

**SUPREME COURT – STATE OF NEW YORK  
TRIAL TERM, PART 56 SUFFOLK COUNTY**

**PRESENT:**

*Hon. Carmen Victoria St. George*  
**Justice of the Supreme Court**

X

**TOWN OF BROOKHAVEN,**

**Index No.  
609056/2019**

**Plaintiff,**

**Motion Seq:  
001 MG  
Decision/Order**

**-against-**

**ARDIAN GOLEMI,**

**Defendants.**

X

The following numbered papers were read upon this motion:

Notice of Motion/Order to Show Cause.....	4-16, 19
Answering Papers.....	
Reply.....	
Briefs: Plaintiff's/Petitioner's.....	
Defendant's/Respondent's.....	

Before the Court is an order to show cause brought by the plaintiff, Town of Brookhaven, against the defendant, Ardian Golemi. Plaintiff alleges that defendant is in violation of the Brookhaven Town Code (the Code) because he has a storage trailer on his premise in contravention of Section 85-197A of the Code. The premise, identified by Suffolk County Tax Map 0200-982.10-10.00-033.000, is located on Forest Road, Mastic Beach, Town of Brookhaven, County of Suffolk, State of New York (the Subject Premise).

The plaintiff now moves this Court to grant an order declaring the defendant failed to comply with the conditions of his conditional discharge, to remove the storage trailer and grant the plaintiff the authority to enter upon the premise to remove it if necessary, that if removal is necessary for the costs of such removal be paid by defendant and added to his next yearly assessment, and finally that the defendant maintain his property as proscribed by the Code.

**BACKGROUND**

Defendant, a Brooklyn resident, is the owner of the Subject Premise. As alleged, beginning on February 23, 2018, a complaint was filed with the Town of Brookhaven Law

Department that the Subject Premise was occupied by one (1) storage trailer for which the defendant did not have a valid building permit. On March 9, 2018, a Town investigator issued an appearance ticket to defendant. The defendant was notified of the appearance by a nail and mail service.

The appearance ticket required defendant's appearance before the Sixth District Court in Patchogue, Suffolk County, New York. The defendant failed to appear, and the appearance was adjourned to May 31, 2018. At the May 31<sup>st</sup> hearing defendant pled guilty before Hon. John P. Schettino; was fined five-hundred dollars (\$500.00) and sentenced to a conditional discharge that required he either apply for a building permit or remove the storage trailer within thirty (30) days.

On September 5, 2018, a full three months after the guilty plea, a Town investigator searched the records of the Town of Brookhaven Building Department and found that no permit had been granted or applied for by the Subject Premise. The investigator then went to the Subject Premise that day and photographed the storage trailer defendant failed to remove.

On November 2, 2018, the defendant was ordered to appear before the Sixth district Court on December 6, 2018, because it had reasonable cause to believe defendant violated his conditional discharge. The Sixth District Court issued a Declaration of Delinquency and Notice of Appearance and warned the defendant that failure to appear may result in the issuance of a bench warrant. The defendant failed to appear, and Hon. James P. Flanagan issued a bench warrant for the defendant.

A verified complaint was filed on May 10, 2019 alleging the facts as stated *supra*. On May 30, 2019 the plaintiff brought an order to show cause. The plaintiff filed affidavits of the Town investigator, certified deed and tax for the Subject Premise, the appearance ticket, conditional discharge and the Sixth District Court's declaration of delinquency and notice of appearance, as well as photos of the Subject Premise taken as recently as May 6, 2019. The defendant has filed no reply.

### **LEGAL STANDARD**

The CPLR provides that "[t]he court in a proper case may grant an order to show cause, to be served in lieu of a notice of motion, at a time and in a manner specified therein." (CPLR § 22144[d]). "There is no specific definition of a proper case, and it is obvious that the legislative intent was to leave that question entirely within the court's discretion" (*Mallory v. Mallory*, 113 Misc2d 912, 913-914 [Sup Ct, Nassau County 1982]). Although in exercising that discretion the court may, if not must, make some assessment of the merits (*Id.* at 914), the court "does not have the authority to make a final determination on the motion" (*see Bush v. 280 Park Ave. S. Assoc.*, 2003 SlipOp 50758[U], \*2 [App Term, 2d Dept 2003]).

As with any motion, the burden of proof on an order to show cause is on the movant, notwithstanding that it directs the recipient to show cause why the particular relief being sought should not be granted (*Siegel*, NYPRAC § 248 [6th ed.]).

Pursuant to CPLR § 2214(a), an order to show cause must state “the relief demanded and the grounds therefor” (*Carter v. Johnson*, 84 AD3d 1141, 1142 [2d Dept 2011]). The court may however “grant relief that is warranted by the facts plainly appearing on the papers on both sides, if the relief granted is not to dramatically unlike the relief sought, the proof offered supports it and there is no prejudice to any party” (*Evans v. Argent Mtge. Co.*, 120 AD3d 618, 620 [2d Dept 2014], quoting *Frankel v. Stavsky*, 40 AD3d 918, 918-919 [2d Dept 2007]).

### DISCUSSION

New York State Town Law authorizes a Town to commence an appropriate action to prevent, restrain, correct, or abate the unlawful construction of a building in violation of the local zoning law (*see*, Town Law § 268[2]; *Town of Caroga v. Herms*, 62 AD3d 1121 [3d Dept 2009], *lv. Den.* 13 NY3d 708 [2009]). Removal of a structure is an appropriate means by which a governmental agency may abate a violation of the zoning code (*see Town of Brookhaven v. Mascia*, 38 AD3d 758 [2d Dept 2007] [authorizing Town to demolish residential structure]; *Village of Port Chester v. Westchester Ave. Marina realty, Inc.*, 152 AD2d [2d Dept 1989] [directing removal of building]).

The Subject Premise is situated within an “A-Residence-1” zoning district as defined by the Code (**Brookhaven Town Code § 85-134**). Code § 85-197A designates permitted uses as “[a]ll principal uses, accessory uses and uses authorized by special permit . . . permitted in the A Residence . . . [and] [a]ll uses identified as incentive within the Transition Area Overlay District established in connection with the Montauk highway Corridor Study Land Use Plan for Mastic and Shirley Phase II” (**Brookhaven Town Code § 85-197A**). Accordingly, a valid building permit is required by the Code for the Subject Premise. A search of the Town of Brookhaven records produced no building permit. Therefore, the storage trailer is unpermitted and is in violation of the Code.

The Code provides the plaintiff certain remedies. “In case any . . . structure . . . is used in violation of this chapter . . . any appropriate action or proceeding may be instituted or taken to prevent such unlawful . . . use, [and] to restrain, correct or abate such violation, to prevent . . . any illegal act, conduct, business or use in or about such premise” (**Brookhaven Town Code § 85-157**). To remedy the violation of the Code on the Subject Premise the plaintiff brought this action to, *inter alia*, remove the storage trailer and grant the plaintiff the authority to enter upon the premise to remove it if necessary, that if removal is necessary for the costs of such removal be paid by defendant and added to his next yearly assessment; and finally that the defendant maintain his property as proscribed by the Code. Section 85-157 of the Code permits that remedy. The defendant provides no opposition and does not refute the plaintiff’s showing that the Subject Premise is in violation of the Code and that removal of the offending storage trailer is not a remedy available to plaintiff. Accordingly, removal of the offending storage trailer is an appropriate means by which the plaintiff may abate a violation of the zoning code.

As such this Court makes no determination whatsoever as to plaintiff’s request declaring that the defendant failed to comply with the conditions of his conditional discharge. Such an inquiry is unnecessary and will not be addressed further.

**CONCLUSION**

Upon the foregoing; it is

**ORDERED** that plaintiff's motion is granted as limited here; and it is further,

**ORDERED** that the offending storage trailer on the Subject Premise be removed; and it is further,

**ORDERED** that plaintiff is granted the authority to enter upon the Subject Premise to remove the offending storage trailer if necessary; and it is further,

**ORDERED** that if removal is necessary, that the costs incurred by the plaintiff for such removal be paid by the defendant and added to the Subject Premises next yearly assessment; and it is further,

**ORDERED** that the defendant maintain his property as proscribed by the Brookhaven Town Code; and it is further,

**ORDERED** that counsel for the defendants is hereby directed to serve a copy of this decision and order with notice of entry on counsel for plaintiff.

The foregoing constitutes the Order of this Court.

Dated: September 10, 2019  
Riverhead, NY

  
CARMEN VICTORIA ST. GEORGE, J.S.C.

FINAL DISPOSITION ☒ NON-FINAL DISPOSITION [ ]