

**Collazo v Coastal at Lincoln, Inc.**

2011 NY Slip Op 33767(U)

May 9, 2011

Supreme Court, New York County

Docket Number: 102797/2008

Judge: Eileen A. Rakower

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

DEBENT. **HON. EILEEN A. RAKOWER**

PART 15

Index Number : 102797/2008

COLLAZO, CINDY

INDEX NO. 102797/08

vs

COASTAL AT LINCOLN

MOTION DATE \_\_\_\_\_

Sequence Number : 002

MOTION SEQ. NO. 002

COMPEL

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

Answering Affidavits — Exhibits \_\_\_\_\_

1  
2,3

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE WITH  
THE ACCOMPANYING MEMORANDUM DECISION.

FILED

MAY 12 2011

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 5/9/11



**HON. EILEEN A. RAKOWER**

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 15

-----X  
CINDY COLLAZO,

Plaintiff,

- against -

Index No. 102797/08

**DECISION/  
ORDER**

COASTAL AT LINCOLN, INC. and  
JOSEPHINA RESTAURANT,  
Defendants.

Mot. Seq.: 002

-----X  
COASTAL AT LINCOLN, INC. and  
JOSEPHINA RESTAURANT,

Third-Party Plaintiff

Third-Party  
Index No.  
590432/08

-against-

DESIGN WITHIN REACH, INC.,

Third-Party Defendant.

-----X  
DESIGN WITHIN REACH, INC.,

Second Third-Party Plaintiff

Second Third-Party  
Index No.590396/09

-against-

EMUAMERICAS, LLC.

Second Third-Party Defendant.

-----X  
HON. EILEEN A. RAKOWER, J.S.C.

Plaintiff brings this action for personal injuries allegedly sustained when a chair she sat in collapsed while she was at Josephina Restaurant ("Josephina"),

located at 1900 Broadway in the County and State of New York on September 10, 2007. By Order of this Court, dated March 17, 2010, plaintiff's motion to amend her complaint to add Design Within Reach ("DWR") and Emu Americas, LLC ("Emu") as direct defendants was granted. Plaintiff now moves for an order compelling defendants to answer the amended summons and complaint, or, in the alternative, an order granting default judgment against defendants. Plaintiff also seeks to compel the deposition of DWR and Emu witnesses. DWR and EMU both oppose.

Plaintiff, in support of her motion, asserts that the defendants have failed to answer her amended complaint that was served on March 25, 2010, and that, to date, defendants have failed to answer.<sup>1</sup> Further, plaintiff claims that defendants have adjourned court ordered depositions several times.

DWR, in opposition, argues that the motion should be denied because it served an answer to the amended complaint on January 13, 2011. DWR claims that its failure to produce a witness has not been willful. Rather, the subject witness lives in California, and there have been scheduling difficulties. DWR states that it is ready and willing to schedule a new deposition date for its witness. Emu also claims that it has already served its answer, and that the adjournments of its deposition occurred through no fault of its own. Both DWR and Emu represent that they spoke to plaintiff's counsel and that he agreed to accept their late answers.

Initially, the portion of plaintiff's motion seeking to compel an answer from DWR and Emu, or enter a default judgment against them, is rendered moot by service of their answers on January 13, 2011 and January 21, 2011, respectively.

CPLR §3124 states:

If a person fails to respond to or comply with any request, notice, interrogatory, demand, question or order under this article . . . the party seeking disclosure may move to compel compliance or a response.

Wherefore it is hereby

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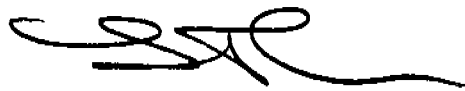
<sup>1</sup>The Court notes that plaintiff's motion to compel, which was not fully submitted until March 24, 2011, is dated October 22, 2010.

[\* 4]

ORDERED that the motion is granted to the extent that defendants Design Within Reach, Inc. and Emu Americas, LLC shall each produce a witness for deposition within 30 DAYS of service of a copy of this order with notice of entry; and it is further

ORDERED that the parties shall appear for a compliance conference on Tuesday July 26, 2011 at 9:30 a.m. in Room 308 at 80 Centre Street.

Dated: May 9, 2011



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EILEEN A. RAKOWER, J.S.C.

**FILED**

**MAY 12 2011**

NEW YORK  
COUNTY CLERK'S OFFICE