

Brothers Alexander, LLC v New Order Constr. Mgt., Inc.
2021 NY Slip Op 32173(U)
November 5, 2021
Supreme Court, Kings County
Docket Number: Index No. 505760/2016
Judge: Debra Silber
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 9**

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THE BROTHERS ALEXANDER, LLC,

Plaintiff,

-against-

NEW ORDER CONSTRUCTION MANAGEMENT, INC.,

Defendant.

-----X

DECISION & ORDER

Index No. 505760/2016

Cal No. 10

MS # 7

Recitation, as required by CPLR 2219(a), of the papers considered in the review of plaintiff's motion for an order holding defendant judgment-debtor in contempt

Papers	NYSCEF
Notice of Motion, Affirmation and Exhibits Annexed.....	<u>68-82</u>
Affirmation in Opposition and Exhibits Annexed.....	<u> </u>
Reply Affirmation.....	<u> </u>

Upon the foregoing cited papers, the Decision/Order on this application is as follows:

Plaintiff has moved for an order of civil contempt, punishing defendant-judgment debtor New Order Construction Management, Inc. for failing to appear for an oral deposition of said judgment-debtor to enforce the Judgment entered by this court dated November 27, 2019. Plaintiff first served a Subpoena, as is provided for in CPLR 5224 (Doc 53 at 36-40). When defendant did not comply, plaintiff brought a motion to compel, and on March 24, 2021, the court issued an order that states "IT IS ORDERED that defendant judgment debtor shall produce documents responsive to the plaintiff's document request set forth in its Deposition Notice and shall appear for a deposition within 60 days of the date of the service upon it of this decision and order." Plaintiff served the Order with Notice of Entry, and then served a new Subpoena to take a

deposition of judgment debtor and to produce documents (Doc 72), noticed for May 25, 2021. The defendant judgment-debtor did not appear, as indicated in the transcript provided at Doc. 74. This motion followed.

In support of the motion, plaintiff has submitted a notice of motion, an affirmation of counsel, an affidavit of Edward Alexander, the court's order, the Notice of Entry, the Judgment, the second Subpoena and the Affidavit of Service of the Subpoena, the transcript of the deposition that documents that defendant failed to appear, along with an Affidavit of Service of the motion. The notice of motion properly provided, in at least eight-point bold type, the notice and warning that "failure to appear in court may result in . . . immediate arrest and imprisonment for contempt" as is mandated by Judiciary Law § 756. No opposition has been submitted and the motion was submitted on default on October 28, 2021.

Upon the foregoing papers, and it appearing that defendant judgment-debtor New Order Construction Management, Inc. was subpoenaed to appear for an oral deposition to be held on May 25, 2021 at 10:00 A.M. at the office of plaintiff's counsel, and that defendant failed to appear at that time and place, and on motion of Anthony J. Siano, attorney for plaintiff, it is ordered that:

1. The motion is granted with regard to New Order Construction Management, Inc., the defendant judgment-debtor.
2. The failure of defendant-judgment debtor New Order Construction Management, Inc. to obey the subpoena, requiring defendant judgment-debtor to appear for deposition, was calculated to and actually did defeat and impair plaintiff's rights and constituted a contempt of court.
3. For the contempt, New Order Construction Management, Inc. shall pay a fine

in the sum \$500 to be paid to the judgment creditor within ten (10) days after service of a copy of this order with notice of entry on New Order Construction Management, Inc. by service upon the Secretary of State pursuant to Business Corporation Law § 306.

4. Judgment-debtor New Order Construction Management, Inc. will be purged of the contempt if it provides a person with knowledge of the facts, who appears and gives testimony under oath and provides the requested documents, pursuant to the aforementioned subpoena, on or before the later of December 20, 2021 or the date that is ten (10) days after service of a copy of this order with notice of entry on New Order Construction Management, Inc., at the offices of plaintiff's counsel, Anthony J. Siano Esq. PLLC, 333 Westchester Ave. Suite 302, White Plains. NY 10604, (914) 997-0100.

5. If defendant does not pay the fine and appear and submit to the examination as provided above, additional fines are hereby imposed, in the sum of One Hundred Dollars (\$100) per business day, from the later of the two dates as provided in the above paragraph, until the deposition has been held and the documents provided.

6. Plaintiff may apply to the court for a money judgment for said fines, upon proof by affidavit of the service of a copy of this order with notice of entry thereof upon the judgment-debtor, and of the failure of the judgment-debtor to pay the fine as aforesaid until the date that the defendant judgment-debtor provides the requested documents and a person with knowledge of the facts and circumstances to answer questions under oath at an oral deposition.

7. Anthony J. Siano, Esq. is granted \$45 dollars for motion costs against

defendant-judgment debtor.

The branch of the motion which seeks to hold John Collins, as “principal” of defendant judgment debtor, in civil contempt is denied. As was stated in the court’s prior order, he was not a party to this action, the judgment was not entered against him, and to hold him in contempt for violation of a post-judgment information subpoena, a special proceeding must be brought by petition and notice of petition or petition and order to show cause, and he must be personally served with the papers which commence the special proceeding, in order for the court to have jurisdiction over him (*Long Is. Trust Co. v Rosenberg*, 82 AD2d 591 [2d Dept 1981]).

The foregoing constitutes the Decision and Order of this Court.

Dated: November 5, 2021

ENTER:



Hon. Debra Silber, J.S.C.