

MDB Dev. Corp. v Naylor Concrete & Steel Erectors, LLC
2020 NY Slip Op 30488(U)
February 19, 2020
Supreme Court, New York County
Docket Number: 650622/2018
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JOEL M. COHEN PART IAS MOTION 3EFM

Justice

MDB DEVELOPMENT CORP.,
Plaintiff,

- v -

NAYLOR CONCRETE & STEEL ERECTORS, LLC,
Defendant.

INDEX NO. 650622/2018
MOTION DATE 11/27/2019
MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

NAYLOR CONCRETE & STEEL ERECTORS, LLC,
Plaintiff,

Third-Party
Index No. 595254/2018

-against-

DOKA USA, LTD., UNITED TRANSIT MIX, INC., HD SUPPLY
CONSTRUCTION SUPPLY LTD., MEN OF STEEL REBAR
FABRICATORS LLC, SUNBELT RENTALS, INC., FIDELITY
AND DEPOSIT COMPANY OF MARYLAND ZURICH
AMERICAN INSURANCE COMPANY, WC 28 REALTY, LLC,
ABC CORPORATIONS 1-10, RICKY NAYLOR, JOHN DOES
1-10

Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 148, 149, 150, 151,
152, 153, 154, 155

were read on this motion to STRIKE ANSWER

Upon the foregoing documents

This is a breach of construction contract action brought by Plaintiff, MDB Development
Corp. against Defendant Naylor Concrete & Steel Erectors. LLC ("Naylor") concerning a project
at 527 W. 27th Street, New York, New York. After filing its Answer, Defendant was served with
demands for discovery on March 25, 2019. Defendant Naylor failed to provide responses. Blum
Affirmation, ¶¶4-5.

By Order dated August 27, 2019, the Court granted a motion by Robert Corini, Esq. to be relieved as counsel for Defendant/Third-Party Plaintiff Naylor. (NYSCEF 155). The Order directed Naylor to find replacement counsel within 40 days. Naylor failed to retain new counsel.

Several conferences were scheduled following the issuance of the August 27th Order, namely: October 15, 2019, January 14, 2020, February 4, 2020 and finally February 18, 2020. On January 14, 2020 an Order was issued advising that should Naylor fail to appear at the next scheduled conference, it's answer could be stricken in compliance with 22 NYCRR 202.27. (NYSCEF 159). An adjournment of the February 4, 2020 conference was requested by Naylor's Oklahoma counsel and was reluctantly granted to permit Naylor to obtain local, New York counsel, Naylor failed to do so. Despite the additional time, Naylor failed to appear for the final February 18, 2020 conference.

Naylor has now failed to appear at several court conferences, has not filed opposition to Plaintiff's instant motion to strike its answer nor has it otherwise obtained counsel. Pursuant to CPLR 321, corporations cannot proceed *pro se* and must appear through counsel. Therefore, Naylor is in default, its answer is stricken and Plaintiff is directed to proceed to an inquest, before a Judicial Hearing Officer, for an assessment of damages as against Naylor.

Should Naylor demonstrate good cause in compliance with CPLR §5015 or any other applicable law, it may seek a vacatur of this Order.

Therefore, it is:

ORDERED that Plaintiff's motion to strike the Answer of defaulting Defendant Naylor Concrete & Steel Erectors, LLC is Granted; it is further

ORDERED that Plaintiff shall be directed to a Judicial Hearing Officer (“JHO”) to conduct an inquest to hear and determine the amount of damages to be payable to Plaintiff, by Defendant Naylor; it is further

ORDERED that the powers of the JHO/Special Referee to determine shall not be limited further than as set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119 M, 646-386-3028 or spref@courts.state.ny.us) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this Court at www.nycourts.gov/supctmanh at the "Local Rules" link), shall assign this matter to an available Special Referee to determine as specified above; and it is further

ORDERED that plaintiff’s counsel shall serve a copy of this order with notice of entry on defendant within five days and that counsel for plaintiff shall, after thirty days from service of those papers, submit to the Special Referee Clerk by fax (212-401-9186) or email an Information Sheet (which can be accessed at <http://www.nycourts.gov/courts/ljd/supctmanh/refpart-infosheet-10-09.pdf>) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

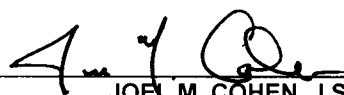
ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR § 4318) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and that the parties shall appear for the reference hearing, including with all such witnesses and evidence as they may seek to present, and shall be ready to proceed,

on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referee's Part in accordance with the Rules of that Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue specified above shall proceed from day to day until completion.

This constitutes the Decision and Order of the Court.

2/19/2020
DATE


JOEL M. COHEN, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE