

**Treskas v Style & Care, Inc.**

2021 NY Slip Op 34249(U)

January 4, 2021

Supreme Court, Queens County

Docket Number: Index No. 709446/18

Judge: Timothy J. Dufficy

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**Short Form Order**

**NEW YORK SUPREME COURT - QUEENS COUNTY**

**PRESENT: HON. TIMOTHY J. DUFFICY**  
**Justice**

**PART 35**

-----X  
**OMORFOULA TRESKAS and MARIA TRESKAS,**

**Index No.: 709446/18**

**Plaintiffs,**

**Mot. Date: 10/13/20**

**-against-**

**Mot. Seq. 2 & 4**

**STYLE & CARE, INC., PAUL OULOUPIS**  
**a/k/a POLYCARPOS OULOUPIS, STELLIOS**  
**OULOUPIS, SOPHIA OULOUPIS, MIRIAM**  
**DELGADO, CHRIS GRAMMATAS, GABRIEL**  
**J. RODRIGUEZ, CSPN BUILDERS, INC., a/k/a**  
**CSPN BUILDERS, CORP., CSPN PALIURAS**  
**CONSTRUCTION CORP., SPIRO PALIURAS,**  
**and PERSI CONTRACTING CORP.,**

**FILED**

**1/7/2021**  
**11:17 AM**

**Defendants**

**COUNTY CLERK**  
**QUEENS COUNTY**

-----X  
**CSPN BUILDERS INC a/k/a CSPN BUILDERS,**  
**CORP., CSPN PALIURAS CONSTRUCTION**  
**CORP, and SPIRO PALIURAS,**

**Third-Party Plaintiffs,**

**-against-**

**PEI ENGINEERING P.C., HERMAN**  
**SILVERBERG, JOHN STACOM,**  
**ARCHITECTURAL DESIGN P.C.,**  
**JOHN STACOM JR., and JOHN STACOM SR.,**

**Third-Party Defendants.**

-----X  
The following papers were read on this motion by Persi Contracting Corp.(Persi) to dismiss the Complaint, pursuant to CPLR3211(a)(1), (5) & (7), dismissing all claims and cross claims asserted against Persi, with prejudice, on the basis that: plaintiffs' Complaint fails to state a cause of action; plaintiff MARIA TRESKAS has no standing to maintain the instant action and is an improper party; documentary evidence mandates dismissal of the action; significant damages that are the subject of this litigation occurred more than three years before the action was commenced; and the cross-motion by plaintiffs for leave to file a Second Amended Verified Complaint, pursuant to CPLR 3025[b], and to preclude Style & Care , Inc., Paul Ouloupis a/k/a Polycarpos Ouloupis, Stelios Ouloupis, Sophia Ouloupis and Miriam Delgado (also referred to herein as the Style & Care defendants) from producing evidence at trial on the disputed issues, or, pursuant to CPLR

3126(3), striking said defendants’ Answer for their bad faith and willful failure to respond to Plaintiffs’ Combined Demands, dated June 13, 2019, or in the alternative, pursuant to CPLR 3124, compelling Style & Care, Paul Ouloupis a/k/a Polycarpos Ouloupis, Stelios Ouloupis, Sophia Ouloupis and Miriam Delgado to respond to plaintiffs’ Combined Demands, dated June 13, 2019, and revising the caption to conform to plaintiffs’ proposed Second Amended Verified Complaint (motion by Persi and cross-motion by plaintiffs - Motion Sequence No. 2); and the motion by PEI Engineering P.C. (PEI) and Herman Silverberg (Silverberg) (also referred to herein as third-party defendants) to dismiss the third-party complaint, pursuant to CPLR 3211(a)(1) and (7), based on documentary evidence, and on the ground that it fails to state a cause of action (Motion Sequence No. 4).

**PAPERS  
NUMBERED**

**Motion Sequence No. 2**

Notice of Motion - Affidavits - Exhibits.....	EF 61-73; EF 95
Notice of Cross Motion - Affidavits - Exhibits .....	EF 91- 94
Answering Affidavits - Exhibits.....	EF 96-120; EF 126
Reply Affidavits.....	EF121-123; EF 130

**Motion Sequence No., 4**

Notice of Motion - Affidavits - Exhibits.....	EF 83-88
Memorandum of Law.....	EF 89
Answering Affidavits - Exhibits.....	EF 124; EF 127-129
Reply Affidavits.....	EF 125

Upon the foregoing papers it is ordered that the motion by defendant Persi and cross-motion by plaintiffs (Motion Sequence No. 2) and the motion by third-party defendant PEI and Silverberg (Motion Sequence No. 4) are consolidated herein for purposes of disposition, and determined as follows:

This is an action for, *inter alia*, breach of contract, fraud and negligence regarding a home improvement project at the premises, located at 83-48 159th Street, Jamaica, NY 11432 (hereinafter referred to as the Project or the Premises). Plaintiffs allege that the work of the defendant contractors, subcontractors, and design professionals’ was negligent, defective, and incomplete, and as a result, caused significant damages to the plaintiffs’ house at the Premises and resulted in the issuance of various violations and Stop Work Orders by the NYC Department of Buildings (DOB). Defendant Persi moves to dismiss the complaint on various grounds, as provided herein. Plaintiffs cross-move for leave to amend the Complaint, third-party defendants PEI and Silverberg move to

dismiss the third-party complaint on the ground that it fails to state a cause of action. The motions and cross-motion are opposed by the respective parties.

### Facts

The Second Amended Verified Complaint alleges the following, that on or about February 4, 2015, Omorfoula Treskas entered into a written contract with Style & Care and Paul Ouloupis for a home improvement project, and to perform work according to the plans, which among other things, included renovation of the interior of the Premises, replacing a portion of damaged bricks on the exterior walls, replacing the exterior balcony, replacing the roofing and replacing the concrete sidewalk and garage driveway in front of the house (hereinafter referred to as the Project). Paul Ouloupis entered into the said contract in his personal capacity, as well as on behalf of Style & Care. During the meetings between Paul Ouloupis and Omorfoula Treskas, Paul Ouloupis intentionally misrepresented to Omorfoula Treskas, his qualifications, experience and expertise in construction and home improvements, by falsely stating that he and/or Style & Care possessed the necessary qualifications, experience, knowledge, expertise, and ability to perform work at the Project. The lump sum contract, dated February 4, 2015, was for \$280,000, which included the cost for the architect and the design of the Project. On or about July 13, 2015, a Work Permit was issued to Paul Ouloupis and Style & Care. Defendant Style & Care began demolition of portions of the home. Upon information and belief, Paul Ouloupis did actively and personally engage in the work at the Project.

Omorfoula Treskas made various payments, under the February 4, 2015 contract, including an initial payment of \$80,000, and additional progress payments of \$74,000. By December, 2015, Omorfoula Treskas had made a total payment of \$154,000, under the February 4, 2015 contract, that is approximately 55% of the total contract sum. Between the period of February 4, 2015, and December 2015, Paul Ouloupis requested that Omorfoula Treskas issue checks, leaving the payee portion blank, which payee information was then filled in by Paul Ouloupis, who would then issue the above mentioned checks, payable to cash, to various individuals, including Stelios Ouloupis, Sophia Ouloupis, Miriam Delgado, Chris Grammatas, and Gabriel J. Rodriguez.

Specifically, a check, in the amount of \$10,000, was made payable personally to Stelios Ouloupis for the Project, on or about August 8, 2015; a check, in the amount of \$5,000, was made payable personally to Sophia Ouloupis; a check issued to Miriam Delgado, in the amount of approximately \$28,000; a check issued to Chris Grammatas, in the amount of approximately \$15,000; and a check issued to Gabriel J. Rodriguez, in the amount of approximately \$14,000.

In or about December, 2015, Paul Ouloupis requested additional payments beyond the lump sum of the February 4, 2015 contract, without providing a change order. When Omorfoula Treskas refused, Style & Care and Paul Ouloupis ceased work at the Premises. At the time that Paul Ouloupis and Style & Care ceased work, the value of the work that they had performed was approximately \$25,500. Through their work at the Premises, Style & Care and Paul Ouloupis damaged, cracked, broke and/or removed structural elements of the Premises. Despite the plaintiffs' requests and demands, Style & Care and Paul Ouloupis have refused to return to the Project to remedy the damages they caused and to finish the Project, and have refused to return any of the plaintiff's money.

In or about August 23, 2017, Omorfoula Treskas subsequently entered into a new contract with a different contractor, known as CSPN Builders, Corp., a/k/a CSPN Builders, Inc. (CSPN) to complete the Project at the Premises. The scope of work in the August 23, 2017 contract with CSPN included, among other things, the unfinished work by Style & Care and Paul Ouloupis, as well as additional renovation work as per a revised set of architectural and structural drawings prepared by an architectural firm, known as John Stacom Architectural Design PC, and a professional engineer, known as Herman J. Silverberg, P.E., of P.E.I. Engineering P.C. During Omorfoula Treskas' meetings with defendant Spiro Paliuras (Paliuras), Paliuras represented to Omorfoula Treskas verbally that CSPN possessed a proper NYC Home Improvement License. In fact, the contract between Omorfoula Treskas and CSPN, dated August 23, 2017, contained a NYC Home Improvement License number, to wit.: 1215331. Upon information and belief, however, CSPN never maintained a valid NYC Home Improvement License during the time that it contracted for the plaintiff. Paliuras also misrepresented to Omorfoula Treskas, his qualifications, experience and expertise in construction and home improvements, by falsely stating that he and/or CSPN possessed

the necessary qualifications, experience, knowledge, expertise, ability, intent, and proper NYC home improvement license to perform work at the Project.

The August 23, 2017 contract called for a total lump sum of \$528,000. On or about September 21, 2017, a Work Permit was issued to Paliuras and CSPN. Upon information and belief, Paliuras did actively and personally engage in the work at the Project. Upon information and belief: Paliuras and CSPN hired and directed the work of certain subcontractors for some of the work on the Project, including but not limited to a subcontractor for a part(s) of the foundation work; Paliuras and CSPN hired co-defendant Persi to perform certain portions of the foundation work as a subcontractor at the Project; and CSPN paid Persi to perform certain portions of the foundation work as a subcontractor at the Project.

On or about December 11, 2017, a Full Stop Work Order was issued by the NYC Department of Buildings for construction damage caused by the defendants to the structural integrity of the party wall of the house. The December 11, 2017 Stop Work Order, which remains active to date, states:

AT TIME OF INSPECTION OBSERVED CRACKS IN  
PARTITION WALL OF SEMI ATTACHED WHICH  
SEEM UNSAFE ALL WORK STOPPED REQUIRING  
ENGINEERING REPORT

On or about December 12, 2017, an additional NYC Department of Buildings (DOB) inspection was made and an Environmental Control Board (ECB) violation notice #35294959Y was issued against CSPN for defective, leaning and missing sections of construction fence around the property, contrary to BC 3307.7 and section 27-1021 of the Building Code. The installation of the construction fence, that the defendants charged the plaintiff the sum of \$17,000, was performed without proper studs, braces, top and bottom plates, contrary to the approved project drawings by John Stacom, R.A. During the months of February through April of 2018, additional ECB violation notices #35309227H, #35240198P, and #35337483P, were issued against CSPN and plaintiff Omorfoula Treskas' deceased husband, for failure to correct and certify prior violation notices pertaining to the construction fence installation by CSPN.

On or about December 13, 2017, an additional DOB inspection was made and ECB violation notice #35302298N was issued against CSPN for lack of conformance of work with the approved plans, contrary to BC28-105.12.2. More specifically, the DOB inspector noted the following:

NOTED: JOB#421167828 FILING AS ALT 2. MORE THAN A 60% FOUNDATION AT 1ST FL. HAVE REMOVED. JOB NOT FILING PROPERLY. NEW FOUNDATION ERECTED.

During the months of January, March, and May of 2018, additional ECB violation notices were issued against the premises. As a result of the defective work of the defendants, more than 50% of the exterior walls of the building were damaged and removed, in violation of the approved drawings and the NYC Building Code. As a result, the plaintiffs' home improvement project became a new construction and a New Building application and plans have to be filed which involves attending hearings and obtaining zoning approvals from the NYC Zoning Board, as well as an audit of the plans.

On or about March 2, 2018, a second Full Stop Work Order was issued by DOB for failure to correct the defective construction fence erected by CSPN. Although this Stop Work Order was rescinded by the filing of the revised fence construction plans, the conditions of the fence was not corrected and the fence remains leaning and installed in an unsafe manner, subjecting the plaintiffs to additional violations and fines. After receiving the Stop Work Orders, CSPN and its subcontractors, including but not limited to Persi, stopped work and have not returned to the Project. Before stopping work at the Project, CSPN and its subcontractors negligently and improperly damaged, cracked, broke, and/or removed structural elements of the Premises, as well as exterior and interior finishes in excess of the demolition work shown on the plans and thereby permanently damaged the structure and essential systems of the house, in violation of the approved plans and the NYC Building Code. At the time that CSPN, Paliuras and their subcontractors stopped work at the Project, Omorfoula Treskas had already made payments to CSPN in the amount of approximately \$186,000 (35% of the total sum of the August 23, 2017 contract).

The August 23, 2017 contract with CSPN called for a payment schedule of up front payments of \$186,000, before CSPN finished certain portions of their work, such as shoring, footing, and floor framing. At the time CSPN, Paliuras, and their subcontractors stopped work at the Project, the shoring and excavation was only about 40% complete. CSPN and Paliuras' demolition and fencing work at the Project was performed in a defective manner and caused further damages to the house and was in violation of the approved plans and the NYC Building Code. CSPN, Paliuras, and their subcontractors performed foundation work in a defective manner and foundation work was only about 50% complete when they stopped work at the Project. At the time CSPN, Paliuras and their subcontractors stopped work at the Project, they failed to provide any weather protection and the floor framing was only about 25% complete resulting in damage by rainwater penetration due to a lack of weather protection. Further, the plaintiffs allege that CSPN and Paliuras also failed to maintain copies of the approved plans at the Project site for the NYC Department of Buildings Inspection, that resulted in additional violations. There is substantial water damage to the new and existing wood framing of the house due to defendants' negligence in failing to install waterproofing and temporary coverage or protection to keep rainwater and the elements from deteriorating the interior and exterior of the house. Despite the plaintiffs' requests and demands, defendants have refused to return to the Project to remedy the damages they caused and to finish the Project. Defendants have also refused to return any of Plaintiff's money, notwithstanding plaintiffs' requests and demands.

On or about June 19, 2018, plaintiff Omorfoula Treskas commenced an action against STELIOS/PAUL OULOUPIS OF STYLE & CARE OF ASTORIA NY and SPIROS PALIURAS OF CSPN CORPORATION OF MANHASSET LI, SOPHIA OULOUPIS & STELIOS OULOUPIS & PAUL OULOUPIS. Plaintiffs asserted fourteen causes of action against the defendants. On June 22, 2018, plaintiff OMORFOULA TRESKAS deeded the Premises to her daughter, MARIA TRESKAS, while retaining a life estate. On September 6, 2018, the parties stipulated to allow the plaintiff to file an Amended Complaint. On September 7, 2018, the plaintiffs filed a Supplemental Summons and Amended Verified Complaint naming Maria Treskas, as an additional party plaintiff and STYLE & CARE, INC., PAUL OULOUPIS a/k/a

POLYCARPOS OULOUPIS, STELIOS OULOUPIS, SOPHIA OULOUPIS, MIRIAM DELGADO, CHRIS GRAMMATAS, GABRIEL J. RODRIGUEZ, CSPN BUILDERS, INC., a/k/a CSPN BUILDERS, CORP. CSPN PALIURAS CONSTRUCTION CORP., SPIRO PALIURAS, AND PERSI CONTRACTING CORP. as defendants.

After the deposition of the then non-party witness Herman Silverberg, PE, on or about July 22, 2020, CSPN Builders Inc., a/k/a CSPN Builders, Corp., CSPN Paliuras Construction Corp., and Spiro Paliuras, filed a Third-Party Summons and Complaint against PEI Engineering P.C., Herman Silverberg, PE, John Stacom, RA, Architectural Design P.C., John Stacom Jr., RA and John Stacom Sr., RA.

By the instant motions, the defendants respectively move to dismiss the Complaint, pursuant to CPLR 3211[a][1], [5] and [7]. Plaintiffs oppose the motions and cross-move to amend the Complaint.

#### Motion by defendant Persi

The branch of the motion by Persi to dismiss the part of the Complaint that is asserted on behalf of plaintiff Maria Treskas, on the ground that Maria Treskas lacks standing to commence the instant action, is granted. The Court of Appeals has defined the standard by which standing is measured, explaining that a plaintiff, in order to have standing in a particular dispute, must demonstrate an injury in fact that falls within the relevant zone of interests sought to be protected by law (see *Matter of Fritz v Huntington Hosp.*, 39 NY2d 339, 346 [1976]). Without a property interest to enforce, there can be no standing (see *Society of Plastics Indus. v County of Suffolk*, 77 NY2d 761, 772, [1991]). The undisputed record indicates that Maria Treskas did not have any property interest in the Premises at the time of the alleged occurrence(s) that are the subject of the instant litigation and did not enter into any contract with any of the defendants for the home improvement work. Therefore, she does not have standing to contest the alleged wrongdoings (cf., *Niagara Falls Redevelopment, LLC v Cerrone*, 28 AD3d 1138 [4th Dept 2006]).

In the second branch of the motion, Persi moves for dismissal of unstated causes of action, based upon his contention that he is an independent contractor with no duty of care to the plaintiff. Persi was a sub-contractor retained by CSPN to perform work on the

Project, including but not limited to demolition, installation of footings, walls, and sidewalk, etc. Plaintiffs have not alleged a breach of contract cause of action against Persi and its principal, Michael Persichilli. However, it appears that the plaintiffs' property damage causes of action are based upon breach of the renovation contract that was entered into between Omorfoula Treskas and CSPN. The claims asserted in the amended complaint "are grounded in the breach of a construction contract and as a general rule, the breach of a contract does not give rise to tort liability unless a legal duty independent of the contract itself has been violated" (*Teller v Bill Hayes, Ltd.*, 213 AD2d 141, 144 [2d Dept 1995]; *see also Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 389 [1987]). Therefore, the branch of the motion to dismiss the claims against Persi that are asserted in the amended complaint is granted.

Persi also moves to dismiss the all claims against it on the ground that they are time-barred. The Complaint alleges that CSPN hired Persi and executed a subcontract for Persi's work, on August 25, 2017. Thus, Persi could not have commenced or completed its work prior August 25, 2017, the date on which it was hired. Plaintiff's action was commenced. on June 19, 2018, less than a year later. These claims are governed by a six-year statute of limitations (*see* CPLR 213[2]) and, under the facts of this case, the proposed claims asserted by the plaintiff are timely (*Felice v Am. A.W.S., Corp.*, 46 AD3d 505, 506-07 [2d Dept 2007]; *cf. Anderson v Nottingham Vil. Homeowner's Assn. Inc.*, 37 AD3d 1195 [4th Dept 2007]).

#### Motion by third-party defendants PEI and Herman Silverberg

Third-party defendants PEI and Herman Silverberg move to dismiss the third-party complaint, pursuant to CPLR 3211 [a][1] and [7]. The motion is granted on the ground that the third-party complaint of the CSPN defendants fails to state a cause of action. It is apparent from the reading of CPLR 1401, that a claim for contribution is limited to actions for "personal injury, injury to property or wrongful death," *viz.*, actions sounding in tort, even where the basis for contribution is the contractual relationship among the parties (*County of Westchester v Welton Becket Assocs.*, 102 AD2d 34 [2d Dept 1984], *affd.* 66 NY2d 642 [1985]). It is clear here that the basis of the lawsuit brought by the

CSPN defendants is breach of contract, for which contribution is unavailable (*Board of Educ. v Sargent, Webster, Crenshaw & Folley*, 71 NY2d 21 [1987]). Moreover, the CSPN defendants, merely by invoking the language of tort in its third-party complaint and stating that liability arises from “culpable conduct, want of care and breach of contract,” cannot transform the action into one which sounds in tort (*Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 390 [1987]). All of PEI and Silverberg’s assorted errors and omissions enumerated in the third-party complaint sound in contract, and no attendant tort claim is asserted alleging the breach of a duty independent of the contract (*Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, *supra*, at 389).

Further, there is no basis for indemnification by the third-party defendants. Nothing in the pleadings indicates that any duty (outside the obligation to perform pursuant to the contract) was owed by the third-party defendants to the CSPN defendants which would support any claim by the CSPN defendants sounding in tort. “[I]ndemnity arises because of an independent duty between tort-feasors based upon contract” (*Smith v Hooker Chem. & Plastics Corp.*, 83 AD2d 199, 201 [4th Dept 1991], citations omitted, *lv. den.*, 56 NY2d 645 [1982]). There is no injury to persons or property alleged to have been sustained nor a breach of any legal duty owed to the CSPN defendants, independent of the contract, which would serve as the basis of a duty owed to third persons (*Clark-Fitzpatrick Inc. v Long Is. R.R. Co.*, *supra*, 70 NY2d at 389). “[S]ince the predicate of common-law indemnity is vicarious liability without actual fault on the part of the proposed indemnitee, it follows that a party who has itself actually participated to some degree in the wrongdoing cannot receive the benefit of the doctrine” (*SSDW Co. v. Feldman-Misthopoulos Assoc.*, 151 AD2d 293, 295 [1st Dept 1989], quoting *Trustees of Columbia Univ. v. Mitchell/Giurgola Assocs.*, 109 A.D.2d 449, 453, 492 N.Y.S.2d 371, citation omitted). Accordingly, the motion by PEI and Silverberg to dismiss the third-party complaint insofar as asserted against them, is granted.

