

<b>Cohill v Structure Tone, Inc.</b>
2016 NY Slip Op 30988(U)
May 26, 2016
Supreme Court, New York County
Docket Number: 159198/13
Judge: Sherry Klein Heitler
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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 30

----- X  
DENNIS COOHILL,

Plaintiff,

-against-

STRUCTURE TONE, INC., OLD SLIP PROPERTY  
LLC, CLB BANK INTERNATIONAL, CB RICHARD  
ELLIS, INC., and INTERSTATE FIRE PROTECTION,  
INC.

Defendants.

----- X  
OLD SLIP PROPERTY LLC,

Third-Party Plaintiff,

-against-

CLS BANK INTERNATIONAL and  
CB RICHARD ELLIS, INC.,

Third-Party Defendants.

----- X  
STRUCTURE TONE, INC.,

Second Third-Party Plaintiff,

-against-

INTERSTATE FIRE PROTECTION, INC.,

Second Third-Party Defendant.

----- X

Index No. 159198/13  
Motion Seq. 005

**DECISION & ORDER**

----- X  
OLD SLIP PROPERTY LLC, and  
CLS BANK INTERNATIONAL,

Third Third-Party Plaintiffs,

-against-

M. MOSER ASSOCIATES LLC,

Third Third-Party Defendants.

----- X  
STRUCTURE TONE, INC., OLD SLIP PROPERTY  
LLC, CLS BANK INTERNATIONAL, CB RICHARD  
ELLIS, INC., and M. MOSER ASSOCIATES LLC.,

Fourth Third-Party Plaintiffs,

-against-

WORKWELL PARTNERS CORP., and  
AL-LEE INSTALLATIONS, INC.,

Fourth Third-Party Defendants.

----- X  
INTERSTATE FIRE PROTECTION, INC.,

Fifth Third-Party Plaintiff,

-against-

PENGUIN AIR CONDITIONING and  
MILLER PLUMBING AND HEATING, INC.,

Fifth Third-Party Defendants.

----- X  
SHERRY KLEIN HEITLER, J.:

This is the second motion by fourth third-party plaintiffs Structure Tone, Inc., Old Slip Property LLC, CLS Bank International, CB Richard Ellis, Inc., and M. Moser Associates LLC ("Fourth TPPs") for an order, pursuant to CPLR 3215, declaring fourth third-party defendant Al-Lee Installations, Inc.

("Al-Lee") to be in default and setting this matter down for an inquest on damages.<sup>1</sup>

The moving papers indicate that the Fourth TPPs served Al-Lee with copies of the fourth third-party summons and verified fourth third-party complaint by service upon the New York Secretary of State pursuant to section 306 of the Business Corporation Law. To date, Al-Lee has not answered or otherwise appeared in this action.

The court finds Al-Lee to be in default. *See* 3215(a). Fourth TPPs are hereby entitled to proceed to an inquest, which shall be held simultaneously with the trial of the underlying action since many of the issues raised at the trial and inquest will be similar. In the event the underlying action does not proceed to trial, Fourth TPPs are directed to notify the court and all interested parties in writing if they wish to proceed with the inquest. Upon receipt of such notice the court will refer this matter to the Special Referee Clerk of this court for placement upon the Special Referee Calendar.

Accordingly, it is hereby

ORDERED that this motion is granted to the extent that the court finds fourth third-party defendant Al-Lee Installations, Inc. to be in default for its failure to answer or appear in this action; and it is further

ORDERED that the court directs an inquest on the issue of damages against Al-Lee to be held at the same time and place as the trial of this action against the remaining defendants herein; and it is further

ORDERED that in the event that the underlying action does not proceed to trial, this matter shall be referred to the Special Referee Clerk upon receipt of written notice from Fourth TPPs of their intent to proceed therewith; and it is further

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<sup>1</sup> A copy of this court's December 21, 2015 order denying Fourth TPPs prior motion is annexed to the moving papers as exhibit D.

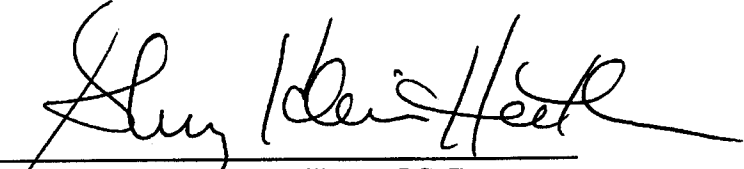
ORDERED that, pursuant to CPLR 3215(d), Fourth TTPs shall serve a copy of this decision with notice of entry upon Al-Lee by first class mail within 30 of the date of this decision and order; and it is further

ORDERED that the Clerk is directed to mark his records accordingly.

This constitutes the decision and order of the court.

ENTER:

DATED: 5-26-16

  
\_\_\_\_\_  
SHERRY KLEIN HEITLER, J.S.C.