

**GC Eng Eng'g Assoc., P.C. v Goshow Architects,
L.L.P.**

2022 NY Slip Op 32383(U)

July 20, 2022

Supreme Court, New York County

Docket Number: Index No. 654771/2020

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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GC ENG ENGINEERING ASSOCIATES, P.C.

Plaintiff,

- v -

GOSHOW ARCHITECTS, L.L.P.,

Defendant.

-----X

INDEX NO. 654771/2020

MOTION DATE 07/15/2022

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 45, 46

were read on this motion to/for PRECLUDE.

The motion by defendant to strike the complaint is denied. However, the Court strikes the note of issue (which was filed after this motion was brought, but before the motion was submitted).

Defendant moves to strike the complaint on the ground that plaintiff has not complied with various discovery demands.

In opposition, plaintiff points to documents it produced Bates stamped GCE_001 through GCE_01133, which allegedly includes invoices, account statements, agreements, and time sheets for the projects at issue. (In this matter, plaintiff seeks payment for engineering services it allegedly provided to defendant).

In reply, defendant observes that the above discovery was produced one day after defendant made the instant motion. It also argues that plaintiff failed to produce a single email or other communication with defendant or non-party involved in the construction projects that are the subject of plaintiff's complaint. Defendant is particularly interested in plaintiff's emails with the project owners.

As an initial matter, the Court declines to strike the complaint as plaintiff has provided a substantial amount of discovery and striking a complaint is a drastic remedy. Under these circumstances, the Court also declines to award any sanctions.

However, the time for games is over. The fact that plaintiff produced over 1,000 pages of documents only after defendant made the instant motion is unacceptable. Any further litigation tactics like this may result in the imposition of penalties, such as preclusion or sanctions.

Plaintiff is directed to produce all relevant emails or other forms of communications with defendant and with the project owners of the construction projects referenced in the complaint along with a privilege log (if necessary) on or before September 1, 2022. Any documents not produced (with respect to emails or communications with the project owners or defendant) cannot be used by plaintiff in this case. That means they cannot be used at trial or in a subsequent motion. And if defendant gets communications not produced by plaintiff some other way (from third parties), then defendant may make a motion for appropriate relief.

To be clear, the Court makes no finding that defendant may not seek additional discovery. Given the over-1,000 pages of discovery that plaintiff recently produced, there may be other relevant demands. The instant order considers the specific demand highlighted by defendant in reply. And there may be additional and relevant demands that arise from the emails/communications with the project owners (such as with contractors or other non-parties).

The Court also vacates the note of issue, which was filed before this motion was submitted. The Court observes that it ordered that a note of issue be filed because the parties did not update the Court about the status of discovery by the assigned deadline. Clearly, there is discovery outstanding and this case is not ready for trial.

Accordingly, it is hereby

ORDERED that the motion by defendant to strike plaintiff's complaint is denied; and it is further

ORDERED that plaintiff shall produce all relevant communications (including emails) with defendant and with the project owners for the construction projects referenced in the complaint on or before September 1, 2022 and plaintiff may not rely on or use any document not produced by this deadline with respect to its communications with defendant or these project owners not produced by the deadline; and it is further

ORDERED that the note of issue (NYSCEF Doc. No. 43) is hereby vacated and the case is stricken from the trial calendar; and it is further

ORDERED that, within 15 days from the entry of this order, movant shall serve a copy of this order with notice of entry on all parties and upon the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who is hereby directed to strike the case from the trial calendar and make all required notations thereof in the records of the court; and it is further

ORDERED that such upon 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).

The next conference shall be on September 12, 2022 at 10 a.m. The parties are directed to upload a discovery update by September 6, 2022 (September 5, 2022 is a Court holiday) or the conference will be adjourned.



7/20/2022

DATE

ARLENE BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE