

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF CONNECTICUT  
NEW HAVEN DIVISION

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In re:		Case No.: 14-21007 (AMN)
	SHERI SPEER	Chapter 7
	<i>Debtor.</i>	
	SEAPORT CAPITAL PARTNERS LLC	Adv. Pro. NO.: 15-2031 (AMN)
	<i>Plaintiff</i>	
v.		
	SHERI SPEER	Re: AP-ECF No. 186, 240, 259,
	<i>Defendant</i>	260, 267

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ORDER GRANTING MOTION FOR SANCTIONS, IN PART,  
FINDING THAT ELISSA SPEER WAS IN CONTEMPT OF COURT BUT  
HAS NOW CURED HER CONTEMPT, AND IMPOSING A SANCTION REQUIRING  
ELISSA SPEER TO PAY A PORTION OF MOVANT'S ATTORNEYS FEES

On May 29, 2015, Seaport Capital Partners LLC (“Seaport”) commenced adversary proceeding 15-2031 against the defendant, Sheri Speer (“S. Speer”), a Chapter 7 debtor in case number 14-21007. AP-ECF No. 1. In pursuit of its adversary proceeding complaint against S. Speer, Seaport subpoenaed a non-party, Ms. Elissa Speer (Sheri Speer’s mother, “E. Speer”), on or about January 14, 2016. When E. Speer failed to comply, as discussed below, Seaport filed a motion for sanctions against E. Speer. AP-ECF No. 186. Additionally, Seaport filed a motion seeking sanctions against Attorney Vincent Fazzone (“Attorney Fazzone”), based on his alleged actions in the course of his representation of E. Speer.<sup>1</sup> AP-ECF No. 305.

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<sup>1</sup> A separate order will enter regarding AP-ECF No. 305.

Familiarity with the docket of this adversary proceeding is assumed. See, AP-ECF Nos. 156, 236, 278, 339. Parenthetically, the court also notes the history of the role of Attorney Fazzone. Attorney Fazzone filed an appearance in this adversary proceeding for both S. Speer and E. Speer. AP-ECF No. 167, 215. Because Seaport sought sanctions against E. Speer, and against Attorney Fazzone for his representation of E. Speer, the court held a hearing on the potential conflict of interest regarding Attorney Fazzone's continued representation of E. Speer. AP-ECF No. 339. Following a hearing held on April 5, 2017, the court granted Attorney Fazzone's motions to withdraw as counsel for both S. Speer and E. Speer.<sup>2</sup> AP-ECF No. 356, 357. E. Speer has proceeded *pro se* in this matter since April 5, 2017.

Returning to the central dispute, when E. Speer failed to comply with Seaport's original subpoena, Seaport moved to compel her compliance including document production, attendance and testimony at a deposition. AP-ECF No. 145. The court granted the motion to compel, and entered an order requiring that E. Speer to appear for a deposition on July 14, 2016 (the "July Compliance Order"). AP-ECF No. 156. On July 14, 2016, Seaport filed a motion seeking sanctions (the "Sanctions Motion") against E. Speer, for failure to comply with the subpoena and the July Compliance Order. AP-ECF No 186. The Sanctions Motion sought a civil bench warrant from this court directing the United States Marshal Service to apprehend E. Speer and produce her for a deposition, as well as reasonable attorneys fees for their efforts to ensure E. Speer's compliance with the subpoena and the July Compliance Order. AP-ECF No. 186.

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<sup>2</sup> Attorney Fazzone was represented by counsel at the April 5, 2017 hearing. ECF No. 355, 375.

When E. Speer failed to comply with the July Compliance Order, the court issued an Order to Show Cause, directing E. Speer to appear on October 11, 2016. AP-ECF No. 236. After E. Speer failed to comply with that order, the court then issued a civil bench warrant (*capias*) for E. Speer, once again ordering her to appear on December 2, 2016. AP-ECF No. 278.

It is uncontested that, after being contacted by the United States Marshal Service regarding the civil bench warrant, E. Speer appeared at a deposition conducted by Seaport in a conference room adjacent to the courtroom, on December 2, 2016.

On August 1, 2017, a hearing was held on the Sanctions Motion. AP-ECF No. 458, 459, 460. Ms. Elissa Speer testified, and was questioned by Seaport regarding her failure to comply with the subpoena as well as the court's prior orders. The court continued the hearing to August 23, 2017, at which time the court heard argument on AP-ECF No. 186, and took the matter under advisement. AP-ECF No. 482; Docket Entry Dated August 23, 2017; Docket Entry Dated August 25, 2017.

Having considered the arguments of the parties, testimony of E. Speer, and the record of this case, the court makes the following findings of fact and conclusions of law.

1. E. Speer failed to comply with two court orders, AP-ECF No. 156, 256 to appear before this court, and comply with Seaport's valid subpoena.<sup>3</sup>
2. E. Speer appeared at a deposition on December 2, 2016, and was examined by counsel for Seaport.

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<sup>3</sup> At a hearing held on August 16, 2016, the court instructed counsel for Ms. Elissa Speer, Attorney Vincent Fazzone, that Ms. Elissa Speer was to appear at a deposition on September 7, 2016, though no written order entered to that effect. AP-ECF No. 236.

3. E. Speer appeared and testified at a hearing held on the Sanctions Motion on August 1, 2017.
4. E. Speer's testimony at the August 1, 2017 hearing as to why she did not comply with the subpoena or the court's orders was vague and inconsistent. Although E. Speer testified she was unable to comply with the dates as set forth in the court's orders, due to various medical conditions, her testimony was unpersuasive. No persuasive evidence substantiating E. Speer's medical conditions, or that her medical conditions excused her non-compliance, was submitted.<sup>4</sup>
5. While it is clear Seaport incurred attorneys fees to enforce the subpoena, a substantial portion of the attorneys fees requested by counsel for Seaport, are not reasonably related to E. Speer's failure to comply with discovery, or the court's orders.

All parties, including non-parties to litigation such as E. Speer, have an obligation to comply with discovery. *Agiwal v. Mid Island Mortgage*, 555 F.3d 298, 302 (2d Cir. 2009). The court concludes E. Speer's failure to comply with the court's orders after many months was willful and knowing, despite the fact E. Speer was, for a time, represented by an attorney. See, Fn. 4. Based on this record the court finds E. Speer in contempt for her failure to comply with ECF No. 156 and 256.

Seaport has moved for sanctions under Fed.R.Bankr.P. 7037, which incorporates Fed.R.Civ.P. 37. "The purposes of Rule 37 sanctions are to ensure that a party will not

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<sup>4</sup> To be clear, E. Speer did not assert that she did not comply with any court orders on the advice of Attorney Fazzone, while he was serving as her attorney. Nor did E. Speer assert she was unaware of the court's orders. Rather, E. Speer's testimony at the August 1, 2017 hearing was unambiguous regarding her knowledge of the court's orders.

be able to profit from its own failure to comply, to secure compliance with a particular order and to deter the parties and others from failing to comply with discovery obligations.” *Cruz v. Meachum*, 159 F.R.D. 366, 368 (D.Conn. 1994); see, e.g., *In re Bello*, 528 B.R. 562, 566 (Bankr. E.D.N.Y. 2015) (“Under Fed.R.Civ.P. 37(d), the court may order sanctions if a party ‘fails, after being served with proper notice, to appear for that person's deposition’...” ) (*quoting* Fed.R.Civ.P. 37(d)). On June 23, 2016, the court issued an order compelling E. Speer to comply with Seaport’s subpoena. AP-ECF No. 156. On September 16, 2016 the court issued an order to show cause, ordering E. Speer to appear but she did not comply until December 2, 2016, after the issuance of a *capias*. Notwithstanding that E. Speer has since complied with the court’s orders, Seaport is entitled to an award of attorneys fees incurred in seeking compliance with the subpoena and this court’s various orders.

Counsel for Seaport have filed three affidavits stating they have incurred a total of \$17,935.44 in attorneys fees pursuing discovery from E. Speer. AP-ECF No. 240, 259, 260.

Having considered the record of this case, the submissions of the parties, including the fact that E. Speer has since complied and given deposition testimony to Seaport, it is hereby

ORDERED, that, the Sanctions Motion, AP-ECF No. 186, is GRANTED in part; and it is further

ORDERED, that, the court finds Ms. Elissa Speer in contempt for the period of her willful non-compliance with the court’s orders, AP-ECF No. 156, 256, up until her appearance at a deposition on December 2, 2016; and it is further

ORDERED, that, Ms. Elissa Speer shall pay a total of \$1,250.00, representing a portion of the attorneys fees incurred by Seaport in seeking enforcement of a subpoena and court orders compelling discovery, as follows:

1. Ms. Elissa Speer shall pay \$500.00 to Attorney Patrick Boatman within ninety (90) days of this order
2. Ms. Elissa Speer shall pay \$750.00 to Attorney Donna Skaats within ninety (90) days of this order.

And it is further,

ORDERED, that, Ms. Elissa Speer's failure to comply in a timely manner with the provisions of this order may result in additional sanctions.

Dated on March 29, 2018, at New Haven, Connecticut.

*Ann M. Nevins*  
United States Bankruptcy Judge  
District of Connecticut

