

<b>Laboy v Tier St. Realty Corp.</b>
2015 NY Slip Op 30587(U)
March 3, 2015
Sup Ct, Bronx County
Docket Number: 307313/2012
Judge: Betty Owen Stinson
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NEW YORK SUPREME COURT - COUNTY OF BRONX

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: PART IA8

-----X  
TERESA LABOY

Index No. 307313/2012  
**DECISION AND ORDER**

Plaintiff(s),

Present:  
HON. BETTY OWEN STINSON

-against-

TIER STREET REALTY CORP.,  
JOHN J. MEGLIO, Esq., as Escrow Agent,

Defendant(s)  
-----X

STINSON, J:

This motion by plaintiff to strike the defendants' response to the plaintiff's Notice to Admit dated August 6, 2014 and thereby deeming the matters admitted is denied.

On August 6, 2014, plaintiff submitted to defendants a Notice of Admit pursuant to CPLR §3123(a). The Notice to Admit was responded to by the President of defendant Tier Street Realty Corp. on August 22, 2014. In the response to the Notice to Admit, the defendant denied that the document annexed to the Notice to Admit was a title report from Trinity Abstract, LLC received by John Meglio, seq (*sic*), see Exhibit A. The defendant Tier Street Realty Corp. denied that the document was a true copy because the copy attached to the Notice was incomplete. With respect to admission #2, defendant Tier Street Realty Corp. admitted that it was a true copy of a letter dated October 25, 2011 received by John J. Meglio, Esq. but addressed to Besmach Real Estate from Trinity Abstract, LLC, a copy was also sent to Robert Klar, Esq.

The purpose of allowing a party to serve a Notice to Admit is to save the expense of the noticing party from the time and expense of proving genuineness of any papers or documents, or the correctness or fairness of representation of any photographs or of the truth of any matters of facts set forth in the request as to which the party requesting the admission has reason to believe there could be no substantial dispute at trial and which are within the knowledge of such parties or could be ascertained by him upon reasonable inquiry. Plaintiff contends that because the President of Co-defendant Mr. Zotkola provided these sworn responses to the Notice to Admit and not John J. Meglio, Esq., they are not proper and should be deemed admitted. The Notice to Admit was addressed to John J. Meglio, Esq., attorney for defendants. Both Tier Street Realty Corp. and John J. Meglio, Esq. are parties in this action. The Civil Practice Law and Rules permit a party to respond to a Notice to Admit based on their own knowledge or knowledge acquired through reasonable inquiry. Plaintiff's counsel's objects to the response by Mr. Zotkola and not Mr. Meglio. Both are parties to this action. Therefore, the court finds that the responses to the Notice to Admit are proper and that the defendants have denied the Notice stated in Paragraph #1 and admitted the genuineness of the document letter of October 25, 2011. If the purpose of the admissions was to establish that defendant Miglio had been the person to receive the documents, then a different statement should have been submitted. It is the genuineness of the documents that is the subject of the Notice to Admit, not who may or may not have received it. Moreover, on November 20, 2014, a supplemental response to plaintiff's Notice to Admit was made by John J. Meglio essentially affirming what the response had been of Co-defendant Tier Street. The court fails to see how the document was received or by whom is the purpose of CPLR §3123(a).

Plaintiff further moves to compel the defendants to provide the documents and

information as contained in plaintiff's Notice for Discovery and Inspection, post-EBT demands numbered 1,2, 3, 8,9, and 10 contending that the defendants have improperly refused to provide the documents and information requested. Defendants have provided a response to the post EBT demands requested indicating therein that the documents are not created by them but were provided to them by the plaintiff's title company and that plaintiff is in possession of the same documents that the defendants were provided. It would be burdensome and duplicitous to require defendants to provide the same documents that were created and generated by the plaintiff's title company. Therefore, defendant's objection to plaintiff's demand for a copy of the title report; a copy of all letters, documents, written memorandum sent by Trinity Abstract, LLC to the defendants; and all records as to the date and time the defendants received a title report issued by Trinity Abstract, LLC as well as any other documents listed in Item #2 are well taken and need not be provided by the defendant.

Plaintiff also seeks a list of properties maintained by A&S. A&S is not a party to this lawsuit and without a showing of the relevance of some other company's ownership or maintenance of properties, not the subject of this action, the motion to compel is denied. Likewise, a list of income and expenses as to 81 Tier Street, Bronx, New York from July 1, 2012 to the present and any leases for that address from July 1, 2012 to the present is irrelevant to the issues in this case. This action by plaintiff seeks the return of a down payment because the sale of Tier Street Property was not concluded. There are no claims for damages for loss of income or profits or any damages relative to the fact that the sale did not go through. The claim in this action is merely for the return of the down payment. Accordingly, defendant's objection to Items 5 and 6 listed in Paragraph #8 of plaintiff's Affirmation in Support of Motion is well taken.

In sum, the plaintiff's motion striking defendants' response to the Notice to Admit and to compel defendants to provide documents and information requested in plaintiff's Notice for Discovery and Inspection post-EBT is denied.

This constitutes the decision and Order of the court.

March 3, 2015  
Bronx, New York

  
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BETTY OWEN STINSON, J.S.C.