SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **14**

Justice

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NOUVEAU ELEVATOR INDUSTRIES, LLC,

Plaintiff,

- v -

CHABAD OF MIDTOWN MANHATTAN, INC.,CHABAD 509 FIFTH A LLC

Defendants.

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INDEX NO. 656045/2023

MOTION DATE 01/10/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 20, 21, 22, 23, 24, 25, 26, 27, 28

were read on this motion to/for STRIKE PLEADINGS.

Plaintiff's motion to strike is decided as described below.

Background

This action concerns elevator maintenance and repair work allegedly performed by plaintiff at defendants' property. Plaintiff contends it was not fully paid and is owed nearly $700,000. Plaintiff details that after serving the summons and complaint, it agreed to six extensions of time for defendants to answer as the parties were purportedly exploring a settlement. Plaintiff complains that defendants never proposed any settlement offers and that they eventually filed an answer with counterclaims.

Plaintiff served a notice for discovery and inspection on September 9, 2024. It insists that counsel for defendants suggested that a settlement might be a better use of resources and that defendants failed to respond to the aforementioned discovery demand. Plaintiff acknowledges

that the parties eventually agreed on dates in a preliminary conference order dated November 6, 2024 (NYSCEF Doc. No. 19) which was so-ordered by this Court. That order detailed that all discovery demands be served by November 20, 2024 and responses to any discovery demands be served 30 days after receipt (*id*.). Plaintiff insists that despite all of its efforts, it has not received anything from defendants.

In opposition, defendants argue that the instant motion is untimely because they had until December 20, 2024 to respond to discovery demands and that this motion was filed on December 13, 2024. Defendants argue that they responded on December 20, 2024 (although defendants did not attach a copy of their responses to their opposition papers).

In reply, plaintiff points out that it served the subject discovery demand in September 2024 and so they were due in October 2024. It argues that nothing in the preliminary conference order set a December 20, 2024 deadline for defendants to respond to that September demand. Plaintiff points out that on December 20, 2024, after this motion was already filed, defendants' counsel requested more time to respond to the outstanding discovery demand. Counsel for plaintiff responded via email that the responses were due a long time ago and that he had already filed a motion to strike based on defendants' failure to respond. Plaintiff then details that it received defendants' responses, which merely consisted of vague objections and did not include a single document.

Discussion

As initial matter, this Court emphasizes that "Before a court invokes the drastic remedy of striking a pleading or the alternative remedy of precluding evidence, there must be a clear showing that the failure to comply with court-ordered discovery was willful and contumacious"

(*Castillo v Charles*, 210 AD3d 625, 626-27 [2d Dept 2022] [internal quotation and citations omitted]).

The Court's analysis begins with the fact that plaintiff served a discovery demand in September 2024 and defendants did not respond until December 2024. To be sure, the preliminary conference order was conspicuously silent as to that specific outstanding demand. For some reason, plaintiff did not expressly include that demand in the stipulation. However, contrary to defendants' argument in opposition, the stipulation did not set a December 20, 2024 deadline for them to finally respond. The stipulation states that a response was due within 30 days after service of discovery which, of course, meant that defendants' deadline had already passed as the demand was served in September.

In any event, it is not directly clear how this Court-ordered discovery stipulation applied to the outstanding document demand upon which plaintiff moves. In light of the well-established standard that striking a pleading is a drastic remedy, the Court is unable to strike defendants' answer where there *might* be a single Court order ignored by defendants.

However, that does not end this Court's inquiry. Defendants' conduct in this action is wholly lacking. Defendants, who have continuously relied upon the promise of a settlement, ignored a valid discovery demand, set their own deadline to respond and then failed to even attach a copy of their response in opposition. That does not evince a party meaningfully cooperating in an ongoing litigation inclined to comply with Court-ordered deadlines. Even more concerning is the actual content of the response, which was included by plaintiff in reply. Defendants have demonstrated that they did not approach the demand with the appropriate solemnity; they did not include a single document in response to plaintiff's demand. That is unacceptable.

Defendants are therefore required to respond, substantively and completely, to plaintiff's demand on or before February 5, 2025. This response must include documents; vague and boilerplate objections will not suffice. Moreover, the Court observes that defendants may only raise objections based upon privilege (with a proper privilege log) or that the demands are palpably improper. As defendants did not timely respond, they are waived their right to raise any other objections (*see Otto v Triangle Aviation Services, Inc.*, 258 AD2d 448, 448, 684 NYS2d 612 [2d Dept 1999]).

The Court recognizes plaintiff's frustrations in prosecuting its case. It believes that defendants utilized the prospect of a possible settlement, which would conserve the resources of all parties, as a way to delay this case. For whatever reason, settlement has not yet occurred; it is now time for the parties to actively engage in this litigation. That begins with defendants responding to plaintiff's demands by February 5, 2025. The failure to sufficiently and timely respond will result in proper penalties upon a motion by plaintiff. Enough is enough.

The conference currently scheduled for March 3 will remain on the calendar. As noted in the prior conference order, the parties shall upload an update by February 24, 2025 (that should provide plaintiff enough time to evaluate defendants' response and take appropriate action if necessary).

Accordingly, it is hereby

ORDERED that plaintiff's motion to strike is denied; and it is further

ORDERED that defendants shall substantively respond, including the production of documents, to plaintiff's discovery demand by February 5, 2025.

1/13/2025
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED		GRANTED IN PART	X OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE