

**Cutler v AB Stable LLC**

2024 NY Slip Op 31593(U)

May 6, 2024

Supreme Court, New York County

Docket Number: Index No. 156743/2021

Judge: Judy H. Kim

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. JUDY H. KIM PART 04**

*Justice*

-----X

KEVIN CUTLER,

Plaintiff,

- v -

AB STABLE LLC, TISHMAN CONSTRUCTION  
CORPORATION OF NEW YORK D/B/A AECOM TISHMAN,  
ALLAN BRITEWAY ELECTRICAL UTILITY  
CONTRACTORS, INC.,

Defendants.

-----X

AB STABLE LLC, TISHMAN CONSTRUCTION  
CORPORATION OF NEW YORK D/B/A AECOM TISHMAN,

Third-Party Plaintiffs,

-against-

ALLAN BRITEWAY ELECTRICAL UTILITY CONTRACTORS,  
INC.,

Third-Party Defendant.

-----X

INDEX NO. 156743/2021

MOTION DATE 05/30/2023

MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 595300/2022

The following e-filed documents, listed by NYSCEF document number (Motion 002) 73, 74, 75, 77, 78, 79, 80, 81

were read on this motion to/for STRIKE PLEADINGS.

Upon the foregoing documents, plaintiff's motion to strike the answer of defendants AB Stable LLC and Tishman Construction Corporation of New York d/b/a AECOM Tishman is denied.

In decision and order dated May 10, 2023, this Court (Hon. Frank P. Nervo) granted plaintiff's motion to compel disclosure, pursuant to CPLR §3124 (NYSCEF Doc. No. 46) and, in

a related order dated May 11, 2023, directed that the pleadings of defendants AB Stable LLC and Tishman Construction Corporation of New York d/b/a AECOM Tishman would be stricken unless they provided the following discovery within ten days from the date of that order: (1) responses to plaintiff's January 6, 2022 demand pursuant to New York State's Comprehensive Insurance Disclosure Act; (2) responses to plaintiff's January 6, 2022 First Notice for Discovery and Inspection; (3) supplemental responses to plaintiff's January 3, 2022 Combined Demands; and (4) copies of certain documents referenced in defendants' Safety Plan (NYSCEF Doc. No. 49).

Plaintiff now moves to strike defendants' Answer on the grounds that defendants have failed to produce the material outlined above by the deadline set by the Court. In opposition, defendants assert that they have fully complied with the May 11, 2023 Order, noting that they uploaded a supplemental response on NYSCEF on May 17, 2023 (See NYSCEF Doc. Nos. 51-71) along with a letter requesting a conference with the Court to confirm that they had complied with the Court's directives (NYSCEF Doc. No. 50 [letter]). Defendant adds that on June 19, 2023, they responded to plaintiff's January 6, 2022 demand pursuant to New York State Comprehensive Insurance Disclosure (NYSCEF Doc. No. 78), supplemented their prior responses to plaintiff's January 3, 2022 Combined Demands, including progress photographs, plaintiff's safety orientation records, and subcontract documents between Tishman and non-party PAL Environmental Service (NYSCEF Doc. No. 80), and responded to plaintiff's February 7, 2023 Notice for Discovery and Inspection (NYSCEF Doc. No. 79),

In reply, plaintiff contends that these responses failed to satisfy the Court's May 11, 2023 order because certain of the responses state that searches for responsive documents were ongoing, and, moreover, that plaintiff impermissibly responded to certain demands with objections. Finally, plaintiff asserts that defendant has failed to produce certain material (e.g., excess insurance

information, photographs referenced in AMS Incident Investigation Report a copy of the contract between defendants and Trident, and the OSHA File for the year of, and year prior to the incident).

### DISCUSSION

Plaintiff's motion is denied. Defendants have substantially complied with this Court's May 11, 2023 order and, as a result, striking defendants' answer an inappropriate remedy (See Carlos v 395 E. 151st St., LLC, 41 AD3d 193 [1st Dept 2007]; see also Gomes v Valentine Realty LLC, 32 AD3d 699 [1st Dept 2006]). The Court notes that the record does not support plaintiff's assertion that defendants waived their right to respond to plaintiff's discovery demands with objections. Finally, to the extent plaintiff contends that certain responsive material has not yet been produced, this issue and all other discovery issues will be addressed at the parties' upcoming compliance conference in Part 4 (80 Centre Street, Room 308) on June 21, 2024 at 10:00 a.m.

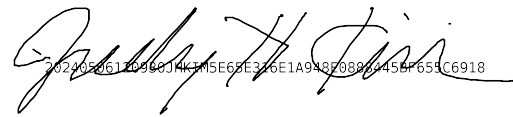
Accordingly, it is

**ORDERED** that plaintiff's motion to strike the answer of defendants AB Stable LLC and Tishman Construction Corporation of New York d/b/a AECOM Tishman is denied; and it is further

**ORDERED** that within twenty days from the date of this decision and order, counsel for defendants AB Stable LLC and Tishman Construction Corporation of New York d/b/a AECOM Tishman shall serve a copy of this decision and order, with notice of entry, upon plaintiff as well as the Clerk of the Court (60 Centre St., Room 141B) and the Clerk of the General Clerk's Office (60 Centre St., Rm. 119); and it is further

**ORDERED** that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on this court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)).

This constitutes the decision and order of the Court.



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5/6/2024  
DATE

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HON. JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE