

SCAN

SHORT FORM ORDER  
SUPREME COURT - STATE OF NEW YORK

Present:  
**HON. BRUCE D. ALPERT**

Justice  
TRIAL/IAS, PART 4  
NASSAU COUNTY

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DYNAIRE SERVICE CORP.,

**Motion Sequence No. 3**

Plaintiff,

Index No. 12257/03

-against-

MOTION DATE: February 9, 2005

J. P. FENDT CONSTRUCTION &  
DEVELOPMENT CORP.,

Defendant.

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The following papers read on this motion to punish:

Notice of Motion	X
Supporting Affidavit	X

Upon the foregoing papers it is ordered that this unopposed application by the plaintiff/judgment creditor to punish the defendant/judgment debtor and its CEO, John Peter Fendt a/k/a John P. Fendt, for the failure to attend a deposition and produce various records, pursuant to subpoena, is granted to the extent hereinafter set forth, and in all other respects the application is denied.

The defendant/judgment debtor may purge the contempt by submitting to deposition at room 05 lower level of this Court on April 21, 2005, at 9:30 a.m., by producing thereat the records delineated within the subpoena previously served and by paying a fine in the sum of \$250 and costs, inclusive of counsel fees, in the additional sum of \$750. (see, Quantum Heating Services Incorporated v Austern, 100 AD2d 843; Bennett Brothers, Inc. v Floyd Bennett Farmers Market Corporation, 16 AD2d 897 [1st Dept.])

The fine imposed and costs assessed are to be paid at or before the scheduled deposition by certified check, bank check or money order, which shall be made payable to the plaintiff/judgment creditor and its attorney.

In the event the defendant/judgment debtor does not appear, produce and/or pay the fine imposed and costs assessed as directed herein, further application may be made to this Court for additional sanctions.

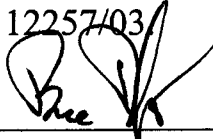
Moving counsel shall serve a copy of this Order upon the defendant/judgment debtor at least fifteen (15) days prior to the scheduled deposition. Such service shall be effectuated in the same manner as service of process.

The prayer to find the defendant's CEO in contempt is denied. Though his status as a non-party is not, standing alone, insulating (see, Walter Doors v Greenberg, 151 AD2d 550, 551), the movant has not demonstrated that the subject officer was aware of the terms of the underlying Order and had been personally served with the instant motion papers.

(see, Citibank, N. A. v Anthony Lincoln-Mercury, Inc., 86 AD2d 828, 829)

This concludes all proceedings under index number 12257/03

Dated: March 21, 2005

  
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J.S.C.

**ENTERED**  
MAR 23 2005  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE