

**Monteforte v Newport Designs Corp.**

2020 NY Slip Op 30615(U)

February 27, 2020

Supreme Court, New York County

Docket Number: 158962/2017

Judge: John J. Kelley

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. JOHN J. KELLEY**

**PART IAS MOTION 56EFM**

*Justice*

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**INDEX NO. 158962/2017**

**ROGER MONTEFORTE,**

**MOTION DATE 02/18/2020**

**Plaintiff,**

**MOTION SEQ. NO. 001**

**- v -**

**NEWPORT DESIGNS CORP., G BULIDERS, LLC,  
GEORGE FIGLIOLIA, and JASON KLEIN,**

**DECISION + ORDER ON  
MOTION**

**Defendants.**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40

were read on this motion to/for DISCOVERY.

This is an action for an accounting and to recover for breach of implied contract, breach of contract, negligence, gross negligence, conversion, and fraud in connection with a construction project for which the defendants allegedly agreed to provide certain design services to the plaintiff. The defendants move pursuant to CPLR 3126 to strike the plaintiff's complaint or preclude him from adducing evidence in support of his claims as a sanction for failing to make disclosure in accordance with discovery orders. The plaintiff opposes the motion. The motion is granted to the extent that the plaintiff is directed to respond to interrogatories 1, 2, and 3, and the motion is otherwise denied.

The plaintiff alleges in his complaint that he retained the defendants to undertake pre-construction studies in connection with the proposed renovation of his residence at 10 West Street in Manhattan. He asserts that he paid them a significant sum of money for their consulting work, but that they accepted payment without satisfactorily performing the work for

which they were retained. The plaintiff requested that they account for the money that he paid them, but they declined to do so. This action ensued.

In their interrogatories, the defendants requested the plaintiff to provide the following information:

"1. Please identify all parties that bid on the Project and provide names, contacts, addresses, telephone numbers, emails, etc.;

"2. If the Project was commenced subsequent to Defendants involvement, please identify all parties that performed on the Project and provide what role they played in the Project, provide names, contacts, addresses, telephone numbers, emails, etc.;

"3. Please identify how much of the Project was completed, if at all, and by whom, and at what cost (itemized for each party), please identify all parties that performed on the Project and provide what role they played in the Project, their names, contacts, addresses, telephone numbers, emails, etc."

The party seeking disclosure need only demonstrate that the discovery sought is reasonably calculated or reasonably likely to lead to the discovery of information bearing on the claims (*see Forman v Henkin*, 30 NY3d 656, 661, 666 [2018]; *Crazytown Furniture, Inc. v Brooklyn Union Gas Co.*, 150 AD2d 420, 421 [2d Dept 1989]). Here, the items of damage sought by the plaintiff expressly include not only a refund of the \$75,000 he claims that he paid to the defendants for work not actually performed, but also consequential damages. Consequential damages are defined as "[l]osses that do not flow directly and immediately from an injurious act but that result indirectly from the act," and they are also termed indirect damages (Black's Law Dictionary [9th ed 2009]). Such damages are "the natural and probable consequence of the breach" (*Reads Co., LLC v Katz*, 72 AD3d 1054, 1056 [2d Dept 2010]). Consequential damages necessarily include the cost of retaining other contractors or consultants to perform the disputed work properly (*see Rudolf v Shayne, Dachs, Stancisi, Corker & Sauer*, 8 NY3d 438, 443 [2007]; *Pecker Iron Works, Inc. v New York Trades Council Assn. of N.Y.C. Health Ctr., Inc.*, 22 AD3d 259, 260 [1st Dept 2005]).

CPLR 3101(a) provides that "there shall be full disclosure of all matter material and necessary in the prosecution or defense of an action." This language is "interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity" (*Osowski v AMEC Constr. Mgt., Inc.*, 69 AD3d 99, 106 [1st Dept 2009], quoting *Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406-407 [1968]). Hence, the defendants have the right to disclosure with respect to the identities, cost of, and other particulars of contractors and consultants who were or may have been retained to complete the requested work (see CPLR 3124).

Nonetheless, the defendants are not entitled to the imposition of a sanction upon the plaintiff for failing to respond to interrogatories 1, 2, and 3. CPLR 3126 authorizes the court to sanction parties who "refuse[ ] to obey an order for disclosure or willfully fail[ ] to disclose information which the court finds ought to have been disclosed" (*Kutner v Feiden, Dweck & Sladkus*, 223 AD2d 488, 489 [1st Dept 1998]). A failure to comply with discovery, particularly after a court order has been issued, "may constitute the dilatory and obstructive, and thus contumacious, conduct warranting the striking of the[ ] answer[ ]" (*id.*; see *CDR Creances S.A. v Cohen*, 104 AD3d 17 [1st Dept 2012]; *Reidel v Ryder TRS, Inc.*, 13 AD3d 170 [1st Dept 2004]). Here, the plaintiff's failure to provide answers to the subject interrogatories was not dilatory or obstructive, but based on a good-faith objection to disclosure (see generally *Devine v Pinapati*, 2008 NY Slip Op 51011[U]. 19 Misc 3d 1135[A] [Sup Ct, Albany County, May 21, 2008]).

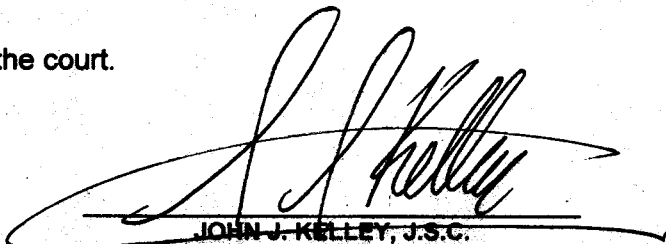
Accordingly, it is,

ORDERED that the defendants' motion is granted to the extent that the plaintiff is directed to provide the defendants with answers to interrogatories 1, 2, and 3 on or before April 3, 2020, and the motion is otherwise denied; and it is further,

ORDERED that the parties shall appear for a status conference on March 3, 2020, at 11:15 a.m., as previously scheduled.

This constitutes the Decision and Order of the court.

2/27/2020  
DATE

  
JOHN J. KELLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: