

**IMP Plumbing & Heating Corp. v Versatile Mech.
Servs. Corp.**

2024 NY Slip Op 32621(U)

July 26, 2024

Supreme Court, New York County

Docket Number: Index No. 654698/2019

Judge: Louis L. Nock

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LOUIS L. NOCK PART 38M

Justice

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IMP PLUMBING & HEATING CORP.,

Plaintiff,

INDEX NO. 654698/2019

MOTION DATE 07/19/2024

MOTION SEQ. NO. 002

- v -

VERSATILE MECHANICAL SERVICES CORP., TOLL
BROTHERS, INC., TOLL BROTHERS CITY LIVING, 55
WEST 17TH STREET PARTNERS, LLC, FIDELITY AND
DEPOSIT COMPANY OF MARYLAND, XYZ
CORPORATION, JOHN DOE

Defendant.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44

were read on this motion to/for

ENFORCEMENT

LOUIS L. NOCK, J.S.C.

Plaintiff, the judgment creditor of defendant and judgment debtor Versatile Mechanical Services Corp. (“debtor”), seeks to compel compliance with information and deposition subpoenas served on debtor on May 10, 2024, pursuant to CPLR 3124, 3126, 2308, 5223, and 5224, and Judiciary Law § 773, and for related fines and penalties due to debtor’s noncompliance. There is no opposition to the motion. Upon the foregoing documents, the motion is granted in part, in accordance with the following memorandum decision.

Plaintiff obtained a default judgment against debtor on July 26, 2021, in the amount of \$47,599.64 (NYSCEF Doc. No. 29). Plaintiff attests that, in furtherance of its efforts to enforce the judgment, it served debtor with an information subpoena (NYSCEF Doc. No. 34) and a deposition subpoena (NYSCEF Doc. No. 36) on May 10, 2024, by service on the Secretary of State pursuant to Business Corporations Law § 306 (b) (affidavits of service, NYSCEF Doc.

Nos. 35, 37). Debtor provided no response to either subpoena, and did not appear for the deposition demanded on June 3, 2024 (Sava affirmation, NYSCEF Doc. No. 31, ¶¶ 13-14). Approximately a week later, plaintiff made the instant motion.

The failure to comply with an information subpoena issued pursuant to CPLR 5224 (a) (3) is governed by CPLR 2308 (b) (CPLR 5224 [a] [3] [iv]). CPLR 2308 (b) provides that upon the subject of the subpoena's failure to comply, "the issuer or the person on whose behalf the subpoena was issued may move in the supreme court to compel compliance." The court may order compliance, and assess costs of \$50, a penalty of \$50, and damages caused by the subject's failure to comply (*id.*). The failure to comply with a subpoena to appear and give testimony, however, is punishable as contempt of court, as well as a \$150 penalty, and damages caused by the subject's failure to comply (CPLR 2308 [a]).

Here, debtor plainly failed to comply with a properly served information subpoena and deposition subpoena, which seek proper subjects for disclosure (CPLR 5223 ["At any time before a judgment is satisfied or vacated, the judgment creditor may compel disclosure of all matter relevant to the satisfaction of the judgment, by serving upon any person a subpoena"]; *George v Victoria Albi, Inc.*, 148 AD3d 1120, 1121 [2d Dept 2017] ["A judgment creditor is entitled to discovery from either the judgment debtor or a third party in order to determine whether the judgment debtor concealed any assets or transferred any assets so as to defraud the judgment creditor or improperly prevented the collection of the underlying judgment"] [internal quotation marks and citations omitted]). The court, however, declines to punish debtor for contempt at this time. A motion to hold a party or other entity in contempt of court must, among other things, be made on notice to the party to be held in contempt containing the following statement:

**“WARNING:
YOUR FAILURE TO APPEAR
IN COURT MAY RESULT IN
YOUR IMMEDIATE ARREST
AND IMPRISONMENT FOR
CONTEMPT OF COURT.”**

(Judiciary Law § 756). As the notice of motion herein lacks such a statement, the court may not punish debtor's disobedience as contempt of court. Accordingly, the fines set forth in Judiciary Law § 773 applicable to a contempt order do not apply, and plaintiff's request to impose such fines is denied.

The remaining assessments against debtor provided above are appropriate under the circumstances, especially as debtor, by failing to oppose the motion, offers no explanation for its failure to comply with the information and deposition subpoenas served upon it by plaintiff.

Accordingly, it is hereby

ORDERED that the motion is granted in part; and it is further

ORDERED that defendant Versatile Mechanical Services Corp. is directed to respond to the information subpoena served on it on May 10, 2024, in full, within 30 days of service of a copy of this order with notice of entry; and it is further

ORDERED that within 30 days of responding to the information subpoena, defendant Versatile Mechanical Services Corp. shall appear for deposition at the offices of plaintiff's counsel, or at another agreed upon time and place, to respond to the deposition subpoena; and it is further

ORDERED that defendants are directed to pay plaintiff's costs in the sum of \$50.00, and statutory penalties in the amount of \$200.00 (CPLR 2308 [a], [b]); and it is further

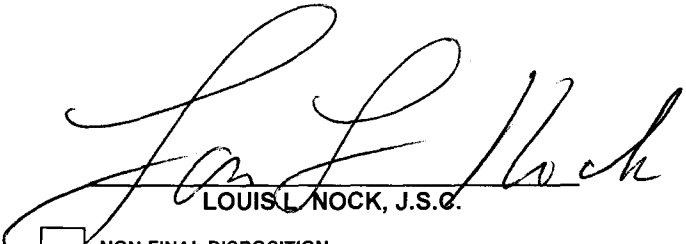
ORDERED that plaintiff may submit further proof of its damages related to defendant Versatile Mechanical Services Corp.'s failure to comply (CPLR 2308 [a], [b]) by electronic

filing on or before August 12, 2024, with a copy by email to the Principal Court Attorney of Part 38 at ssyaggy@nycourts.gov; and it is further

ORDERED that if defendant Versatile Mechanical Services Corp. fails to comply with this order, plaintiff may move for further appropriate relief.

This constitutes the decision and order of the court.

7/26/2024
DATE


 LOUIS L. NOCK, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED		<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART		<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER		<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT		<input type="checkbox"/>	REFERENCE