Guarantee Co. of N. Am. USA v Xin Dev. Group Intl., Inc.
2026 NY Slip Op 31992(U)
May 7, 2026
Supreme Court, New York County
Docket Number: Index No. 654742/2023
Judge: Anar Rathod Patel
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 45

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THE GUARANTEE COMPANY OF NORTH AMERICA USA,

Plaintiff,

- v -

XIN DEVELOPMENT GROUP INTERNATIONAL, INC., XIN QUEENS HOLDING, LLC, QUEENS THEATRE HOLDCO, LLC, QUEENS THEATRE OWNER LLC,

Defendants.

INDEX NO. 654742/2023

MOTION DATE 02/12/2026

MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

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HON. ANAR RATHOD PATEL:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 166–174, 176–187 were read on this motion for CONTEMPT.

Plaintiff The Guarantee Company of North America USA (GCNA) ("Plaintiff") moves pursuant to Judiciary Law § 753 for an order (i) punishing Defendants, Xin Development Group International, Inc., Xin Queens Holding, LLC, Queens Theatre Holdco, LLC and Queens Theatre Owner LLC (collectively, "Defendants"), by fine or imprisonment, or either, for Defendants' contempt of the November 18, 2025 Decision and Order (NYSCEF Doc. No. 128) and the December 1, 2025 Supplemental Order (NYSCEF Doc. No. 137), requiring Defendants to deposit collateral funds in the amount of $3,092,100 with Plaintiff on or before December 18, 2025 (collectively, the "Collateral Deposit Orders"); and (ii) permitting Plaintiff to enforce the Collateral Deposit Orders, collectively, as if it were a money judgment; and (iii) granting Plaintiff its costs, expenses, legal fees, and disbursements incurred in making this motion.

Relevant Factual and Procedural History

Plaintiff brings this action against Defendants pursuant to an agreement of indemnity whereby Plaintiff issued certain "bonds, undertaking, and/or obligations of suretyship" on behalf of Defendants for a landmark preservation development project involving the RKO Theatre located at 135-35 Northern Boulevard, Flushing, New York (the "Property"). NYSCEF Doc. No. 181 at ¶¶ 5, 7 ("Zhang Aff."). On September 27, 2023, Plaintiff filed a summons and verified complaint seeking, as relevant here, specific performance compelling Defendants to deposit collateral security demanded by Plaintiff. *Id.* at ¶ 11.

On November 18, 2025, the Court issued a Decision and Order Plaintiff's Motion for Summary Judgment (Motion 003) ordering, *inter alia*, that Defendants, jointly and severally,

deposit $3,000,000.00 of collateral security with Plaintiff within thirty (30) days. NYSCEF Doc. No. 168 at 11 (11/18/25 Decision and Order). On December 1, 2025, the Court subsequently issued a Supplemental Decision and Order, ordering that Defendants, jointly and severally, deposit $3,092,100.00 of collateral security, instead of the previously ordered $3,000,000.00, with Plaintiff within thirty (30) days of the 11/18/25 Decision and Order to account for additional past-due premium payments that had been withdrawn from the collateral funds then held by Plaintiff. Zhang Aff. at ¶ 15; NYSCEF Doc. No. 170 (12/1/25 Supplemental Order, together with the 11/18/25 Decision and Order, "Orders"). On December 18, 2025, Defendants filed a letter seeking a 90-day extension to comply with the 12/1/25 Supplemental Order; the Court denied the request. NYSCEF Doc. No. 171 at 5–6 (12/25/23 Letter); NYSCEF Doc. No. 167 at ¶ 11 (Pius Aff.). It is undisputed that, to date, Defendants have not deposited any collateral security.

Defendants allege that they do not have the financial resources to comply with the Orders. They argue that due to a lack of cash, liquidity, and/or unencumbered assets, they are unable to offer either cash collateral or a letter of credit to satisfy the Court's Orders. NYSCEF Doc. No. 180 at 10 (Defs.' Opp'n); Zhang Aff. at ¶ 40. Defendants state that their assets principally consist of real property, which are either (1) encumbered with first lien mortgages; (2) generate no revenue; (3) generate revenue that is used for the payment of debt service; or (4) generate *de minimis* revenue "insufficient to satisfactorily serve as collateral." Defs.' Opp'n at 17. Defendants offer bank statements for each Defendant entity, which carry ending balances ranging from $482.82 to $3,624.70 during the period from November 2025 to February 26, 2026. Zhang Aff. at ¶ 19; NYSCEF Doc. Nos. 182–183 (Bank Account Statements). Defendants further advise that the Property's lender noticed a foreclosure sale scheduled for May 8, 2026. Zhang Aff. at ¶ 39. Plaintiff, however, asserts that Defendants are able to, at a minimum, deposit some cash collateral, and therefore partially comply with the Court's Orders. NYSCEF Doc. No. 187 at 5–6 (Pl.'s Reply). Plaintiff alleges that Defendants possess "substantial assets," including "subsidiary companies," which in turn own valuable real estate. *Id.* at 5. It is undisputed that one of the subsidiaries owns sixty-one parking spaces and eight motorcycle parking spaces in Brooklyn that generate monthly gross revenue of $25,197.00. *Id.* at 5; Zhang Aff. at ¶ 22.

Legal Discussion

"A motion to punish a party for civil contempt is addressed to the sound discretion of the court, and the movant bears the burden of proving contempt by clear and convincing evidence." *Matter of Hughes v. Kameva*, 96 A.D.3d 845, 846 (2d Dept. 2012); *Cassarino v. Cassarino*, 149 A.D.3d 689, 690 (2d Dept. 2017). The movant must establish that: (1) a lawful order of the court, clearly expressing an unequivocal mandate, was in effect, (2) the order was disobeyed and the party disobeying the order had knowledge of its terms, and (3) the movant was prejudiced by the offending conduct. *El-Dehdan v. El-Dehdan*, 26 N.Y.3d 19, 29 (2015); *see also* Judiciary Law § 753(A)(3). "Once the movant establishes a knowing failure to comply with a clear and unequivocal mandate, the burden shifts to the alleged contemnor to refute the movant's showing, or to offer evidence of a defense, such as an inability to comply with the order." *Toranzo v. Toranzo*, 185 A.D.3d 621, 623 (2d Dept. 2020). If a party is in civil contempt, a "court of record has power to punish, by fine and imprisonment." Judiciary Law § 753(A). In a civil contempt proceeding, a court has broad discretion to craft a remedy appropriate to the unique circumstances and facts in each action. There is a "large degree of discretion lodged in the court in the matter of punishing for a civil contempt, and as to conditions on which contempt may be purged. This

discretion may be exercised both as to inflicting or refusing to inflict punishment . . ." *In re Hildreth*, 28 A.D.2d 290, 291, 293 (1st Dept. 1967) (internal quotation omitted).

Here, Plaintiff satisfies the required elements of *El-Dehdan v. El-Dehdan.* First, it is undisputed that the Court issued lawful Orders on November 18, 2025, and December 1, 2025, ordering Defendants to deposit the required collateral security on, or before, December 18, 2025. Second, Defendants do not dispute their knowledge of the Court Orders, as evidenced by their December 18, 2025 letter to the Court requesting a 90-day extension to comply, nor do they dispute their failure to comply with the Court Orders. Finally, Plaintiff proves that it is "defeated, impaired, impeded, and prejudiced" by Defendants' failure to provide the collateral security upon demand, as Plaintiff's right to collateral security constitutes "an important and bargained-for part of [the] surety relationship" which Defendants have undermined by their failure to post the requisite collateral. NYSCEF Doc. No. 173 at 5–6 (Pl.'s Mem. of Law). Defendants do not provide any argument with respect to Plaintiff's satisfaction of these elements.[1]

Having established that Defendants are in civil contempt, the burden shifts to Defendants to offer evidence of a defense—here, proof that Defendants lack the resources to provide the collateral security to Plaintiff. *See Toranzo*, 185 A.D.3d at 623. Defendants do not claim their assets fail to generate *any* cash flow, but instead allege that the cash flow from existing assets is primarily intended for alternate purposes, such as debt service. Defs.' Opp'n at 17–18. Defendants also allege that the available cash generated from assets is insufficient to satisfy the $3,092,100.00 collateral security requirement. *Id.* "A hearing is required if the papers in opposition raise a factual dispute as to the elements of civil contempt, or the existence of a defense." *Id*. Accordingly, the Court directs a hearing to determine whether—and to what extent—Defendants are financially able to comply with the Court Orders by, for example, showing their gross cash flow, loan-to-value ratio of encumbered assets, and unencumbered assets of Defendant entities available for sale.

Plaintiff requests "upon the hearing of this matter, that Defendants be fined on a daily basis, imprisoned, or both until they comply with the Collateral Deposit Orders." Pius Aff. at ¶ 19. Plaintiff additionally requests post-hearing relief "permitting the issuance of restraining notices and the utilization of other enforcement devises [*sic*] provided in Article 52 of the CPLR." *Id.* at ¶ 19. The parties concede the authority of a court, on a finding of civil contempt, to craft remedies for Plaintiff pursuant to Judicial Law § 753(A)(3) and CPLR § 5104. The parties also do not dispute that a court does not have the authority to permit enforcement of a collateral deposit order under CPLR Article 52. Defs.' Opp'n at 19–21; Pl.'s Mem. of Law at 5. The broad enforcement mechanisms available to a party under Article 52 only apply to "money judgment[s] and an order directing the payment of money." CPLR § 5101. Separately, available remedies to aggrieved parties in non-money judgment cases occur through "order by contempt." CPLR § 5104.

Plaintiff, incorrectly, argues that a court can "convert" the existing Collateral Deposit Orders into money judgment orders, and thereby use the self-help enforcement provisions provided by Article 52. Pl.'s Mem. of Law at 7–8. Plaintiff does not provide any binding authority to

[1] While Defendants do assert that Plaintiff "failed to prove by clear and convincing evidence . . . that it has been actually prejudiced by Defendants' failure to deposit collateral security," Defendants fail to offer any explanation for how their failure to deposit the collateral—an obligation owed to Plaintiff under both the contract between the parties and this Court's orders—would not *ipso facto* entail prejudice to Plaintiff. Defs.' Opp'n at 15 n.8. Accordingly, the Court declines to credit this argument.

support this proposition. In its briefing, Plaintiff cites to one federal court order and three New York State Supreme Court orders that allegedly convert collateral deposit orders requiring specific performance into money judgment orders. However, Plaintiff misinterprets and therefore misapplies these cases, which do not involve the conversion of a collateral deposit order into a money judgment order. In *RLI Insurance*, Plaintiff avers that the Southern District of New York entered an order for specific performance with respect to collateral security and simultaneously allowed enforcement of the order under Article 52—thereby allowing the surety to enforce the collateral deposit order through all "means and methods" permitted under New York State law. *See* Pl.'s Mem. of Law at 7 (citing *RLI Ins. Co. v. Pro-Metal Constr., Inc.,* 18-cv-2762 (AJN), 2019 WL 1368851 (S.D.N.Y. March 26, 2019)). The unambiguous text of that court's subsequent order, however, is contrary to Plaintiff's assertion. The court in *RLI Insurance*, in an order issued shortly after the order cited by Plaintiff, denied the surety's request to enter the collateral deposit order as a money judgment because "[t]he Court did not award damages, as no claim for damages was at issue in the motions. . ." NYSCEF Doc. No. 186 (S.D.N.Y. April 10, 2019 Court Order).[2]

Here, Plaintiff does not report any draw, attempted or actual, by the obligee on the bond. As such, the Court will not consider the request by Plaintiff for a money judgment order or allow any enforcement of the collateral deposit orders pursuant to Article 52.

Accordingly, it is hereby

ORDERED that Plaintiff's The Guarantee Company of North America USA Motion for Civil Contempt (Mot. 005) as to Defendants Xin Development Group International, Inc., Xin Queens Holding, LLC, Queens Theatre Holdco, LLC, and Queens Theatre Owner LLC, for failure to comply with the Court's Orders, dated November 18, 2025, and December 1, 2025, by failing to deposit collateral security with Plaintiff on or before December 18, 2025, is GRANTED and Defendants are found to be in civil contempt of the aforementioned Orders; and it is further

ORDERED that the parties are directed to appear for a hearing as to the limited issues of: (1) Defendants' defense of inability of pay and therefore comply with Orders, (2) the appropriate imposition of civil contempt sanctions pursuant to Judiciary Law § 753(A)(3), and (3) Plaintiff's costs, expenses, legal fees, and disbursements incurred in making the instant motion; and it is further

ORDERED that parties and counsel shall appear in-person on **June 17, 2026, at 10:30 a.m.** in Courtroom 428, at 60 Centre Street for an evidentiary hearing as directed hereto. Parties are directed to comply with this Court's Part Rules at XI with respect to pre-hearing submissions.

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[2] *See also City of New York v. Am. Safety Casualty Ins. Co.*, New York Supreme Court, Index No. 450214/2012 at NYSCEF Doc. No. 82, Order of Judgment (court issued money judgment in favor of defendant against third-party to recover "penalties and restoration work" plus fees, in light of plaintiff's claim against defendant in which plaintiff sought to draw on the bond); *Atlantic Specialty Ins. Co. v. Keenwawa, Inc.*, New York Supreme Court, Index No. 650691/2024 at NYSCEF Doc. No. 35, Decision and Order (court enforced money judgment entered at NYSCEF Doc. 20 for *actual money damages incurred* by plaintiff after a draw on a bond posted by plaintiff; *see* Index No. 650691/2024 at NYSCEF Doc. No. 18); *Atlantic Specialty Ins. Co. v. Lynn R. Calvano et al.*, New York Supreme Court, Index No. 650912/2022 at NYSCEF Doc. No. 223 (defendant found in civil contempt when failing to comply with order to deposit collateral).

All proposed exhibits, exhibit charts, and proposed witness lists shall be uploaded to the Virtual Evidence Courtroom (VEC) seven (7) days prior to the hearing; and it is further

ORDERED that parties shall submit a joint letter on, or before, **May 18, 2026**, with respect to the status of the foreclosure sale of the Property and the resulting impact on this action.

The foregoing constitutes the Decision and Order of the Court.

Maty 7, 2026
DATE

ANAR RATHOD PATEL, A.J.S.C.

CHECK ONE:	X	**CASE DISPOSED**			**NON-FINAL DISPOSITION**		
		GRANTED		**DENIED**	X	**GRANTED IN PART**		**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**		
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**		**REFERENCE**