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### Department of Hous. Preserv. & Dev. v. Stark

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**Department of Hous. Preserv. & Dev. v Stark**

2022 NY Slip Op 33590(U)

October 18, 2022

Civil Court of the City of New York, Kings County

Docket Number: Index No. 301983/22

Judge: Remy Smith

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS: PART B

-----X  
DEPARTMENT OF HOUSING PRESERVATION  
AND DEVELOPMENT,

Petitioner,

Index No.301983/22

-against-

DECISION/ORDER  
*Remy Smith, J.H.C.*

ARON STARK a/k/a ARI STARK,  
GREENE RESIDENCE LLC and  
MOSHE DEUTSCH,

Respondents.

-----X  
Hon. Remy Smith

Recitation pursuant to CPLR §2219 of the papers considered on this contempt motion:

Petitioner’s Notice of Motion and supporting papers . . . . .	1
Respondent’s Opposition . . . . .	None

Petitioner seeks a finding of contempt because respondents landlords violated this court’s Order dated March 25, 2022 that required respondents landlords to repairs conditions and pay a penalty of \$212,455.00 for failure to timely correct the violations (NYSCEF Doc. 25).

Respondents failed to appear or answer. Petitioner served the Order and the money judgment with a Notice of Entry on respondents on March 28, 2022 (NYSCEF Docs. 28 & 29). Petitioner now alleges that respondents have not corrected the violations or paid the penalties and therefore it seeks a finding of civil and criminal contempt against them. The Order to Show Cause seeking contempt was properly served (NYSCEF Doc. 63).

To sustain her burden required for this court to hold respondents in civil contempt, petitioner must show by clear and convincing evidence “(1) that a lawful order of the court, **clearly expressing an unequivocal mandate**, was in effect, (2) that the order was disobeyed and

the party disobeying the order had knowledge of its terms, and (3) that the **movant was prejudiced** by the offending conduct”. El-Dehdan v. El-Dehdan, 114 A.D.3d 4, 978 N.Y.S.2d 239 (App Div 2<sup>nd</sup> Dept, 2013) (internal quotation marks omitted), *affd* 26 N.Y.3d 19, 19 N.Y.S.3d 475, 41 N.E.3d 340 (2015) (emphasis added).

The March 25, 2022 Order clearly and unequivocally set forth that respondent landlord is to repair. The Order was served by HPD at all addresses utilized by respondent. That the Order was issued on default does not militate against finding that respondent landlord is charged with its awareness. El-Dehdan supra.

Petitioner has also satisfied the third prong of civil contempt in that the existence of violations is necessarily prejudicial. See Various Tenants of 446-448 W. 167<sup>th</sup> St. v. N.Y. City DHPD, 153 Misc.2d 221 (1<sup>st</sup> Dep’t 1992).(existence of violations necessarily and *ipso facto* prejudices the petitioner under these circumstances in that said conditions violate the Housing Maintenance Code and fall short of the housing standards). The record supports a finding that the violations still exist, and this is supported by evidence submitted in the tenant action for this building. Index No. 311827/21. This court therefore grants petitioner’s motion and holds respondents in civil contempt of the court’s Order dated March 25, 2022 for failure to correct HPD violations referenced therein. The court awards the statutory fine of \$250.00 and issues a bench warrant as set forth below. The court does not impose the *per diem* fine requested by petitioner because it already has its own penalty schedule and can seek additional fines under the Housing Maintenance Code without resort to Judiciary Law.

Substitute service is sufficient to confer jurisdiction on this Court. See Department of Hous. Preservation V. 24 West 132 Equities, Inc., 1986 N.Y. Misc. LEXIS 3152 (Sup. Ct. App.

Term 1<sup>st</sup> Dep't 1986), wherein the court upheld "affix & mail" service of a contempt motion, stating that "[i]n the particular context of contempts not committed in the immediate presence of the court, it is frequently the case that those who have flagrantly violated the court's orders are not disposed to make themselves readily available for personal delivery of notice that they are to be prosecuted for contempt of those orders. The method of service employed in this proceeding, one of the methods delineated in the statute governing service in civil actions generally, was one reasonably calculated under all the circumstances to apprise respondent of the pendency of the action." Likewise, respondents have never appeared in this case and the court is satisfied that substitute service on a person at all relevant addresses is "personal service" such that the court has personal jurisdiction over said respondents Stark and Deutsch.

However, petitioner did not establish that the violation of the court order was sufficiently wilful or contumacious to rise to the level required to prove criminal contempt. The purpose of criminal contempt is solely to protect the integrity of the judicial process and to punish the contemnor for failure to obey a court order. Patchogue Realty Assocs. v. Pet Time Ventures, No. 614012/2020, 2022 N.Y. Misc. LEXIS 4593 (Sup. Ct. Jan. 11, 2022). A finding of criminal contempt requires the elements set forth above except that rather than a showing of prejudice to the movant, there must be willfulness of the subject. Such willfulness cannot be ascertained at this time.

That said, incarceration on civil contempt is available to petitioner and therefore this court issues a warrant for the arrest of Moshe Deutsch and Aron a/k/a Ari Stark. A period of incarceration may be imposed upon a finding of either a criminal or civil contempt. When a period of incarceration is imposed, what distinguishes a criminal contempt from a civil contempt

is, in part, the purpose for which the incarceration is imposed. Matter of Rubackin v. Rubackin, 2009 NY Slip Op 1488, 62 A.D.3d 11, 15, 875 N.Y.S.2d 90, 93 (App. Div. 2nd Dept.). If the incarceration is to garner compliance with the Order violated, the contempt is civil and the “civil contemnor is said to hold the keys to the prison.” Rubackin. The respondents can purge the civil contempt by either completing the repairs or demonstrating that doing so is impossible.

Riverside Capital Advisers, Inc. v. First Secured Capital Corp., 2008 NY Slip Op 10146, 57 A.D.3d 870, 870 N.Y.S.2d 114 (App. Div. 2nd Dept.). The court concludes, however, that it must impose this remedy in order to secure compliance with the March 25, 2022 Order to complete repairs.

Based on the foregoing, in addition to an award of \$250.00 in petitioner’s favor with a judgment against the respondents, the court issues a Warrant of Commitment for Moshe Deutsch and Aron a/k/a Ari Stark as well as a Contempt Order and Judgment against all respondents. The court will forward same to the appropriate entities.

The foregoing is the Decision/Order of this court and the clerk is directed to enter judgment accordingly.

Dated: Brooklyn, New York  
October 18, 2022

BY:   
Remy Smith, J.H.C.