

Cooper v Bldg 7th St. LLC

2023 NY Slip Op 30728(U)

March 14, 2023

Supreme Court, New York County

Docket Number: Index No. 153479/2018

Judge: Arlene P. 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 P. BLUTH PART 14

Justice

-----X

DWAYNE COOPER,

Plaintiff,

- v -

BLDG 7TH STREET LLC,EAST 7TH STREET VENTURES
LLC,BLDG MANAGEMENT CO. INC.,

Defendant.

-----X

BLDG 7TH STREET LLC, EAST 7TH STREET VENTURES
LLC, BLDG MANAGEMENT CO. INC.

Plaintiff,

-against-

ALL BORO TANK TESTING, LLC, GLOBAL PEST CONTROL,
LLC

Defendant.

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INDEX NO. 153479/2018
MOTION DATE N/A
MOTION SEQ. NO. 006

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595699/2018

The following e-filed documents, listed by NYSCEF document number (Motion 006) 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225

were read on this motion to/for DISCOVERY.

Defendants’ motion to strike third party defendant All Boro Tank Testing, LLC’s (“All Boro”) answer and to vacate the note of issue is denied.

Background

Defendants contend that after the deposition of All Boro's witness, they served a post-deposition notice for discovery and inspection on November 9, 2022. They claim that All Boro has yet to provide the outstanding discovery requested in this demand. Defendants also complain that plaintiff, in the interim, filed a note of issue on January 20, 2023. Defendants maintain that All Boro has repeatedly ignored Court discovery orders and so its answer should be stricken.

Third-party defendant Global Pest Control, LLC ("Global Pest") cross-moves for the same relief. It claims that All-Boro has not responded to its post-EBT discovery demands.

All Boro contends that it is conducting a diligent search for the discovery demanded. It also insists that the information requested is irrelevant.

Plaintiff opposes the branch of the motion that seeks to strike the case from the trial calendar. He points out that the parties' discovery stipulation dated November 28, 2022 (which was so-ordered by the Court) directed that a note of issue be filed by February 3, 2023. Plaintiff questions why defendants waited until after the note of issue was filed to demand All Boro turn over the discovery when All Boro's deadline to respond was weeks earlier.

Discussion

The Court grants the motion and the cross-motion only to the extent that All Boro's answer, affirmative defenses and crossclaims are stricken. On this record, it is undisputed that both defendants and Global Pest made post-EBT discovery demands in November 2022 and that

the Court so-ordered a stipulation that required All Boro to respond to these demands within 30 days of that stipulation (which was so-ordered on November 29, 2022) (NYSCEF Doc. No. 187).

All Boro does not contend it made timely objections to these demands or made a motion for a protective order. Nor does its opposition detail what documents it has turned over or even what it has done to locate the records. The only argument offered by All Boro was included in both affirmations from its counsel that “ALL BORO is conducting a diligent search to determine the existence of the discovery sought after by [Global Pest]” (NYSCEF Doc. No. 224, ¶ 7) and “ALL BORO is conducting a diligent search to determine the existence of the discovery sought after by BLDG” (NYSCEF Doc. No. 219, ¶ 7).

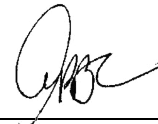
The Court observes that All Boro has, previously, delayed this case and offered belated responses to discovery demands (NYSCEF Doc. No. 175 [decision on motion sequence 004]). Court orders must have some meaning. Here, All Boro, yet again, has apparently done nothing to even attempt to comply with a Court order. It did not even bother to offer discovery in response to the instant motion. A vague and conclusory contention that it is “working on it” is not sufficient given All Boro’s history of not timely responding to discovery demands. As stated above, there are many options available to a party in All Boro’s position. If it could not find documents or needed more time, it could have attempted to stipulate with movants for an extension of time. But it did not do that. All Boro could have made a motion for an extension of time or done something to indicate it took the Court-ordered deadline seriously. All Boro did not do that either. If the client was not being responsive to the attorneys, the attorneys could move to get off the case. All Boro’s attorneys did not do that. Instead, neither All Boro nor its attorneys did anything and its opposition does nothing to suggest it will comply. That behavior compels the Court to strike All Boro’s answer, affirmative defenses and crossclaims.

Accordingly, it is hereby

ORDERED that defendants' motion and third-party defendant Global Pest Control LLC's cross-motion are granted to the extent that All Boro Tank Testing LLC's answer, affirmative defenses and crossclaims are stricken and dismissed, and there shall be an inquest against All Boro at time of trial or, if the matter is resolved with respect to the remaining parties prior to trial, then movants shall file a note of issue for an inquest.

3/14/2023

DATE



ARLENE P. 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