

**T.G. Nickel & Assoc., LLC v Skyline Windows, LLC**

2022 NY Slip Op 33704(U)

October 28, 2022

Supreme Court, New York County

Docket Number: Index No. 653933/2018

Judge: Andrea Masley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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T.G. NICKEL & ASSOCIATES, LLC,  
Plaintiff,

- v -

SKYLINE WINDOWS, LLC, PINNACLE ELECTRIC  
CORP., BAYBRIDGE ENTERPRISES LTD., SC PRIME  
ENERGY LTD., MITSUBISHI ELECTRIC POWER  
PRODUCTS, INC., MITSUBISHI ELECTRIC TRANE  
HVAC US LLC, and MITSUBISHI ELECTRICAL U.S., INC.,

Defendants.

INDEX NO. 653933/2018

MOTION DATE N/A

MOTION SEQ. NO. 003

**DECISION + ORDER ON  
MOTION**

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SC PRIME ENERGY LTD.  
Plaintiff,

-against-

ABCO REFRIGERATION SUPPLY CORP., MITSUBISHI  
ELECTRIC POWER PRODUCTS, INC., MITSUBISHI  
ELECTRIC TRANE HVAC US LLC, MITSUBISHI ELECTRIC  
U.S., INC.

Defendants.

Third-Party  
Index No. 595416/2019

-----X

SC PRIME ENERGY LTD.  
Plaintiff,

-against-

MEC CON ASSOCIATES, INC.

Defendant.

Second Third-Party  
Index No. 595376/2020

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310,

311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346

were read on this motion to/for

DISCOVERY<sup>1</sup>

Oral argument was held on motion sequence number 003 on August 30, 2022 and on September 30, 2022. This decision supplements the record. At the outset, plaintiff's motion seeking to extend all discovery deadlines is denied as moot.

### **Mitsubishi Defendants**

For the reasons stated on the record, plaintiff's motion against defendants Mitsubishi Electric Power Products, Inc., Mitsubishi Electric Trane HVAC US LLC, and Mitsubishi Electrical U.S., Inc. (Mitsubishi Defendants) is denied without prejudice with respect to an order conditionally striking the pleadings and for an adverse inference and granted with respect to attorneys' fees and expenses incurred in bringing this motion.<sup>2</sup> (See NYSCEF 246, Aug, 30, 2022 tr at 29:17-19, 30:7-25.) If so advised, plaintiff shall bring a new motion, by Order to Show Cause (OSC), against the Mitsubishi Defendants within 7 days of the date of this order, otherwise waived.

<sup>1</sup> Discovery in this action was consolidated with *T.G. Nickel & Assocs., LLC v MS/WG 1107 Broadway Owner LLC, et al.*, index No. 657025/2017. (NYSCEF Doc. No. [NYSCEF] 300, decision and order.)

<sup>2</sup> The court provisionally denied plaintiff's motion subject to the Mitsubishi Defendants' compliance with their September 13, 2022 deadline for document production. (See NYSCEF 346, tr at 45:22-23, 46:8-18.) On October 18, 2022, plaintiff informed the court that the Mitsubishi Defendants have made corrections, re-produced their productions, and that plaintiff anticipates all matters to be resolved regarding the Mitsubishi Defendants "in a matter of days." (NYSCEF 348, Oct. 18, 2022 status letter at 2.)

### SC Prime<sup>3</sup>

Plaintiff's motion is denied without prejudice with respect for an order striking SC Prime's pleadings and entering a default judgment, or alternatively, imposing a preclusion sanction and adverse inference against SC Prime and granted with respect to attorneys' fees and expenses incurred in bringing this motion. (See NYSCEF 356, Sept. 30, 2022 tr at 54:9-55:3, 45:7-9.) The court also directed SC Prime to submit insurance claim documents by October 7, 2022 (*id.* at 54:11-13) and also to retrieve documents responsive to plaintiff's requests for production from other defendants or third-parties, if not already done (*id.* 51:4-53:2).

