

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. JOSEPH COVELLO

Justice

CHECKER GLASS CORP., Individually and on
behalf of all Lienors, Claimants or Creditors for
work and / or materials due and owing in connection
with the construction and improvement of certain
real property described herein,

Plaintiff,

-against-

NTX INTERIORS, INC., ILYA LEON ASANOVICH
a/k/a ILYA L. ASANOVICH, EDGAR RENOVALES
a/k/a EDGAR RENOVALEV, ROBERT W. RUDD,
MICHAEL STEVEN WILLIAMS a/k/a
STEVEN WILLIAMS and JOHN DOE 1 - 10,

Defendants.

TRIAL/IAS, PART 22
NASSAU COUNTY

Index No.: 5000/04

Motion Seq. No.: 03, 04, 05

Motion Date: 05/06/05

The following paper read on this motion:

Notice of Motion / Order to Show Cause	x x
Notice of Cross-Motion	x
Affirmation in Opposition	x x
Reply	x x
Memorandum of Law	x

Upon the foregoing papers, the motion brought by Order to Show Cause by the law firm of Platzer, Swergold, Karlin, Levine, Goldberg & Jaslow, LLP. (Platzer), pursuant to CPLR §321, for an order permitting it to withdraw as counsel for defendant, NTX Interiors, Inc. (NTX), in the above captioned action and to stay all proceedings for a period of thirty (30) days to enable NTX to obtain new counsel, is determined as set forth herein.

The cross-motion by the law firm of Raice, Paykin, Greenblatt, Lesser & Kreig,

Checker v NTX

LLP. (Raice), pursuant to CPLR §321, for an order permitting it to withdraw as counsel for defendants, Ilya Asanovich (Asanovich) and Edgar Renovales (Renovales), in the above captioned action and to stay all proceedings for a period of thirty (30) days to enable Asanovich and Renovales, to obtain new counsel, is determined as set forth herein.

The motion for Contempt brought by Order to Show Cause by plaintiff, Checker Glass Corp. (Checker), for an Order holding defendants, NTX, Asanovich and Renovales, in contempt for failing to comply with the Orders of this Court dated October 13, 2004, January 19, 2005 and March 9, 2005, by failing to produce records of NTX relating to the construction referred to in the complaint, appear for pre trial depositions etc., is determined as set forth herein.

Movants, the law firms of Platzer and Raice, assert that their requests to be relieved from representing the defendants, NTX, Asanovich and Renovales (respectively), in this action are due to the failure of their clients to cooperate and assist counsel in the defense of this action, failure to provide documents necessary to respond to discovery demands and Orders, and failure of the clients to pay for legal services rendered.

Plaintiff, Checker, opposes the motions by Platzer and Raice to be relieved as counsel for the defendants in this action and moves for an Order declaring the corporate defendant, NTX, and the individual defendants, Asanovich and Renovales, in Contempt

Checker v NTX

as they have failed to comply with discovery demands and the Orders of this Court dated October 13, 2004, January 19, 2005 and March 9, 2005. Plaintiff further asserts that defendants' counsel have also failed to provide demanded information in their possession.

Movants, Platzer and Raice, assert that their failure to provide discovery responses was due to the lack of cooperation of their clients. It is also asserted that the defendants are not able to obtain access to the demanded documents and information as defendant, NTX, was locked out of its premises by its landlord and as NTX could not pay the storage fees where documents were placed. Movants assert that they do not have possession of demanded information.

Contempt is a drastic remedy, not obtainable absent a clear showing of entitlement (see *Pinto v. Pinto*, 120 AD2d 337, First Dept., 1986). Prior to such an adjudication a hearing is required. Based upon the competing contentions of the parties and their counsel the Court cannot make a determination with regard to the plaintiff's motion for contempt in the absence of a hearing.

It is undisputed that the defendants have failed to comply with plaintiff's discovery demands and the Orders of this Court. However, an issue exists as to whether the defendants and / or their attorneys failure to comply was willful and not due to the unavailability of the documents and information. Accordingly, a hearing is necessary to

Checker v NTX

determine whether the documents and information is unavailable, or whether the defendants and / or their attorneys' failure to comply with the plaintiff's discovery demands and the Orders of this Court were willful. Therefore, it is hereby

ORDERED, that the motion by the law firm of Platzer, Swergold, Karlin, Levine, Goldberg & Jaslow, LLP., for an Order permitting it to withdraw as counsel for defendant, NTX Interiors, Inc., and the cross-motion by the law firm of Raice, Paykin, Greenblatt, Lesser & Kreig, LLP., for an Order permitting it to withdraw as counsel for defendants, Ilya Asanovich and Edgar Renovales, are denied with leave to renew after a determination is rendered on the issue of Contempt. It is further

ORDERED, that representatives of the law firms of Platzer, Swergold, Karlin, Levine, Goldberg & Jaslow, LLP., the law firm of Raice, Paykin, Greenblatt, Lesser & Kreig, LLP., defendant, NTX Interiors, Inc., and defendants, Ilya Asanovich and Edgar Renovales, shall appear on **September 15, 2005 at 9:30 a.m.**, New York State Supreme Court, Nassau County, in IAS Part 22, located at 100 Supreme Court Drive, Mineola, New York, for a hearing as to whether the defendants, NTX, Asanovich, Renovales and / or their attorneys should be held in Contempt for failing to comply with the Orders of this Court. **Failure to appear may result in the imposition of sanctions.** It is further

ORDERED, that if prior to September 15, 2005 the defendants fully comply with

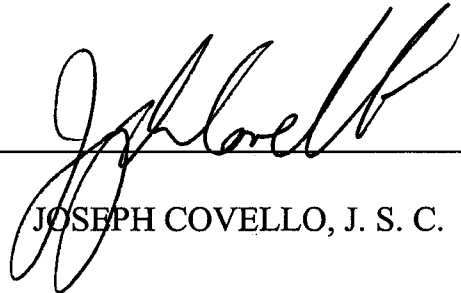
Checker v NTX

the outstanding discovery demands and Orders of this Court the September 15, 2005

Contempt hearing will be converted to a Status Conference.

This constitutes the decision and Order of this court.

Dated: August 15, 2005



JOSEPH COVELLO, J. S. C.

ENTERED
AUG 19 2005
NASSAU COUNTY
COUNTY CLERK'S OFFICE