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### Beam v. AC Marketing Corp.

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

-----X  
ANTHONY BEAM, STEPHEN INGRAM, and  
DANIEL CANADA

Petitioners,

INDEX NO. 300728-21/KI

-against-

**DECISION/ORDER**

CATHY GHUZLAN, AC MARKETING CORP.

DEPARTMENT OF HOUSING PRESERVATION  
AND DEVELOPMENT

Respondents.

-----X  
**Sergio Jimenez, Judge:**

Recitation, as required by C.P.L.R. § 2219(a), of the papers considered in review of this motion.

**Papers Numbered**

|   |                   |
|---|-------------------|
| Order to Show Cause with affidavits and exhibits (Seq. 1).....    | 1 (NYSCEF #9-11)  |
| Notice of Cross-Motion with affidavits and exhibits (Seq. 2)..... | 2 (NYSCEF #13-21) |
| Affirmation in Reply with exhibits.....                           | 3 (NYSCEF #22-29) |

Petitioners commenced this special proceeding seeking correction of housing maintenance code violations, finding of harassment, civil penalties and compensatory damages pursuant to Section 27-2005[d] of the Administrative Code of the City of New York in connection to various apartments at 2469 Bragg Street Brooklyn, NY 11219 (“premises”) by order to show cause with petition dated February 23, 2021 and initially returnable on April 4, 2021. Respondents failed to appear, and an inquest was held on May 14, 2021. Hon. Kimberly Slade issued an order after inquest dated May 21, 2021 finding proper service was effectuated, violations of the Housing Maintenance Code<sup>1</sup>, and issuing an order to correct violations of record and ordering respondents to cease harassment of petitioners<sup>2</sup>. Petitioners thereafter filed a motion

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1 The violations were issued by the court and thus do not appear on HPD’s website.  
2 The May 21, 2021 did not make a formal finding of harassment.

seeking civil contempt, damages and fees dated November 18, 2021 based on respondent's failure to comply with the May 21, 2021 order. Respondents thereafter appeared by counsel and filed a cross-motion dated February 16, 2022 seeking dismissal of the proceeding for lack of personal jurisdiction, or alternatively vacating respondents' default and allowing respondents to file an answer. Petitioners filed written reply in support of their order to show cause seeking civil contempt and opposing respondents' cross motion. The court heard oral argument on both motions on April 29, 2022 and reserved decision.

### **Respondents' Cross-Motion**

As issues of jurisdiction must be dealt with first, the court will first address respondents' cross motion prior to contempt. (*Elm Mgmt. Corp. v. Sprung* 33 A.D.3d 753 [App. Div. 2<sup>nd</sup> Dept. 2006]). Respondents' cross-move for dismissal of the proceeding based on lack of personal jurisdiction, first arguing petitioners were required to serve process of this proceeding in accordance with CPLR § 308 and their failure to do so renders the proceeding defective. Alternatively, respondents argue that the address used for service, despite it being on the last properly registered address with HPD, is incorrect claiming petitioners' counsel has "actual knowledge<sup>3</sup>" that respondents "do not reside there<sup>4</sup>" without explaining any further detail; and that petitioners' use of one envelope for both respondents render service improper.

Respondents do not cite to any relevant case law which requires compliance with CPLR § 308 service in a summary housing part action. Claiming that special proceedings are governed by CPLR § 403(c), respondents argue service must be complete according to the due diligence standard under CPLR § 308. However, it is well settled that service of pleadings in an HP proceeding is governed by the New York City Civil Court Act §110, which specifically states:

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<sup>3</sup> See respondents' cross motion at ¶17.

<sup>4</sup> See respondents' cross motion at ¶17.

Service of process shall be made in the manner prescribed for actions or proceedings in this court, except where the manner of such service is provided for in the housing maintenance code of the administrative code of the city of New York, such service may, as an alternative, be made as therein provided. N.Y.C. C.C.A. § 110(m)(1)

Further, N.Y.C. Admin. Code 27-2115(j) allows for service by certified mail, return receipt requested. (“If a tenant seeks an order directing the owner and the department to appear before the court pursuant to subdivision (h) or (i) of this section, the court may allow service of the order by the tenant by certified or registered mail, return receipt requested.”) Respondents’ assertion that service here is defective is not supported by relevant law, and this portion of respondents’ cross-motion is denied.

Respondents next argue that the petition should be dismissed because the address used for service is improper, seeming to argue that where respondents “reside” is where service of process is required, and making conclusory allegations that petitioners’ counsel had “actual knowledge” of respondents’ addresses, without providing further detail<sup>5</sup>. Here, petitioners served respondents at their last known address registered with DHPD, 2469 Bragg Street Brooklyn, New York 11219<sup>6</sup>, appearing on their registration which lapsed in September 2019. It is well-settled that service in an HP proceeding is proper at the address registered with DHPD on the multiple dwelling registration (“MDR”). Where a property owner has failed to keep registration current, courts have found service to be proper where effectuated at the address found on the last filed MDR, even where expired. (*See Vargas v 112 Suffolk St. Apt. Corp.*, 66 Misc. 3d 1214[A] [Civ. Ct. NY Co. 2021]; *See Also Dep’t of Hous. Pres. & Dev. of City of NY v. 373 8th St. Realty*, 35 Misc.

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<sup>5</sup> See respondents’ cross-motion at ¶17.

<sup>6</sup> See petitioners’ affirmation in reply at Ex. A

3d 147(A) [App. Term 2nd Dept. 2012]). Moreover, failure to comply with the registration requirements of MDL §325 deprives a defaulting party in an HP proceeding from demonstrating the reasonable excuse needed to vacate a default judgment. (*Dep't of Hous. Pres. & Dev. of City of NY v. 373 8th St. Realty*, 35 Misc. 3d 147(A) [App. Term 2nd Dept. 2012]). Thus, respondents' argument that the address used for service is improper when service was effectuated at the last registered DHPD address is insufficient to rebut service.

Respondents finally argue that the petition should be dismissed because service in a single envelope on both respondents is defective "as a matter of law," without citing to any specific case law, statutes, or regulations. The affidavit of service reveals that respondents' assertion is correct, and service was effectuated to both respondents in one envelope<sup>7</sup>. It is well settled that "a properly executed affidavit of service gives rise to a presumption of valid service" (*Sutton Place Restaurant and Bar, Inc. v Garnett*, 20 Misc 3d 1104[A] [2008]). Generally, service pursuant to CPLR § 308 upon a natural person, and pursuant to CPLR § 311 upon a corporation, is sufficient on both a natural person and a corporation where a named officer of the corporation is served with a single summons and complaint. (*See Port Chester Elec. Co. v Ronbed Corp.*, 28 AD2d 1008, 284 N.Y.S.2d 9 [App. Div. 2nd Dept. 1967]). Where, as here, the standard for service is significantly reduced from the "due diligence" standard in the CPLR, to only certified mail, return receipt requested as set forth in N.Y.C. Admin. Code 27-2115(j), it follows that the same principal holds in an HP proceeding. Therefore, under this set of facts, service of one petition within the same envelope is sufficient upon both respondents.

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<sup>7</sup> See NYSCEF Document #5.

Alternatively, petitioners argue that their default should be vacated pursuant to CPLR § 5015(a)(1) because they have presented an excusable default and a meritorious defense to the proceeding. Respondents make the same arguments pertaining to service as set forth above to demonstrate an excusable default. The service issues raised by respondents do not meet the standard under CPLR 5015(a)(1). As stated *supra*, "a properly executed affidavit of service gives rise to a presumption of valid service" (*Sutton Place Restaurant and Bar, Inc. v Garnett*, 20 Misc 3d 1104[A] [2008].) Moreover, service was found proper by order of Hon. Kimberly Slade after inquest on May 14, 2021. Respondents' conclusory statements that service is "improper" are insufficient to rebut the presumption of proper service (*See Dep't of Hous. Pres. & Dev. of City of NY v. 373 8th St. Realty*, 35 Misc. 3d 147(A) [App. Term 2nd Dept. 2012]). Further, respondents' argument that the address on the respondents' last registered MDR with DHPD is incorrect is unavailable here, as petitioners' reliance on the last MDR for service has been found proper, and respondents may not now use their failure properly register the premises to avoid service. (*See Id.*)

Finally, even if respondents raised an excusable default, they do not present a meritorious defense to the proceeding. Respondents allege by conclusory statement that one of the three petitioners, Daniel Canada, herein surrendered and vacated the premises. Notably, respondents do not allege and do not present a surrender agreement. Moreover, the court takes judicial notice of respondent AC Marking Corp.'s holdover proceedings against all three petitioners, consolidated under index number L&T 74697-19/KI. There is no indication that the holdover proceeding has been discontinued against petitioner Canada, and therefore respondents must understand petitioner Canada maintains at least

legal possession of the premises, even if physical possession is in dispute. Thus, respondents' conclusory statements do not sufficiently allege a meritorious defense to this action.

Therefore, petitioners' cross motion seeking dismissal, or in the alternative vacatur of the default judgment and permission to file an answer is denied.

### **Petitioners' Motion for Civil Contempt**

Turning to petitioners' motion for civil contempt, petitioners seek a finding of contempt and associated fines, civil penalties, and resulting legal fees based on respondents' failure to comply with the inquest order dated May 21, 2021 ("May 2021 order"). The moving party bears the prima facie burden of proof to obtain the relief sought. (*Matter of Stop & Shop Cos. Inc. v. Assessor of the City of New Rochelle*, 32 Misc.3d 496 [Sup. Ct. Westchester Co, 2011]). Civil contempt has four elements. "First, it must be determined that a lawful order of the court, clearly expressing an unequivocal mandate, was in effect. Second, [i]t must appear, with reasonable certainty, that the order has been disobeyed. Third, the party to be held in contempt must have had knowledge of the court's order, although it is not necessary that the order actually have been served upon the party. Fourth, prejudice to the right of a party to the litigation must be demonstrated." (*El-Dehdan v. El-Dehdan*, 26 N.Y.3d 19 [2015]; citing, *Matter of McCormick v. Axelrod* 466 N.Y.S.2d 279 [1983]). The movant bears the burden of establishing contempt with clear and convincing evidence. (*El-Dehdan* 26 N.Y.3d 19 at 29; citing, *Graham v. Graham*, 543 N.Y.S.2d 735 [App. Div. 2d Dept 1989]; *Tener v. Cremer* 931 NYS2d 552 [App. Div. 1st Dept 2011]; *Town of Copake v. 13 Lackawanna Props., LLC*, 900 N.Y.S.2d 508 [App. Div. 3d 2010]). Respondents do not substantively

oppose the order to show cause for contempt, nor do they allege any work has been done at the premises, rather arguing exclusively for dismissal of the proceeding or vacatur of the default judgment. It cannot be disputed that the May 2021 order was a lawful, unequivocal order, currently in effect. Respondents had notice of the order based on petitioners' filed affirmation of service with their notice of entry<sup>8</sup>. Petitioners argue the order was disobeyed and that they have suffered prejudice as a result based on respondents sworn affidavits and photos annexed to their motion.

The court credits two petitioners' sworn affidavits stating that no work has been done at the premises since the May 2021 inquest order and that the violations persist, only Anthony Beam and Stephen Ingram. The court will not consider the affidavit of Daniel Candad as presented, as it was sworn to on February 22, 2021, prior to the court's May 2021 order. The court further finds that prejudice exist where petitioners have lived with the conditions as described. Thus, the court finds respondents in contempt of the May 2021 order. Associated fines are assessed in the amount of \$250 each, for a total of \$500, to petitioner Anthony Beam and Stephanie Ingram separately. Petitioners' request for fines of \$1250 is denied as Judiciary Law § 773 does not provide for individualized fines per directive in a single order.

As to civil penalties, unquestionably, the time to correct the conditions as listed in the May 2021 order has lapsed and no defense to penalties has been asserted. Thus, civil penalties are appropriate. However, civil penalties are denied with leave to renew with proposed calculations from either petitioners or DHPD.

Petitioners' request for legal fees is denied with leave to renew by motion seeking

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<sup>8</sup> See NYSCEF Document #8.



a hearing.

Finally, respondents shall correct violations as listed in the May 2021 order for only petitioners Anthony Beam and Stephen Ingram's apartments, as petitioners have failed to show repairs are still necessary as to petitioner Daniel Canada, "C" violations within 7 days of the date of this order, "B" violations within 30 days from the date of this order, and "A" violations within 60 days from the date of this order. Respondents shall provide 24 hours' notice for access. For purposes of further contempt, the May 2021 order remains in effect.

IT IS ORDERED AS FOLLOWS:

Respondents' cross-motion is denied in its entirety.

Respondents are found in civil contempt of court pursuant for disobeying the May 21, 2021 order. Respondents shall pay \$250 to petitioner Stephen Ingram by June 15, 2022. Respondents shall pay \$250 to petitioner Anthony Beam by June 15, 2022. Upon default in payment, petitioners may restore the matter to the court's calendar by order to show cause seeking appropriate relief.

Petitioners' request for civil penalties is denied with leave to renew with proposed calculations.

Petitioners' request for legal fees is denied with leave to renew by motion seeking a hearing.

Respondents shall correct violations as listed in the May 2021 order, "C" violations within 7 days of the date of this order, "B" violations within 30 days from the date of this order, and "A" violations within 60 days from the date of this order. Respondents shall provide 24 hours' notice for access. The May 2021 order remains in

effect. This order is without prejudice to petitioners' right to seek further contempt of court against respondents. Respondents may seek additional time to complete repairs by order to show cause which the court will entertain on good cause shown.

This constitutes the Decision/Order of the Court, which is uploaded to NYSCEF.

Dated: Brooklyn, New York  
May 26, 2022

*Sergio Jimenez*  
**Judge, Housing Court**  

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*Sergio Jimenez, J.H.C.*

TO:

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