On October 18, 2022, plaintiff informed the court that SC Prime failed to produce relevant insurance claim documents by the deadline, and accordingly, plaintiff requests that the court grant the requested relief. (NYSCEF 351, Oct. 18, 2022 SC Prime status letter at 3.) On October 24, 2022, SC Prime responded that it has produced all documents in its possession related to the insurance claim as a result of Hurricane Ida (NYSCEF 138, Oct. 24, 2022 letter in response [filed in the SC Prime Plaintiff Action]); SC Prime shall submit, and e-file to NYSCEF, an affidavit from someone with knowledge attesting to this within 7 days of the date of this order. Plaintiff shall bring a new motion, by OSC, against SC Prime for the requested relief by November 30, 2022, otherwise waived.

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<sup>3</sup> SC Prime Energy Ltd. (SC Prime) is also a plaintiff in related action *SC Prime Energy Ltd. v Consigli & Assocs., LLC f/k/a T.G. Nickel & Assocs., LLC*, index No. 650101/2022 (SC Prime Plaintiff Action).

## Baybridge Enterprises

At argument, plaintiff and defendant Baybridge Enterprises Ltd (Baybridge) disputed whether Baybridge's production of 464 documents is complete. Plaintiff argued that Baybridge has not made an ESI production, destroyed documents in 2018 when Baybridge ceased operations, and merely re-produced the same documents that were produced in a 2016 related and discontinued action. Baybridge contends that the relevant documents in this action are the same documents for the 2016 discontinued action and, thus, Baybridge's production of relevant documents is complete.

On October 18, 2022, plaintiff wrote to the court regarding additional documents plaintiff found on a USB drive that were produced in the 2016 action but not in this action. (See NYSCEF 348, Oct. 18, 2022 status letter at 3.) Baybridge wrote separately to the court and requested a 30-day extension to reproduce the files on the USB drive in accordance with the parties' ESI protocols. (NYSCEF 350, Oct. 18, 2022 Baybridge status letter.)

Plaintiff's motion is denied without prejudice with respect for an order to strike Baybridge's pleadings and enter a default judgment, or alternatively, imposing a preclusion sanction and adverse inference and granted with respect to attorneys' fees and expenses incurred in bringing this motion. Additionally, Baybridge shall finalize re-production within 14 days of the date of this order. Plaintiff shall then review Baybridge's production, and, if so advised, plaintiff may bring a new motion, by OSC, by November 30, 2022, otherwise waived.

### **Skyline Windows**

Plaintiff's motion is denied in part without prejudice for an order to conditionally strike the pleadings and impose an adverse inference against defendant Skyline Windows, LLC and granted in part with respect to attorneys' fees and costs. (See NYSCEF 356, Sept. 30, 2022 tr at 81:6-10.) If so advised, plaintiff shall bring a new motion, by OSC, against Skyline for the requested relief by November 30, 2022, otherwise waived.

### **ABCO Refrigeration**

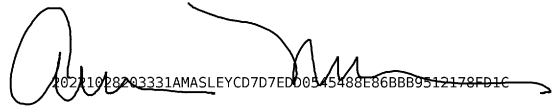
Plaintiff's motion is denied in part without prejudice for an order to conditionally strike the pleadings and impose an adverse inference against defendant ABCO Refrigeration Supply Corp. (ABCO) and granted in part with respect to attorneys' fees and costs. Additionally, as of October 18, 2022, plaintiff reports to the court that there are no additional issues with regard to ABCO's production at this time.

Accordingly, it is

ORDERED that motion sequence number 003 is denied in part and granted in part in accordance with the foregoing; and it is further

ORDERED that plaintiff submit an affirmation detailing the services performed and identifying all timekeepers including brief descriptions of their jobs and level of experience by electronic filing to NYSCEF and by email to [SFC-Part48@nycourts.gov](mailto:SFC-Part48@nycourts.gov) in accordance with the directions stated on the record; and it is further

ORDERED that counsel for the Mitsubishi Defendants, defined above, shall enter appearances for the record in this action.



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10/28/2022

DATE

ANDREA MASLEY, 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