

**Board of Mgrs. of the Porter House Condominium v  
Delshah 60 Ninth LLC**

2022 NY Slip Op 31402(U)

April 28, 2022

Supreme Court, New York County

Docket Number: Index No. 157034/2018

Judge: Arlene Bluth

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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. ARLENE BLUTH PART 14

Justice

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INDEX NO. 157034/2018

BOARD OF MANAGERS OF THE PORTER HOUSE
CONDOMINIUM,

MOTION DATE 04/26/2022

Plaintiff,

MOTION SEQ. NO. 008

- v -

DELSHAH 60 NINTH LLC,

DECISION + ORDER ON MOTION

Defendant.

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DELSHAH 60 NINTH LLC

Third-Party
Index No. 595236/2020

Plaintiff,

-against-

ANTONIO DI ORONZO, BLUARCH LLC

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 008) 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287

were read on this motion to/for DISCOVERY.

The motion by third-party defendants Antonio Di Oronzo and Bluarch LLC to strike the notices to admit served by defendant is granted.

Background

Plaintiff owns a ten-story condo located at 66 Ninth Avenue. It claims that its predecessor entered into an agreement with the owner of the building next door (defendant Delshah's predecessor) which imposed a perpetual easement of light and air and restricted elevations on the upper and lower roofs of Delshah's building. Plaintiff claims that defendant

breached the easement agreement during renovations in 2016 and that some of its unit owners had their views obstructed. Delshah obtained a final certificate of occupancy for its building in May 2018.

Plaintiff argues that structures on the roof allegedly added by Delshah in 2016, including a stair bulkhead and an elevator bulkhead on the upper portion of the roof, exceed a height restriction contained in the easement agreement. Plaintiff also complains about an HVAC unit installed on the lower portion of the roof which allegedly also exceeded the elevation permitted under the agreement and is noisy; Delshah claims that a 2005 agreement (the “Smog Hog Agreement”) expressly allows an HVAC unit on this portion of the roof. Also at issue are two sky lights added to the lower roof top.

Defendant contends that the third-party defendants performed architecture work for defendant and alleges that its contractor relied on the architectural drawings from the third-party defendants when making renovations to defendant’s building. In other words, defendant alleges that any issues regarding these renovations are the fault of the third-party defendants.

The third-party defendants complain that defendant served two notices to admit on them (one on each third-party defendant) and asked them to look at 3,629 pages of documents from a 2017 litigation. They claim this request is burdensome and does not seek relevant information.

Defendant contends that the documents at issue relate to either this case or a 2017 litigation in which defendant claim that the third-party defendants produced documents. It observes that the 2017 litigation involved the timeliness of construction relating to renovations at defendant’s building. Defendant argues that it merely wants the third-party defendants to confirm the genuineness of papers and documents created by the third-party defendants, and which were purportedly produced in the 2017 litigation or in this case. It maintains that it does not seek any

admissions about matters that go to the heart of the case or would require the third-party defendants to make admissions about architectural practices and procedures. Defendant argues that the affidavit from Mr. Di Oronzo only focuses on Request No. 1 in the notice to admit regarding documents produced in the 2017 litigation (these have Bates Numbers BA 00001 to 003629).

In reply, the third-party defendants claim that the two notices to admit are an improper attempt at serving interrogatories and cross-examining Mr. Di Oronzo.

### Discussion

As an initial matter, the Court declines to wade into the *ad hominem* attacks lodged by the parties' attorneys. This motion will focus solely on the content of the requests to admit.

“[T]he purpose of a notice to admit is to crystallize issues and to eliminate from trial those that are easily provable or not really in dispute. Thus, the subject section makes available a procedure whereby a party may, in effect, procure a stipulation from the opposing party regarding certain specific matters concerning which there is general agreement and whose exclusion as an issue to be litigated will serve to expedite the trial” (*Hodes v City of New York*, 165 AD2d 168, 170-71, 566 NYS2d 611 [1st Dept 1991] [citations omitted]).

The Court observes that the notices to admit (one served on each third-party defendant) are certainly lengthy, but that alone is not a reason to strike notices to admit. Rather, this Court must consider the substance of these requested admissions. The Court finds that many of these proposed admissions do not reduce issues for trial and instead seek factual admissions that are more appropriately explored at a deposition or through some other discovery device, like interrogatories.

For instance, in the notice to admit sent to Mr. Di Oronzo, defendant asks him to admit that “each of the architectural drawings prepared by Bluarch of the Project were drawn by Masashi Kobayashi, designated ‘MK’ on those drawings” and that Mr. Kobayashi was not a licensed architect in New York between 2013 and 2018 (NYSCEF Doc. No. 272, ¶¶ 19, 21). Obviously, that is not a proper statement for which defendant could demand an admission; it is a question to be posed at a deposition.

But the improper requests do not end there. As third-party defendants point out, items 37, 38, 39, 42, 52 and 53 of the Di Oronzo notice to admit seek admissions on highly technical and architectural matters (*id.* at 8-10). The notice to admit served on the corporate third-party defendant contains similar requests. It is wholly improper to seek admissions about alleged “facts” that necessarily require Mr. Di Oronzo to use his architectural expertise. For example, item 38 demands that he admit that certain “Grade” elevations in various architectural drawings purportedly prepared by the corporate third-party defendant were copied from another survey. That is not an innocuous factual question ripe for a notice to admit.

Other requests are also improper. Item 42 asks the Di Oronzo to admit that Bluarch “has not produced a copy . . . of the drawings of the stair without [the] bulkhead” (*id.* ¶ 42). As stated above, the purpose of a notice to admit is to, essentially, seek a stipulation about the genuineness of documents. It is not designed for a party to demand an admission about something that the opposing party *did not do*.

The Court could continue reviewing various improper items but it need not do so. “[W]hile a few proper requests may be interspersed in the Notice to Admit. . . it is not the court's obligation to prune those pre-litigation devices” (*Kimmel v Paul, Weiss, Rifkind, Wharton &*

*Garrison*, 214 AD2d 453, 453-54, 214 AD2d 453 [1st Dept 1995] [citations omitted]).


Therefore, both notices to admit are stricken.

Moreover, the Court expects that the deposition of Mr. Di Oronzo (which the parties claim is scheduled for May 4, 2022) will go forward.

Accordingly, it is hereby

ORDERED that the motion by third-party defendants to strike the subject notices to admit is granted.

Next Conference: June 21, 2022 (NYSCEF Doc. No. 269 [directing the parties to file a discovery update by June 14, 2022]).

<u>4/28/2022</u> <b>DATE</b>			 <hr/> <b>ARLENE BLUTH, J.S.C.</b>
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE