

**Murawski v Bisso**

2025 NY Slip Op 31466(U)

April 21, 2025

Supreme Court, New York County

Docket Number: Index No. 160752/2020

Judge: Emily Morales-Minerva

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: HON. EMILY MORALES-MINERVA PART 42M

Justice

-----X

WILLIAM MURAWSKI,

Plaintiff,

- v -

RICHARD BISSO, LAB PLUMBING, DOUBLE B REALTY,  
MACAU REALTY,

Defendant.

-----X

INDEX NO. 160752/2020

MOTION DATE 04/05/2025

MOTION SEQ. NO. 006

DECISION + ORDER ON  
MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 006) 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237

were read on this motion to/for STRIKE CASE FROM CALENDAR

APPEARANCES:

William Murawski, pro se.

Hannum, Feretic, Prendergast & Merlino, LLC, New York, NY  
(Paul Benjamin Josephs, Esq., of counsel), for defendants  
RICHARD BISSO and LAB PLUMBING.

Rivkin Radler, LLP, Uniondale, NY (Sahil Sharma, Esq., of  
counsel), for defendant DOUBLE B REALTY.

EMILY MORALES-MINERVA, J.S.C.

In this personal injury action arising from an alleged fire  
that occurred on September 29, 2017, plaintiff WILLIAM MURAWSKI,  
moves, by notice of motion (sequence number 006), for an order,  
pursuant to CPLR § 3126,<sup>1</sup> to strike the answers of defendants

<sup>1</sup> CPLR § 3126 provides, "If any party, or a person who at the time a  
deposition is taken or an examination or inspection is made is an officer,  
director, member, employee or agent of a party or otherwise under a party's  
control, refuses to obey an order for disclosure or willfully fails to  
disclose information which the court finds ought to have been disclosed

RICHARD BISSO, LAB PLUMBING, and DOUBLE B REALTY (collectively, defendants) for failing to respond to plaintiff's demand for Bill of Particulars.<sup>2</sup>

Defendants appear and submit written opposition to the motion.

For the reasons that follow, motion (seq. no. 006) is denied in its entirety.

When a defendant responds to discovery demands but provides responses that plaintiff deems to be inadequate, the proper remedy is a motion to compel pursuant to CPLR § 3124 as opposed to a motion to strike pursuant to CPLR § 3126 (see Double Fortune Prop. Inv'rs Corp. v Gordon, 55 AD3d 406, 407 [1st Dept 2008] [holding that "plaintiff having responded to defendant's discovery requests, the proper course for defendant, rather than moving to strike the complaint pursuant to CPLR § 3126, was first to move to compel further discovery pursuant to CPLR § 3124"]; see also Charter One Bank v Houston, 300 AD2d 429, 430

---

pursuant to this article, the court may make such orders with regard to the failure or refusal as are just, among them: 1. an order that the issues to which the information is relevant shall be deemed resolved for purposes of the action in accordance with the claims of the party obtaining the order; or 2. an order prohibiting the disobedient party from supporting or opposing designated claims or defenses, from producing in evidence designated things or items of testimony, or from introducing any evidence of the physical, mental or blood condition sought to be determined, or from using certain witnesses; or 3. an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or any part thereof, or rendering a judgment by default against the disobedient party."

<sup>2</sup> Defendant MACAU REALTY has never appeared in the instant action.

[2d Dept 2002] [finding that "the appellant's request for preclusion is unavailing. The appellants were not entitled to sanctions under CPLR § 3126 without first moving to compel"]; J.N.K. Mach. Corp. v TBW, Ltd., 155 AD3d 1611, 1614 [4th Dept 2017]).

In any case, a party seeking preclusion or an order to strike a pleading must show that they made a good faith effort to resolve the issue with the other party before moving for more drastic relief (see generally Uniform Civil Rules for the Supreme Court and County Court [22 NYCRR] § 202.7; see also Lehrman v Lehrman, 211 AD3d 582, 583 [1st Dept 2022]).

Here, on October 16, 2024, defendants RICHARD BISSO and LAB PLUMBING responded to plaintiff's demand for bill of particulars, and plaintiff attaches the responses as an exhibit to his motion (see NYSCEF Doc. No. 227, Plaintiff's Exhibit F [defendants' RICHARD BISSO and LAB PLUMBING responses to plaintiff's demand for bill of particulars, dated October 15, 2024]). Likewise, defendant DOUBLE B REALTY responded to plaintiff's demand for bill of particulars on January 27, 2025 (see NYSCEF Doc. No. 230, defendant DOUBLE B REALTY's response to plaintiff's demand for bill of particulars, dated January 27, 2025). Therefore, the proper course for plaintiff, rather than moving to strike defendants' answers pursuant to CPLR § 3126, was first to move to compel further discovery pursuant to CPLR §

3124 (see Tong v Granat, 2022 NY Slip Op 31159[U] [Sup Ct NY Cnty 2022, L. Nock, J.S.C.], citing Double Fortune Prop. Inv'rs Corp., 55 AD3d at 407 [finding that sanctions are not appropriate as defendants have not behaved contumaciously since they have responded to plaintiff's demand, even if potentially incompletely])).

Nor did plaintiff comply with 22 NYCRR § 202.7, which required plaintiff to make a good faith attempt to resolve the issues with defendants before moving for the relief requested (see 241 Fifth Ave. Hotel, LLC v GSY Corp., 110 AD3d 470, 472 [1st Dept 2013] [holding that it was an error to grant motion to strike where counsel did not substantively comply with judicial administration rule requiring an affirmation that counsel conferred with opposing counsel in good faith effort to resolve issues raised by motion])).

Accordingly, it is hereby

ORDERED that plaintiff WILLIAM MURAWSKI's motion (sequence no. 006) to strike the answers of defendants RICHARD BISSO, LAB PLUMBING, and DOUBLE B REALTY is denied entirely; it is further

ORDERED that the parties shall appear for a virtual status conference in Part 42 on May 29, 2025 at 12:00 P.M.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

4/21/25  
DATE

*Emily Morales-Minerva*  
EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

non-financial disposition

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: