

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D25470  
O/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - November 20, 2009

STEVEN W. FISHER, J.P.  
DANIEL D. ANGIOLILLO  
THOMAS A. DICKERSON  
JOHN M. LEVENTHAL, JJ.

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2008-08885

DECISION & ORDER

Town of Riverhead, appellant, v T.S. Haulers, Inc.,  
respondent.

(Index No. 14437/02)

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Jaspan Schlesinger, LLP, Garden City, N.Y. (Maureen T. Liccione of counsel), for  
appellant.

Scheyer & Jellenik, Nesconset, N.Y. (Stephen R. Jellenik of counsel), for respondent.

In an action, inter alia, to permanently enjoin the defendant from engaging in a sand  
and soil mining and processing operation, the plaintiff appeals from an order of the Supreme Court,  
Suffolk County (Kerins, J.), dated September 2, 2008, which, after a hearing, denied its motion to  
hold the defendant in civil and/or criminal contempt of a judgment of the same court (Berler, J.) dated  
March 26, 2004.

ORDERED that the order is affirmed, with costs.

To prevail on a motion to punish for civil contempt, the movant must establish, by  
clear and convincing evidence (1) that a lawful order of the court, clearly expressing an unequivocal  
mandate, was in effect, (2) that the order was disobeyed and the party disobeying the order had  
knowledge of its terms, and (3) that the movant was prejudiced by the offending conduct (*see Coyle*  
*v Coyle*, 63 AD3d 657, 658; *Kalish v Lindsay*, 47 AD3d 889; *Galanos v Galanos*, 46 AD3d 507;  
*Biggio v Biggio*, 41 AD3d 753; *Gloveman Realty Corp. v Jefferys*, 29 AD3d 858, 859). To prevail  
on a motion to punish for criminal contempt, the movant must establish, beyond a reasonable doubt,  
the willful disobedience of a court's lawful mandate (*see* Judiciary Law § 750[A][3]; § 751; *Muraca*

December 22, 2009

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*v Meyerowitz*, 49 AD3d 697; *see also Matter of Rubackin v Rubackin*, 62 AD3d 11, 19). Here, the plaintiff did not meet its burden (*see Wheels Am. N.Y., Ltd. v Montalvo*, 50 AD3d 1130; *Panza v Nelson*, 54 AD2d 928). Therefore, the hearing court properly denied the plaintiff's motion to hold the defendant in civil and/or criminal contempt.

FISHER, J.P., ANGIOLILLO, DICKERSON and LEVENTHAL, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court