

<b>ENL Global, Inc. v Dong Chen</b>
2025 NY Slip Op 35220(U)
September 11, 2025
Supreme Court, Kings County
Docket Number: Index No. 522507/2025
Judge: Francois A. Rivera
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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 11<sup>th</sup> day of September 2025

HONORABLE FRANCOIS A. RIVERA

-----X  
ENL GLOBAL, INC.,

Petitioner,

- against -

DONG CHEN,

Respondent.

-----X

**DECISION & ORDER**

Index No.: 522507/2025

Oral Argument: 9/11/2025

Cal. No.: 18

Ms. Seq. No.: 1

Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice petition filed on July 8, 2025, under motion sequence number by ENL Global, Inc (hereinafter the petitioner) for an order pursuant to t to CPLR § 5206(e), directing that the premises known as and located at 366 62nd Street, Brooklyn, New York 11220 (hereinafter the subject premises”), be sold and that the proceeds from the sale thereof in an amount not exceeding Two Hundred Four Thousand Eight Hundred Twenty-Five Dollars (\$204,825) be paid to the Respondent/Judgment Debtor DONG CHEN a/k/a DON CHEN in the event that Respondent is the owner of the said property at the time that the property is sold; b. The Judgment in favor of Petitioner in the principal sum of \$120,248.55, plus interest from January 14, 2025, be adjudged to be a lien upon the surplus, that the lien be enforced, and the surplus be applied to the Judgment held by Petitioner against Respondent/Judgment Debtor. The motion is unopposed.

- Notice of petition
- Petition
- Exhibits 1-3
- Affirmatio of service

**BACKGROUND**

On July 8, 2025, the petitioner commenced the instant special proceeding by filing a notice of petition, petition and accompanying papers (hereinafter the commencement

papers) with the Kings County Clerk's office (KCCO). On July 30, 2025, the petitioner filed an affidavit of service of the commencement papers on the respondent with the KCCO.

The petition alleges the following salient facts. On January 14, 2025, a judgment was entered in favor of petitioner and against the respondent Dong Chen in the sum of \$120,248.55 ("Judgment"), in the Supreme Court of the State of New York, County of Kings, in the action entitled "ENL Global, Inc. v. Dong Chen a/k/a Don Chen," Index No. 513504/2024. The said Judgment has not been satisfied, and no payments have been made against the Judgment.

Respondent Dong Chen owns a one-half interest in the premises known as and located at 366 62nd Street, Brooklyn, New York 11220 ("Premises"). Upon information and belief, the Premises are the residence of respondent/judgment debtor Dong Chen. As such, pursuant to CPLR § 5206(a), the said premises is subject to a homestead exemption not to exceed the sum of \$204,825. Besides the judgment held by petitioner, there are no other liens or mortgages on the Premises. The fair market value of the Premises far exceeds the homestead exemption amount, and there is sufficient equity in the Premises for it to be sold to satisfy or partially satisfy petitioner's judgment lien.

#### **LAW AND APPLICATION**

The instant petition is a proceeding pursuant to CPLR 5206€ to compel the sale of a homestead to satisfy a money judgment.

CPLR 5206(a) provides as follows:

(a) Exemption of homestead. Property of one of the following types, not exceeding one hundred fifty thousand dollars for the counties of Kings, Queens, New York, Bronx, Richmond, Nassau, Suffolk, Rockland, Westchester and Putnam; one hundred twenty-five thousand dollars for the counties of Dutchess, Albany, Columbia, Orange, Saratoga and Ulster; and seventy-five thousand dollars for the remaining counties of the state in value above liens and encumbrances, owned and occupied as a principal residence, is exempt from application to the satisfaction of a money judgment, unless the judgment was recovered wholly for the purchase price thereof:

1. a lot of land with a dwelling thereon,
2. shares of stock in a cooperative apartment corporation,
3. units of a condominium apartment, or
4. a mobile home.

CPLR Article 4 sets forth the rules governing special proceedings. CPLR 409 (b) provides in pertinent part that the court shall make a summary determination upon the pleadings, papers and admissions to the extent that no triable issues of fact are raised. Pursuant to CPLR 409 (b), in a special proceeding, where there are no triable issues of fact raised, the court must make a summary determination on the pleadings and papers submitted as if a motion for summary judgment were before it (*see Matter of Korotun v Laurel Place Homeowner's Assn.*, 6 AD3d 710, 711 [2d Dept 2004], citing *Matter of Friends World Coll. v Nicklin*, 249 AD2d 393 [2d Dept 1998]).

The affidavit of service of the commencement papers filed with the KCCO has alleged service as follows. On July 25, 2025, at 7:13 AM petitioner's process server affixed a true copy to the door of said premises located at 366 2<sup>nd</sup> Street, Brooklyn, New York, the same being the recipient's actual place of abode within the State of New York. The process server previously attempted to serve the respondent on July 12, 2025, at 8:55 AM, and on July 25, 2025 at 07:13 AM at that location. The process server completed service on July 25, 2025, by depositing of the papers in a postpaid, properly addressed

envelope by first class mail, bearing the legend Personal & Confidential and not indicating legal action, in an official depository under the exclusive care and custody of the United States Post Office in the State of New York.

CPLR 308 (4) permits service by “affix and mail” only where personal delivery or delivery to a person of suitable age and discretion “cannot be made with due diligence” (*see Sinay v. Schwartzman*, 148 A.D.3d 1068, 1070, 50 N.Y.S.3d 141 [2nd Dept. 2017]). “The requirement of due diligence must be strictly observed because there is a reduced likelihood that a defendant will actually receive the summons when it is served pursuant to CPLR 308 (4)” (*Serraro v. Staropoli*, 94 A.D.3d 1083, 1084, 943 N.Y.S.2d 201 [2nd Dept. 2012] *citing Kaszovitz v. Weiszman*, 110 A.D.2d 117, 120, 493 N.Y.S.2d 335 [2nd Dept. 1985] ).

A plaintiff may only resort to service pursuant to CPLR § 308(4) where service pursuant to CPLR § 308 (1) and (2) cannot be made with due diligence (*County of Nassau v Lotosky*, 34 AD3d 414 [2d Dept 2006]). Of the two attempts at service on the defendant one was made during the work week during normal business hours when it could reasonably have been expected that the defendant would either be working or be in transit to or from work (*see Earle v Valente*, 302 AD2d 353 [2d Dept 2003]). The affidavit of the plaintiff's process server, together with the papers submitted with the instant petition failed to demonstrate that the process server attempted to ascertain the respondent's business address and to effectuate personal service at that location, pursuant to the provisions of CPLR § 308(1) and (2) (*County of Nassau v. Long*, 34 AD3d 787 [2d Dept 2006]).

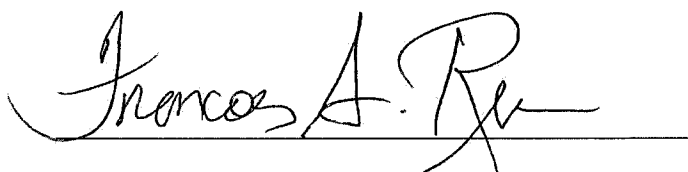
Having failed to demonstrate the exercise of due diligence before attempting service of the commencement papers pursuant to CPLR 308(4), the petition is denied for lack of personal jurisdiction over the respondent.

**CONCLUSION**

The notice of petition and petition by ENL Global, Inc for an order pursuant to CPLR § 5206(e), directing the sale of the subject premise to satisfy the outstanding judgment of the petitioner is denied, and the petition is dismissed.

The foregoing constitutes the decision and order of this Court.

ENTER:

  
J.S.C.

**HON. FRANCIS A. RIVERA**