

Trice v Tag Ct. Sq. LLC
2020 NY Slip Op 33759(U)
November 10, 2020
Supreme Court, New York County
Docket Number: 106846/2010
Judge: Andrew Borrok
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ANDREW BORROK

PART

IAS MOTION 53EFM

Justice

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ELLIOT TRICE, MYA HAN, ILONA ROSS, ENRICO FERRANTE, MATTHEW GRAY, LAUREN GRAY, GREGORY SULLIVAN, JUAN AZCONA, FEDERIQUE HENRIOTAZCONA, JENNIFER OK, LETICIA TIANGCO, ELIZABETH LEE, IRIS GOLD, AMY BASSIN, ALBERT ARANEO, AMY KIMARANEO, TOSHIKO TAKAHARA, RYAN RACUYA, VIRGILIO BARCO, JASON HOMER, TROY ALLEN, ADDIS GETAHOUNALLEN, DAVID MATIK, LOUIE RUEDA, THOMAS LINDSLEY, WILLY CHANG, ANDY HONG, EMILY GIORDANO, ANTIPAS DIMAKOPOULOS, MICHAEL SHAPIRO, DIANA SHAPIRO, MARK GOLD, JAMES GUNN, KELLY CONATY, EDNA INESCAJUMBAN, HANIFA SCULLY, CHRISTOPHER SCULLY, SUNDAR JAGANNATH, MANJULA JAGANNATH, CHRYSO KAIZER, RACHEL WORTMAN, JOSH WORTMAN, DAVID QUINTAVALLE, RAYMOND WONG, NUBIA RUEDA, VINCENT SPENCER, MATTHEW WISHNOW, JARETT LIVINGSTON, FATIMA MASTOUR, JUAN SIERRA, CHRISTOPHER KELLEY, PEGGY ANN JAYNE, CECILA CUNNINGHAM, MICHAEL AVALLONE, BEAU MITCHELL, DEEPA MANWANI, MARIN DASKALOV, ELEONORA NIKOLOVA, CHRISTOS ATHANASIOU, ANASTASIA ATHANASIOU, STEPHEN PEPPER, SHELDON CURTIS, ASHLEY FLOTO, KRISTOPHER ABDELMESSIH, ALAN LAM, TRINI LAM, JAMES ROHAN, KEITH KANCAR, SOPHIA DRAMITINOS, MARY DRAMITINOS, MARY ZOTOS, OLLIE JOHNSON, KATHLEEN JOHNSON, AEON STANFIELD, LISA STANFIELD, CHARLES COHEN, HEE IM, BERT BUSTAMANTE, ALICIA BUSTAMANTE, THOMAS DEMSKER, ADELE DEMSKER, STUART DEMSKER, BARBARA BERNARD, DANIEL HALLMAN, ADRIANA ACEDO, STEPHEN KIM, HSUAN LEE, CHRIS NICODERMO, ZACHARY BERGER, ZMBER ZIEFER, JEFFREY WEISS, THEODORUS SANDFORT, DOUGLAS ADELMAN, LYUDMILA SHTEYNBAUM, THOMAS BARNES, YI ZHOU XIAO, CHI CHENG PUI, JULIA ROSHKOW, STEVE SALZMAN, ROCKFORD CHUN, KUEICHEN FANG, PETER UNGUREANU, MATTHEW SPIEGEL, MALKA SPIEGEL, ANDREW GERLE, MARIE POON, BO LIM MUI, ALBERT LEATHERMAN, ADRIA JOVER, LAURA ROIMERSHER, WENDY WILSON, DANIEL WU, ANNIE LAMMERS, SEAN LAMMERS, JARRED KIRSCH, ALEJANDRA KIRSCH, STEPHEN FOX, ALEXANDER CHAN, AMY CHAN, KATHLEEN CARLISLE, HUN KIM, JAVOR STOLAROV, WILLIAM ROSENBERG, PAUL HILEPO, TOM KNOTEK, ERIC BENAİM, TOVIT

INDEX NO. 106846/2010
MOTION DATE 09/17/2020
MOTION SEQ. NO. 012

**DECISION + ORDER ON
MOTION**

BENAIM, ANDERS DAHLSTROM, SALME DAHLSTROM, PETER JOHNSON, BUM WON, GEORGE VARSOS, CARMEN VARSOS, ELINOR ANKER, LALEO LLC, MING WONG, MICHAEL CLARKE, ANA SOKOLOFF, BETSY ASHTON, MARK JOHNSON, JANET COOK, MARY KASARIS, JULIE WON, MARGARET LEE, JEREMY FRIEDEL, CAROL HUANG, DARIUS TENCZA, MARINA TENCZA, MARIANNE HOUTENBOS, PIETER HOUTENBOS, KIMBERLY CONATY, SOOK KIM, YUNG KIM, MARVIN LIPKIND, TANIA LIPKIND, ADAM COLOMA, ARRIS LOFTS CONDOMINIUM,

Plaintiff,

- v -

TAG COURT SQUARE LLC, TAG QUART SQUARE MANAGER LLC, ALLEN SILVERMAN, ANDREW SILVERMAN, ALEXANDER SILVERMAN, WILLIAM KOGAN, THOMSON AVE APARTMENTS LLC, ANDALEX GROUP, COSTAS KONDYLIS & PARTNERS, MICHAEL PERAGINE, ETTINGER ENGINEERING ASSOCS, WSP CANTOR SEINUK, CANTOR SEINUK GROUP INC, PAVARINI MCGOVERN LLC, STRUCTURE TONE LLC, STRUCTURE TONE LLC, PACE PLUMBING CORP, GEIGER ROOFING CO INC, DRYVIT SYSTEMS INC, STEGLA GROUP INC, AAG CONSTRUCTION CORP, SUNSHINE GROUP LTD, GAF MATERIALS CORPORATION (3RD PARTY DEFENDANT), ELITE FLOORS, INC., RCC CONCRETE CORP., TOPLINE CONTRACTING, INC., PIONEER WINDOWS INC., PJ MECHANICAL CORP. (FOURTH-PARTY-DEFENDANTS), COMPONENT ASSEMBLY SYSTEMS INC., SPECTRUM PAINTING CORP. (THIRD THIRD-PARTY DEFENDANT),

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 012) 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395

were read on this motion to/for ENFORCEMENT.

As indicated on the record (November 5, 2020), and upon the foregoing documents, including the reading and filing of the affirmation of Steven D. Sladkus, Esq. dated September 17, 2020, together with the exhibits attached thereto submitted in support of plaintiff's Order to Show Cause for an Order (a) restoring to the Court's calendar the above-entitled action and the related actions bearing

Index Nos. 590086/11, 591010/11, 590404/12, 595364/12 and 595354/14 (collectively, the “Action”), (b) enforcing a January 9, 2019 settlement agreement between the parties (the “January Agreement”), which was further memorialized in a July 19, 2019 Stipulation of Settlement (the “July Agreement”) filed with the Court under seal on July 30, 2019 (collectively, the “Settlement Agreement”) settling and fully resolving the Action, (c) directing defendants TAG Court Square LLC (“TAG”) and its principals, Andrew Silverman, Alexander Silverman and Allen Silverman (the “Silvermans”)(together with TAG, the “Sponsor Defendants”) to (i) pay their portion of the cash payment to plaintiff required to be paid under the Settlement Agreement, (ii) execute and deliver to plaintiff the requisite releases contemplated under the Settlement Agreement, (iii) execute and deliver to plaintiff the lease negotiated between plaintiff and the Sponsor Defendants for the basement storage space, and (iv) execute and deliver to plaintiff an assignment for each of the storage cages transferring ownership to plaintiff, and (d) directing the Silvermans to execute the requisite approved affidavit and deliver same to Harlan H. Lazarus, Esq., counsel for the receiver appointed in the action entitled *Wells Fargo Bank, National Association v. Andalex Aviation II, LLC and Allen Silverman*, Index No. 651415/2016 and to take any such additional action as may be required to effectuate the Settlement Agreement, and (e) granting plaintiff an award of costs and attorneys’ fees under the Settlement Agreement, together with such other and further relief as this Court deems just and proper; and the affirmation of Charles R. Pierce, Jr. dated October 22, 2020 submitted on behalf of defendant Pioneer Windows, Inc. in support of plaintiff’s motion; and the affirmation of Gary S. Ehrlich dated October 22, 2020 submitted on behalf of the Silverman Defendants in opposition to plaintiff’s motion to the extent that it seeks to compel the Silvermans to execute an affidavit other than the affidavit which has been executed by Alexander

Silverman and provided to the receiver and awards plaintiff's costs and fees; and no other defendant having opposed plaintiff's motion;

And the Court having heard oral argument on plaintiff's motion on November 5, 2020, it is hereby

ORDERED, that the Action is restored to the Court's calendar; and it is further

ORDERED, that NYSCEF Doc. No. 382 and the record on this motion sequence No. 12 is supplemented, *nunc pro tunc*, to include the July Agreement, which will be uploaded to NYSCEF and filed under seal as soon as practicable (counsel may submit a proposed sealing order to Part 53 by email, on notice), or uploaded to NYSCEF by plaintiff's counsel with appropriate redactions of any and all monetary settlement contributions; and it is further

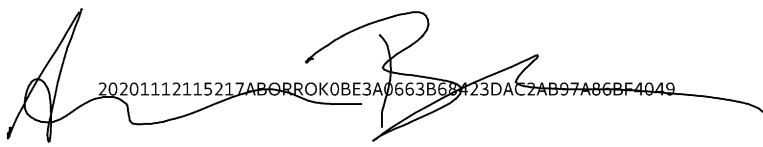
ORDERED, that within forty-five (45) days from the date of entry of this Order the Sponsor Defendants shall fully comply with the terms of the Settlement Agreement by (a) paying their portion of the cash payment to plaintiff required to be paid under the Settlement Agreement; (b) executing and delivering the requisite releases contemplated under the Settlement Agreement in the form attached as Exhibit B to the July Agreement; (c) execute and deliver to plaintiff the lease negotiated between plaintiff and the Sponsor Defendants; (d) execute and deliver to plaintiff an assignment of each of the storage cages transferring ownership to plaintiff; and (e) take any such additional action as may be required to effectuate the Settlement Agreement including but not limited to executing a stipulation of discontinuance; and it is further

ORDERED, that plaintiff is entitled to an award of reasonable attorneys' fees and costs it incurred in connection with its enforcement of the Settlement Agreement due to the Sponsor Defendants' breach thereof; and it is further

ORDERED, that within five (5) days from the date of entry of this Order plaintiff's counsel shall provide the Silvermans' counsel with an invoice for the attorneys' fees and costs incurred by plaintiff in connection with this motion (the "Invoice"), which shall be paid within fifteen (15) days after receipt; and it is further

ORDERED, that to the extent the Sponsor Defendants object to the attorneys' fees reflected in the Invoice, the Court shall refer the matter to a special referee to hear and determine the reasonable amount of attorneys' fees and costs plaintiff may recover from the Sponsor Defendants, and plaintiff shall be permitted to recover the additional attorneys' fees and costs it incurs in connection with any such hearing; and it is further

ORDERED, that the Action is severed as to defendants PJ Mechanical, Corp., Elite Floors, Inc. and Topline Contracting, Inc and they are dismissed from this action. Counsel shall upload a separate stipulation with said defendants accordingly.


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11/10/2020
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					REFERENCE