

**George v 327-329 Dev. LLC**

2025 NY Slip Op 33444(U)

September 11, 2025

Supreme Court, Kings County

Docket Number: Index No. 514430/2020

Judge: Wavny Toussaint

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KINGS COUNTY CLERK  
2025 SEP 12 A 10:51

At an IAS Term, Part 70 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 11<sup>th</sup> day of September, 2025.

P R E S E N T :

HON. WAVNY TOUSSAINT,  
Justice.

\_\_\_\_\_  
DIANE GEORGE,

Plaintiff,

- against -

327-329 DEVELOPMENT LLC,

Defendant.  
\_\_\_\_\_

Index No.: 514430/2020  
MS #6  
**DECISION AND  
ORDER**

The following papers numbered 1 to read herein  
Notice of Motion/Order to Show Cause/  
and Affidavits (Affirmations) Annexed  
Cross Motion and Affidavits (Affirmation) Annexed  
Answers/Opposing Affidavits (Affirmations)  
Reply Affidavits (Affirmations)  
Affidavit (Affirmation)  
Other Papers

Papers Numbered  
178-186  
187  
\_\_\_\_\_  
\_\_\_\_\_

Upon the foregoing papers, plaintiff moves (Seq. 06) for an order, pursuant to CPLR §§ 5224(a)(3)(iv) and 2308(b), compelling defendant to respond to plaintiff's Information Subpoena and Restraining Notice, dated April 18, 2025. Defendant 327-329 Development LLC ("defendant") opposes the motion.

### Background

Plaintiff is the owner of the premises located at 331 20th Street, Brooklyn, New York. On or about June 22, 2017, defendant purchased the house next door to plaintiff's home as well as the house next to this one and requested access to plaintiff's property to demolish the two houses and construct a four-story apartment building in their place. On May 1, 2019, plaintiff and defendant entered into a License Agreement in which plaintiff granted defendant a license to access her property to install and maintain monitoring equipment and erect temporary protections, a sidewalk shed and weatherproofing, in a manner consistent with the construction plans set forth in the License Agreement.

Plaintiff alleges defendant breached the license agreement and caused damage to her property from the start of construction on May 28, 2019. By order dated July 17, 2023, the Court awarded plaintiff attorneys' fees, based upon plaintiff's motion practice addressing defendant's alleged breach of the License Agreement. A judgment was issued in the amount of \$106,125.77.<sup>1</sup> By order dated March 27, 2025, the Court severed the judgment from the on-going action.

Plaintiff sought enforcement of the judgment by serving a certified Information Subpoena and Restraining Notice (collectively the "Subpoena") on defendant's counsel, Tsyngauz & Associates, P.C. Service was completed by Federal Express, Priority Overnight mail as of April 21, 2025. Additionally, plaintiff's counsel sent defendant's

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<sup>1</sup> The judgment was entered by the Clerk on April 10, 2025.

counsel an email attaching the Subpoena following the Federal Express mailing. Delivery and receipt of the Subpoena is not disputed by defendant's counsel.

### **The Parties' Contentions**

Plaintiff now moves (Seq. 06) for an order, pursuant to CPLR §§ 5224(a)(3)(iv) and 2308(b), compelling defendant to respond to the Subpoena. Plaintiff argues the Subpoena was properly served on defendant's counsel as of April 21, 2025, and that pursuant to CPLR § 5224(a)(3), defendant was required to submit its responses seven (7) days therefrom, or by April 28, 2025, but failed to do so.

Defendant contends, among other things, that service on its counsel was not permitted under the CPLR § 5224(a)(3) and otherwise was improper, as the statute only allows service via registered or certified mail, return receipt requested and does not permit service via Federal Express or email.

### **Discussion**

"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' " (*Wydra v Brach*, 227 AD3d 727, 728 [2d Dept 2024] citing *Lisogor v Nature's Delight, Inc.*, 189 AD3d 1386, 1388 [2d Dept 2020]).

CPLR § 5224(a)(3) provides that service of an information subpoena, accompanied by a copy and original of written questions and a prepaid, addressed return envelope, "may

be made by registered or certified mail, return receipt requested” (CPLR § 5224(a)(3)).<sup>2</sup> The answers together with the original of the questions must be returned “within seven days after receipt” (*id.*). Further, “information subpoenas, served on an individual or entity other than the judgment debtor, may be served on an individual, corporation, partnership or sole proprietorship only if the judgment creditor or the judgment creditor’s attorney has a reasonable belief that the party receiving the subpoena has in their possession information about the debtor that will assist the creditor in collecting his or her judgment” (CPLR § 5224(a)(i)).

Here, service of the Subpoena on defendant’s attorney, rather than directly upon defendant itself, was defective (*AXA Equitable Life Ins. Co. v Epstein*, 29 Misc.3d 689, 692 [Sup Ct, NY County 2010]). In support of the motion, plaintiff’s counsel summarily states: “The Information Subpoena requested information about Defendant’s assets for purposes of recovering the amount owed to Plaintiff pursuant to the Judgment and is therefore highly relevant and critical to recovery of this Judgment” (NYSCEF Doc. No. 179, par. 11). Counsel does not detail the “highly relevant” information possessed by defendant’s counsel, including whether defendant’s counsel maintains the financial books and records of defendant or that defendant’s counsel was privy to information regarding the assets and liabilities of defendant, or possessed any other related financial documentation, which

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<sup>2</sup> “An information subpoena may alternatively be served pursuant to CPLR § 2303 ‘in the same manner as a summons.’ ” (*Jack Mailman & Leonard Flug DDS, PC v Belvecchio*, 195 Misc.2d 275, 276 [App Term, 2d Dept, 11th & 13th Jud Dists 2008]).

would assist with collecting the judgment. Without more, the record is devoid of evidence which would authorize service on defendant's counsel under CPLR § 5224(a)(3).

In any event, the manner of service was improper, as service was made by Federal Express rather than by registered or certified mail, return receipt requested, as required by CPLR § 5224(a)(3). Service also was not completed in the same manner as a summons and complaint, pursuant to any of the four methods of delivery permitted by CPLR § 308.


**Conclusion**

Accordingly, it is hereby

**ORDERED**, that plaintiff's motion (Seq. 06) for an order, pursuant to CPLR §§ 5224(a)(3)(iv) and 2308(b), compelling defendant to respond to plaintiff's Information Subpoena and Restraining Notice, dated April 18, 2025, is denied.

This constitutes the decision and order of the Court.

2025 SEP 12 A 10:51  
 KINGS COUNTY CLERK

ENTER  
  
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 J.S.C.

**HON. WAVNY TOUSSAINT**  
**J.S.C.**