

Toribio v 575 Broadway LLC

2022 NY Slip Op 30505(U)

February 15, 2022

Supreme Court, New York County

Docket Number: Index No. 150457/2017

Judge: Sabrina B. Kraus

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. SABRINA KRAUS PART 57TR

Justice

-----X

JUAN TORIBIO

Plaintiff,

- v -

575 BROADWAY LLC, 575 BROADWAY ASSOCIATES,
L.P.,

Defendant.

-----X

575 BROADWAY. LLC and 575 BROADWAY
ASSOCIATES, L.P.,

Third-Party Plaintiffs,

-against-

ALERT ACTION CONTRACTING. INC.,

Third-Party Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 006) 174, 175, 176, 177, 178, 179, 180, 181, 186, 188, 190, 191, 192, 193, 194, 195, 196

were read on this motion to/for STRIKE PLEADINGS.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224

were read on this motion to/for VACATE/STRIKE - NOTE OF ISSUE/JURY.

Upon the foregoing documents, Motion seq nos. 6 & 8 are consolidated herein for disposition.

The motion to strike the note of issue is denied. The parties conceded all discovery has been completed, except for the deposition of Alert Action Contracting Inc (Alert). Alert was

previously held to be willfully in default of its discovery obligations by Judge Kelly in a decision dated May 3, 2021. Because that decision was issued while counsel for Alert had a pending motion to withdraw, Judge Kelly vacated and recalled the decision and order on Motion Seq. No.6, pursuant to a decision and order issued May 5, 2021. On that same date, Judge Kelly granted the motion of counsel for Alert to withdraw and stayed any actions against Alert for 60 days.

To date Alert has not appeared by new counsel and Alert has submitted no opposition to either of the two motions pending before the court.

Based on the foregoing the motions are granted to the extent of striking the answer of Alert and extending the parties time to moved for summary judgment through April 22, 2022.

The balance of the relief sought is denied.

Additionally, the caption of the action needs to be amended due to various discontinuances that have taken place.

Movants having established that Alert has willfully and contumaciously failed to appear for a deposition and provide discovery as previously directed by this court, it is hereby

ORDERED that the motions of plaintiff and defendants and to strike the answer of ALERT ACTION CONTRACTING. INC., are granted; and it is further

ORDERED that the answer is stricken; and it is further ordered

ORDERED that the action shall bear the following caption:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

JUAN TORIBIO

Plaintiff,

- v -

575 BROADWAY LLC, 575 BROADWAY ASSOCIATES,
L.P.,

Defendant.

-----X

575 BROADWAY. LLC and 575 BROADWAY
ASSOCIATES, L.P.,

Third-Party Plaintiffs,

-against-

ALERT ACTION CONTRACTING. INC.,


Third-Party Defendants.

-----X

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon ALERT ACTION CONTRACTING, INC. at 53-13 65th Place, Maspeth New York 11378, and upon the County Clerk (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the new caption; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address (www.nycourts.gov/supctmanh)); and it is further

ORDERED that this constitutes the decision and order of the court.

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2/15/2022
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER
 INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER
 FIDUCIARY APPOINTMENT

REFERENCE

CHECK IF APPROPRIATE: