

Finkel v New York City Dept. of Citywide Admin. Servs.
2022 NY Slip Op 30664(U)
March 1, 2022
Supreme Court, New York County
Docket Number: Index No. 159920/2021
Judge: Laurence Love
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE LOVE PART 63M

Justice

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DR. GERALD FINKEL, AS CHAIRMAN OF THE JOINT
INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY,

Petitioner,

INDEX NO. 159920/2021

MOTION DATE 04/17/2022

MOTION SEQ. NO. 001

- v -

NEW YORK CITY DEPARTMENT OF CITYWIDE
ADMINISTRATIVE SERVICES, FIREALARM ELECTRICAL
CORP

**DECISION + ORDER ON
MOTION**

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39

were read on this motion to/for POST JUDGMENT OTHER.

Upon the foregoing documents, it is

The following read on Petitioner – Dr. Gerald Finkel, as Chairman of the Joint Industry Board of the Electrical Industry, Order to Show Cause to Compel – CPLR 5225(a), Respondent – New York City Department of Citywide Administrative Services (“DCAS”), as Garnishee, to turnover monies and other assets in which Judgment Debtor – Firealarm Electrical Corp. (“Firealarm”) has an interest; and to direct payment, CPLR 5227, of any debts owed by Respondent – DCAS to Judgment Debtor – Firealarm Electrical Corp. until Petitioner’s – Judgment Creditor’s outstanding Judgment against Judgment Debtor – Firealarm Electrical Corp. of \$1,026,808.22 has been satisfied.

A Virtual Microsoft Teams Appearance was held on February 16, 2022 at 10:00 am where both sides appeared.

Per Petitioner's Memorandum of Law, "[o]n September 6, 2019, Petitioner obtained a Judgment against Firealarm in a federal action, *Dr. Gerald Finkel, as Chairman of the Joint Industry Board of the Electrical Industry v. Firealarm Electrical Corp.*, 18 CV 7211 (ILG) (JO), in the amount of \$1,071,240.50. Petitioner has identified construction contract retainage of \$204,280.34 that is in New York City Department of Citywide Administrative Services' possession in which Firealarm has an interest" (see NYSCEF Doc. No. 6 P. 3). Petitioner submits the Default Judgment from a United States District Judge in the amount of \$1,071,240.50 against Firealarm (see NYSCEF Doc. No. 2).

A Judgment Creditor may bring a special proceeding against a person or entity in possession of money or property in which a Judgment Debtor has an interest or against a person who is or will become indebted to the Judgment Debtor and obtain an order requiring the person or entity to pay the withheld amounts to the Judgment Creditor (see *SSC Resolution, LLC v. Prudential Ins. Co. of Am.*, 2019 N.Y. Misc. LEXIS 5550).

Per Respondents' Affirmation in Opposition,

"On or about June 30, 2015, the City acting through the New York City Department of Citywide Administrative Services ("DCAS") entered into two requirements contracts with judgment debtor Firealarm Electrical Corp. to provide fire alarm maintenance and incidental repair for a period of three years. The contractual term for both Firealarm Contracts commenced in or around August, 2015 and expired in 2018. At the expiration of the contractual term, DCAS did not renew the Firealarm Contracts. On or about February 15, 2019, Firealarm submitted a Notice of Dispute with DCAS' Commissioner seeking review of two disputes. On or about June 24, 2019, the DCAS Commissioner issued a determination denying Firealarm's dispute. On or about July 23, 2019, Firealarm filed a Notice of Claim in the amount of \$3,040,406.25 with the Office of the Comptroller. As of today's date, ... is still under review by the Comptroller's Office and no determination has been issued. On or about September 15, 2020, Firealarm filed a second Notice of Claim in the amount of \$2,475,882.11. [T]he Comptroller sent a letter ... all but Claim No. 4 were time-barred. Firealarm filed a Notice of

