

**Perez v Long Is. Concrete Inc.**

2023 NY Slip Op 32207(U)

June 27, 2023

Supreme Court, New York County

Docket Number: Index No. 654227/2018

Judge: Melissa A. Crane

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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. MELISSA A. CRANE PART 60M**

*Justice*

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JOHNNY PEREZ, ARCADIO FRIAS, NESTOR RAMIREZ,

Plaintiff,

- v -

LONG ISLAND CONCRETE INC., THOMAS J PERNO, TJM  
CONSTRUCTION CORP., ZHL GROUP INC., LANMARK  
GROUP, INC., THE GUARANTEE COMPANY OF NORTH  
AMERICA USA, VIGILANT INSURANCE COMPANY, THE  
OHIO CASUALTY INSURANCE COMPANY, JOHN DOE  
BONDING COMPANIES 1-10, REGULATOR  
CONSTRUCTION CORP.,

Defendant.

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INDEX NO. 654227/2018

MOTION DATE N/A

MOTION SEQ. NO. 011

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 011) 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 492, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 536, 537, 538, 539, 540, 541, 542, 543, 544

were read on this motion to/for SANCTIONS.

Upon the foregoing documents, it is

The court decided the motion for sanctions per the reasoning on the record of 6/27/2023 and sums up its conclusions here.

In general, this case has been pending since 2018. Yet, discovery has been like pulling teeth. There have been numerous discovery conferences and orders that never seem to obtain compliance. For example, the LIC Defendants interposed blanket objections to Plaintiffs' December 3, 2019 document requests that were picayune and unreasonable. These objections ended up requiring intensive court intervention in the form of two telephonic conferences with a prior court attorney, an amended scheduling order in May 2020 (see EDOC 68) and ultimately a conference with the Court on September 25, 2020 where the Court ordered the records produced.

Still, from that date, it took years to complete discovery (see, e.g. conference order dated 7/9/2021 [EDOC 200] which indicates the parties were still in the middle of document discovery).

Obstructive conduct has continued to the present. For example, at a deposition on 2/23/2023, counsel for LIC improperly directed a witness not to answer.

On March 17, 2022, the Appellate Division, First Department largely affirmed this court's denial of defendants' motions to dismiss. This decision confirmed that the issue of whether defendants LIC and Regulator were alter egos of the other was front and center in this litigation (see EDOC 284). Following that decision, this court issued a final scheduling order on July 26, 2022 (EDOC 292), that then had to be amended repeatedly (see EDOCs 378 and 402).


Finally, after years of discovery and intensive court involvement, on March 13, 2023, LIC issued a Rule 11-e(d) certification that no further responsive documents existed. It came as quite a surprise then, that on March 28, 2023, after insisting that there were no more documents, LIC supported a cross motion with certain correspondence and invoices between LIC and Regulator that had never been produced (see EDOC 455). These documents purport to explain approximately \$7 million of payments Regulator made to LIC from July 2015 through September 2018. At no point did LIC reach out to the court or opposing counsel to alert anyone about the existence of these documents. Given (1) how discovery has proceeded in this case historically, and (2) that the issue of alter ego has been front and center in this litigation from the inception, or at least certainly from the date of the March 17, 2022 Appellate Division, First Department decision, there is simply no excuse to have attached these documents for the first time in an ambush on a cross motion. Accordingly, as explained on the record, the court precludes defendants from relying on the documents attached at EDOC 455 in this action.

Further, for the reasons stated on the record, plaintiff should not have had to threaten a motion to obtain an answer to interrogatory 16. The court had ordered LIC to answer this interrogatory by 1/13/2023 in its “amended final scheduling order” dated January 11, 2023 (see EDOC 378 ¶ 2); and by 2/27/2023 in its subsequent conference order dated February 14, 2023 (EDOC 402 ¶ 2). LIC failed to comply. Not until May 2, 2023, after this court directed plaintiff to make a motion for sanctions, did LIC finally cough up an answer. Even this answer was incomplete, because it excluded public works projects.

This interrogatory has been outstanding for years. It is time to answer it fully. Accordingly, LIC has until July 5, 2023 to answer Interrogatory 16 without excluding forepersons on public works projects. Failure to comply with this order will result in an adverse inference. In addition, because plaintiff should never have had to make this motion, LIC must pay plaintiff’s costs and attorney’s fees related to the portion of the motion relating to Interrogatory 16.

Finally, Regulator failed to interpose its opposition to the motion on time and never asked the court for an extension. Indeed, the court did not even receive Regulator’s opposition in time to read it for oral argument. In addition, Regulator’s document production is inexcusably late. Therefore, for the reasons stated on the record, the court grants that part of plaintiff’s motion directed at defendant Regulator who has until July 5, 2023 to complete its production, including a Jackson affidavit from its client swearing that production is complete, and explaining why no further documents can be located, or the court will strike Regulator’s answer.

The remainder of the plaintiff's motion is denied.

  
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6/27/2023

DATE

MELISSA A. CRANE, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: