

Forest Residence LLC v Jean-Baptiste

2024 NY Slip Op 34631(U)

December 19, 2024

Supreme Court, Kings County

Docket Number: Index No. 531405/2023

Judge: Francois A. Rivera

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 19th day of December 2024

HONORABLE FRANCOIS A. RIVERA

-----X
FOREST RESIDENCE LLC,

Plaintiff,

- against -

RALPH JEAN-BAPTISTE,

Defendant.
-----X

DECISION & ORDER

Index No. 531405/2023

Oral Argument: 12/11/2024

Ms. 2

Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of motion filed on August 13, 2024, under motion sequence number two, by Ralph Jean-Baptiste (hereinafter the respondent) for an order holding Forest Residence LLC (hereinafter the petitioner) in criminal contempt for violating a so-ordered access agreement of the parties. The motion is opposed.

- Notice of motion
- Affirmation in support by Robert Coley
- Affidavit in support by Dona K. Colon
- Affidavit in support by Derek Culpepper
- Affidavit in support by Garfield James
Exhibits NYSCEF 50-55 and 74, 146, 147
152, 154, 156, 158,160, 162, 164, 166, 167
168, 169, 174
- Affirmation in opposition by Rachelle Rosenberg,
- Affirmation in opposition by Abraham Hershkowitz
- Affirmation in opposition by Roey Fishman
- Affirmation in opposition by Michael Cespedes
- Affirmation in opposition Meilech Friedman
Exhibits A-L
- Plaintiff's exhibits 98-113 in reply

BACKGROUND

On October 27, 2023, petitioner commenced the instant special proceeding pursuant to RPAPL 881, by filing an order to show cause, verified petition and annexed documents with the Kings County Clerk's office (KCCO).

On December 29, 2023, respondent, proceeding pro se, filed an affidavit in opposition with annexed exhibits with the KCCO.

On January 17, 2024, petitioner replied to the opposition by filing two affirmations with annexed exhibits with the KCCO.

The verified petition alleges among other things that the petitioner in connection with construction activities on its property located at 25 Legion Street, Brooklyn, New York 11212 seeks a license pursuant to RPAPL 881 for access to the respondent's adjoining property to perform, among other things, a preconstruction survey of the respondent's property; installation, maintenance, and removal of overhead protection on the respondent's property and other activity as required by the New York City Department of Buildings, and other applicable local laws, codes, rules, regulations, and directives.

LAW AND APPLICATION

On March 4, 2024, the Court so-ordered an access agreement with the consent of the parties which resolved the petition. By the instant motion, the respondent seeks an order holding the petitioner in criminal contempt for allegedly violating the access agreement. The alleged violation was the conduct of the petitioner in allowing its workers to place their motor vehicles in front of the respondent's driveway and thus blocking the respondent's access to and from his own driveway. The purpose of criminal contempt is to vindicate the authority of the court (*see Matter*

of *Figueroa-Rolon v. Torres*, 121 A.D.3d 684, 685 [2d Dept 2014]), and to punish the contemnor for disobeying a court order (see *Matter of Department of Env'tl. Protection of City of N.Y. v. Department of Env'tl. Conservation of State of N.Y.*, 70 N.Y.2d 233, 239 [1987]). The imposition of punishment for criminal contempt requires proof beyond a reasonable doubt that the alleged contemnor willfully violated a clear and unequivocal court mandate (see *Rush v. Save My Home Corp.*, 145 A.D.3d 930 [2d 2016]; *Matter of Rubackin v. Rubackin*, 62 A.D.3d 11, 15 [2d Dept 2009]). Here, the evidentiary submissions of the respondent, consisting of e-mails, photographs and affidavits do not meet its burden of establishing beyond a reasonable doubt that the petitioner willfully violated a clear and unequivocal court mandate.

New York State Judiciary Law § 756 sets forth the procedure by which a movant may seek to hold a party in contempt:

“An application to punish for a contempt punishable civilly may be commenced by notice of motion returnable before the court or judge authorized to punish for the offense, or by an order of such court or judge requiring the accused to show cause before it, or him, at a time and place therein specified, why the accused should not be punished for the alleged offense. The application shall be noticed, heard and determined in accordance with the procedure for a motion on notice in an action in such court, provided, however, that, except as provided in section fifty-two hundred fifty of the civil practice law and rules or unless otherwise ordered by the court, the moving papers shall be served no less than ten and no more than thirty days before the time at which the application is noticed to be heard. The application shall contain on its face a notice that the purpose of the hearing is to punish the accused for a contempt of court, and that such punishment may consist of fine or imprisonment, or both, according to law together with the following legend printed or type written in a size equal to at least eight-point bold type:

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

Where a motion seeking criminal contempt does not include the warning and notice provisions required by Judiciary Law § 756 the application must be denied (*Board of Managers of Brightwater Towers Condominium v. M. Marin Restoration, Inc.*, 206 AD3d 605 [2d Dept 2022]). Strict compliance to the statutory requirements is required as dismissal is warranted

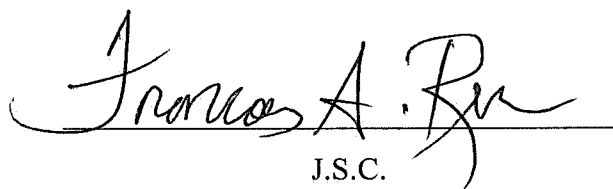
even in the event where a motion seeking criminal contempt includes the required warning but does not include the required notice provision (*Mente v. Wenzel*, 192 AD2d 862 [3d Dept 1993]). The respondent's motion papers do not comply with the warning and notice requirements of Judiciary Law § 756. Based upon the foregoing and due to the respondent's failure to comply with Judiciary Law § 756, the application to hold the petitioner in criminal contempt is denied.

CONCLUSION

The motion by respondent Ralph Jean-Baptiste for an order holding petitioner Forest Residence LLC in criminal contempt for violating a so-ordered access agreement of the parties is denied.

The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.

HON. FRANCOISA RIVERA