

Extech Bldg. Materials, Inc. v TDL Restoration. Inc.
2022 NY Slip Op 30672(U)
March 1, 2022
Supreme Court, Kings County
Docket Number: Index No. 518652/2019
Judge: Debra Silber
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 9**

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EXTECH BUILDING MATERIALS, INC.,

Plaintiff,

-against-

**TDL RESTORATION. INC.,
DANYA CEBUS CONSTRUCTION LLC,
WESTCHESTER FIRE INSURANCE COMPANY
and DRITON QUNI,**

Defendants.

-----X

DECISION & ORDER

Index No. 518652/2019

Cal No. 14

Mot. Seq. #3

Recitation, as required by CPLR 2219(a), of the papers considered in the review of plaintiff's motion for a contempt order.

Papers

Notice of Motion, Affirmation and Exhibits Annexed.....
Affirmation in Opposition and Exhibits Annexed.....
Reply Affirmation.....

NYSCEF Doc.

63-68

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

In this action to foreclose on a mechanic's lien, plaintiff has obtained a default judgment against defendants TDL Restoration Inc. and Driton Quni, jointly and severally, which was entered on October 6, 2021. Plaintiff discontinued the action as against the other two defendants [Docs 17 and 61]. The liens themselves state that plaintiff provided materials to defendant TDL Restoration Inc. Defendant Quni was sued as a principal of the corporation, it seems. The NY State Department of State Division of Corporations public website states that the CEO of the corporation is Danny Quni, who may or may not be the same person. However, he was sued as "a/k/a Danny Quni" in an action in

Westchester County, Allied Building Products Corp. v TDL Restoration and Driton Quni a/k/a Danny Quni, 61206/2018, which went to trial and resulted in a judgment naming him as “a/k/a Danny Quni.”

Plaintiff moves for an order of contempt, punishing defendant-judgment debtor Driton Quni for failing to appear for an oral deposition of said judgment-debtor to enforce the Judgment entered by this court, pursuant to a duly served Subpoena pursuant to CPLR 2303 regarding the service of subpoenas, and as is provided for in CPLR §5224 as a method for the enforcement of judgments. In support of the motion, plaintiff has submitted an affidavit of nail and mail service of the Subpoena on the judgment-debtor at his residence, dated October 15, 2021, an attorney’s affirmation, a copy of the Judgment, a copy of the Subpoena which states that the judgment debtor is to appear in person or virtually for an oral deposition on November 10, 2021, a copy of a letter notifying the judgment debtor of his default and plaintiff’s intent to move for contempt if he did not respond, along with an Affidavit of Service of the Notice of Motion, affirmation and exhibits by first class mail at his residence address. No opposition has been submitted and the motion was submitted on default on February 10, 2022.

The court notes that a special proceeding does not need to be commenced when the person subpoenaed is a named defendant and thus a judgment-debtor over whom the court has already obtained jurisdiction (*Long Is. Trust Co. v Rosenberg*, 82 AD2d 591 [2d Dept 1981]).

Upon the foregoing papers, it appearing that defendant-judgment debtor was subpoenaed to appear for an oral deposition on November 10, 2021 at 9:30 a.m. at the office of Diamond Reporting, 16 Court Street, Suite 907, Brooklyn, NY 11241, and that defendant failed to appear at that time and place or to request to appear virtually as stated

on the Subpoena, on motion of Nicholas A. Tantone, Esq., The Law Firm of Elias C. Schwartz, PLLC, attorneys for plaintiff, it is ordered that:

1. The motion is granted.
2. The failure of defendant-judgment debtor Driton Quni to obey the subpoena, requiring defendant 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, Driton Quni shall pay a fine in the sum \$500 to be paid to the judgment creditor within ten (10) days after service by first class mail of a copy of this order with notice of entry on him at his residence address and at his work address at the office of defendant judgment-creditor TDL Restoration Inc., 177 East Hartsdale Avenue, Apt 6R, Hartsdale, NY 10530.
4. Judgment-debtor Driton Quni will be purged of the contempt if he appears and gives testimony in this action under oath and pursuant to the aforementioned subpoena on or before the later of April 29, 2022 or the date that is ten (10) days after service of a copy of this order with notice of entry on Driton Quni, virtually or at the offices of plaintiff's counsel, The Law Firm of Elias C. Schwartz, PLLC, 343 Great Neck Road Great Neck, New York 11021 (516) 487-0175, or at the offices of Diamond Reporting (address above).
5. If defendant does not pay the fine and appear and submit to the examination as provided above, upon proof by affidavit of the first class mail service of a copy of this order with notice of entry thereof upon Driton Quni, the judgment-debtor, at both his work and his home addresses, and of the failure of Driton Quni to pay the fine as aforesaid and answer questions under oath at an oral deposition by the date fixed by the court herein to purge the contempt, an application may be made for a

Warrant directing the Sheriff of Kings County or any county of the State of New York where he may be found, to seize and arrest Driton Quni forthwith and bring him before this court to be committed or for such further disposition as the court shall direct.

6. The Law Firm of Elias C. Schwartz, PLLC, 343 Great Neck Road, Great Neck, New York 11021 is granted \$45 dollars motion costs against defendant-judgment debtor.

The foregoing constitutes the decision and order of this court.

Dated: Brooklyn, New York
March 1, 2022

ENTER:



Hon. Debra Silber, J.S.C.