

<b>Cooper v Bldg 7th St. LLC</b>
2022 NY Slip Op 32039(U)
July 1, 2022
Supreme Court, New York County
Docket Number: Index No. 153479/2018
Judge: Arlene Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ARLENE BLUTH PART 14**

*Justice*

-----X

DWAYNE COOPER,

Plaintiff,

- v -

BLDG 7TH STREET LLC,EAST 7TH STREET VENTURES  
LLC,BLDG MANAGEMENT CO. INC.,

Defendant.

-----X

BLDG 7TH STREET LLC, EAST 7TH STREET VENTURES  
LLC, BLDG MANAGEMENT CO. INC.

Plaintiff,

-against-

ALL BORO TANK TESTING, LLC, GLOBAL PEST CONTROL,  
LLC

Defendant.

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INDEX NO. 153479/2018  
MOTION DATE N/A  
MOTION SEQ. NO. 005

**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 595699/2018

The following e-filed documents, listed by NYSCEF document number (Motion 005) 155, 156, 157, 158,  
159, 162, 163, 164, 165, 166, 167, 168, 169, 176, 177, 178

were read on this motion to/for ATTORNEY - FEES.

The motion by defendants for legal fees is granted and the cross-motion by non-party  
Dione Woods is denied.

**Background**

Previously, this Court granted defendants' motion to hold non-party Dione Woods in  
contempt for failure to turn over a deposition transcript from a September 2021 deposition (Ms.

Woods is a stenographer) (NYSCEF Doc. No. 151). Ms. Woods did not oppose that motion and so the Court granted defendants' motion. The Court observed that it had granted Ms. Woods' request for an adjournment of that motion (MS003) and she still did not submit any opposition (*id.*). The Court awarded defendants reasonable legal fees and directed them to make an application for such fees (*id.*).

Now defendants move for \$3,201.70 in fees, which includes legal fees, motion filing fees and process server fees. The Court directed defendants to serve Ms. Woods by personal service.

In opposition and in support of her cross-motion for leave to reargue, renew and to vacate the Court's prior order, Ms. Woods claims that she was hired by a non-party reporting service to transcribe a deposition in this case. She claims that the reporting service reneged on its promise to pay her and that she was supposed to collect payment on delivery of the transcript. Ms. Woods admits that she retained the transcript until arrangements could be made for payment.

She insists that an attorney's office for one of the parties in this case offered to pay her directly for the transcript but that this offer was never turned into a formal agreement. She contends that she did not oppose the previous motion (MS003) because she was scheduled to undergo an in-patient procedure on the morning of the return date. She contends that "a request was made for an enlargement of time to allow me to recover from this in-patient procedure and participate in my defense. Unfortunately, I was unable to contact my attorneys prior to the Court's rendering of a decision granting the application in full" (NYSCEF Doc. No. 168, ¶¶ 13-14). She also argues she finally turned over the transcript on June 2, 2022.

In reply, defendants claim that Ms. Woods did not state a basis for reargument or renewal and that she wrongly withheld the transcript for over 8 months. Defendants argue that the Court was correct to impose sanctions under these circumstances.

## Discussion

The Court grants the motion by defendants and denies Ms. Woods' cross-motion. As an initial matter, Ms. Woods did not state a sufficient reason for why this Court should consider the branches of her motion that seek renewal and reargument. The fact is that the previous motion was decided without opposition. Because Ms. Woods did not submit any opposition, there is no basis for the Court to find that it overlooked or misapprehended anything in connection with the prior motion. And Ms. Woods cannot present new facts or arguments where she did not previously present any facts or arguments. The proper relief is to seek vacatur of the order, which Ms. Woods did, in fact, cite as part of her motion.

“As to vacating the default, a party seeking to vacate a default judgment must demonstrate both a reasonable excuse for the default and a meritorious defense” (*Aetna Life Ins. Co. v UTA of KJ Inc.*, 160 NYS3d 590, 2022 NY Slip Op 01266 [1st Dept 2022]).

Here, the Court finds that Ms. Woods did not cite a reasonable excuse for her failure to oppose motion sequence 003. The Court observes that on April 4, 2022, counsel for Ms. Woods uploaded a letter requesting a two-week adjournment of the motion (NYSCEF Doc. No. 128). This request did not mention that Ms. Woods was set to undergo a medical procedure. The Court granted this request and adjourned the motion to May 10, 2022 (longer than the two weeks requested). Yet, Ms. Woods still did not submit opposition.

Ms. Woods' claim that she underwent a medical procedure is not supported with any documentation nor did she provide any specific details about her purported hospitalization. It is not clear from Ms. Woods' affidavit in opposition (specifically, paragraph 13) whether her medical procedure impacted her ability to offer opposition on the initial return date in April or the adjourned date in May. In other words, while undergoing a procedure is a good excuse, Ms.

Woods needed to cite the exact the dates she was hospitalized to establish a reasonable excuse for not offering opposition. Her vague excuse is not sufficient. The record before this Court does not demonstrate that she or her attorney were incapable of submitting opposition or asking for another adjournment based on her purported medical issues. Plus, Ms. Woods did not offer a meritorious reason for why she held onto the deposition transcript for nearly 8 months. While the Court empathizes with her contention that she needed to get paid for her work, that does not mean she can hold up a case for so long, especially where defendants moved to hold her in contempt for not turning over the transcript.

That she eventually turned over the transcript by the deadline the Court set in its decision for motion sequence 003 is not a reason to vacate her contempt. She merely followed the Court's directive and thereby avoided additional sanctions. The fact is that a stenographer has an obligation to turn over a transcript (*see People v Williamson*, 136 AD2d 497, 523 NYS2d 817 [1st Dept 1988] [finding that a monetary fine was appropriate, rather than imprisonment, where a former court reporter refused to transcribe her stenographic notes unless she was paid a certain amount]). Ms. Woods can obviously explore legal action against whatever parties she desires relating to her claims of nonpayment. But that does not mean she can withhold a deposition transcript for nearly 8 months and ignore a motion to hold her in contempt.

The Court also observes that the amount defendants seek is reasonable and, in any event, Ms. Woods did not directly oppose the amount sought.


Accordingly, it is hereby

ORDERED that the motion by defendants for fees (as directed by the Court in motion sequence 003) is granted and the Clerk is directed to enter judgment in favor of defendants and

against non-party Dione Woods in the amount of \$3,201.70 upon presentation of proper papers therefor; and it is further

ORDERED that the cross-motion by non-party Dione Woods is denied.

Conference: Already Scheduled for July 25, 2022 (NYSCEF Doc. No. 154; the parties are to upload a discovery update by July 18, 2022).

<u>7/1/2022</u> DATE			 ARLENE BLUTH, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART	<input checked="" type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE