSD). The statement of facts in the MSD also provides additional factual background to the underlying case and Mr. Antoun’s allegations.

² See (Exhibit 1, Facts Section and Argument § 1).

³ (Exhibit 2 - Order Granting Mr. Antoun’s Motion for Summary Disposition).

⁴ Administrative Order No. 2007-3, p. 5 § 6(a) (providing rules for the Sixth Judicial Circuit’s E-Filing Pilot Program. The Supreme Court’s Order specifically requires that each party is responsible for registering an email address to receive e-filing. *Id.*).

⁵ (Exhibit 1, [p. 15]).

⁶ (Exhibit 3, p. 19).

Kumar (Mr. Antoun’s “RFAs”) by way of the Sixth Judicial Circuit Court’s Wiznet E-filing system.⁷

At this point, Mr. Kumar was still represented by attorney Eric Spector, who received service by way of the Sixth Judicial Circuit’s E-Filing system.⁸

January 30, 2013

Order allowing Mr. Spector to withdraw is e-filed.⁹ Under the order, Mr. Spector was allowed to assist in a limited number of issues before the conclusion of his representation.¹⁰

January 31, 2013

Mr. Kumar, again through counsel, serves responses to Mr. Antoun’s RFAs by way of e-filing.¹¹

February 6, 2013

The trial court enters an order staying all proceedings pursuant to Mr. Kumar’s invocation of his Fifth Amendment rights.¹²

March 29, 2013

Trial court lifts the stay of proceedings except for discovery directed to Mr. Kumar, again due to Mr. Kumar’s invocation of his Fifth Amendment privilege.¹³

April 10, 2013

Mr. Antoun e-files his MSD. The motion is also served via deposit in a U.S.P.S. mail receptacle on April 10, 2013.¹⁴

⁷ (Exhibit 4 – Mr. Antoun’s RFAs).

⁸ (Exhibit 4, p. 18).

⁹ (Exhibit 5 – Order Allowing Withdrawal).

¹⁰ (Exhibit 5).

¹¹ (Exhibit 6 - Responses to RFAs).

¹² (Exhibit 7 – Order Staying Case).

¹³ (Exhibit 8 – Amended Scheduling Order and Stay as to Mr. Kumar).

¹⁴ (Exhibit 1, [p. 15]).

April 22, 2013

Court issues an amended briefing/scheduling order¹⁵ for Mr. Antoun’s MSD. The order explicitly states that “[i]f briefs are not filed, the Court will assume that the party is without authority for the respective positions, and will proceed with the motion accordingly.”¹⁶ The order also explicitly states, in all caps, that MCR 2.119(A)(2)¹⁷ would be “STRICTLY ENFORCE[D]”.¹⁸ Under this order, filing and oral argument dates were also significantly extended:

- Mr. Kumar’s response due on May 15, 2013.
- Optional reply brief due on May 22, 2013.
- Motion hearing to occur on June 12, 2013.

April 22, 2013

Mr. Antoun issues a Re-Notice of Hearing for the MSD again with service by way of e-filing and first class mail to Mr. Kumar’s home address.

[April 24, 2013]

[Defendant Kumar’s response to Mr. Antoun’s MSD would have been due pursuant to MCR 2.116(G)(1)(a)(i). However, the court’s briefing order gave Mr. Kumar an additional 21 days to prepare a response to the motion.]

[May 1, 2013]

[Under the Court’s March 29, 2013 Amended Scheduling Order, Mr. Kumar’s witness and exhibit lists were due on this date. Mr. Kumar fails to file either, and has not since done so.]

May 15, 2013

Kumar’s response to the MSD is due pursuant to the lower court’s briefing order for the MSD. No response is filed.

¹⁵ (Exhibit 9 – Briefing Order for MSD).

¹⁶ (Exhibit 9); (emphasis added).

¹⁷ “A motion or response to a motion that presents an issue of law **MUST** be accompanied by a brief citing the authority on which it is based.” MCR 2.119(A)(2)(emphasis added).

¹⁸ (Exhibit 9, ¶ 4); (emphasis supplied in original).

[May 31, 2013]

[Discovery closes under the Court's March 29, 2013 Amended Scheduling Order.]

June 6, 2013

Neither a response nor any other communications from Mr. Kumar were ever received by the Court. Accordingly, the Court issued its order granting Mr. Antoun's MSD in whole due to Mr. Kumar's failure to make any sort of response.¹⁹

June 10, 2013

Mr. Antoun e-files and serves, by way of first class mail the seven day order of judgment contested by Mr. Kumar. This judgment is the result of the Court's Order, which had already granted the MSD.²⁰

[June 12, 2013]

[Oral argument would have occurred on this date if the MSD had not already been granted. No response was ever received by Defendant Kumar.]

Defendant did not file an objection to the separately filed seven day order of judgment dismissing Mr. Kumar's counterclaims, and did not request an appeal within 21 days of the entry of the order.²¹

After Mr. Kumar obtained new legal counsel and objected to the initial judgment submitted under MCR 2.602(B)(3) by Mr. Antoun's counsel. A hearing was set and the trial court entered an order of judgment on June 26, 2013, with the amount of damages to be determined after a hearing.²² At the same time, Mr. Antoun filed a motion for a preliminary

¹⁹ (Exhibit 2).

²⁰ (Exhibit 10 – Proposed Order of Judgment, p. 2).

²¹ (Exhibit 11 – Order Dismissing Counterclaims).

²² (Exhibit 12 – Order of Judgment).

injunction as to Mr. Kumar's assets.²³ This motion was also granted by the court, enjoining Mr. Kumar from alienating, transferring or disposing of assets.²⁴ However, a stay of proceedings was issued as to the entire case, due to Mr. Kumar's concerns as to self-incrimination.²⁵ The entry of the stay of proceedings has completely prevented Mr. Antoun from further judicial proceedings for the determination of the amount of the judgment. At the same time, Mr. Kumar hides behind the Fifth Amendment with prominent retained counsel from various Metro Detroit law firms,²⁶ and seeks this court's assistance in obtaining relief from the injunction preserving the status quo as to his assets that would otherwise be subject to a money judgment.

There is a strong correlation between Mr. Kumar and fraud. The underlying case involves civil allegations of fraud and misrepresentation, for which the trial court granted summary disposition against Mr. Kumar.²⁷ Mr. Kumar has been indicted for conspiracy to commit Medicare fraud in the U.S. District Court for the Eastern District of Michigan.²⁸ Further, Mr. Kumar has represented to courts that he has no assets,²⁹ despite the fact that he has

²³ (Exhibit 13 - Post-Summary Disposition, Pre-Judgment Motion to Prevent Defendant from Alienating, Transferring or Disposing of Assets Pending Entry and Execution of Judgment).

²⁴ (Exhibit 14 - Order Granting Injunctive Relief).

²⁵ (Exhibit 15 – Order Staying Case).

²⁶ To illustrate, in 2013, Mr. Kumar is/has been represented in various matters by Attorneys Mark Kriger, Walter Piszczatowski, Eric Spector, Ven Johnson, Heather Atnip, Alexander Stotland, Elizabeth Thomson, Deborah Lapin, Brian Legghio & Jonathan Sweik.

²⁷ (Exhibit 2).

²⁸ (Exhibit 16 – Indictment).

²⁹ (Exhibit 17 – Excerpt of January 23, 2013 Hearing Transcript, p. 19) (“MR. SPECTOR: Having -- listen, having a very wealthy client with deep pockets, I agree, and I

employment,³⁰ and manages to hire numerous attorneys to tend to his legal troubles.³¹ Without the injunctive relief, Mr. Antoun is without any remedy to ensure that the judgment against Mr. Kumar can be enforced.

I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT ENTERED THE JUNE 26, 2013 ORDER ENJOINING MR. KUMAR FROM ALIENATING, TRANSFERRING OR DISPOSING OF ASSETS PENDING THE DETERMINATION OF THE MONETARY AMOUNT OF THE JUDGMENT CONTEMPORANEOUSLY WITH ENTRY OF JUDGMENT IN FAVOR OF MR. ANTOUN.

Standard of Review

Appellate courts review a trial court’s decision on a preliminary injunction for abuse of discretion.³² The finding of an abuse of discretion “involves far more than a difference in judicial opinion.”³³ For this Court to find that there has been an abuse of discretion, it may do so only “when ‘an unprejudiced person’ considering ‘the facts upon which the trial court acted, [would] say that there was no justification or excuse for the ruling made.’”³⁴

wish Deepak -- when we -- I would -- my brief wouldn’t be a short brief, it would be 80 pages like theirs . . . ”).

³⁰ (Appellant’s Br. 5).

³¹ See n. 26, *supra*.

³² *State v McQueen*, 493 Mich 135, 146; 828 NW2d 644 (2013).

³³ *Gilbert v Daimler Chrysler Corp.*, 470 Mich 749, 761-762; 685 NW2d 391 (2004) (internal citation omitted).

³⁴ *Id.* (internal citation omitted; bracketed text provided in original).

Analysis

A. *The Trial Court Did Not Abuse Its Discretion By Entering A Preliminary Injunction Pending Determination of the Dollar Amount of the Judgment.*

This Court should affirm the order enjoining Deepak Kumar from alienating, transferring or disposing of assets pending entry and execution of judgment in this matter. MCR 3.310 enabled the lower court to enjoin Mr. Kumar from alienating assets. To order an injunction, a court must evaluate the following factors:

- a. Harm to the public interest if an injunction issues;
- b. [W]hether harm to applicant in absence of temporary relief outweighs harm to opposing party i[f] relief is granted;
- c. [S]trength of applicant’s demonstration that applicant is likely to prevail on merits; and
- d. [D]emonstration that applicant will suffer irreparable injury if relief is not granted.³⁵

However, Mr. Kumar’s appellate brief only challenges the irreparable harm/injury element.³⁶ Thus, only the irreparable injury element will be discussed.

The trial court did not abuse its discretion in finding that irreparable injury would occur if an injunction was not ordered. Mr. Kumar is accused of committing federal crimes for money laundering and fraud. Clearly, there is a risk sufficient for the issuance of an injunction that Mr. Kumar will take advantage of the legal system by alienating funds before the collections process can run its course in an effort to make himself “judgment-proof”. Here, we are dealing with an individual who has drawn federal attention, investigation, and an indictment for fraudulent activity (conspiracy to commit Medicare fraud). Further, the underlying allegations of this case

³⁵ *Commissioner of Ins. v Arcilio*, 221 Mich App 54; 561 NW2d 412 (1997).

³⁶ (Appellee’s Br. 4).

involve fraudulent misrepresentations, and Mr. Kumar, despite essentially claiming poverty on multiple occasions, is represented by over five attorneys. There is significant concern that Mr. Antoun will not be able to collect on the judgment in this matter, which is sufficient to trigger the right to injunctive relief. “[T]he right to recover a worthless judgment is not an adequate remedy at law.”³⁷ Thus, an injunction should be issued consistent with the relief requested above.

Mr. Kumar’s argument that irreparable harm cannot be shown through potential loss of money alone is improper. Mr. Kumar suggests that irreparable harm cannot be proven through money damages.³⁸ However, cases cited by Mr. Kumar in his arguments³⁹ involve preliminary injunctions where a remedy at law is available, thus nullifying the need for the equitable relief of an injunction.⁴⁰ In Michigan, Justice Cooley’s opinion in *Edwards* forms the genesis of the modern monetary damages carve-out from the irreparable harm requirement.⁴¹ However, a diligent review of the case law shows that it is the lack of a remedy at law (i.e., a collectible money judgment) that enables a court to order injunctive relief. Indeed, the purpose of an

³⁷ *National Concessions, Inc. v National Circus Corp.*, 347 Mich 335, 339; 79 NW2d 910 (1956). See *White Star Refining Co. v Hassen*, 251 Mich 224, 227; 231 NW 577 (1930) (injunctive relief can be awarded where judgment at law would otherwise be worthless); see also *Shell Petroleum Corp. v Ford*, 255 Mich 105, 109-110; 237 NW 378 (1931) (injunction allowed due to difficulty in ascertainment of amount of monetary damages).

³⁸ (Appellant’s Br. 4-5).

³⁹ E.g. *Pontiac Fire Fighters Union Local 376 v City of Pontiac*, 482 Mich 1, 8-9; 753 NW2d 595 (2008) (“Equally important is that a preliminary injunction should not issue where an adequate legal remedy is available”. *Id.*).

⁴⁰ See *Edwards v Allouez Min. Co.*, 38 Mich 46 (1878).

⁴¹ See *id.*

injunction is “to prevent irreparable mischief; it stays an evil the consequences of which could not adequately be compensated if it were allowed to go on.”⁴²

Here, without the lower court’s injunction there is no legal remedy available for Mr. Antoun, as there is nothing stopping Mr. Kumar from alienating assets to make them uncollectable. Injunctive relief is in the sound discretion of the trial court and should be based on the facts of the particular case.⁴³ Thus, consistent with Michigan’s law as to injunctions, an injunction should be issued against the alienation of assets until execution of judgment.

B. The Trial Court’s Injunction Did Not Amount to a “Prejudgment Garnishment” As Claimed By Mr. Kumar.

The lower court’s order of injunctive relief does not constitute a prejudgment garnishment, as claimed by Mr. Kumar. In his leave application, Mr. Kumar claims that the trial court’s grant of an injunction “[c]onstitutes [a]n [u]nlawful [p]re-judgment [g]arnishment,⁴⁴ providing no authorities to support the proposition, or even that prejudgment garnishments are illegal at all.⁴⁵ Presumably, Mr. Kumar refers to *Cochrane v Westwood Wholesale Grocery Co.*,⁴⁶ where the Michigan Supreme Court held that Michigan’s prejudgment garnishment procedure violated the due process clauses of the Michigan and U.S. Constitutions.⁴⁷ However, *Cochrane* rejected Michigan’s statute due to the U.S. Supreme Court’s determination that Georgia’s

⁴² *Id.* at 49.

⁴³ *Hamilton v AAA of Michigan*, 248 Mich App 535, 541; 639 NW2d 837 (2001).

⁴⁴ E.g. (Appellant’s Br. 3).

⁴⁵ Cf. MCR 3.102 (“GARNISHMENT BEFORE JUDGMENT” *Id.*).

⁴⁶ 394 Mich 164, 165-166; 229 NW2d 309 (1975) (per curiam).

⁴⁷ *Id.*

(similar) prejudgment garnishment statute was unconstitutional.⁴⁸ Around the same time, Michigan’s statute had also been struck down by a three-judge panel of the U.S. District Court for the Eastern District of Michigan.⁴⁹ In providing its rationale for striking down the prejudgment garnishment statute, the Michigan Supreme Court quoted the three-judge U.S. District Court panel:

prejudgment garnishment of funds in which the claimant has no interest without a bond requirement to protect the owner of the funds and without an opportunity for prompt hearing to test the merits of the claim and the validity of the garnishment . . . violates due process . . .⁵⁰

The court’s rationale is illustrative as to why such reasoning is not applicable to the injunction as to Mr. Kumar’s assets.

Here, unlike *Cochrane*, there has not been garnishment of assets.⁵¹ In other words, there has not been seizure of money by Mr. Antoun from Mr. Kumar by way of the order of injunctive relief. Further, Mr. Kumar had the opportunity to respond and oppose the request for the injunction through counsel at a hearing, where the trial court itself determined the validity of a need for an injunction. All of these procedural factors distinguish the injunction at issue from what made Michigan’s former prejudgment garnishment rule unconstitutional.

Additionally, Mr. Antoun *does* have an interest in funds subject to an injunction: *judgment has already been rendered* in his favor. All that remains is the determination of the

⁴⁸ *Id.* at 166.

⁴⁹ *Id.* at 165.

⁵⁰ *Id.*

⁵¹ See (Exhibit 12); see (Exhibit 14).

amount of the judgment. Indeed, the amount Mr. Antoun paid in the attempted purchase of the at-issue home health agency is established as a matter of contract and the cashier's checks that he paid to Mr. Kumar's agent.⁵²

Moreover, Mr. Kumar's attempt to analogize the injunction at issue to prejudgment garnishment is improper under Michigan's principles of interpretation of statutes and court rules.

Like statutes, terms in the Michigan Court Rules are interpreted according to their plain meaning.⁵³ "Garnishment" is "[a] judicial proceeding in which a creditor (or potential creditor) asks the court to order a third party who is indebted to or is bailee for the debtor to turn over to the creditor any of the debtor's property (such as wages or bank accounts) held by that third party."⁵⁴ Garnishment is governed by its own provisions in the Michigan Court Rules.⁵⁵

Whereas, injunctions are subject to separate rules unrelated to garnishment.⁵⁶ It simply cannot be said that the order for *injunctive* relief is a *garnishment* of any sort. Similar attempts to re-characterize orders for injunctive relief have been disregarded by this Court before,⁵⁷ and the same should occur here.

⁵² (Exhibit 18 - Purchase Agreement, p. 12); (Exhibit 19 - Cashier's Checks Totaling \$250,000).

⁵³ *Yudashkin v Linzmeyer*, 247 Mich App 642, 649-650; 637 NW2d 257 (2001).

⁵⁴ Black's Law Dictionary (8th ed).

⁵⁵ MCR 3.101-3.102.

⁵⁶ See MCR 3.310.

⁵⁷ *Mitan v Fox*, unpublished opinion per curiam of the Court of Appeals, issued December 11, 2008 (Docket No. 280667), p. 2; (Exhibit 20).

C. As Mr. Kumar’s Fifth Amendment Concerns Should be Decided on an Issue-By-Issue Basis, and Assertion of the Fifth Amendment Privilege Should Not Impede Proceedings Necessary for the Determination and Execution of a Money Judgment.

[A] witness may not use the safeguards of the Fifth Amendment to distort the truth to his own advantage or as a subterfuge.⁵⁸

It is well-settled Michigan law that the Fifth Amendment right cannot be prospectively asserted to halt the progression of civil cases on all fronts. Here, the only issue left for determination is the amount of the judgment against Mr. Kumar (the amount of which was not been disputed by Mr. Kumar’s new attorneys). A stay is simply not necessary this late in the life of this case, and should not bear upon the review of the order of injunctive relief.

It is clear under Michigan law that a party’s failure to comport with procedural requirements set forth under the court rules is not excusable due to the Fifth Amendment. For example, in *Huntington Nat. Bank v Ristich*,⁵⁹ the Michigan Court of Appeals affirmed (then) Circuit Judge David Viviano’s refusal to set aside a default filed against a defendant in a civil breach of contract case, despite the fact that Mr. Ristich claimed he failed to answer a civil complaint filed against him alleging breach of contract and fraud because of Fifth Amendment concerns arising out of the same allegations. In affirming Justice Viviano’s ruling, the *Ristich* court noted that “although the constitutional privilege against self-incrimination must be protected, the constitutional right of plaintiff in a civil case to have his day in court must also be protected.”⁶⁰ The court also noted that “we have not discovered any Michigan law excusing a defendant who invokes the privilege from filing an answer.”⁶¹

⁵⁸ *New Properties, Inc. v Newpower*, unpublished per curiam opinion of the Court of Appeals, issued October 15, 2002 (Docket No. 225570) (Exhibit 21).

⁵⁹ 292 Mich App 376, 377-378; 808 NW2d 511 (2011) (per curiam).

⁶⁰ *Id.* at 384.

The *Ristich* analysis is applicable to the facts at bar. Mr. Kumar’s argument that he should enjoy relief from the order of injunctive relief and the stay of the case because of *his own* invocation of the Fifth Amendment, he now claims that the trial court’s judgment against him is defective, and that further proceedings must be stayed in whole for the same reasons. Courts here and elsewhere⁶² do not permit the Fifth Amendment to obstruct civil process a plaintiff’s constitutional right to his day in court.

Even as to the issue of deposition testimony, Michigan law bars the use of the Fifth Amendment privilege to avoid giving deposition testimony. As such, the privilege does not preclude Mr. Kumar from participating in a hearing to determine the amount of damages in whole, if such a hearing were to be ordered. “The protection against compulsory self-incrimination provided by the Fifth and Fourteenth Amendments of the United States Constitution and Const. 1963, art. 1, § 17 does not entitle defendant to refuse to give any testimony in a civil action.”⁶³ Michigan law requires that in a civil case, first, a witness must be produced to provide testimony; then, the witness may assert the Fifth Amendment privilege, if

⁶¹ *Id.* at 385.

⁶² E.g. *DeLeo v Wachovia Bank, N.A.*, 946 So2d 626, 630 (2007) (Exhibit 22) (error assigned to trial court for not taking each invocation of Fifth Amendment by judgment debtor in creditor’s examination on a question-by-question basis); *North American Mortg. Investors v Pomponio*, 219 Va 914, 920 (1979) (Exhibit 23) (judgment creditor’s proceedings in aid of execution, individual judgment debtor was not entitled to blanket privilege of immunity on Fifth Amendment grounds); *American State Bank of Dickinson v Stoltz*, 345 NW2d 365 (1984) (Exhibit 24) (North Dakota Supreme Court holds that invocation of Fifth Amendment privilege by judgment debtor to questions asked in creditor’s exam were improper without sufficient explanation of why the material was privileged – a blanket refusal was not appropriate).

⁶³ *Larrabee v Sachs*, 201 Mich App 107, 110; 506 NW2d 2 (1993).

necessary, to preserve the privilege; then finally, the trial court should rule upon whether or not the privilege actually exists.

For example, in *New Properties, Inc. v Newpower*,⁶⁴ this Court affirmed the trial court's order compelling a civil defendant to answer deposition questions, despite the possibility of future prosecution. In *Newpower*, Plaintiffs Robert and Harriet Kitchen invested several hundred thousand dollars in a real estate development corporation formed by defendant George Newpower. Newpower subsequently pled guilty to embezzlement, and gave a deposition in a bankruptcy proceeding before being incarcerated. Subsequently, however, the plaintiffs sought his deposition testimony in the civil litigation over the failed development company. Newpower asserted his Fifth Amendment right against self-incrimination, for fear of prosecution under federal bank fraud and mail/wire fraud laws.⁶⁵

In light of this, the trial court ordered that Mr. Newpower give a deposition, and assert his Fifth Amendment rights as he saw fit during the deposition. Mr. Newpower then took an interlocutory appeal on the issue. Affirming the trial court as to the Fifth Amendment-deposition issue,⁶⁶ this Court held that "the privilege against self-incrimination does not entitle a defendant to refuse to provide testimony in a civil action; rather, a defendant may invoke the privilege only after a potentially incriminating question has been posed."⁶⁷ Given this, there is simply no basis

⁶⁴ N. 58, *supra*.

⁶⁵ *Id.*

⁶⁶ *Id.* Note: this Court reversed on a separate, unrelated Fifth Amendment issue, that Mr. Newpower had to answer all of the questions previously put to him in his deposition in the bankruptcy proceeding. *Id.*

⁶⁷ *Id.*

to claim that Mr. Kumar should be allowed to freeze this case in its tracks. The matter should be remanded to the trial court for determination of the amount of the judgment.

D. Even if it Was Error for the Trial Court to Grant an Injunction Before Entry of Judgment, Such Error is Harmless, as A Valid Judgment Has Now Been Entered. Mr. Kumar Should Be Estopped From Purporting Irregularities With the Judgment Due to His Invocation of the Fifth Amendment.

Mr. Kumar incorrectly asserts that no judgment has been entered in the trial court.⁶⁸ To the contrary, judgment was entered contemporaneously with the order for injunctive relief.⁶⁹ Mr. Kumar can cite to no authority barring an injunction secondary to an order of judgment for a dollar amount to be determined in subsequent proceedings,⁷⁰ and an injunction is appropriate here. Indeed, Mr. Kumar himself cites to *National Concessions, Inc. v National Circus Corp.*,⁷¹ where the Michigan Supreme Court acknowledged that injunctive relief is appropriate in circumstances where ascertainment of the amount of damages is impossible.⁷² The circumstances created by Mr. Kumar's invocation of the Fifth Amendment to seek a stay of proceedings is precisely the sort of circumstance for which injunctive relief is designed: remedies at law (i.e. determination of the amount of the judgment, followed by execution) have been made unavailable, and thus, injunctive relief is necessary.

⁶⁸ (Appellant's Br. 7) ("[The] trial court should not have entered the asset freeze order in the absence of any judgment entered against Mr. Kumar." *Id.*).

⁶⁹ (Exhibit 12) & (Exhibit 14).

⁷⁰ Indeed, by way of example, the Court of Appeals affirmed just such a decision in *Heilman v Heilman*, 95 Mich App 728, 730-731; 291 NW2d 183 (1980) (portion of order of judgment of divorce where determination of amount of judgment contingent upon amount of subsequent personal injury verdict/settlement upheld).

⁷¹ 347 Mich 335, 339; 79 NW2d 910 (1956).

⁷² *Id.*; (Appellant's Br. 5).

RELIEF REQUESTED

Mr. Antoun's ability to meaningfully collect on the underlying judgment requires the enforcement of the trial court's injunction. Thus, Mr. Antoun respectfully requests that this Court affirm the trial court's order of injunctive relief. Mr. Antoun further requests that this Court remand this case for entry of a money judgment, and execution of the same.

In the alternative, if this Court retains jurisdiction for additional proceedings or will not order entry of a money judgment and execution, Mr. Antoun respectfully requests that Mr. Kumar be required to post a bond.

Respectfully Submitted,

THE HEALTH LAW PARTNERS, P.C.

Date: July 24, 2013

/s/Phillip B. Toutant

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STATE OF MICHIGAN
IN THE COURT OF APPEALS

MICHAEL G. ANTOUN,

Plaintiff /Appellee,

COA No. 317267
LC No. 12-126902-CK

v.

DEEPAK KUMAR,

Defendant/Appellant.

PROOF OF SERVICE

On July 24, 2013, I served, by way of the Michigan Court of Appeals' Wiznet/Tyler electronic filing system a copy of the Appearance of counsel for Appellee, Michael Antoun which, upon information and belief, will deliver a copy of said document to counsel for Appellant at the following email addresses:

Johnathan D. Sweik at jsweik@hertzschram.com

Elizabeth C. Thomson at lthomson@hertzschram.com

Deborah S. Lapin at dlapin@hertzschram.com

Date: July 24, 2013

/s/Tammy Blackwood

Tammy Blackwood

Court of Appeals, State of Michigan

ORDER

Michael George Antoun v Deepak Kumar

Docket No. 317267

LC No. 2012-126902-CK

Kathleen Jansen
Presiding Judge

Pat M. Donofrio

Elizabeth L. Gleicher
Judges

The Court orders that the motion for immediate consideration is GRANTED.

The application for leave to appeal is DENIED for failure to persuade the Court of the need for immediate appellate review.

The motion to file a reply is GRANTED.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

AUG 02 2013

Date

Chief Clerk