

Moncion v 793-801 Bedford Realty LLC
2022 NY Slip Op 30476(U)
February 1, 2022
Supreme Court, Kings County
Docket Number: Index No. 502187/18
Judge: Carolyn E. Wade
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At an IAS Term, Part 84 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 1st day of February, 2022.

P R E S E N T:

HON. CAROLYN E. WADE,

Justice.

-----X

EDILIO MONCION,

Plaintiffs,

-against-

Index No.: 502187/18

793-801 BEDFORD REALTY LLC, THE JAY GROUP INC.
AND PRESTIGE CONSTRUCTION NY LLC,

Defendants.

DECISION/ORDER

-----X

793-801 BEDFORD REALTY LLC, THE JAY GROUP INC.,
PRESTIGE CONSTRUCTION NY LLC

Third-Party Plaintiffs,

-against-

1 SEAL USA, LLC

Third-Party Defendant.

-----X

793-801 BEDFORD REALTY LLC, THE JAY GROUP INC.,
PRESTIGE CONSTRUCTION NY LLC

Second Third-Party Plaintiffs,

-against-

DESIGN N SAFETY, INC.

Second Third-Party Defendant.

-----X
1 SEAL USA, LLC Third Third-Party Plaintiff

-against-

BRAGA CORP. and ABLE FENCING INC.
Third Third-Party Defendants.
-----X

<u>The following e-filed papers read herein:</u>	<u>NYSCEF Doc Nos.</u>
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) _____ NYSCEF #s _____	<u>217-228, 304</u>
Opposing Affidavits (Affirmations) _____	<u>305-315</u>
Reply Affidavits (Affirmations) _____	<u>318</u>

Upon the foregoing cited papers, and after oral argument, third-party defendant 1 Seal USA LLC moved to Quash, or Modify Subpoena, or in the alternative a Protective Order (motion seq. #10). Plaintiff cross-moved for sanctions (motion seq. #14).

The underlying action was commenced by plaintiff Edilio Moncio, a contractor employed by 1 SEAL USA, LLC, who alleges that he sustained serious injuries at a construction site due to the violation of labor laws by the defendants.

As a preliminary matter, this Court notes that on December 8, 2021, the parties virtually argued the above-referenced motions, which were then marked "submitted." Notwithstanding, 1 SEAL USA, LLC's counsel e-filed a letter, dated December 23, 2021, which *inter alia*, requested that its instant motion (mot seq. #10) be marked "withdrawn," "thereby dropping plaintiff's cross motion" (mot. seq. #14). Plaintiff's counsel subsequently submitted a letter opposing the request. Notably, the instant decision/order

had been drafted by the time the correspondences were received. Thus, both applications will be decided herein.

1 SEAL USA LLC's Motion to Quash or Modify Subpoena (mot. seq. #10)

It is undisputed that third-party defendant, 1 SEAL USA, LLC served a subpoena on non-party Mr. Rivadeneira to appear for a July 27, 2021 virtual deposition. However, Mr. Rivadeneira did not receive the virtual link. One hour after his non-appearance, the plaintiff filed a Notice to Take Deposition and Subpoena Ad Testificandum for the non-party witness. The deposition was subsequently held on August 23, 2021 with all parties' counsel present, including 1 SEAL USA, LLC's attorney. A continuance will be held at a later date. Since everyone was present, movant 1 SEAL USA, LLC's motion to quash/modify the subpoena; or alternatively, for a protective order is **denied as moot** (motion seq. #10).

Plaintiff's Cross-Motion for Office Costs (mot. seq. #14)

Turning to Plaintiff's Cross-Motion for Office Costs (motion seq. #14), the court, in its discretion, may reimburse costs for actual expenses reasonably incurred resulting from frivolous conduct (22 NYCRR 130-1.1). Conduct is frivolous if: (1) it is "completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;" (2) is "undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another;" or (3) "asserts material factual statements that are false" (22 NYCRR 130-1.1[c]). "In determining whether the conduct undertaken was frivolous, the court shall consider, among other issues, the circumstances under which the conduct took place,

including the time available for investigating the legal or factual basis of the conduct, and whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel or the party” (*id.*).

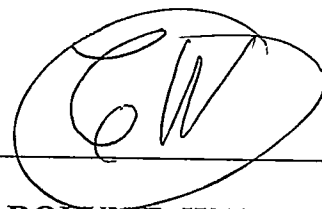
In the instant case, the Court has examined 1 SEAL USA, LLC’s conduct, including its withdrawal of a prior motion for sanctions that it filed against Plaintiff’s counsel (motion seq. #9). As noted above, the entity most recently sought to withdraw its instant motion after it was marked “submitted.” This Court finds that 1 SEAL USA, LLC’s conduct, including the withdrawal of motion seq. #9, does not rise to the level of the criteria outlined in 22 NYCRR 130-1.1 for such relief. However, this Court stresses that it is imperative for the attorneys to engage in professional and ethical conduct.

The court has considered the parties’ remaining contentions and find them to be without merit and/or moot. Accordingly, it is

ORDERED that both 1 SEAL USA, LLC’s Motion to Quash or Modify Subpoena (mot. seq. #10) and plaintiff’s Cross-Motion for sanctions (mot. seq. #14) are both **DENIED.**

This constitutes the decision and order of the court.

E N T E R,

A handwritten signature in black ink, appearing to read 'CW', is written over a horizontal line. The signature is enclosed within a hand-drawn oval.

HON. CAROLYN E. WADE, JSC