Petition with the Contract Dispute Resolution Board. Firealarm's Petition is currently pending. Firealarm filed a third Notice of Claim in the amount of \$1,470,693.25 with the Comptroller. [T]he Office of the Comptroller issued a Partial Determination Letter ... denying Claim Nos. 1,2,3, and 5. Firealarm filed a Notice of Petition with the Contract Dispute Resolution Board. Firealarm's Petition is currently pending. DCAS received an Information Subpoens with Restraining Notice to Garnishee. No payments have been released to Firealarm and DCAS will restrain any funds that become due and owing to Firealarm while the Restraining Notice remains in effect. There is \$90,970.19 being held in retainage ... with regard to the BQSI contract. There is \$111,310.15 being held in retainage ... with regard to the MNBX contract (see NYSCEF Doc. No. 34 Par. 4, 6, 8, 9, 10, 11, 12, 13, 17, 18, 19, 22, 24, 25, 26, 29, 30, 31, 34, 36).

Respondent's Memorandum of Law in Opposition states, "[a] debt against which a money judgment may be enforced by a special proceeding instituted under CPLR Article 52 must satisfy the requirement in CPLR 5201(a) of certainty." "A greater degree of 'certainty' of the indebtedness is required" (see *Colonial Press of Miami, Inc. v. Bank of Commerce*, 71 Misc. 2d 987, 988 [1st Dep't 1972]).

Respondent's Memorandum of Law in Opposition continues, "[u]nder Article 42 of the Standard DCAS Requirements Contract, to receive partial payments from DCAS, a contractor must submit a requisition for payment which must contain an estimate of the quantity and value of the work completed during the period the contractor seeks payment for" (see NYSCEF Doc. No. 35 P. 11). Respondent Exhibits the BQSI Contract (see NYSCEF Doc. No. 19) and the MNBX Contract (see NYSCEF Doc. No. 20). "[T]he Petitioner has not identified any payment requisitions submitted by Firealarm to DCAS for which Firealarm has not received payment. Nor has the Petitioner identified any substantial completion payment or final completion payment requisitions that have been submitted by Firealarm to DCAS which remain unpaid" (see NYSCEF Doc. No. 35 P. 12).

CPLR 5201(a) states in pertinent part, “[a] money judgment may be enforced against any debt ... certainly or upon demand of the judgment debtor.” “A summary Order should not be made in a proceeding supplementary to execution for the application of money or property to the payment of the judgment unless the judgment debtor’s right to the immediate possession of such money or property is substantially undisputed” (see *Gabor v. Renaissance Assoc.*, 566 N.Y.S.2d 607, 608 [1st Dept. 1991]).

Petitioner has a Judgment against Firealarm but not DCAS. Currently there remain questions about amount due and fulfillment of various contracts between DCAS and Firealarm. As the amount due has not been made “certain” per CPLR 5201(a), this Court cannot Order a money judgment until certainty has been determined.

ORDERED that Petitioner’s Order to Show Cause to Compel – CPLR 5225(a), Respondent – New York City Department of Citywide Administrative Services (“DCAS”), as Garnishee, to turnover monies and other assets in which Judgment Debtor – Firealarm Electrical Corp. (“Firealarm”) has an interest; and to direct payment, CPLR 5227, of any debts owed by Respondent – DCAS to Judgment Debtor – Firealarm Electrical Corp. until Petitioner’s – Judgment Creditor’s outstanding Judgment against Judgment Debtor – Firealarm Electrical Corp. of \$1,026,808.22 has been satisfied are DENIED.

3/1/2022
DATE


LAURENCE LOVE, J.S.C.

CHECK ONE:

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CASE DISPOSED

☒

NON-FINAL DISPOSITION

☐

GRANTED

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DENIED

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GRANTED IN PART

☐

OTHER

APPLICATION:

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SETTLE ORDER

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SUBMIT ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

☐

FIDUCIARY APPOINTMENT

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REFERENCE