

Loja v Riverview Operating Co., LLC

2020 NY Slip Op 33168(U)

August 24, 2020

Supreme Court, Queens County

Docket Number: 717527/17

Judge: Timothy J. Dufficy

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. TIMOTHY J. DUFFICY
Justice

PART 35

-----X
LUIS ANDRES LOJA,

Plaintiff,

Index No.: 717527/17

Mot. Date: 8/4/20

-against-

Mot. Seq. 2

**RIVERVIEW OPERATING CO., LLC,
QSB 267 PROPERTY CO., LLC, SIMON
BARON DEVELOPMENT LLC, SIMON
BARON CONSTRUCTION LLC and
LEEDING BUILDERS GROUP, LLC,**

FILED

8/25/2020

11:58 AM

Defendants.

-----X
**RIVERVIEW OPERATING CO., LLC,
QSB 267 PROPERTY CO., LLC, SIMON
BARON DEVELOPMENT LLC, SIMON
BARON CONSTRUCTION LLC and
LEEDING BUILDERS GROUP, LLC,**

**COUNTY CLERK
QUEENS COUNTY**

Third-Party Plaintiffs,

-against-

HIGHBURY CONCRETE, INC.,

Third-Party Defendants.

-----X
The following papers were read on this motion by third-party defendant, Highbury Concrete, Inc. for an order, *inter alia*, striking the plaintiff's Complaint, pursuant to CPLR 3126; and on the cross-motion by plaintiff for an order, *inter alia*, pursuant to CPLR 3126 striking the answers of defendants/third-party plaintiffs and third-party defendant; and on the cross-motion by defendants Leeding Builders Group, LLC, QSB 267 Property Co. LLC, Riverview Operating Co. LLC, and Simon Baron Development LLC, for an order, *inter alia*, pursuant to CPLR 3126, striking the plaintiff's Complaint.

PAPERS
NUMBERED

Notice of Motion-Affidavits-Exhibits	EF 42-54
Notice of Cross-Motion-Affidavits-Exhibits.....	EF 55-58
Notice of Cross-Motion-Affidavits-Exhibits.....	EF 59-67
Affs in Opp to Cross-Mot. and Reply on Motion-Exh..	EF 68-69
Affs in Opp to Cross-Motion-Exhibits.....	EF 70-73

Upon the foregoing papers, it is ordered that the motion and cross-motions are both granted, ONLY to the extent set forth below.

This motion by third-party defendant Highbury Concrete, Inc. for an order, *inter alia*, striking the plaintiff’s Complaint, pursuant to CPLR 3126, is granted solely to the extent set forth below.

Pursuant to the Preliminary Conference Order of this Court, dated July 16, 2018, the plaintiff was directed to, *inter alia*, appear for an examination before trial (EBT). It is undisputed that the plaintiff failed to comply with the terms of this Order. Thereafter, pursuant to the Compliance Conference Order of Joseph J. Esposito, dated January 15, 2019, the plaintiff was directed to, *inter alia*, appear for an EBT. Thereafter, pursuant to a “So-Ordered” Stipulation of this Court, dated October 22, 2019, the plaintiff was again directed to appear for an EBT. It is undisputed that the plaintiff has failed to comply with the terms of this Order. It is undisputed that the EBT of the plaintiff began on January 8, 2020, but was never completed. As such, the plaintiff has not fully complied with the directive.

Plaintiff has failed to comply with three (3) Court Orders, but the plaintiff has provided a reasonable excuse for such in that: he has always been ready, willing, and able to appear for a continued EBT, and that it is the other parties who are at fault for the continued EBT not going forward.

The Court finds that the plaintiff is directed to appear for a continued EBT, as directed below.

The cross-motion by defendants Leeding Builders Group, LLC, QSB 267 Property Co. LLC, Riverview Operating Co. LLC, and Simon Baron Development LLC for an order, *inter alia*, pursuant to CPLR 3126. striking the plaintiff’s Complaint is granted solely to the extent set forth below:

Said defendants requested authorizations from the plaintiff, pursuant to a letter dated March 12, 2020. Plaintiff maintains he has provided all such authorizations.

The Court finds that the plaintiff has substantially complied with the requests for authorizations. To the extent that cross-moving defendants feel that such authorizations are insufficient, they are free to make a motion delineating exactly which authorizations are outstanding.

To the extent that cross-moving defendants request an EBT of the plaintiff, same is granted for the same reason this Court proffered for the granting of an EBT to movant Highbury Concrete Inc. Thus, the plaintiff must appear for a continued EBT, as set forth below.

The cross-motion by plaintiff for an order, *inter alia*, pursuant to CPLR 3126, striking the answers of defendants/third-party plaintiffs and third-party defendant is granted solely to the extent set forth below.

Plaintiff maintains that defendants and third-party defendants have failed to comply with his Combined Demands, dated January 17, 2019, in derogation of multiple Court Orders.

The Court finds cross-moving defendants have provided a Response, dated July 27, 2020 and filed on July 30, 2020 and third-party defendant Highbury Concrete Inc. provided a Response, dated June 24, 2020, and filed on July 1, 2020. Plaintiff has not submitted a Reply indicating he is not satisfied with either of the Responses. Thus, the Court shall not address such.

However, it is undisputed that defendants/third-party plaintiffs and third-party defendant have outstanding EBTs. As such, defendants/third-party plaintiffs and third-party defendant must appear for EBTs, as set forth below.

Accordingly, it is

ORDERED that the motion by third-party defendant Highbury Concrete Inc. and the cross-motion by defendants Leeding Builders Group, LLC, QSB 267 Property Co. LLC, Riverview Operating Co. LLC, and Simon Baron Development LLC are both granted solely to the extent set forth above, in that, it is:

ORDERED that plaintiff is to appear for a continued EBT, on a date, time, and place mutually agreed upon by the parties or via Skype for Business, Zoom, Skype, Microsoft Teams or its equal, **no later than** sixty (60) days from the date that this Order appears in the minutes of the Office of the County Clerk–NYSCEF system; and it is further

ORDERED that defendants/third-party plaintiffs and third-party defendant are to appear for EBTs, on a date, time, and place mutually agreed upon by the parties or via Skype for Business, Zoom, Skype, Microsoft Teams or its equal, **no later than** sixty (60) days from the date that of completion of plaintiff's EBT; and it is further

ORDERED that any applications not specifically addressed herein are denied.

The foregoing constitutes the decision and order of the Court.

Dated: August 24, 2020



TIMOTHY J. DUFFICY, J.S.C.

FILED

8/25/2020

11:58 AM

**COUNTY CLERK
QUEENS COUNTY**