In light of the court’s decision on this issue, the Court need not address whether dismissal is also warranted based upon documentary evidence, pursuant to CPLR 3211 [a][1].

Cross-Motion by plaintiffs Omorfoula Treskas and Maria Treskas

The branch of the cross-motion for leave to serve a Second Amended Verified Complaint, is granted without opposition, and otherwise on the merits. Plaintiff seeks to add defendants and add certain claims against all the defendants, including claims against Persi and its principal, Michael Persichill), and other contractor defendants, for their violations and breach of trust under the NY Lien Law Article 3-A, NY Lien Law § 77, based on their alleged diversion of trust fund monies which funds were meant for the Project and failure to complete their work. In total, the new proposed Second Amended Complaint asserts twenty-four causes of action, some of which were asserted in the amended complaint.

It is well-settled that leave to amend pleadings shall be given freely, unless the party opposing the amendment can demonstrate prejudice or surprise from the delay (*see* CPLR 3025[b]; *Volpe v Good Samaritan Hosp.*, 213 AD2d 398, 399 [2d Dept 1995]). “Mere lateness is not a barrier to the amendment. It is lateness coupled with significant prejudice to the other side, the very elements of the laches doctrine” (*Edenwald Contr. Co. v City of New York*, 60 NY2d 957, 959 [1983], quoting Siegel, Practice Commentaries, McKinney's Cons Law of NY, Book 7B, CPLR 3025.5, p. 477). “Prejudice requires ‘some indication that the defendant has been hindered in the preparation of its case or has been prevented from taking some measure in support of its position’ ” (*Kocourek v Booz Allen Hamilton Inc.*, 85 AD3d 502, 504 [1st Dept 2011] [internal citations omitted] ). The burden of establishing prejudice is on the party opposing the amendment (*see Kimso Apts., LLC v Gandhi*, 24 NY3d 403, 411 [2014]). Furthermore, in considering a motion to dismiss, pursuant to CPLR 3211 (a) (7), “the court should accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Simos v Vic-Armen Realty, LLC*, 92 AD3d 760, 761 [2d Dept 2012] [internal quotation marks omitted]; *see Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). Furthermore, the decision whether to grant such a motion lies in the court's discretion. *See C-Kitchens Assoc., Inc. v Travelers Ins. Companies*,

15 AD3d 905 [4th Dept 2005], *citing Edenwald Contr. Co. v City of New York*, 60 NY2d 957, 959 [1983]).

Here, the plaintiffs demonstrated that the proposed amendment has merit, and the defendants cannot claim prejudice or surprise since the proposed amendments arise out of the same facts as those underlying the action (*see Koenig v Action Target, Inc.*, 76 AD3d 997, 997-98 [2d Dept 2010]; *Fisher v City of New York*, 48 AD3d 303, 304 [1st Dept 2008]; *Maloney Carpentry, Inc. v Budnik*, 37 AD3d 558 [2d Dept 2007]; *Huntington v Trotta Auto Wreckers*, 257 AD2d 647 [2d Dept 1999]).

The Court notes, that based upon the findings in this Order, the caption in the proposed Second Amended Verified Complaint has been further amended by the Court, as is directed below.

The branch of the cross-motion which is to strike the Answer of the Style & Care defendants' for failure to comply with a combined Demand and to comply with a Compliance Conference Order is granted. On June 13, 2019, the plaintiff duly served the Style & Care defendants with a Combined Demand requesting discovery of certain information and documents, pursuant to the Preliminary Conference Order, dated May 14, 2019. Subsequently, on November 26, 2019, a Compliance Conference was held, and the Compliance Conference Order, in part, orders that all the defendants were to serve discovery responses within 45 days from November 26, 2019. The Preliminary Conference Order also required Defendants to provide certain responses, such as the disclosure of insurance information. To date, defendants, Style & Care Inc., Paul Ouloupis a/k/a Polycarpos Ouloupis, Stelios Ouloupis, Sophia Ouloupis, and Miriam Delgado, have provided absolutely no responses to Plaintiffs' Combined Demands nor to the Preliminary Conference Order. In fact, the Style & Care defendants did not respond to the plaintiffs' cross-motion. Plaintiff submits that it has been over one (1) year since the Preliminary Conference and, since the plaintiffs requested the foregoing discovery and made good faith attempts to obtain same from the Style & Care defendants, that the proper remedy for this failure is a striking of the Answer of the Style & Care defendants.

A court has the discretion to sanction a party which has failed to comply with court-ordered discovery by striking part or all of a pleading (*see CPLR 3126[3]; Kihl v Pfeffer*, 94 NY2d 118, 122 [1999]; *Dokaj v Ruxton Tower Ltd. Partnership*, 91 AD3d

812, 814 [2d Dept 2012]; *Maffai v County of Suffolk*, 36 AD3d 765, 766 [2d Dept 2007]). “However, the extreme sanction of striking an affirmative defense is inappropriate absent a clear showing that the failure to comply with discovery demands was willful and contumacious” (*Jones v LeFrance Leasing Ltd. Partnership*, 110 AD3d 1032, 1033 [2d Dept 2013], quoting *Maffai v County of Suffolk*, 36 AD3d at 766; see *Weber v Harley–Davidson Motor Co., Inc.*, 58 AD3d 719, 722 [2d Dept 2009]). “The willful and contumacious character of a party's conduct can be inferred from his or her repeated failures to comply with disclosure, coupled with inadequate excuses for those defaults” (*Poulas v U–Haul Intl.*, 288 AD2d 202, 202 [2d Dept 2001]; see *Northfield Ins. Co. v Model Towing & Recovery*, 63 AD3d 808, 809 [2d Dept 2009]). Here, on May 14, 2019, a Preliminary Conference was held. The Preliminary Conference Order issued therefrom set forth a schedule for the parties to serve discovery demands and responses to discovery demands, and also contains a provision that requires all the defendants to furnish insurance coverage information (including excess and/or umbrella coverage) in this action. On June 13, 2019, Plaintiffs’ Combined Demands to the defendants were served, which included a demand for copies of any insurance contracts and agreements under which any person carrying on insurance business may be liable to satisfy part or all of a judgment which may be entered in this action, including but not limited to excess and additional coverage.

On November 26, 2019, a Compliance Conference was held. The Compliance Conference Order directed that all the defendants were to serve discovery responses to the plaintiffs’ discovery demands and to the Preliminary Conference Order (including insurance information) within 45 days, from November 26, 2019. To date, defendants Style & Care Inc., Paul Ouloupis a/k/a Polycarpus Ouloupis, Stelios Ouloupis, Sophia Ouloupis, and Miriam Delgado have provided absolutely no responses to Plaintiffs’ Combined Demands nor to the Preliminary Conference Order, in complete defiance of this Court’s previous Orders. Notably, the Compliance Conference Order, dated November 26, 2019, provided, in pertinent part, as follows:

“ORDERED that any failure to comply strictly with the terms of this order shall be grounds for the striking of pleadings . . . pursuant to CPLR 3126.”

The Style & Care defendants did not proffer any response to plaintiffs' cross-motion for sanctions as a result. Accordingly, under the circumstances where the Style & Care defendants failed to produce the subject evidence or to provide a credible explanation as to why they failed to do so. The record supports a determination, in effect, that their failure to produce the said records as directed was willful and contumacious (see *Northfield Ins. Co. v Model Towing & Recovery*, 63 AD3d at 809; *Poulas v U-Haul Intl.*, 288 AD2d at 202). Therefore, plaintiff's cross-motion, *inter alia*, to strike the answer of the Style & Care defendants, is granted (see *Jones v LeFrance Leasing Ltd. Partnership*, 110 AD3d 1032, 1034 [2d Dept 2013]). 'If the credibility of court orders and the integrity of our judicial system are to be maintained, a litigant cannot ignore court orders with impunity' ” (*Northfield Ins. Co. v Model Towing & Recovery*, 63 AD3d at 809, quoting *Kihl v Pfeffer*, 94 NY2d at 123).

Accordingly, based upon the foregoing, it is

**ORDERED** that the motion by Persi Contracting Corp. (Persi) is granted in part and denied in part, in that, it is

**ORDERED** that the branch of the motion by Persi to dismiss the part of the complaint which is asserted on behalf of plaintiff Maria Treskas on the ground that Maria Treskas lacks standing to commence the instant action, is granted; and it is further

**ORDERED** that the Maria Trekas shall be stricken as a plaintiff in this action, and the caption shall be amended to reflect such; and it is further

**ORDERED** that the branch of the motion by Persi to dismiss the claims against it that are asserted in the amended complaint on the ground that it was an independent contractor, is granted; and it is further

**ORDERED** that the branch of the motion to dismiss the claims, that asserted against Persi on the ground that they are time-barred, is denied; and it is further

**ORDERED** that the motion by third-party defendants PEI Engineering P.C. (PEI) and Herman Silverberg to dismiss the third-party complaint, insofar as asserted against PEI and Herman Silverberg, is granted.

**ORDERED** that the cross-motion by plaintiffs is granted in that, it is

**ORDERED** that the branch of the cross-motion to strike the Answer of the Style & Care defendants' for failure to comply with a combined Demand and to comply with a Compliance Conference Order is granted; and it is further

**ORDERED** that the branch of the cross-motion to amend the caption to conform to the proposed caption in the Second Amended Verified Complaint is granted to the extent that the caption shall reflect **all of the caption amendments** indicated below:

Plaintiff Marisa Trekas shall be **stricken** from the caption as a party plaintiff.

P.E.I. Engineering, P.C. and Herman Silverberg, P.E., a/k/a Herman J. Silverberg, P.E., shall be **stricken** from the proposed caption.

Defendant Spiro Paliuras shall be **substituted as** Spirodon Paliuras, a/k/a Spiro Paliuras.

Spiros Paliuras, Spirodon Paliura and Spyridon Paliura, Michael Persichilli, John Stacom Architectural Design P.C., John Patrick Stacom, R.A., John William Stacom, R.A., Caliber Control Inspection, Inc., Anthony John Stacom, Inc., R.A., shall be **added as party defendants**; and it is further .

**ORDERED** that this Court, *sua sponte*, further amends the caption in the third-party action by striking third-party defendants PEI ENGINEERING P.C. and HERMAN SILVERBERG, as the case has been dismissed against them pursuant to the findings of this Court in the instant Order. This caption amendment shall be reflected in the caption of the Second Amended Verified Complaint; and it is further .

**ORDERED** that the branch of the cross-motion for leave to serve a Second Amended Verified Complaint, is granted. The proposed Second Amended Verified Complaint shall **reflect all the caption amendments**, as discussed above and set forth

below, and the **body** of the proposed Second Amended Verified Complaint shall be amended accordingly; and it is further

**ORDERED** that the amended title of the action shall be:

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

-----X  
**OMORFOULA TRESKAS,**

**Index No.: 709446/18**

**Plaintiff,**

**-against-**

**STYLE & CARE, INC., PAUL OULOUPIS  
a/k/a POLYCARPOS OULOUPIS, STELLIOS  
OULOUPIS, SOPHIA OULOUPIS, MIRIAM  
DELGADO, CHRIS GRAMMATAS, GABRIEL  
J. RODRIGUEZ, CSPN BUILDERS, INC., a/k/a  
CSPN BUILDERS, CORP., CSPN PALIURAS  
CONSTRUCTION CORP., SPIRODON  
PALIURAS, a/k/a SPIRO PALIURAS, SPIROS  
PALIURAS, SPIRODON PALIURA and  
SPYRIDON PALIURA, PERSI CONTRACTING  
CORP., MICHAEL PERSICHILLI, JOHN  
STACOM ARCHITECTURAL DESIGN P.C.,  
JOHN PATRICK STACOM, R.A., JOHN  
WILLIAM STACOM, R.A., CALIBER CONTROL  
INSPECTION, INC., ANTHONY JOHN STACOM,  
INC., R.A.,**

**Defendants**

-----X  
**CSPN BUILDERS INC a/k/a CSPN BUILDERS,  
CORP., CSPN PALIURAS CONSTRUCTION  
CORP, and SPIRO PALIURAS,**

**Third-Party Plaintiffs,**

**-against-**

**JOHN STACOM, ARCHITECTURAL DESIGN  
P.C., JOHN STACOM JR., and JOHN STACOM SR.,**

**Third-Party Defendants.**

-----X  
; and it is further

**ORDERED**, that the plaintiff shall serve and file the Second Amended Verified

Complaint, **with the caption and body amended, as set forth above**, within thirty (30) days of the entry of this Order, upon all defendants; and it is further

**ORDERED**, that a copy of this Order with Notice of Entry be served on all parties to the action, and the Clerk of Queens County, who is directed to amend the caption upon receipt of service.

This constitutes the decision and order of this Court.

**Dated: January 4, 2021**



**TIMOTHY J. DUFFICY, J.S.C.**

**FILED**

**1/7/2021  
11:17 AM**

**COUNTY CLERK  
QUEENS COUNTY**