

<b>Sturman v BBA Group 377 LLC</b>
2021 NY Slip Op 31400(U)
April 19, 2021
Supreme Court, New York County
Docket Number: 655795/2019
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 14

Justice

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DEBORAH STURMAN, ARTHUR MILLER,
Plaintiff,

INDEX NO. 655795/2019

MOTION DATE 04/15/2021

MOTION SEQ. NO. 001

- v -

BBA GROUP 377 LLC, ILAN BRACHA, HAIM BINSTOCK,
ELP 377 BROADWAY, LLC, JOHN DOES, 377 BROADWAY
NYC MEZZ, LLC

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48

were read on this motion to/for STRIKE PLEADINGS.

The motion by plaintiffs to inter alia strike defendants' answer is denied.

Background

Plaintiffs were investors in a development project where defendants allegedly promised they would renovate a commercial space and plaintiffs would receive a significant return. They allege that despite defendants' repeated claims that investors would receive substantial distributions, plaintiffs received very little. Plaintiffs also argue that various financial documents misrepresented the amount of distributions that were sent to plaintiffs.

In this motion, plaintiffs claim that defendants have exhibited bad faith by not timely producing documents they agreed to produce. In opposition, defendants contend that they are actively producing documents and that any delays were due to legitimate concerns. Defendants insist that they never refused to produce documents. They point out that that a series of snowstorms in February 2021 delayed production and that they produced a substantial number of

documents on March 4, 2021 (only a few days past the February 19, 2021 deadline). Defendants also claim that the ongoing pandemic has delayed their ability to quickly respond.

Defendants also contend that they tried to assuage plaintiffs' concerns about the quality of the document productions. They point out that two of the defendants, Bracha and Binstock, lost access to emails from when they worked for Keller-Williams NYC because that entity defaulted on its franchise agreement. The lost emails were apparently from a key time period in the instant action. Defendants observe that they have made efforts to access these emails and were told they have to pay a license fee to access them.

In reply, plaintiffs dismiss defendants' excuses for not timely producing documents and insist that they never agreed to extend defendants' time to produce documents. They question why it took a year to discover the reason for so many missing emails from Bracha and Binstock. And plaintiffs take issue with some of the documents produced by defendants and request that they be produced in native format rather than in a pdf format.

### **Discussion**

The Court denies the motion. From the papers on this motion, there is no basis to impose the harsh remedy of striking the defendants' answer and defendants appear willing to produce relevant documents. Understandably, plaintiffs are frustrated at the slow pace of defendants' production and at the recent discovery about certain defendants' emails. But nothing shows a willful or contumacious effort by defendants to ignore court orders or their discovery obligations.

The Court also observes that the parties appeared to delay discovery while waiting for the Court to sign a confidentiality order. Of course, as expressed by the Court at various discovery conferences, this Court does not "rubber-stamp" confidentiality orders and that parties must state

a sufficient basis for such relief. However, the Court recognizes that this delayed the production of documents.

Moreover, to the extent that plaintiffs demand certain relief for the first time in reply, that is denied as improper.

### Summary

The denial of the instant motion should not be viewed as condoning defendants' actions. It is merely a finding that defendants did not engage in conduct that justifies the drastic remedy of striking their pleading. But as this case progresses, defendants are reminded that continued delays in responding to discovery will not be ignored (absent good cause shown).

The ongoing pandemic will undoubtedly continue to make it difficult for the parties to quickly respond to discovery demands and the parties are encouraged to work together to resolve disputes (especially where it appears that they agree that documents must be produced). That said, the Court cautions either party against using the pandemic as a "generic" excuse for every discovery issue.

The Court expects that by the time of the next conference, defendants will have made substantial progress in complying with outstanding discovery demands and taken appropriate steps to obtain discovery from third parties (such as issuing subpoenas). The Court may issue appropriate penalties if it believes that defendants are needlessly delaying this case.

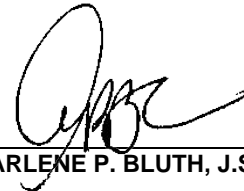
Accordingly, it is hereby

ORDERED that the motion by plaintiffs to strike defendants' answer, for sanctions, or to compel defendants to produce documents is denied.

Remote Conference: May 10, 2021 at 10 a.m.

4/19/2021

DATE



ARLENE P. BLUTH, 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: