

SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. F. DANA WINSLOW,

Justice

**BAK-A-LUM a DIVISION OF BRADCO
SUPPLY CORP.,**

**TRIAL/IAS, PART 6
NASSAU COUNTY**

Plaintiff,

MOTION DATE: 7/27/09

-against-

INDEX NO.: 21594/08

**ISLANDWIDE ROOFING and SIDING CORP.
d/b/a ISLAND WIDE ROOFING and SIDING
and THOMAS COMPTON a/k/a THOMAS M.
COMPTON, JR.,**

MOTION SEQ. NO.: 001

Defendants.

The following papers read on this motion (numbered 1):

Notice of Motion..... 1

The court automatically adjourns all motions that are submitted, without opposition for one month, to determine whether or not there was either an administrative delay or excusable neglect. Such adjournment is made without prejudice to the moving party to have the merits of such an adjournment considered in the event that there is a subsequent submission.

This is an action brought by plaintiff, BAK-A-LUM a division of BRADCO SUPPLY CORP. to punish defendant THOMAS COMPTON a/k/a THOMAS M. COMPTON, JR. ("COMPTON") for contempt of court by reason of the failure of COMPTON to obey a subpoena. Plaintiff also seeks an order awarding plaintiff a fine in the amount that remains due and owing, attorney's fees and an order issuing a warrant committing COMPTON to jail.

The subpoena, dated March 9, 2009 (the "Subpoena") demanded the appearance of "ISLANDWIDE ROOFING AND SIDING CORP. d/b/a ISLAND WIDE ROOFING AND SIDING, by an officer with knowledge" at a deposition on April 14, 2009, with respect to the collection of a judgment in the amount of \$28,126.26 docketed by the County Clerk on March 5, 2009, against defendants ISLANDWIDE ROOFING & SIDING CORP. d/b/a ISLAND WIDE ROOFING & SIDING and THOMAS COMPTON a/k/a THOMAS M. COMPTON, JR. [Motion Ex. A]. According to the

affidavit of service attached to the motion [Motion Ex. B], sworn to on March 18, 2009, the Subpoena was served on COMPTON by service on "Mrs. Compton, Wife" on March 16, 2009 at 205 Weed Avenue, Staten Island, NY, "said premises being defendant's dwelling place" pursuant to CPLR §308(2). COMPTON allegedly did not appear at the April 14, 2009 deposition.

The Court notes that although the Subpoena is addressed to "the above-named judgment debtors" being "ISLANDWIDE ROOFING AND SIDING CORP. d/b/a ISLAND WIDE ROOFING AND SIDING, by an officer with knowledge", plaintiff has failed to submit an affidavit of service that the Subpoena was served on said corporate entity. In addition, the within motion seeks to hold COMPTON in contempt for failing to comply with a Subpoena which only directs "ISLANDWIDE ROOFING AND SIDING CORP. d/b/a ISLAND WIDE ROOFING and SIDING by an officer with knowledge" to appear at a deposition. The Subpoena does not specifically direct an appearance by defendant COMPTON.

Based on the foregoing, it is

ORDERED, that the motion by plaintiff BAK-A-LUM a division of BRADCO SUPPLY CORP. to punish defendant THOMAS COMPTON a/k/a THOMAS M. COMPTON, JR. ("COMPTON") for contempt of court is **denied**.

Plaintiff shall serve defendant ISLANDWIDE ROOFING AND SIDING CORP. d/b/a ISLAND WIDE ROOFING AND SIDING, by personal service pursuant to CPLR §311(a)(1), and defendant THOMAS COMPTON a/k/a THOMAS M. COMPTON, JR. by personal service pursuant to CPLR §308(1) or §308(2), with a copy of this Order with notice of entry.

This constitutes the Order of this Court.

Dated:

9/30

, 2009

[Signature]
J.S.C.

ENTERED

OCT 27 2009

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**