

**Daniel Hammer v 370 Seventh Ave. Assoc., LLC, ACC
Constr. Corp., Broadwall, Comscore, Inc., Godsell Constr.
Corp. & Premier Elec., Inc.**

Motion No: 3631

Slip Opinion No: 2020 NYSlipOp 76050(U)

Decided on December 15, 2020

Appellate Division, First Department, Motion Decision

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Judiciary Law § 431.

This motion is uncorrected and is not subject to publication in the
Official Reports.

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Present – Hon. Rolando T. Acosta,
Sallie Manzanet-Daniels
Troy K. Webber
Lizbeth González
Tanya R. Kennedy,

Presiding Justice,

Justices.

Daniel Hammer,
Plaintiff-Appellant,

Motion No. **3631**
Index No. 152347/14
Case No. 2019-22683

-against-

370 Seventh Avenue Associates, LLC, ACC
Construction Corporation, Broadwall,
Comscore, Inc., Godsell Construction Corp.
and Premier Electric, Inc.,
Defendants-Respondents-Appellants.

ACC Construction Corporation, 370 Seventh
Avenue Associates, LLC and Comscore, Inc.,
Third-Party Plaintiffs-Respondents-
Appellants,

-against-

Godsell Construction Corp.,
Third Party Defendant-Respondent.

An appeal and cross appeals having been taken to this Court from an order of the Supreme Court, New York County, entered on or about July 12, 2019, and said appeal and cross appeals having been perfected,

And plaintiff-appellant having moved (a) to dismiss the cross appeals of defendants-respondents-cross appellants, ACC Construction Corporation, 370 Seventh Avenue Associates, LLC and Comscore, Inc. in their entirety for failure to contribute to costs of the Joint Record herein pursuant to 22 NYCRR 1250.9(f)(1)(ii); (b) to strike the reply brief of defendants-respondents-cross appellants, ACC Construction Corporation, 370 Seventh Avenue Associates, LLC, and Comscore, Inc., filed on October 26, 2020, on the grounds that it constitutes an impermissible sur reply without leave of the court under 22 NYCRR 1250.8(c), or in the alternative, to strike the averments contained in page 2 through 11 of such brief, and (c) for costs on this motion and the appeal,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of striking the reply brief filed by the aforementioned defendants-respondents-appellants, on October 26, 2020, with leave to resubmit a reply brief which omits pages 2-11, by January 15, 2020, for the February 2021 Term of this Court, to which Term the appeal and cross appeals are adjourned. Plaintiff's motion is otherwise denied.

ENTERED: December 15, 2020

A handwritten signature in black ink, reading "Susanna Molina Rojas". The signature is written in a cursive, flowing style.

Susanna Molina Rojas
Clerk of the Court