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2022-08-22

### Jinsheng Wang v. Impact Real Estate Mgt.

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#### Recommended Citation

"Jinsheng Wang v. Impact Real Estate Mgt." (2022). *All Decisions*. 554.  
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[\*1]

<b>Jinsheng Wang v Impact Real Estate Mgt.</b>
2022 NY Slip Op 50820(U)
Decided on August 22, 2022
Civil Court Of The City Of New York, Queens County
Guthrie, J.
Published by <a href="#">New York State Law Reporting Bureau</a> pursuant to Judiciary Law § 431.
As corrected in part through August 26, 2022; it will not be published in the printed Official Reports.

Decided on August 22, 2022

Civil Court of the City of New York, Queens County

<p><b>Jinsheng Wang, Petitioner,</b></p> <p><b>against</b></p> <p><b>Impact Real Estate Management, Respondent,</b> <b>and NEW YORK CITY DEPARTMENT OF HOUSING</b> <b>PRESERVATION AND DEVELOPMENT (DHPD), Respondent.</b></p>
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Index No. HP 36/22

Jinsheng Wang (pro se)  
Petitioner

Department of Housing Preservation and Development  
Housing Litigation Bureau  
100 Gold Street  
New York, NY 10038  
Respondent

Clinton J. Guthrie, J.

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of petitioner's order to show cause for civil contempt:

## **Papers Numbered**

Order to Show Cause & Affidavit Annexed 1-2

Proof of Service (Certificate of Mailing) 3

Inquest Exhibits (1-5) 4-8

Upon the foregoing cited papers and the inquest had thereon, the decision and order on petitioner's motion and directing punishment for civil contempt is as follows.

## **PROCEDURAL HISTORY**

Petitioner filed this HP action by order to show cause seeking correction of violations. The premises are located at 71-12 164th Street, Fl 2, Fresh Meadows, NY 11365. After respondent Impact Real Estate Management (hereinafter "Impact") failed to appear on March 18, 2022, the court issued an order to correct open violations on default. Subsequently, petitioner filed the instant order to show cause seeking civil contempt. On May 16, 2022, after Impact failed to appear, the court granted the order to show cause to the extent of setting it down for a hearing/inquest on June 3, 2022. On June 3, 2022, petitioner appeared and Impact again failed to appear. The inquest was adjourned to June 29, 2022 so that petitioner could collect evidence. On June 29, 2022, after Impact failed to appear, the court held an inquest and reserved decision upon its conclusion.

## **INQUEST**

Petitioner Jinsheng Wang was sworn in and testified with an official Mandarin interpreter. Mr. Wang testified that Impact did not repair any of the violations in the court's order to correct. The only repair, of a door, was undertaken by DHPD. Mr. Wang testified that he mailed to the order to Impact as required (the court took judicial notice of the certificate of mailing proof). Mr. Wang then introduced a series of exhibits. Exhibit 1, a Clickpay payment history, demonstrated, according to Mr. Wang, that he stopped making maintenance payments as of May 2021. Exhibit 2, a series of Uber payment statements, was introduced and Mr. Wang testified that they showed his earnings as a driver for Uber and what he lost in wages. Exhibit 3, a HomeGoods receipt, was introduced and Mr. Wang testified that it was for rugs to address water leakage and damage to his floor. Exhibit 4, a DVE Construction Inc. estimate, was introduced and Mr. Wang testified that it procured as an estimate for possible repairs but that the work was not done and the company was not paid. Finally, Exhibit 5, Uber ride records, were introduced and Mr. Wang testified that they showed the money he had paid to travel to court on relevant court dates. The court admitted

all the exhibits without objection and the inquest concluded.

## DISCUSSION

Under Judiciary Law § 753, a court of record has the power to punish, by fine and imprisonment, or either, "a neglect or violation of duty, or other misconduct, by which a right or remedy of a party to a civil action or special proceeding, pending in the court may be defeated, impaired, impeded, or prejudiced." [\*See generally El-Dehdan v. El-Dehdan\*, 26 NY3d 19](#), 28-29 [2015]. A civil contempt is "one where the rights of an individual have been harmed by the contemnor's failure to obey a court order." *Dept. of Env'tl. Protection v. Dept. of Env'tl. Conservation*, 70 NY2d 233, 239 [1987]. For civil contempt to lie, "it must be established that the rights of a party to the litigation have been prejudiced." *Id.* at 239. Furthermore, "[t]o sustain a finding of civil or criminal contempt based on an alleged violation of a court order it is necessary to establish that a lawful order of the court clearly expressing an unequivocal mandate was in effect [and] appear with reasonable certainty that the order has been disobeyed." *Id.* at 240. Finally, "the party charged must have had knowledge of the court's order." *Id.* at 240. The elements of civil contempt must be demonstrated by clear and convincing evidence. *See El-[\*2]Dehdan*, 26 NY3d at 29.

The court finds that all elements of civil contempt have been demonstrated by clear and convincing evidence. This court's order to correct on default included an unequivocal mandate to correct all open violations referenced therein, within the timeframes of the Housing Maintenance Code. Based on petitioner's un rebutted testimony and the court's judicial notice of the continued existence of the violations on the DHPD website (*see* Multiple Dwelling Law § 328(3)), the court finds that it appears with reasonable certainty that the default order to correct was disobeyed by Impact. The court also finds that Impact had knowledge of the court order, upon petitioner's showing of proof that he timely served the order upon Impact at the address included in the order. [\*See Matter of Lisa T. v. King E.T.\*, 30 NY3d 548](#), 556 [2017]. Finally, petitioner established that his rights have been prejudiced by Impact's disobedience of the default order to correct. He testified and submitted evidence showing that he has had to incur additional expenses to deal with the conditions that are the source of the relevant violations. The violations themselves also corroborate the existence of prejudice, insofar as they are prima facie evidence of a water leak and related damages in petitioner's apartment. *See Dept. of Hous. Preserv. & Dev. v. Knoll*, 120 Misc 2d 813, 814 [App Term, 2d Dept 1983].

## CIVIL CONTEMPT PUNISHMENT

Having determined that Impact is in civil contempt of the court's March 18, 2022 order to correct, an appropriate civil contempt punishment must be imposed. *See* Judiciary Law § 753. A civil contempt penalty must be "designed not to punish but, rather, to compensate the injured private party or to coerce compliance with the court's mandate or both." *Dept. of Env'tl. Protection*, 70 NY2d at 239. The court refrains from imposing imprisonment on this record, although the court can consider further penalties in the event of continued disobedience. [\*See Wenig Saltiel & Johnson, LLP v. Yeshiva Ktana of Bensonhurst\*, 55 Misc 3d 126](#)[A], 2017 NY Slip Op 50336[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2017].

In lieu of imprisonment, the court will impose a fine. Judiciary Law § 773 sets out the fines to be imposed upon a contempt finding. If "actual loss or injury" is proven, the fine will be in the amount of said loss or injury. "Where it is not shown that an actual loss or injury has been caused, a fine may be imposed, not exceeding the amount of the complainant's costs and expenses, and two hundred fifty dollars in addition thereto, and must be collected and paid, in like manner." The court finds that petitioner established actual monetary losses due to Impact's disobedience of the court's order. Petitioner's losses, as demonstrated at the inquest and upon credible testimony, amount to \$806.26, broken down as follows: \$28.87 for travel to and from court on May 2, 2022 (Uber rides), \$79.99 for rugs purchased as a result of the water damage to petitioner's floor at HomeGoods in May 2022, and \$697.40 in lost wages because of court appearances necessitated by Impact's disobedience of the March 18, 2022 order.<sup>[FN1]</sup> Although petitioner also seeks compensation for maintenance, whether paid or unpaid, he has not shown that he paid any maintenance at the time that the March 18, 2022 order was in effect, so no [\*3] actual loss has been demonstrated with regard to the maintenance. For the same reason, the court declines to impose costs of estimated repairs, insofar as petitioner did not present evidence that any costs were expended for repairs. *See e.g. State v. Unique Ideas, Inc.*, 44 NY2d 345, 349 [1979] ["The [civil contempt] award must be formulated not to punish an offender but solely to compensate or indemnify private complainants"].

## CONCLUSION

Accordingly, upon the findings made herein, it is ORDERED and ADJUDGED that the court will impose a fine of \$806.26, to be entered as a judgment in favor of Jinsheng Wang and against Impact Real Estate Management, as a punishment for civil contempt pursuant to

Judiciary Law §§ 770 and 773. Upon full payment of the fine imposed herein and correction of all violations referenced in the March 18, 2022 order, respondent Impact Real Estate Management shall be purged of civil contempt.

A copy of this Decision/Order is being emailed to petitioner and to DHPD's attorneys. Petitioner shall serve a copy of this order upon respondent **Impact Real Estate Management** at 3030 Northern Boulevard, Suite 402, Long Island City, NY 11101, by **first class mail with certificate of mailing** on or before August 29, 2022. Proof of service of the Decision/Order shall be provided with any future relief is sought by petitioner. The court is also mailing a copy of this Decision/Order to respondent Impact Real Estate Management.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: August 22, 2022  
Queens, New York  
So Ordered,

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CLINTON J. GUTHRIE, J.H.C.

### Footnotes

**Footnote 1:** The proof of lost wages consisted of Uber payment statements for four (4) consecutive weeks. The court takes the average weekly earnings, \$2,440.86, and divides that by 14, which corresponds to each half-day component (Mr. Wang testified that he lost a 1/2 day's wages for each appearance), which equals \$174.35. This amount is multiplied by 4 (the number of court appearances post-issuance of the March 18, 2022 order).

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